KALYAN-DOMBIVLI BRANCH
OF WIRC OF ICAI

NEWSLETTER NOVEMBER 2017

First & foremost

Dear Professional Colleagues ,

At the outset I express my apologies for delay in publishing this November Newsletter .As you can understand everyone including the contributories to the Newsletter were busy in Tax and Company Audits . 7 Day extension also was a great relief and I hope now everyone is bit relaxed . Once this pressure period was once in year now every month is a pressure month . Need to be careful and also one need to have a proper work life balance . In recent times we have seen many unfortunate instances where young members have even lost their lives due to work pressure .

Today Branch received a Thanks Giving Letter from Mrs. Parija Gadkari wife of CA Manoj Gadkari who unfortunately passed away at a very young age of 38, in February 2017 . Our Members Ex Thane Branch Managing Committee Member CA Sameer Sarangdhar and our Vice Chairman CA Murtuza Kachwala our Immediate Past Chairman CA Madan Achwal took lead and initiated the process of obtaining the Financial Aid from CABF . Thanks to ICAI, she got the Financial Assistance from CABF . Compliments to all my colleagues in Managing Committee and also branch is very much thankful to our senior member CA Sameer Sarangdhar . The Branch also received number of Books on Accounting and Auditing from Mrs. Gadkari as donation . The Branch is really thankful to her . We will be sending those books in our reading rooms and those will remain with us as a wonderful memory of CA Manoj .

Continued...

In this entire process what I observed that although our Branch is a Mega Category Branch still the CABF Life Members are very less from our region . Therefore its my sincere appeal to all the members to take the CABF Life Membership .The Membership form is uploaded on the website of the Branch. Request you to drop your Membership Cheques at Branch Office along with duly filled up forms .

Pune Branch is hosting Maharashtra Co-op Convention @ Hotel Shereton Grand Hotel, Pune on 18th & 19th November 17. You must be informed of the same already. Please find the details of on http://puneicai.org/events/maharashtra-cooperative-convention/ **. Its my earnest appeal to register for the same and take maximum benefit of a very useful event for updating the skills and knowledge.**

ICAI International Conference is happening on 8th and 9th December 17 @ Hotel Sahara Star, Mumbai. This will be a great opportunity to be a part of an iconic event of ICAI and gain much needed updates on topics like, Accounting & Taxation in disruptive era, Future of Audits, Financial and Capital Market. These topics may not seem to be part of our routine practice but are very crucial in planning our own professional growth and path in future. Sincere request to join such a wonderful even. Check details on https://www.wirc-icai.org/EventDetailsNew.aspx?id=3125.

Also Branch is joining hands with Vasai branch to host GST Sangam on 25th November 17. Please do join in large number

Branch seeks active participation from all the Members in the initiative to submit the pre-budget Memorandum to WIRC. 2017 has been a year of continuous evolvement of the GST and also has marked many notable changes in Direct Tax regime. Hence branch would be submitting the Memorandum at the earliest considering the budget 2018. Also 3rd Batch of DISA is starting from 25th November 2017 @ Ulhasnagar. Members are requested to take he benefit of the same. First MCS course under the Branch is proposed to start on 17th November 17.

Thanking You , With Best Regards !!!

CA Shekhar Patwardhan
Chairman
Kalyan Dombivli Branch of WIRC
10th November 17

Procurement of Goods by merchant exporter at concessional rate

W.e.f. 23rd October, 2017, The Central Government vide Notification No. 40/2017-Central Tax (Rate) dated 23rd October, 2017 exempts the intra-State supply and inter state supply of taxable goods in excess of the amount calculated @0.05 % and @ 0.1% respectively by a registered supplier i.e Merchant Exporter to a registered recipient i.e Ultimate Exporter for export is subject to fulfilment of the following conditions namely:

1. Supplier shall supply the goods to the Recipient on a tax invoice.
2. Recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the Supplier.
3. Recipient shall indicate the GSTIN of the Supplier and the tax invoice number issued by the Supplier in respect of the said goods in the shipping bill or bill of export i.e Merchant exporter details should come in shipping bill.
4. Recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce.
5. Recipient shall place an order on Supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the Supplier.
6. When goods have been exported, the Recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the Supplier along with proof of export general manifest or export report having been filed to the Supplier as well as jurisdictional tax officer of such supplier.

