# KALYAN-DOMBIVLI BRANCH OF WIRC OF ICAI

# NEWSLETTER OCTOBER 2017

***First & foremost***

Dear Professional Colleagues,

Things are slowly coming to track in GST Implementation and hopefully in couple of months everything will settle down. It's a real tough time in keeping in mind all the due dates. This month is tougher as along with GST, Tax Audits and TDS Returns due dates are also there. It's a real busy period for all small and medium practitioners as our bread and butter comes from Tax and Company Audits. This year in Tax Audits ICDS is a big change in 3CD reporting and in Company Audits so many provisions have been changed including the mandatory reporting .

Our Branch is fortunate that many of our speakers are star speakers across the Western Region. CA Vyomesh Pathak is the leading faculty on ICDS who has contributed a lot in terms of the number of presentations across the region and also in the form of Articles in WIRC Referencer and other publications. Another star that is emerging is CA Gopal Kedia who also is travelling across the region and guiding the members and articles on various GST Implementation aspects. The Branch organised couple of Programmes last month on ICDS Reporting and practical issues in GST Implementation at Bhivandi and Dombivli where both the stalwarts guided the members very well on these practical aspects. As a Branch We are thankful to them as they are always available for the activities of the Branch.

It is noticed that currently many practical issues we are facing in our day to day practice. Particularly it is observed that young Practioners face many problems and they don't get a proper forum to address those issues. Keeping this in mind the Branch in its Managing Committee has decided to start a Helpdesk. It's our sincere request to send your quesries at **helpdeskkdub@gmail.com.** To begin with We are starting with Direct and Indirect Tax and the queries as well as the replies given by experts will be published in the Newsletter as well .

*Continued...*

This is a real study time for our CA Students. The second Mock Test Series for IPCC and Final Students an initiative of the Board of Studies is going to begin from 3rd October 2017 . Just to inform all of you that with the support of all the Managing Committee Members We are holding the said examination at 3 Centres. Crash Course for IPCC as well as Final also is currently going on. The Branch is ultimately for the benefit of students and we are trying our best to offer all the facilities to the students from our area so that there will be better percentage of passing and off course more rank holders as well . We would like to recognise the great efforts and contributions from all the faculties who are helping our branch to conduct the Crash course since beginning. I would like to make a specific mention of them here so that their contribution and efforts reaches to all the members of the Branch. **Branch is highly thankful to CA Vyomesh Pathak, CA Prerna Peshori, CA Govinda Goyal, CA Samma Narang, CA Tejas Shah, CA Pradeep Jain, CS Rupali Mendki, Mrs. Ankita Thakare and CA Mitali.**

The DISA Batch in the month of November is already hosted on the ICAI Web-site .The batch will be conducted at Hotel Mayur , Ulhasnagar . Managing Committee Member CA Hari Dudani is the Co-ordinator for the said batch. Its our sincere Request and appeal to all the member to register for the said batch. We are also planning to conduct the Certification Course on Fraud and Forensic at Dombivli in November . Those who are interested to join are requested to give their names to any of the Managing Committee Members so that we can take up the matter forward once we have the requisite numbers .

My Sincere thanks to CA Divyang Thakkar, CA Gopal Kedia and the entire Newsletter team for their contribution to this News Letter.

The Festival of Light "Diwali " is near . We wish all the members and students a very Happy Diwali and Prosperous New Year .

We Wish You all a Prosperous Tax and Company Audit season too .

Thanking You , With Best Regards !!!

CA Shekhar Patwardhan

Chairman

Kalyan Dombivli Branch of WIRC

***Extension of Time limit for filing details in FORM TRANS 1 for month of July***

The Central Government vide *Order No -03/2017-GST, dated. 21st September,2017* has extended the time limit for filing of details in form TRANS 1 under Rule 117*(Form for submission of details by persons entitled to take credit of input tax carried forward in the return relating to the period ending with the day immediately preceding the appointed day under section 140)* for the month of July 2017 up to 31st October 2017. Prior to this notification, such details were required to be furnished within 90 days from the appointed date i.e 28th September.

