



# ICAI MANGALORE

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

## e- Bulletin



### The Bulletin Board

Volume 11 | November 2015

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### Thought for the Month:



## Chairman's Message



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

Dear Esteemed Members,

Warm greetings.

The festive season of Diwali is over, leaving joy, cheer, happiness and vibrancy that it had showered on us. It has inspired us to believe in the power of good and that no matter how dark the night is, but a single lamp can enlighten our path. May the happiness that this season brings brighten our lives now and always.

We have conducted many programs in the month of November at ICAI. Start ups are gaining momentum in recent years. No matter what people tell you, words and ideas can change the world. In order to discuss the 'Role of CAs in enabling start-up eco system' we have conducted seminar on this subject on 14-11-15. Thanks to CA.Aadit Devanand for enlightening us on the subject.

On the same day CA.Satyakumar ,Chennai presented very useful paper on 'Issues in Capital Gains' and many interesting and critical issues were discussed. Thanks to him for his wonderful deliberation.

I am extremely happy that for the first time in the history of Mangalore Branch, a residential seminar of 3 days was organized jointly by Mangalore and Udupi Branch from 20-22nd November at Eagle Eye Resort Chikkamagalur and it was a grand success. On the first day CA.Dayanand Bangalore, discussed 'Service tax issues on Charitable and Religious institutions' and also threw light on the topic of 'Export incentives under FTP' and he opined that it is a new avenue of practice for Chartered Accountants.

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## Chairman's Message



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In the Panel discussion on 'Issues in Income tax relating to Charitable and religious trusts', CA.Y.Ganesh and CA.Srinivas Kamath discussed various tax issues and grey areas. We are extremely thankful to all the speakers.

Most of our members in practice are usually busy in IT Scrutiny Assessments. In order to give more insight into the subject we selected 'Assessment Proceedings, Appeals and Landmark Judgements' as topic for discussion for the second day and CA.G.S.Prashanth took up an excellent session on the topic . Thanks to CA.G.S.Prashanth for sharing his rich expertise with our members. All the participants and their family members enjoyed the exquisite scenic beauty of Chikkamagalur and Mullayanagiri and it was great experience worth cherishing to have spent time with our fellow CA members.

For CA students, apart from conducting ITT batch and GMCS 1 batch, CPT mock test was also conducted at Padil on 29/11/2015.SICASA Committee of Mangalore Branch is all set to host a mega event 'Jnana Sathra' National Conclave for CA students on 15<sup>th</sup> and 16<sup>th</sup> of December 2015. It's my immense pleasure, to cordially invite all the members for the National Conclave of CA students to be held at TMA Pai Conventional Centre, Mangalore.

As the month of November marks the birthday of the first Prime Minister of India Jawaharlal Nehru, I would like to wind up by remembering his quote, '**Loyal and efficient work in a great cause, even though it may not be immediately recognized, ultimately bears fruit**'.

With warm regards,

Yours in Professional Service,

***CA Shivakumar Koikuli***

## Branch Activities November 2015



Sl No	Date	Activity at Branch	CPE Hours/ Number of Participants
01	04.11.2015	ITT BATCH - STARTED	Students : 30
02	14.11.2015	Role of CAs in Enabling Start up Eco System Speaker: CA. Aadit Devanand, Udupi Issues in Capital Gains Speaker: CA. Sathya Kumar, Chennai	Members: 18 CPE Credit: 4 hours
03	20.11.2015 to 22.11.2015	3 days Residential seminar organised by the Continuing Professional Education Committee of ICAI Hosted by Mangalore Branch and Udupi Branches of SIRC of ICAI Day 1- 20.11.2015 I Technical Session Service Tax on Charitable Institutions and Export Incentives under FTP Speaker : CA. Dayanand, Bangalore II Technical Session Panel Discussion on Issues in Income Tax relating to Charitable/Religious Trusts & Education Institutions Panelists :CA. Y. Ganesh,Udupi & CA. S. Srinivas Kamath, Mangalore Entertainment, Camp Fire and Dinner Day 2 - 21.11.2015 III Technical Session Assessment proceedings, Appeals and Land Mark Judgement Speaker : CA. G.S. Prashanth, Bangalore Day 3 - 22.11.2015 Check Out Visit to Mullayanagiri. Lunch at Chickmagalur and back to Mangalore via Udupi	Members: 26 CPE Credit: 6 hours
04	23.11.2015 to 07.12.2015	22nd Batch of GMCS -1	Students: 50
05	29.11.2015	CPT Mock test for December 2015 examination	Students: 55



## Branch Activities Gallery November 2015



Left: CA Sathya Kumar, Chennai and CA Aadit Devanand, Udupi during the seminar held on 14.11.2015 at ICAI Bhawan, Mahendra Arcade.