Further, the Supplier shall not be eligible for the above-mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

Similar notification has been brought under UTGST Act, 2017 vide Notification No. 40/2017-Union Territory Tax (Rate) dated 23rd October, 2017 and under IGST Act, 2017 vide Notification No. 41/2017--Integrated Tax (Rate) dated 23rd October, 2017.

No IGST on inter-State supply of services to Nepal and Bhutan if payment made in INR

The Central Government vide Notification No. 42/2017- Integrated tax (Rate) dated 27th October, 2017 made the amendment in the Notification No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017 whereby a new entry have been inserted in the exemption notification, namely, Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

Clarification on Unstitched Salwar Suits

The Central Board of Excise & Customs vide Circular No. 354/129/2017-TRU dated 27th October, 2017clarifies the doubts which have been raised regarding the classification of Cut pieces of Fabrics under GST. It has been represented that before becoming readymade articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size Fabrics are classifiable under chapters 50 to 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5% with no refund of the unutilized input tax credit. Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the 5% GST rate.

Exemption from payment of GST on advance received on goods

Notification No. 40/2017 - Central Tax dated 13th October 2017 provides that registered person whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees or the registered person whose aggregate turnover in the year in which such person has obtained registration is likely to be less than one crore and fifty lakh rupees and who did not opt for the composition levy shall pay tax only at the time of issuing an invoice. In other words, tax shall not be payable by such persons on advance. It may be noted that the said relaxation shall apply only on outward supply of goods and not on outward supply of services.

Changes in invoice

New Rule 46A is being inserted vide Notification No. 45/2017-Central Tax dated 13th October 2017 to provide that where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.

Relaxation in registration

Prior to amendment, inter-State supply triggered mandatory registration u/s 24 of the CGST Act, 2017. *Vide* Notification No. 10/2017 dated 13-10-2017 - IGST service providers providing interstate supplies of services and having aggregate turnover upto INR 20 lakhs or INR 10 lakhs in case of special category states are exempted from obtaining GST registration. Hence such persons can now apply for cancellation of their registration. It must however be noted that if someone has made inter-State supplies before 13-10-2017, a view can be taken by the department that such person prior to amendment required mandatory registration and hence shall be liable for tax.

Time limit extended for claiming ITC u/s 18(1)

Vide Notification No. 44/2017 - Central Tax dated 13th October, 2017 time limit for claiming input tax credit on stocks in cases eligible u/s 18(1) during the months of July, 2017, August, 2017 and September, 2017 by filing FORM GST ITC 01 has been extended till the 31st day of October, 2017. Sec. 18(1) covers scenarios of new registration, person shifting from composition scheme to normal scheme post 01.07.2017 or when exempt supply becomes taxable. In such cases, registered person can avail credit of inputs, semi-finished goods, finished goods as well as capital goods (only in last category) in stock subject to certain conditions. Due date for filing the form to avail such credit has been extended.

Increase in ambit of specified reverse charge

Supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Central Government, State Government, Union territory or a local authority to any registered person shall now be under specific reverse charge (Notification No. 36/2017-Central Tax (Rate).

Clarification on movement of goods on approval basis

The Central Board of Excise & Customs vide Circular No. F. No. 10/10/2017-GST dated 18th October, 2017 clarified that goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

It is further clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017.

It is also clarified that this clarification would be applicable to all goods supplied under similar situations.

[Refer sub-rule (1) (2) & (3) of rule 55 of the Central Goods and Services Tax Rules, 2017]

Extension of time limits for filing Form GSTR-2 & GSTR-3 for July,2017

The Commissioner, vide Notification No. 54/2017- Central tax dated 30th October, 2017 exercised the powers conferred by the first proviso to sub-section (2) of section 38 and sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), made amendment in Notification No. 30/2017- Central Tax dated 11th September extending the due date for filing of Form GSTR-2 for the month of July, 2017 upto 30th November, 2017 (earlier 31st October, 2017) and GSTR-3 for the month of July, 2017 upto 11th December, 2017 (earlier 10th November, 2017).

Taxability in the case of printing of books, pamphlets, brochures, annual reports, and the like,where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

Taxability in case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

Clarification on taxability of printing contracts

The Central Board of Excise & Customs vide Circular No. F. No. 354/263/2017-TRU dated 20thOctober 2017 clarifies the taxability of printing contracts e.g. books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies.

