



# ICAI MANGALORE

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

## The Bulletin Board

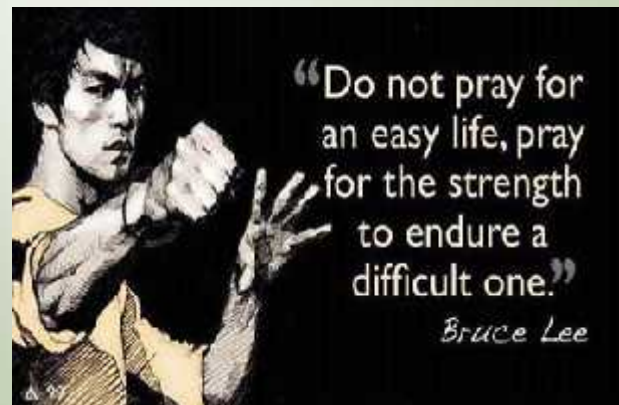
## e- Bulletin



Volume 04 | April 2015

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### Thought for the Month:



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# Chairman's Message



***CA Shivakumar K***  
***Chairman***  
***Mangalore Branch of SIRC of ICAI***



Dear friends,

One and a half months have already passed since the new office bearers have taken over the affairs of the branch. Yes, time and tide waits for none. We have said good bye to the month of March 2015 and welcomed a brand new financial year 2015-16. The New Year comes with new challenges and purpose for us. Learning and unlearning is always a challenge for a professional. This year we have a challenge in the form of implementation of Companies Act 2013 and IFRS. Preparing ourselves for GST is another challenge. We assure you that, our effort will be to bring in the best programmes and value addition to our members in the coming month.

The month of March was filled with a number of activities like Clause by Clause discussion on Union Budget 2015, Full Day Workshop on 'Income Tax Issues in Co-operative Societies' in association with Co-operative Union, Full day Seminar on Bank Audit, Friendship Cricket match between CAs and Tax Departments and many more. I express my sincere and heartiest thanks to each one of you for your good wishes, support and participation in the activities of the branch.

Friends, I would like to share a very interesting story of a wise man and his son. There once lived a wise man in a village. He was often called by the king to advice on matters related to the economy. His name and reputation had spread throughout the country. So it hurt him very much when the village head told him, "you may be a great man, but your son does not know the value of gold or silver". The wise man called his son and asked what is more valuable-gold or silver? 'Gold' said the son. That is correct. Why is it that the village head makes fun of you, claims you do not know the value of gold or silver? He teases me every day. He mocks me before other village elders as a father who neglects his son. This hurts me; I feel everyone in the village is laughing behind my back because you do not know the value of gold or silver. ***Contd..***

## Chairman's Message



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Explain this to me son. The son told his father the reason why the village head carried this impression. “Every day on my way to school, the village head calls me to his house. There in front of all village elders, he holds out a silver coin in one hand and gold coin in other. He asks me to pick up the more valuable coin. I pick the silver coin. He laughs, the elders jeer, and everyone makes fun of me. And then I go to school. This happens every day. That is why they tell you I do not know the value of gold or silver. The father was confused. His son knew the value of gold and silver and yet when asked to choose between a gold and silver he always picked the silver coin. “Why don't you pick up the gold coin?” he asked. In response, the son took the father to his room and showed him a box with more than hundred silver coins. Turning to his father, son said, “the day I pick up the gold coin the game will stop, they will stop having fun and I will stop making money”.

Sometimes in life, we have to play the fool because others like it. That does not mean we lose in the game of life. It just means allowing others to win in one arena of the game while we win in the other. At the same time we should also be careful of others playing up with us and our ending up in fool's paradise. We have to choose which arena matters to us and which arena does not.