Right: CA G S Prashanth, Bangalore during the technical session at Residential Seminar held at Chikmagalur



Left: CA Dayanand, Bangalore during the technical session at Residential Seminar held at Chikmagalur

Right: CA Ganesh Y, Udupi during the technical session at Residential Seminar held at Chikmagalur



Glimpse of Group Picture during residential seminar held at Chikmagalur



## Professional Updates: Direct Taxes

### **Cars donated by 'Hyundai' to appease personnel of Police Dept. is not CSR exp.; disallowable under section 37(1)**

***Hyundai Motor India Ltd. V. Dy CIT [2015] (Chennai-Trib.)(TM)***

Assessee ('Hyundai Motor India Ltd.') claimed expenditure of Rs.5.21 Crores being cost of cars donated by it to police Department of Tamil Nadu as allowable under section 37(1). The Contention of the assessee was that it had made aforesaid donation to test efficacy of their vehicles and to obtain feedback, and, therefore, same should be allowed as market research expenditure under the head 'advertisement and sales promotion expense'.

Assessing Officer (AO) was of the view that expenditure was not incurred for the purpose of business and, therefore, same was not an allowable under section 37(1).

At later stage, Assessee also contented that it was fulfilling its 'corporate social responsibility' in the form of gifting cars to the Tamil Nadu police department, and, therefore, expenditure should be allowed to be deducted.

It was held by the tribunal that the assessee could have sold the cars to the police department to get feedbacks and there was no need to incur such huge expenditure by giving the cars free of cost.

Hence, though the assessee claims that the expenditure was wholly and exclusively incurred for the purpose of business but the real object was only to appease the police personnel and it has nothing to do with the business carried on by the assessee.

Further, the expression 'corporate social responsibility' should be given a rational meaning bearing in mind the idea of the Legislature while bringing out this concept. Wherever there is responsibility on the part of the Government and it was not able to extend its arm in fulfilling its social responsibility and if a corporate social responsibility.

In the instant case, this concept has no application as cars were provided to police officials even when not required. But still, even if the cars were provided to fulfill the social responsibility, Explanation 2 to section 37(1) clarifies the legal position that corporate social responsibility expenditure cannot be claimed as business expenditure under section 37(1).

Thus, expenditure was not allowable as it was not incidental to carrying on business and there was no commercial expediency in incurring that expenditure.



## Professional Update: Direct taxes

### **Rent not to be held as benefit/ perquisite just because spouse had substantial interest in lessee-Co.**

*Dy. CIT v. Smt. Nisha Anil Jain [2015] (Pune -Trib.)*

Assessee had let out property to the company (JISL) in which her husband and her relatives were holding substantial interest. During the relevant year, the assessee received rent which was adjusted against interest-free deposit received from JISL.

The Assessing Officer taxed rental receipts under section 2(24) (iv) in preference to section 22 by treating such receipts as benefit derived from JISL as her relatives were having substantial interest in JISL. Thus, the assessee was denied standard deduction of 30% under section 24.

The provision of section 2(24)(iv) which define 'income' is read as under-

“income” includes –

(iv) the value of any benefit of perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid.

The Tribunal held that a bare reading of the provision shows that it seeks to cover value of benefit/perquisite derived by assessee from a company in form of any sum paid by such company in respect of an obligation which would have been payable by the assessee or its relatives.

The provision is not intended to restrict the right of the Company to advance security deposits to its directors or relatives against the valuable consideration i.e. for obtaining house property on rent.

Section 2(24)(iv) will normally come into play only when the company in which the directors or its relatives have taken advantage in respect of any obligation which the director and their relatives are expected to discharge.

In the instant case, section 2(14)(iv) has no application. The agreement has been entered into with the company for which rent has been paid and hence the rent has been derived as a quid-pro quo for letting out the property. Such receipt of rent cannot be characterized as benefit or perquisite under section 2(24)(iv).