Select Case Laws

Supreme Court

CA Divyang Thakker

Assistant Director of Income-tax v. E-Funds IT Solution Inc. [2017] 86 taxmann.com 240 (SC)

Article 5 of India-US DTAA – Fixed Place PE and profit attributable to India

e-Fund Corp. was the holding company having almost 100% shares in IDLX Corporation, another company incorporated in USA. IDLX Corporation held almost 100% shares in IDLX International BV, incorporated in Netherlands and later in turn held almost 100% shares in IDLX Holding BV, which was a subsidiary again incorporated in Netherlands.

IDLX Holding BV was almost a 100% shareholder of e-Funds International India Private Limited ('e-Fund India'), a company incorporated and resident of India. IDLX International BV was also the parent/holding company having almost 100% shares in e-Fund Inc., which was a company incorporated in USA.

Both e-Fund Inc. and e-Fund Corp. have entered into international transactions with e-Fund India. e-Fund India being a domestic company and resident in India was taxed on the income earned in India as well as its global income in accordance with the provisions of the Income-tax Act, 1961 ('the Act'). The international transactions between the assessees and e-Fund India and the income of e-Fund India were made subject matter of arms length pricing adjudication by the Transfer Pricing Officer.

The assessing officer ('the AO') decided that the assessees (i.e. the e-Fund Inc. and e-Fund Corp) had a permanent establishment (PE) as they had a fixed place where they carried on their own business in Delhi, and that, consequently, Article 5 of the India-U.S. Double Taxation Avoidance Agreement (India-US DTAA) was attracted. Consequently, the assessees were liable to pay tax in respect of what they earned from the aforesaid fixed place PE in India.

The CIT (Appeals) dismissed the appeals of the assessees holding that Article 5 was attracted, not only because there was a fixed place where the assessees carried on their business, but also because theywere "service PEs" and "agency PEs" under Article 5. On appeal, ITAT held that the CIT (Appeals) was right in holding that a "fixed place PE" and "service PE". The appeal of the assessees to the High Court proved successful and the High

Court, by an elaborate judgment, has set aside the findings of all the authorities referred to above, and further dismissed the cross-appeals of the Revenue.

On appeal to Supreme Court, the Apex court held that where no part of main business and revenue earning activity of assessees (two American companies) was carried on through a fixed business place in India which had been put at their dispersal and Indian company only rendered support services which enabled assessees in turn to render services to their clients abroad, this outsourcing work to India would not give rise to a fixed place PE. Thus, Indian entity i.e. subsidiary company will not become location PE under article 5(1) of India-US DTAA merely because there is interaction or cross transactions between Indian subsidiary and foreign Principal. Further none of the customers of assessees were located in India or had received any services in India, thus, first ingredient contained in Article 5(2)(1) was not satisfied. Only auxiliary operations that facilitated such services were carried out in India. Hence, High Court rightly held that no permanent establishment in India could possibly be said to exist on facts of Instant case.

Select Case Laws

Various High Courts

Nirma Ltd. v. ACIT [2017] 86 taxmann.com 286 (Gujarat)

Section 36(1)(iii) of the Act – Interest Expenditure on Secured Premium Notes (SPN) allowable even when the just before date of redemption entire promoter group in unison transferred SPNs to banks and offered difference by way of capital gains

The assessee-company in order to fund its upcoming soda ash plant decided to issue SPNs. The assessee resolved to redeem the SPNs prematurely which was one of the options retained by the company and just before the date of redemption, the entire promoter group in unison transferred the SPNs to the banks at almost identical prices. The assessee claimed deduction for the entire premium and interest paid under section 36(1)(iii) of the Act. The SPN holders offered the difference only by way of capital gains. The banks offered the difference between the purchase price and the redemption price of SPNs by way of profit.

The AO disallowed the claim of the assessee on ground that the expenditure for which the amount was borrowed was a capital expenditure and transaction relating to SPNs was a colourable transaction and was not for the purpose of business.

The Gujarat High Court held that for allowing deduction under section 36(1)(iii) of the Act, all that was necessary was that the money must have been borrowed by the assessee, that it must have been borrowed for the purpose of business and lastly, that the assessee must have paid interest on the borrowed amount. All that is germane is whether the borrowing was, or was not, for the purpose of the business. It was held that the provision makes no distinction between money borrowed to acquire a capital asset or a revenue asset.