Whether due date for submission of GST TRANS-1 is really extended?

| Rule | Transitional Provisions |
|---|---|
| 118 | Declaration to be made u/s 142(11)( c ) - Affecting builders and developers |
| 119 | Declaration of stock held by a principal and Job-worker |
| 120 | Details of goods sent on approval basis |

This order applies only to transitional provisions covered under Rule 117 of CGST Act which covers only Tax or Duty carried forward under any existing law or on goods held in stock on appointed day.

Following rules are not covered under above referred order. The Commissioner is not expressly empowered to extend due dates for transition provisions covered under these rules. Hence it appears that **there is no extension** for filing of GST TRANS-1 covering following transitional Rules.

The assesse having above referred transactions will have to submit GST TRANS -1 form on or before 28th September, 2017 wherein even details of Tax or Duty carried forward under any existing law or on goods held in stock on appointed day needs to be submitted. For builders and developers, the due date for submission of GST TRANS-1 would be 28th September, 2017 only as most of them will have transitional credit u/s 142(11)(c).

Later government realized that Order Number **03/2017**dated 21.09.2017 does not grant the relief sought by the trade and industry.

Hence correction has come through notification no 36/2017- Central Tax dated 29th September 2017, by releasing Central Goods and Services Tax (Eighth Amendment) Rules, 2017, specifying

(ii) in rule 118, for the words “a period of ninety days of the appointed day”, the words and figures “the period specified in rule 117 or such further period as extended by the Commissioner” shall be substituted;

(iii) in rule 119, for the words “ninety days of the appointed day”, the words and figures “the period specified in rule 117 or such further period as extended by the Commissioner” shall be substituted;

***Extension of Time limit for furnishing stock details by Composite dealer***

The central government vide order no 04/2017 dated 29th September 2017 has extended the time limit for intimation of details of stock held on June 30, 2017 for opting composition levy in Form GST CMP-03 to October 31, 2017.

**Big Relief to government contractor**

Big relief to Govt. Contractors from GST rate cut on works contracts and Construction related service provided to Central Government, State Government, Union Territory, a local authority or a governmental authority.

The Central Government notified the revised rates for different goods and services under the Goods and Services Tax (GST) regime.
As per the Notification issued on Wednesday, the Government reduced the rate of GST applicable to specified supply of works contract services to 12 per cent from the current 18%.

## Select Case Laws

CA Divyang Thakker

***Supreme Court***

***Citizen Co-operative Society Ltd. v. ACIT [2017] 397 ITR 1 (SC)***

**Section 80P of the Income-tax Act, 1961 (the Act) –**

**Section 80P not to apply in case of co-operative society carrying on Banking Business**

The assessee was a co-operative society. It claimed deduction under section 80P(2)(a) of the Act, which was denied on the ground that it was carrying on the banking business for public at large and for all practical purposes it was acting like a co-operative bank governed by the Banking Regulation Act, 1949, and its operations were not confined to its members but to outsiders as well.

On appeal to Supreme Court, the Apex court observed that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee. Section 80P(2)(a)(i) recognises two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.

With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the provision of section 80P, it is made clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of section 80P. In order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India, which the appellant does not possess. Therefore, the appellant does not get covered by the definition of 'co-operative bank'. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under section 80P was the fact that it is carrying on its activities in violations of the provisions of the Mutually Aided Co-operative Societies Act, 1995. It is pointed out by the Assessing Officer that the appellant is catering to two distinct categories of people. The first category is that of resident members or ordinary members and there is another category of 'nominal members'. Nominal members are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilized to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quiet distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under section 80P(2)(a)(i)

Further, the principle of mutuality is missing in the Appellant's case. The following three conditions must exist before an activity could be brought under the concept of mutuality; (i) that no person can earn from him; (ii) that there a profit motivation; and (iii) that there is no sharing of profit. In the instant case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. Therefore, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. Such a society cannot claim the benefit of section 80P.