## Professional Updates: Direct Taxes



### **Section 234E – Levying fee for default in filing of TDS return is not unconstitutional : Punjab & Haryana High Court.**

*Dr. Amrit Lal Mangal v. Union of India [2015] (Punjab & Haryana)*

In this case, Assessee filed writ petition before High Court to Challenge the constitutional validity of Section 234E under which a fee is levied for default in furnishing of TDS return.

It was held by the High Court that Section 234E of the Act is not punitive and is in the nature of fees and not a tax. It is levied as a fixed charge for the extra services which are required to be provided by the department to the deductee. If the TDS statement is filed within time by the deductor then there is no additional work which arises for the timely filing TDS statement, the department is to undertake extra work of revising the assessment of the deductee.

Hence, section 234E is neither ultra vires nor unconstitutional.

### **No depreciation on asset if its consideration is paid by taking over liability of purchaser**

*CIT v. Hooghly Mills Ltd. [2015] (Calcutta)*

In the Instant case, assessee acquired fixed assets like land, building and also plant and machinery by paying price partly in cash and partly by taking over the accrued liability of the vendor in respect of the gratuity and leave salary payable by him to his workers.

While claiming depreciation on such assets, the assessee considered present day value of gratuity and leave salary liability as part of cost of assets.

The Assessing Officer did not allow depreciation on gratuity and leave salary liability taken over by the assessee.

The High Court by relying upon the judgement of the Supreme Court in the case of the assessee itself in the case of CIT v. Hooghly Mills Co. Ltd. [2006] 157 Taxmann 347 held that no depreciation can be claimed in respect of the gratuity and leave salary liability even if it is regarded as capital expenditure as such liabilities is neither a building machinery, plant or furniture nor is it an intangible asset of the kind mentioned in section 32(1)(ii).



## Professional Updates: Direct Taxes



### ***CBDT to initiate email based correspondence with taxpayers for paperless assessments***

***LETTER [F.NO.225/267/2015-ITA.11], DATED 19-10-2015***

CBDT has decided to develop a system whereby all correspondence between taxpayer and AO would be done via email to curb physical interface. To start with, it has been decided to launch a pilot project in this regard in five non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad & Chennai stations. Initially, 100 cases for e-hearing would be identified in each of these charges and major part of assessment processing would be conducted in electronic mode. At beginning, only those cases which have been selected for scrutiny on the basis of AIR/CIB information or non-matching with 26AS-data would be covered under this pilot project and that too with the consent of the tax payer.

### ***High Court allows TDS credit even if it belonged to AE but wrongly shown in 26AS of assessee***

***CIT v. Relcom [2015] (Delhi)***

The issue that was dealt in the instant case was as under-

“Whether assessee could claim credit of TDS wrongly shown in its 26AS though corresponding income was belonged to its sister concern?”

It was held by the High Court that where due to an inadvertent mistake of vendor, TDS related to assessee’s sister concern was credited to assessee’s TDS account, assessee could claim credit of such TDS, provided its sister concern had not availed benefit of such TDS certificates.

Further, it was observed by the High Court that the revenue’s contention that the assessee instead of claiming the entire TDS amount ought to have sought a correction of the vendor’s mistake, would unnecessarily prolong the entire process of seeking refund based on TDS credit.

## Professional Updates: Direct Taxes/Company Law



### **Direct Taxes: Section 54F: Mother can't be deemed as owner of house purchased by minor-daughter out of her own income**

**Smt. S. Uma Devi v. CIT [2015] (Hyderabad – Trib.)**

Assessee had sold a capital asset and invested a part of sales consideration in a new residential house so as to claim exemption under section 54F. She owned more than one residential house on date of transfer of original asset. However, one residential house was owned by her minor daughter.

Commissioner denied Section 54F exemption on the ground that assessee would be deemed as owner of house owned by her minor daughters.

The Tribunal held in favour of assessee as under  
By virtue of fiction created by Section 64(1A), the incomes of properties owned by the two minor daughters were clubbed in the hands of the assessee since the date of purchase of the said properties.

The investment for purchase of said properties has come from the independent sources of daughters, which has been accepted by the department.