In the case on hand, the company, investors, banks and financial institutions were aware that the SPNs would be foreclosed. The fact that SPNs were freely transferable is not in dispute. If the promoters, SPN holders and the banks and financial institutions therefore, traded in such SPNs, the same would not indicate any colourable device of tax planning. Mere early redemption also would not be enough to hold that from the inception there was a device created by the company to defeat the Revenue's interests.

Therefore, deduction of premium and interest on redemption of SPNs shall be allowable deduction.

Select Case Laws

Commissioner of Wealth-tax v. Atma Ram Properties (P.) Ltd. [2017] 86 taxmann.com 89 (Bombay)

Section 22 and 28 (i) of the Act - Where assessee-company was formed for purchasing and selling properties, earning of rental income by letting out properties owned by it was chargeable to tax under head 'income from house property' and not under head 'Profits and gains of business'

Assessee-company was incorporated with objects to purchase, sell, deal and traffic in lands, estates, houses or other landed properties - Assessee purchased a property which was already tenanted - Assessee filed its return under Wealth-tax but did not include said property as part of its assets on grounds that since rental income from said property was taxable as 'business income', said property was a business asset, i.e., stock-in-trade of assessee, thus, exempt from Wealth-tax.

The Hon'ble Bombay High Court held that is significant that while the assessee was formed for purchasing and selling properties, earning of income by letting out the properties owned by it was not one of its business objects. The general object of 'dealing' with the properties had to be read *ejusdem generis* the main object. This did not include renting out the properties for income. This crucial distinction in the purpose for which the property was purchased by the assessee determined the nature of the rental income earned by it. As long as the property fetches rental income that was taxable as 'income from house property' it could not be treated as the assessee's business asset or stock-in-trade.

Select Case Laws

CIT v. Sun Pharmaceutical Industries Ltd. [2017] 248 Taxman 449 (Gujarat)

Section 35 of the Act – Deduction under Section 35 of the Act cannot be denied where prescribed authority failed to send intimation in Form 3CL

The assessee-company was engaged in the business of manufacture and sale of pharmaceutical products. The activities of the assessee included research and development activity for developing new drugs and formulation. In respect of expenditure incurred by the assessee on in-house research and development facility, the assessee claimed deduction under section 35(2AB), based on the approval of the in-house research and development granted to the assessee on Form 3CM. The Assessing Officer passed order of assessment under section 143(3) of the Act accepting the assessee's claim. The Commissioner, however, took a view that the prescribed authority had not sent the intimation in Form 3CL to the revenue. In absence of same, assessee's claim could not have been accepted. The Tribunal opined that in case of the assessee, the research and development activity having already been approved in Form 3CM, the assessee thereafter, had no further role to play in the inter-departmental correspondence.

The Gujarat High Court held that undisputedly, the research and development facility set up by the assessee was approved by the prescribed authority and necessary approval was granted. Merely because the prescribed authority failed to send intimation in Form 3CL, would not be reason enough to deprive the assessee's claim of deduction under section 35(2AB).

Mam Raj Goel v. Bar Council of Gujarat [2017] 85 taxmann.com 77 (Gujarat)

Section 24 read with Section 28 of the Advocates Act, 1961 – Practicing Chartered Accountant cannot be enrolled as a member of Bar Council for practice of law as advocate

The petitioner is a Chartered Accountant and was a member of Institute of Chartered Accountant of India with certificate of practice. He was engaged in the practice as Chartered Accountant. However, the petitioner was also having degree of LL.B and, therefore, he had applied for permission for membership of the Bar Council of Gujarat. The instant writ petition was filed by the petitioner under articles 226 of the Constitution of India as well as under sections 24 and 28 of the Advocates Act, 1961 praying that appropriate writ order or direction be issued to the Bar Council of India to enroll the petitioner as a Member of the Bar Council for practice of law as an advocate.

The moot question is whether a Chartered Accountant practicing as Chartered Accountant with the partnership firm of Chartered Accountant can be allowed to have an enrollment as an advocate for practicing in the profession of advocate. The petitioner has tried to suggest that he is conversant with the law and commercial matters and, therefore, he may be allowed to practice as an advocate.