***Union of India v. Tata Tea Co. Ltd. [2017] 85 taxmann.com 346 (SC)***

**Section 115-O of the Act – Constitutional Validity**

The petitioner is a Tea Company which cultivates tea in gardens and processes it in its own factory/plants for marketing the same. The cultivation of tea is an agricultural process although; the processing of tea in the factory is an industrial process. The agricultural income is within the legislative competence of the State and not in the legislative competence of the Parliament. Section 115-O imposes tax on the dividend distributed by the company which is nothing but imposing the tax on agricultural income of the writ petitioner. The writ petitioner challenged the constitutional validity of Section 115-O sub clause (1) and sub clause (3) in so far as it purports to levy the income tax on the profit which is decided to be distributed as dividend thereby imposing an additional income-tax even on the portion of the composite income which represents agricultural income and which is also to be made available for the distribution of dividend and, therefore, transgresses the limits of legislative power, which is assigned to the State Legislature under List II Entry 46 of Seventh Schedule of the Constitution. The Parliament therefore has no competence to levy income tax on agricultural income. The petitioner also states that at best, the amount of dividend distributed by the Company to the extent of 40 per cent on which income tax is charged can only be subject to dividend distribution tax.

The Apex court held that Entry 82 of List I embraces entire field of "tax on income". What is excluded is only tax on agricultural income which is contained in Entry 46 of List II. Income as defined in Section 2(24) of the 1961, Act is the inclusive definition including specifically "dividend". Dividend is statutorily regulated and under the article of association, the companies are required to pay dividend to the shareholders as per the rules of the companies. Section 115-O pertains to declaration, distribution or payment of dividend by domestic company and imposition of additional tax on dividend is thus clearly covered by subject as embraced by Entry 82. The provisions of Section 115-O cannot be said to be directly included in the field of tax on agricultural income. Even if for the sake of argument it is considered that the provision trenches the field covered by Entry 46 of List II, the effect is only incidental and the legislation cannot be annulled on the ground of such incidental trenching in the field of the State legislature. Looking to the nature of the provision of Section 115-O and its consequences, the pith and substance of the legislation is clearly covered by Entry 82 of List I.

Accordingly, the provisions of Section 115-O are well within the competence of Parliament. To put any limitation in the said provision that additional tax can be levied only on the 40% of the dividend income shall be altering the provision of Section 115-O for which there is no warrant.

*Various High Courts*

***CIT v. Ajanta Pharma Ltd. [2017] 85 taxmann.com 252 (Bombay)***

**Section 37(1) of the Act – Disallowance relating to expenses incurred which is prohibited by law**

Consequent to the Gulf War, United States imposed trade sanctions against Iraq. The United Nations initiated Oil-for-Food programme as per UN Resolution 986, whereby Iraq was given choice to decide the countries to whom it sold its oil. In this programme, the countries had to pursue UN Monitored route for the supplies to be made to Iraq and all payments to be received by the suppliers, were routed through the United Nations, after obtaining approvals from the Reserve Bank of India. The assessee being a Pharma Company and being in that business won the bid in Pharma segment for Supply of medicines in North Iraq, raged in war.

With the view to pursue its business in Iraq, the assessee sought help of a Jordan based company 'G' and appointed it as its agent, who would look after their interest in Iraq. The assessee would pay commission on agreed basis. Pertinently, the appointment of agent and payment of commission was as per UN sanctioned percentage of 10 per cent of trade amount/invoice price.

The assessee filed its return claiming deduction of commission paid to company 'G'. The Assessing Officer found from the findings and conclusions in a report styled as 'Volcker Committee Report' that Iraq devised a mechanism, which were actually kickbacks demanded by Iraq Government and under this method certain levies were imposed. These levies were imposed and demanded by Iraq Government from the suppliers and that is how, Iraq Government raised millions of US Dollars in the garb of participating in programme and scheme for Oil-for-food. The Assessing officer passed an order whereby the deduction was restricted to Rs.1.69 crore. On appeal, the Commissioner (Appeals) and on further appeal, the ITAT confirmed the findings of the Assessing Officer.