Simply by virtue of inclusion of rental income of minor daughters under Section 64(1A) in the income of assessee, it could not be presumed that the assessee was owner of property purchased by minor minor daughters. Thus, the findings of the learned Commissioner were factually incorrect and legally unsustainable. Hence, assessee would be eligible for exemption under Section 54F.

### **Company law: Removal of directors by forging sign on resignation letters amounts to oppression**

**Narottam Singh v. Notam India (P.) Ltd. [2015] (CLB- New Delhi)**

Right provided under sections 397 and 398 are statutory in nature and vested with parties to prevent oppression and mismanagement against member or company and such reliefs cannot be granted by civil court; hence on dismissal/withdrawal of civil suit and approaching CLB, principles of res judicata not applicable.

Fraudulent removal and appointment of Directors and increase in authorized share capital of company by forging documents amounts to oppression.

### **Company law: Now Companies needn't inform ROC about their conversion into LLP**

The Government has amended certain rules relating to Limited Liability Partnership (LLP) entities. Under revised norm, the requirement of intimation to Registrar of Companies upon conversion of Companies in LLP's has been done away with. Also, now LLP's will have National Emblem on their certificate of incorporation. The same would be applicable for certificates of registration on conversion and establishment of place of business in India.

### **Company law Sale of property of company at low price without notice to shareholder amounts to oppression**

**Dharamdas Nandlal Mehta v. Meridian Construction (P.) Ltd. [2015] (CLB – New Delhi)**

## Professional Updates

### ***Service Tax: Credit of EC and SHEC can be used to pay service tax: CBEC***

***NOTIFICATION NO.22/2015-C.E.(N.T.)***

Finally, the CBEC has amended Cenvat Credit Rules to allow the utilization of cenvat credit of EC and SHEC on inputs and capital goods received in premises of provider of output service on or after the June 1, 2015.

### ***Service Tax: Activity of distribution of lottery isn't liable to service-tax, rules Sikkim High Court***

***Future Gaming & Hotel Services (P.) Ltd. v. Union of India [2015] (Sikkim)***

Activity of buying and selling of lottery is not a service. Department cannot demand service tax on said activity on basis of rule 6(7C) of Service Tax Rules since it is an optional scheme of payment of tax and does not create a charge of service tax.

### ***Service Tax: No penalty if assessee has bona fide belief that service tax is not leviable***

***Arvind Processors (P.) Ltd. v. CCE & ST [2015] (Mumbai – CESTAT)***

Where assessee was under bona fide belief that its activities were non-taxable, same was a reasonable cause for non-payment of service tax in time, and hence, no penalty could be imposed in such a case.

### ***KVAT: HC sets aside penalty on 'Flipkart' for effecting sales without registering under Kerala VAT Act***

***Flipkart Internet (P.) Ltd. v. State of Kerala [2015] (Kerala)***

'Flipkart' is merely facilitating sales, purchase and delivery of goods, it could not be considered as dealer of goods under Kerala VAT Act. The contention of department that the online portal could be seen as an intangible shop was legally flawed because it is well settled that the situs of a sale is wholly irrelevant to a determination of the issue of whether a sale is inter-State sale or not.

### ***MVAT: Supply to high seas vessel is liable to VAT if territorial connection exist in the State: Mumbai HC***

***Raj Shipping v. State of Maharashtra [2015] (Bombay)***

For levying tax it was not necessary that the sale should take place within the territorial limits of the State. The tax could be levied if all the ingredients of sale like the agreement to sale, the passing of title, delivery of goods have a territorial connection. In the instant case the goods were manufactured or refined within the State and the assessee was situated at Mumbai, thus it means that place of business of assessee was in Mumbai. Therefore, there was sufficient territorial nexus for applicability of Maharashtra VAT Act.