The Gujarat High Court held that the enrollment as a member of the profession is subject to the law made by the Parliament i.e. the advocates Act. Section 28 empowers the Bar Council which is an apex body to make the rule for the member of the profession i.e. the advocates including the rules for enrollment. Rule 49 which is sought to be interpreted in a different manner that it does not restrict the enrollment, cannot be readily believed or accepted. In fact, the person as a member of profession has to discharge his obligation and, therefore, the profession as an advocate or lawyer which is a full time, one cannot be permitted if he is already working as a professional like Chartered Accountant. The nature of work may have some kind of overlapping or connection but it is not the nature of work but it is the nature of profession, which is relevant. Section 49 refers to the general power of the Bar Council of India to make rules. Section 49(a) clearly provides that such rules may provide the conditions subject to which an advocate may be entitled. Thus, it includes the clause or category of a person entitled to be enrolled as an advocate under the Act. Therefore, the statute empowers the body like State Bar Council or Bar Council of India to make the rules for enrollment and also take decision and if the decision is taken, it cannot be said to be illegal.

The submissions which have been made by petitioner that there is nothing which prohibits and, therefore, he should be allowed to ride on two horses in two profession cannot be accepted. The Bar Council of Gujarat has made the rules in exercise of power under section 28 read with section 24. Rule 2 of the Bar Council of Gujarat provides 'Every person applying to be admitted as an advocate shall in his application make a declaration that he is not in full or part-time services or employment and that he is not engaged in any trade, business or profession contrary to the rules .....'. The form which is required to be filled up also requires similar declaration as clause (h) specifically provides "A declaration that the applicant is not in full or part-time, employment or service and is not engaged in any trade, business or profession except as provided in rules 1 and 2 of the Rules of the State Bar Council made under section 28(2)(d) and the Rules of the Bar Council of India'. Thus, the declaration is required to be made that the applicant, who seeks enrollment as an advocate, is not engaged in any profession except as provided under rules of State Bar Council made in exercise of power under section 28. This itself would make the position clear. Therefore, the instant petition cannot be entertained and deserves to be dismissed and accordingly stands dismissed.

Decisions on Section 14A of the Act

H.T. Media Ltd. v. Pr. CIT [2017] 85 taxmann.com 113 (Delhi)

Assessing officer's recording of satisfaction and Nexus between the investment and borrowed funds are necessary conditions of disallowance under Section 14A of the Act

The assessee was engaged in the business of printing and publishing newspapers and periodicals. It received dividends from mutual funds. As per the assessee, all the investments in mutual funds from which dividend were received had been made by it out of its own funds and no borrowed funds had been utilized for the purpose. Accordingly, no interest expenditure had been incurred in relation to earning of exempt income. Further, in regard to the administrative expenses, it was submitted that investments of the assessee were under the reinvestment schemes and the assessee had made disallowance of Rs. 3 lakhs in the return of income in order to cover administrative expenses which were said to have been incurred in relation to earning of exempt income.

The Assessing Officer held that the assessee had incurred expenses to manage its investments and had failed to calculate such expenses in a reasonable manner to ascertain the true and correct picture of its income. The Assessing Officer, accordingly, computed the total disallowance under rule 8D(2) of the Income-tax Rules, 1962 comprising the amount of expenditure directly incurred relating to exempt income under clause (i) of rule 8D(2), interest expenditure incurred under clause (ii) of rule 8D(2); and amount equal to 0.5 per cent of the average value of investments under clause (iii) of rule 8D(2)

On appeal to the Delhi High Court, the High Court held that there was a failure by Assessing Officer to comply with mandatory requirement of section 14A(2) read with rule 8D(1)(a) and record his satisfaction as required thereunder. Therefore, question of applying rule 8D(2)(iii) did not arise. Further, Assessing Officer had also failed to establish any direct nexus between investments made by assessee and interest expenditure incurred. Therefore disallowance of interest under clause (ii) of rule 8D(2) also cannot be made.

Select Case Laws

Pr. CIT v. Nirma Credit & Capital (P.) Ltd. [2017] 85 taxmann.com 72 (Gujarat)

Disallowance can be computed only based on the net amount of interest expenditure (i.e. after reducing the interest income)

During scrutiny assessment, the Assessing Officer noted that the assessee had shown dividend income of Rs.25.26 lakhs from the investment made by it in the shares and securities which was claimed as an exempt income.

The Assessing Officer noted that the assessee failed to prove that the investment in shares and securities was made out of interest free funds only. On the contrary, he noted that the assessee had made substantial borrowings in form of unsecured and secured loans and had claimed interest expense thereof. Thus, the Assessing Officer applied the formula provided in rule 8D read with section 14A for computing disallowance of interest expenditure.