The Bombay High Court observed that a perusal of Explanation 1 to section 37(1) would denote that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. Even if what is alleged by the Assessing Officer and relying upon the report is taken as true and correct, still, the participation of the assessee was not established and proved. The assessee was not found to have made any kickbacks or payment of that nature which reached the Iraq Government through the channels indicated in the Volcker Committee Report. There was no material of this nature in possession of the Assessing Officer against the assessee. The assessee has not incurred any expenditure for any purpose which is an offence or which is prohibited by law. The essential ingredients of Explanation below subsection (1) of section 37, therefore, were not attracted to the assessee's payment made to 'G' Company in Jordon and therefore the same is allowable as deduction

## Select Case Laws

***Arjun Das v. ITO (International Taxation)[2017] 85 taxmann.com 44 (Delhi)***

**Section 237 of the Act – Delay in granting of refund along-with interest**

The assessee was granted refund along with interest. However, there was substantial delay in granting the said refund. The assessee was not granted any interest for the period of delay. The assessee filed a writ petition in the Delhi High Court for delay in receipt of refund.

The Delhi High Court held that the department was to pay costs of Rs.10,000 to assessee for the delay caused in granting him the refund.

***Boston Scientific India (P.) Ltd. v. ACIT [2017] 85 taxmann.com 5 (Delhi)***

**Section 37(1) of the Act – Expenses on Business Promotion and Travel Expenses of Doctors**

The assessee was primarily engaged in promotion, marketing, presales and related activities for medical products/instruments in India. In transfer pricing proceedings, Transfer Pricing Officer (TPO) made certain addition to assessee's income against which objections were raised. The DRP *suo motu* picked up the deduction of expenditure incurred by the assessee under the head 'advertisement and business promotion expenses' and 'travel expenses' debited to the Profit & Loss Account. The DRP noted that the said expenses included 'gifts and freebies' and, therefore, it should be disallowed in view of Explanation to section 37(1) read with the CBDT Circular No. 5 dated 1-8-2012. The Assessing Officer was directed to quantify the amount of disallowance after taking into account the complete details of the said expenditure. In pursuance to directions of DRP, the Assessing Officer passed a final assessment order wherein he disallowed expenditure incurred by assessee on freebies provided to medical consultants, conducting seminars, conventions and meetings. The Tribunal confirmed said disallowance.

On appeal, the Delhi High Court held that where the assessee incurred expenses on conducting seminars, conventions etc., since doctors attended those events/conferences in their personal capacity to enhance their own knowledge/understanding and not to prescribe or recommend assessee's products, expenditure incurred on those seminars, conferences etc. could not be disallowed.

***Pr. CIT v. Mrs. Tara Sinha [2017] 85 taxmann.com 9 (Delhi)***

**Section 4 of the Act – Taxability of amount received under Non-Compete agreement**

The assessee was working as the President of TSME, an advertising agency. She also held 51 per cent shares of the said company and 'MEW' held 40 per cent of the shares of TSME. The remaining 9 per cent shares were held by ACCPL. The assessee resigned from TSME. Upon her retirement, she received payments towards entering into a Non-Compete Agreement with MEW. The assessee claimed said receipt as capital receipt.

The Assessing Officer treated the amounts received by assessee from MEW as a revenue receipt. Thus, the Assessing Officer made an addition to the returned income of the assessee. On appeal, the Commissioner (Appeals) deleted the addition made by the Assessing Officer and held that the payment of compensation in lieu of the non-compete agreement by the assessee was a capital receipt and not chargeable to income tax. The Tribunal also confirmed the order of the Commissioner (Appeals).

The revenue however contended that the amount in question was nothing but a terminal benefit, which was couched as a non-compete fee in order to escape the payment of tax.

On appeal to Delhi High Court, it is undisputed that the assessee was an acknowledged personality in the advertising field in India. From the record it is clear that TSME was a brain child of the assessee. From a reading of clause 1 of the agreement, it is clear that MEW was apprehensive about her retirement and the effect it could have on their business and hence insisted on the obligations contained. This clause is a clear acknowledgement that she did have the potential and stature to take away a substantial number, if not all, of the clients and the employees of TSME. The non-compete fee paid to her cannot, therefore, be termed as a camouflage or a well- orchestrated plan to avoid payment of tax. The Non-Competition Agreement is, therefore, clearly a genuine agreement. The 'real nature of the transaction is that it is a Non-Competition Agreement, wherein the assessee agreed not to be involved in any business in India of advertisement, sale, promotion, public relations etc. Accordingly, the said amount is not taxable in the hands of the assessee.