## Tips on Android Applications



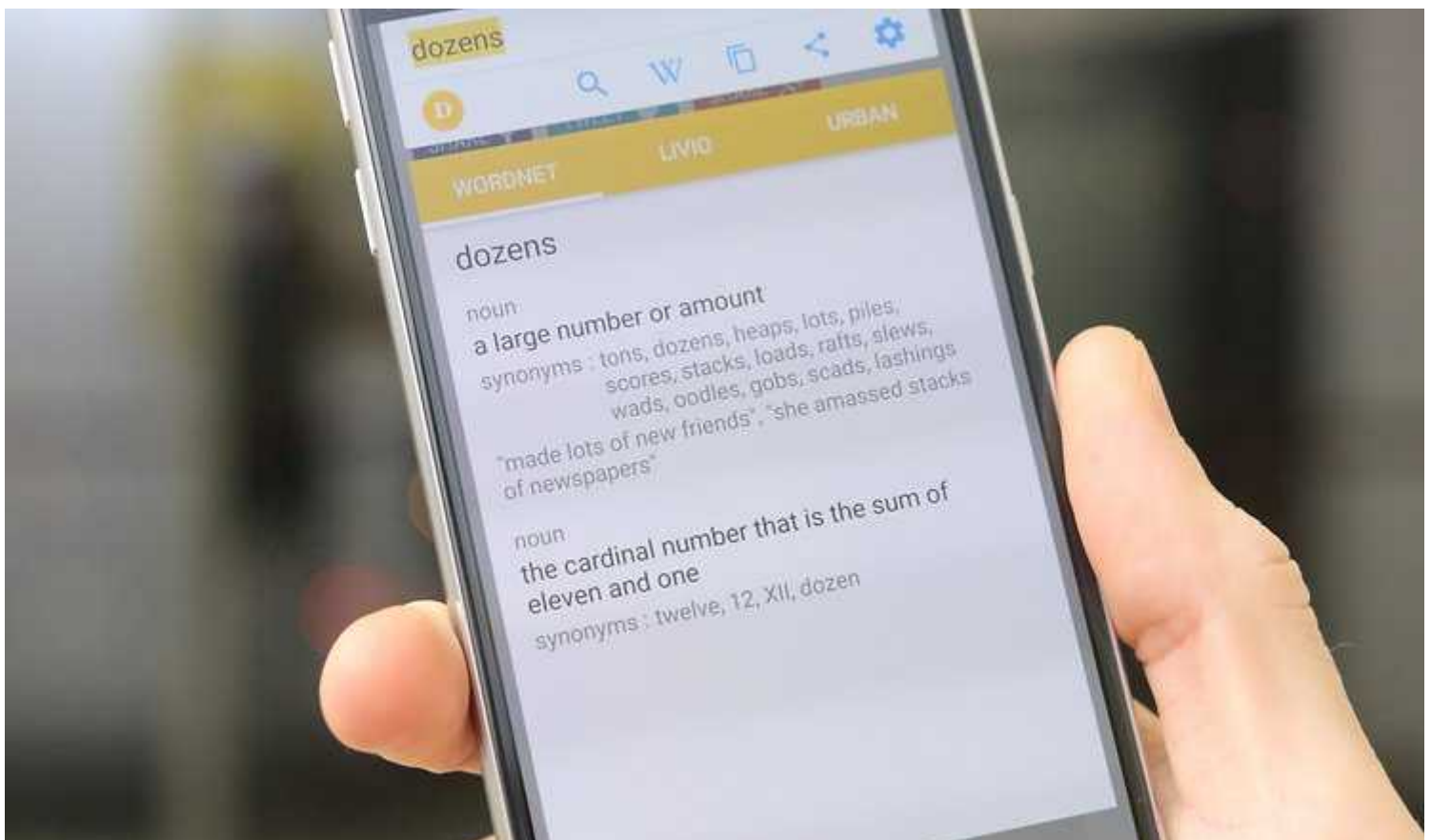
### App Name: Define

Think about how much time you spend reading on your smartphone. Even if you're not a bookworm or *New York Times* subscriber, you're probably always scanning and scrolling through text, and probably doing it across multiple apps. Chances are, you're going to come across a word you don't know at some point.

Define provides a way to look up any word you're unsure of or curious about, in whatever app you're using. Simply by highlighting the text and pressing copy, you bring up an unobtrusive notification, which you can then press to get a definition and usages of the word in question.

You can download two dictionaries, Wordnet and Livio, to use offline, and there's even Urban Dictionary support when you're connected to the internet.

Courtesy: [www.androidpit.com](http://www.androidpit.com)





## 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).*

*Flight Control Center asks the pilot:*

*-Who is landing here?*

*The pilot decides to make a joke:*

*- Guess who, - he asks*

*Flight Control Center turns off the lighting of the landing track and tells:*

*- Guess where..!!!*



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

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

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