The assessee contended that against the interest expenditure of Rs. 7.01 crores on the borrowings, the assessee had earned taxable interest of Rs.6.83 crores and, therefore, for the purpose of computing the disallowance under section 14A, if at all, it is the difference between the interest paid and the interest earned which should be considered as the assessee's interest expenditure for working out the formula provided under clause (ii) of sub-rule (2) of rule 8D.

The Assessing Officer however adopted the full figure of Rs.7.01 crores towards interest expenditure and thereafter applied the formula and computed sum of Rs.99.41 lakhs under sub-rule (2) of rule 8D. He then added half a per cent of the average value of investments not forming part of the total income in terms of clause (iii) of sub-rule (2) of rule 8D to come to total figure of Rs.1.06 crores for disallowance under section 14A.

On appeal to the Gujarat high Court, it was held that for the purpose of applying factors contained in clause (ii) of sub-rule (2) of rule 8D, prior to its amendment with effect from 2-6-2016, amount of expenditure by way of interest would be the interest paid by assessee on borrowings minus taxable interest earned during financial year. Accordingly, the computation of disallowance under Section 14A would be on the net amount of interest

Select Case Laws

Pr. CIT v. IL & FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 (Delhi)

No disallowance under Section 14A where no exempt income is earned, even after considering CBDT Circular No. 5/2014 dated 11-2-2014

The assessee-company was engaged in provision of consultancy services. It had made investment in mutual funds. However, no exempt income was earned during the year. The assessee contented that no interest bearing funds were invested to earn tax free income and therefore no disallowance under section 14A was called for.

The Assessing Officer noted that even in the tax audit report, the auditors had calculated disallowance under section 14A read with rule 8D. He held that the assessee had made investments in shares for the purpose of earning dividend income and therefore the expenses should be disallowed even when the exempt income is not earned. He accordingly made the disallowance. The Commissioner (Appeals) confirmed Assessing Officer's order but restricted said disallowance.

On appeal to the Delhi High Court, the revenue pointed to CBDT Circular No. 5/2014 dated 11-2-2014, which clarified that section 14A would apply even when exempt income was not earned in a particular assessment year.

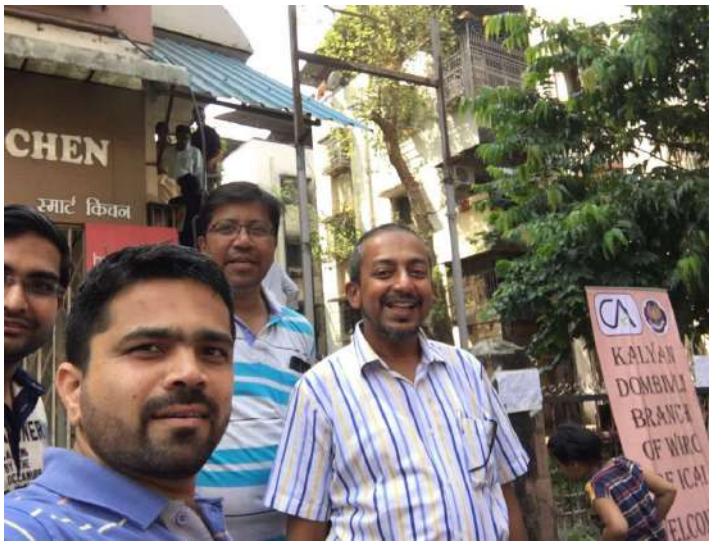
The Delhi high Court held that rule 8D(1) indicates a correlation between the exempt income earned in the assessment year and the expenditure incurred to earn it. In other words, the expenditure as claimed by the assessee has to be in relation to the income earned in 'such previous year'. This implies that if there is no exempt income earned in the assessment year in question, the question of disallowance of the expenditure incurred to earn exempt income in terms of section 14A read with rule 8D would not arise. The court further held that the CBDT Circular upon which extensive reliance is placed by revenue does not refer to rule 8D(1) at all but only refers to the word "includible" occurring in the title to rule 8D as well as the title to section 14A. The circular concludes that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance to be triggered. This will be a truncated reading of section 14A and rule 8D particularly when rule 8D(1) uses the expression 'such previous year'. Further, it does not account for the concept of 'real income'. It does not note that under section 5, the question of taxation of 'notional income' does not arise. Further, the mere fact that in the audit report for the assessment year in question, the auditors may have suggested that there should be a disallowance cannot be determinative of the legal position. That would not preclude the assessee from taking a stand that no disallowance under section 14A was called for in the assessment year in question because no exempt income was earned. For all of the aforementioned reasons, the CBDT Circular dated 11-5-2014 cannot override the expressed provisions of section 14A, read with rule 8D.