With warm regards,

Yours in Professional Service,

**CA Shivakumar K**

**“Setting goals is the first step in turning the invisible into the visible.” – Mr. Anthony Robbins.**

## Branch Activities April 2015



SI No	Date	Activity at Branch	CPE Hours/ Number of Participants
01	05.04.2015	SWACCH BHARATH PROGRAMME SWACCH MANGALURU DRIVE - Jointly with Sri Ramakrishna Mission, Mangalore. Cleaning of surroundings near Kadri Park and redoing a dilapidated Bus Shelter.	15 members and 20 students
02	17.04.2015	National Live Webcast on “ Companies Act”	CPE Credit: 2 hours Members : 14
03	17.04.2015	National Live Webcast Topic: Service Tax	CPE Credit : 2 hours Members: 14
04	23.04.2015	National Live Webcast Topic: FCRA	CPE Credit : 2 hours Members: 11
05	24.04.2015	Study Circle meeting on following Topic:  a) Prosecution Provisions under Service Tax b) Arbitration under Partnership Act and Evidential Value of Financial Statements certified by Chartered Accountants. Speaker: Sri. Vivekananda Paniyal (Advocate)	CPE Credit : 2 Hours Members: 10
06	27.04.2015	ITT Batch started	Students: 27
07	28.04.2015	Talk on "How to face CA Exams?"	Students: 31
08	30.04.2015	Study Circle meeting on Karnataka State Budget & Introduction to GST Speakers : CA. Nandagopal Shenoy & CA. Colin Rodrigues	CPE Credit: 2hours Members: 24



## Branch Activities Gallery April 2015



Study Circle meeting on Karnataka State Budget & Introduction to GST Speakers : CA. Nandagopal Shenoy & CA. Colin Rodrigues conducted on 30<sup>th</sup> April 2015 at ICAI Bhawan, Mahindra Arcade, Mangalore.



SWACCH MANGALURU DRIVE - Jointly with Sri Ramakrishna Mission, Mangalore. Cleaning of surroundings near Kadri Park and redoing a dilapidated Bus Shelter on 05<sup>th</sup> April 2015



## Professional Updates

### ***Direct Taxes: Notification of Income Computation and Disclosure Standards (ICDS):***

Central Government notifies the income computation and disclosure standards to be followed by all assesseees following the mercantile system of accounting, for the purpose of computation of income chargeable to income tax under the head “Profit and gains of business or profession” or “Income from other sources” with effect from the 1st day of April, 2015.

Refer Notification No. 32/2015

### ***Direct Taxes: Sukanya Samriddhi Account Scheme:***

Government has envisaged the following tax benefits under the Sukanya Samriddhi Account Scheme which was introduced in the 2014 Budget:

- a. Investment amount is eligible for 80C benefit
- b. Interest accruing on the deposited amount is exempt from Income tax
- c. Withdrawal from such scheme in accordance with the rules of the said scheme will be exempt from tax

Accordingly, a new clause (11A) is proposed to be inserted in section 10 of the act so as to provide that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014 shall not be included in the total income of the assessee. As a result, the interest accruing on deposits, and withdrawals from any account under the scheme would be exempt.

The scheme has been notified under clause (viii) of sub section (2) of section 80C vide Notification No. 9/2015

### ***Direct Taxes: Form 15G/Form 15H for payments made under life insurance policies:***

The insertion of Sec. 194DA in the Finance Act 2014 wef 01-10-2014 required the withholding of tax @ 2% from payments made under life insurance policy, which are chargeable to tax. The threshold limit for such deduction was set at a higher limit of Rs. 1,00,000. However, in spite of such a high limit, there may be cases where the total income of an assessee including the payments made under life insurance will be below the basic exemption limit. For the benefit of assesseees falling under this category, it is proposed to amend the provisions of section 197A for making the recipients of payments referred to in section 194DA also eligible for filing self-declaration in Form 15G/15H for non deduction of tax at source in accordance with the provisions of section 197A. Amendment will take effect from 1st of June, 2015.

### ***Indirect Taxes: Discount received by an assessee on inter -State sale can't be deemed as 'commission not liable to service tax'***

***AIA Engineering Ltd. v. CST [2015] 55 taxmann.com 241 (Ahmedabad – CESTAT)***

Wherein assessee of Gujarat purchases goods from ‘W’ of Karnataka and sells them to ‘A’ of Jharkhand by transferring documents of title to goods in course of movement of goods directly from Karnataka to Jharkhand, the said transaction is one of sale and, therefore, discount allowed by ‘W’ to assessee cannot be regarded as commission and cannot be charged to service tax.