## Select Case Laws

***Oriental Insurance Co. Ltd. v. DCIT [2017] 84 taxmann.com 312 (Delhi)***

**Section 115JB of the Act – Section 115JB not applicable to Insurance Companies**

The assessee was the subsidiary of General Insurance Corporation of India ('GIC') and was engaged in the business of General Insurance comprising of Fire, Marine and Miscellaneous Insurance Business. The assessing officer computed tax with respect to Section 115JB of the Act read with Part II and Part III of Schedule VI to the Company's Act, 1956. On appeal the Commissioner (Appeals) confirmed the additions made by the Assessing Officer. On second appeal by both the assessee and the revenue, the Tribunal upheld the additions made by the Assessing Officer.

The assessee contented that it is not required to prepare profit & Loss Account in accordance with Part II and Part III of Schedule VI to the Company's Act and therefore the said provisions are not applicable to it.

On appeal to Delhi High Court, it was held that from a reading of section 44 read with the First Schedule of the Act, that insurance companies are required to prepare accounts as per the IA and the regulations of the IRDA and not as per Parts II and III of Schedule VI of the Companies Act. The assessee prepares its accounts as per the IRDA principles. The IRDA Regulations govern the preparation of the auditor's report. Consequently, it is held that section 115JB does not apply to insurance companies.

**QUERIES ON INDIRECT TAX ANSWERED BY THE EXPERTS IN PANNEL :-**

Query on GST by CA Suresh Venkat

There is an institute formed to promote efficient material management and supply chain activity in commercial and industrial undertakings... it is having its branches in major matros and other tier-2 cities..any individual professional or institution can become member.. the branches do the functiion of getting members to the institute besides conducting workshops, events, seminars on material and supply chain management..

*Branches do have physical existence in some of the places like metros but in some places they do not have proper branches and they operate from the residence of the top official there...*

The question here is the institute does not have any owned or leased premises but it operates from its Authorised persons residence..they do not have any sign boards there.. but the person gets business by way of members subscription.. The members directly remit the subscription to the HO and the branch is sent amount towards maintenance of branch ...The authorised person has one assistant for this. The institute continues to show this place as branch in its website and all other broachures etc. will it still be a fixed establishment and quallify for obtaining seperate registration?

If it is not necessary to go for registration of this branch, will the expenses incurred on such seminars at the place of seminar will be taxed IGST& CGST ?

Reply by CA Gopal Kedia :

**Please refer**

Sec 22 . Person liable for registration

( 1 ) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of
goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

therefore he need to take registration from where he make a taxable supply, for this purpose you may refer meaning of location of supplier, Place of business and fixed establishment.
which are reproduce herein below for your reference,

“ location of the recipient of services ” means,—

( a ) where a supply is received at a place of business for which theregistration has been obtained, the location of such place of business;

( b ) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the
location of such fixed establishment;

( c ) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most
directly concerned with the receipt of the supply; and

( d ) in absence of such places, the location of the usual place of residence of the recipient;

Place of business sec 2 (85), which includes – –

( a ) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his
goods, supplies or receives goods or services or both; or

( b ) a place where a taxable person maintains his books of account; or

( c ) a place where a taxable person is engaged in business through an agent, by whatever name called;

*(50) “fixed establishment”*

- means
- a place (other than the registered place of business )
- which is characterised by a sufficient degree of permanence
- and suitable structure in terms of human and technical resources to supply services,
- or to receive and use services for its own needs;

Conjoint reading of above three definition along with sec 22 speaks that if a person is having a fixed establishment in a state from where he is making a taxable supply then he is liable for registration in each of such states..

Thanks

Gopal Kedia

## Gallery


Kalyan Dombivli Branch of WIRC
of the
Institute of Chartered Accountants of India
Welcomes You !


Kalyan Dombivli Branch of WIRC
of the
Institute of Chartered Accountants of India
Welcomes You !