Accordingly, the court held that where no exempt income was earned in relevant assessment year, there could be no disallowance in terms of section 14A, read with rule 8D

The submissions which have been made by petitioner that there is nothing which prohibits and, therefore, he should be allowed to ride on two horses in two profession cannot be accepted. The Bar Council of Gujarat has made the rules in exercise of power under section 28 read with section 24. Rule 2 of the Bar Council of Gujarat provides 'Every person applying to be admitted as an advocate shall in his application make a declaration that he is not in full or part-time services or employment and that he is not engaged in any trade, business or profession contrary to the rules .....'. The form which is required to be filled up also requires similar declaration as clause (h) specifically provides "A declaration that the applicant is not in full or part-time, employment or service and is not engaged in any trade, business or profession except as provided in rules 1 and 2 of the Rules of the State Bar Council made under section 28(2)(d) and the Rules of the Bar Council of India'. Thus, the declaration is required to be made that the applicant, who seeks enrollment as an advocate, is not engaged in any profession except as provided under rules of State Bar Council made in exercise of power under section 28. This itself would make the position clear. Therefore, the instant petition cannot be entertained and deserves to be dismissed and accordingly stands dismissed.

Gallery

Branch joined hands for a social cause - Collection Drive by NGO Goonj on the occasion of Diwali



GST SANGAM 2017

SANGAM

Organised by

WIRC of ICAI

Hosted by

Vasai Branch of WIRC of ICAI

Jointly with

Kalyan Dombivali Branch of WIRC

Thane Branch of WIRC

Navi Mumbai Branch of WIRC

Day & Date: Saturday, 25th November, 2017
Timing: 9.30 am to 7.00 pm
Venue: Green Court Club (GCC), GCC International School Auditorium, Mira Road (East): Mumbai

CPE 6 Hrs

Programme Chairman :
CA. Vishnu Agarwal, Chairman, WIRC of ICAI

Programme Directors :
CA. Sarvesh Joshi, Vice-Chairman, WIRC of ICAI
CA. Aniket Talati, Secretary, WIRC of ICAI
CA. Pradeep Agarwal, Treasurer, WIRC of ICAI

Programme Conveners :
CA. Nitesh Kothari, Chairman, Vasai Branch of WIRC
CA. Shekhar Kulkarni, Chairman, Thane Branch of WIRC
CA. Shekhar Patwardhan, Chairman, Kalyan Dombivali Branch of WIRC
CA. Manoj Pandey, Chairman, Navi Mumbai Branch of WIRC

Programme Co-ordinators :
CA. Xavier Rajan, Secretary, Vasai Branch of WIRC | 9371720027
CA. Yogesh Prasade, Secretary, Thane Branch of WIRC |9594757778
CA. Saurabh Marathe, Secretary, Kalyan Dombivali Branch of WIRC | 9870117150
CA. Minaxi Rachchh, Secretary, Navi Mumbai Branch of WIRC | 9820898183

Programme Schedule

SANGAM

Time	Topics	Speakers
9.00 am to 9.30 am	Registration & Breakfast	-
9.30 am to 10.00 am	Welcome Speech & Introductory Remarks	CA. Vishnu Agarwal
10.00 am to 12.30 pm	Place of Supply, Time of Supply with Special focus on Inter-State Supply & Services	CA. Bimal Jain
12.30 pm to 1.30 pm	Lunch Break	-
1.30 pm to 3.30 pm	UAE (Dubai) VAT Overview	CA. Avinash Poddar
3.30 pm to 3.45 pm	Tea Break & Networking	-
3.45 pm to 5.45 pm	Exports and Recent updates on Exports	CA. Jayesh Gogri
6.00 pm to 7.00 pm	Panel Discussion on Recent Update on GST	CA. Avinash Poddar CA. Jayesh Gogri CA. Jignesh Kansara CA. Dilip Phadke

Registration fees
₹ 1,100/- (inclusive of GST)

Payment Mode
Cash/Demand Draft/Cheque to be drawn in favour of **"Vasai Branch of WIRC of ICAI"** sent to **Vasai Branch Office, Indralok Phase-II, Bhayander (East)**

For online registration visit
http://utility.vasai-icai.org/scevent.aspx?companyid=887&serverip=1

For details please contact
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