## Professional Updates



### **Direct Taxes:**

#### ***Non-furnishing of PAN by NR doesn't attract higher TDS rate of 20% under section 206AA if tax rate under DTAA is beneficial***

#### ***Dy. DIT (IT) v. Serum Institute of India Ltd. [2015] (Pune – Trib.)***

Assessee made payments to non – residents after deducting tax at source in accordance with the rates provided under DTAA's. It was noted by the AO that on account of payments in case of some of the non-residents, the recipients did not have PANs. Thus, the AO was of the view that assessee was under an obligation to deduct tax at higher rate of 20% as per section 206AA, hence, he raised demand relating to the difference between 20% and the actual tax rate provided under the DTAA's. The CIT (A) deleted the demand. The aggrieved-revenue filed the instant appeal before the Tribunal.

The Tribunal held in favour of assessee as under:

1. Section 206AA of the Act prescribes that where PAN is not furnished by recipient of income on which tax is deductible the payer would be required to deduct tax at the higher of the following rates:
  - At the rate prescribed in the relevant provisions of the Act; or
  - At the rate/rates in force; or
  - At the rate of 20%
2. Further, section 90(2) of the Act provides that the provisions of the DTAA's would override the provisions of the Act in cases where the provisions of DTAA's are more beneficial to the assessee.

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3. Thus, there could not be any doubt in the proposition that in case of non-residents, tax liability in India is liable to be determined in accordance with the provisions of the Act or the DTAA between India and the relevant country, whichever is more beneficial to the assessee, having regard to the provisions of section, 90(2) of the Act. For the said reason, assessee had deducted the tax at source having regard to the provisions of the respective DTAA's which provided for a beneficial rate of taxation.
4. It would be incorrect to say that, though the charging sections 4 and 5 of the Act are subordinate to the principle enshrined in section 90(2) of the Act, but the provisions of Chapter XVII-B governing tax deduction at source are not subordinate to section 90 (2) of the Act. Notably, section 206AA of the Act is not a charging section but is a part of a procedural provisions dealing with collection and deduction of tax at source.

Therefore, where the tax had been deducted on the strength of the beneficial provisions of section DTAA's, the provisions of sections of section 206AA of the Act could not be invoked by the AO to insist on the tax deduction at 20%, having regard to the overriding nature of the provisions of section 90(2) of the Act.

## Professional Updates



***Direct Taxes: Section 54 relief allowed on capital gain from land, viz., long – term asset, though flat that existed on it was short-term asset***

***C.N. Anantharam v. Asstt. CIT[2015] 55 taxmann. Com 282/230 taxman 34 (Karnataka)***

The assessee transferred a building (used for residential purposes) within 3 years of its purchase which was constructed on a land, the land being a long –term capital asset. He claimed exemption under section 54 in respect of investment made in another residential house to the extent of capital gain attributable to sale of land. The revenue denied section 54 relief to the assessee on the ground that the building (which existed on aforesaid land) was a short-term capital asset. However, the High Court allowed the benefit of section 54 to the assessee and made the following observations:

- (1) The legislature has defined the meaning of house property as ‘building or land appurtenant thereto’. In view of the aforesaid definition of house property, a land appurtenant to a residential house is entitled to benefit under section 54. Therefore, if a land appurtenant to a residential house was entitled to benefit under section 54, it was difficult to accept that the land on which the residential building was constructed would not be entitled to the said benefit.
- (2) When a property, i.e., residential house is sold, the sale consideration includes the value of the land and the value of the construction. The AO treated the capital gain on sale of land (on which the residential house was constructed) as a long - term capital gain, while the capital gain on sale of building was treated as a short-term capital gain. Therefore, if, for levying tax under the Act, such a distinction could be made, one failed to understand why that distinction would not be kept in mind while extending the benefit under section 54.

***Company Law: Sums received by private Cos. From members/directors prior to April 1, 2014 not to be deemed as deposits: MCA***

***GENERAL CIRCULAR NO. 5/2015 [F.NO. 1/8/2013-CL-V], DATED 30-3-2015***

MCA has issued classification on the applicability of Companies (Acceptance of Deposits) Rules, 2014 wherein it has been clarified that amounts accepted by private companies from their members, directors or their relatives prior to 1<sup>st</sup> April, 2014 would not be treated as ‘deposits’ under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall have to make disclosure in the notes to its financial statement for the financial year commencing on or after 1<sup>st</sup> April, 2014 the figure of such amounts and the accounting head under which such amounts have been shown in the financial statement. Further, any renewal or acceptance of fresh deposits on or after 1<sup>st</sup> April, 2014 shall however, be in accordance with the provisions of the Companies Act, 2013.

***Company Law: MCA encourages ease of doing business; relaxes norms relating to board’s approval***

***NOTIFICATION NO. GSR 2016(E)[F.NO.A-1/32/2013-CL-V-PART], DATED 18-3-2015***



## Professional Updates



### **Pre-April 2014 application money won't be held as deposit if the Co either allots shares or returns money by June 1, 2015**

#### **NOTIFICATION [F. NO. 1/8/2013-CL-V], DATED 31-3-2015**

With regard to the treatment of application money received by the companies before commencement of Companies Act, 2013, i.e., prior to 1-4-2014 against which allotment is still pending and which has also been disclosed in the balance sheet for F.Y. 2013-14, MCA has clarified that such companies shall either return the application money or allot shares, stock, bonds, or debentures or shall have to comply with deposit rules by 30-6-2015

### **Margin earned by assessee in high seas sale cannot be regarded as 'commission' for levying service tax**

#### **MMTC Ltd. v. CST [2015] (Chennai – CESTAT)**

Where assessee had imported coal and supplied same to Indian buyer, margin, termed as 'administrative charge', retained by assessee cannot be regarded as 'commission' and cannot be charged to service tax.

### **Transportation of earth is, prima facie, a part of 'Site Formation related service' and not GTA service**

#### **Futura Technological Services v. CCE [2015] (Bangalore – CESTAT)**

Transport of earth, which is carried out during 'excavation and loading, levelling and compaction' work is, prima facie, a part of 'Site Formation related service' and not Goods Transport Agency's Service.

### **Payment of entire ST with interest before issuance of show cause notice saves assessee from imposition of penalty**

#### **Shail Engineering & Welding Works v. CCE & ST [2015] (Ahmedabad – CESTAT)**

Assessee filed service tax returns belatedly along with late fees and also paid service tax with interest prior to issuance of notice. Department levied penalties for non-payment of service – tax on time under section 76 and 78 alleging suppression. Assessee argued that in view of section 73(3), no notice could be issued to levy penalty. Revenue contended that appellant did not file the required returns in time, therefore, there was suppression and penalties imposed were justified. CESTAT held that belated filling of returns and payment of taxes along with interest was permissible under law. If revenue's argument was accepted, then every delay in payment would attract penalties and section 73(3), regarding non-issuance of notice when entire service tax and interest was paid before notice would become redundant. Since there was no evidence in notice indicating that there was any suppression on part of assessee with an intention to evade tax and since entire tax along with interest was paid before issuance of notice, penalties under sections 76 and 78 were not imposable



## 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](mailto:icaiebulletin@gmail.com).*

*Two hunters are out in the woods when one of them collapses. He doesn't seem to be breathing and his eyes are glazed. The other guy whips out his phone and calls the emergency services.*

*He gasps, "My friend is dead! What can I do?"*

*The operator says "Calm down. I can help. First, let's make sure he's dead."*

*There is a silence, then a gunshot is heard. Back on the phone, the guy says "OK, now what?"*



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

[icaiebulletin@gmail.com](mailto:icaiebulletin@gmail.com)

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