



NEWSLETTER

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1 Executive Summary

■ Accounting and Auditing

- Expert advisory opinion on method of depreciation and related issues in case of freehold land acquired for extraction of mineral resources and road constructed on such land.
 - As per the opinion, the cost of freehold land which will not have any realizable value post extraction should be amortized in the ratio of actual extraction of minerals from the land to the total estimated reserves
 - With respect to road constructed on such land, the depreciation should be based on useful life of the asset [based on technological evaluation] as required by the Accounting Standard -6.

- Four exposure drafts and one guidance note are issued by ICAI namely
 - Exposure draft on Ind AS 13 - Fair Value Measurement
 - Exposure draft on Limited revision to Accounting Standard 10 – Accounting for Fixed Assets
 - Exposure draft of Guidance Note on Recognition of Revenue by Real Estate Developers
 - Exposure draft of Guidance Note on Accounting and Auditing of Political Parties
 - Guidance Note on Certification of XBRL Financial Statements

■ Company Law

- Clarification issued on applicability of cost accounting records, cost audit and related procedural aspects.
- Time limit for filing financial statement under XBRL Mode has been extended upto 31st December 2011 or 60 days from the due date which ever is earlier.

■ FEMA

- Borrowers henceforth not permitted to retain ECB Proceeds abroad to the extent it meant for rupee expenditure in India
- All-in-cost ceiling limits for ECBs and Trade Credits enhanced
- Authorised Dealers now to grant permission for Set-off of export receivables against import payables
- Transfer of shares by Non Resident to Resident and vice versa which earlier required RBI permission now permitted in specified cases

- Permission of realization/ repatriation of the export proceeds from six months to twelve months from the date of export extended till September 2012
- Ceiling on interest rate on Export Credit / Line of Credit with overseas bank in foreign currency enhanced
- Issue / transfer of 'participating interest/ rights' in oil fields to a non- resident now considered as FDI transaction
- Eligible Non Resident Investors allowed to invest on repatriation basis in Foreign Currency and Rupee denominated bonds/ Rupee denominated units of IDFs
- Person resident in India collecting/ remitting payments outside India towards margin money/ investments for internet based foreign exchange trading are liable for violation under FEMA, 1999 and KYC norms/ AML standards.

■ **SEBI**

- FII debt limit in Government & Corporate debt category increased

■ **Income Tax**

- Case Laws
 - Payment made for transportation of goods to truck drivers/owners, wherein transportation work is done by the carrier themselves, does not amount to "rent" and accordingly tax is deductible under section 194C @ 2% considering it as a transportation contract [ITO v. Indian Oil Corporation (Delhi ITAT)]
 - Fees received by the taxpayer for providing technical drawings and reports for mere use by the other party would qualify as 'Fees for Included Services' under India- Canada tax treaty and can not be extended to fall under section 9(1)(vii) of Income Tax Act [DIT v. SNC Lavalin International Inc (Delhi High Court)]
 - Commission paid to overseas agents, who are non resident entities, and who render services only at such particular place, no income can be deemed to accrue or arise in India. If the income is not taxable u/s 9 of the Act, no tax is required to be deducted u/s 195 of the Act [Dy. CIT VS M/s. Divi's Laboratories Ltd. (ITAT Hyderabad)]
 - Gains arising on sale of shares of foreign company by NR to NR are taxable in India only if the foreign company held Indian assets. Situs of the underlying assets and controlling interest cannot be ignored, what is involved in the transaction is an alienation of the assets and controlling interest of an Indian company [In Re Groupe Industrial Marcel Dassault (AAR)]

- While determining indexed cost of gifted asset, cost inflation index for the year in which the asset was first held by previous owner has to be considered [CIT v. Manjula J Shah (Bombay High Court)]

- Circulars
 - Subscription limit to PPF account increased from Rs. 70,000 to Rs. 100,000. Interest rate receivable thereon enhanced from 8% to 8.6% [F.No. 113-01/2011-SB order no. 24/2011 dated 24.11.2011]

 - PAN of Landlord compulsory to claim HRA benefit [Circular No. 5/2011 dated 4.3.2011]

- **OTHERS**
 - Deregulation of Savings Bank Account Interest Rate of Resident Indians
 - Revision in Interest rate on NRE and FCNR Accounts
 - Cheques/drafts etc. cannot to be presented beyond period of three months
 - Demand Draft for Rs.20,000/- and above issued with account payee crossing only

2 Accounting and Auditing

1. Expert Advisory Opinion - Amortization of mineral bearing land

Facts of the case:

- a. A State government company, which is engaged in the mining and marketing of minerals and in generation and selling of wind power was granted a mining lease for excavation of lignite for 20 years.
- b. The company has purchased a freehold land having mineable lignite reserves for extraction of minerals.
- c. There is a provision in lease agreement for further extension of lease as per provisions of the Minerals Concession Rules, 1960.
- d. Company is of the view that freehold land will not have any realizable value after 20 years as that land will not be usable for any purpose after excavation of mineral reserves. Company was amortizing the cost of land over a period of lease i.e. 20 years. Also depreciation on road constructed in mining area is calculated as per Schedule XIV of the Companies Act, 1956.
- e. Government Auditor is of the view that according to matching principle cost of freehold land is to be amortised in proportion to actual excavation of mineral to the estimated mineral reserves. Also road should have been depreciated on the same line with amortization of land instead of as per rate prescribed under Schedule XIV of the Companies Act, 1956.

Query

- a. Whether accounting treatment given by company for amortization of land is correct or not. If not, whether depreciation should be charged based on mineral actually excavated with respect to estimated reserves of lignite. In case of amortization is to be done on the basis of excavation whether same should be done retrospectively.
- b. Whether depreciation on the road constructed on such land should be charged on the same basis as that of land or as per schedule XIV to the companies act 1956.

Points Considered by Committee

- a. The committee notes the introduction paragraph of Accounting Standard 6. The paragraph states that Accounting Standard 6 doesn't apply to land unless it has limited useful life for the enterprise.
- b. The committee notes relevant paragraph relating to determination and revision in useful life of assets as per Accounting Standard 6 'Depreciation Accounting'.
- c. The committee is of the view that since such land after extraction can not be put to any other use and hence it will be considered to have limited useful life. Accordingly principle of Accounting Standard 6 would be applicable to such land. Since the sole purpose of acquisition of land is extraction of mineral resources and such extraction of mineral resources is the only economic use of the land for company, the useful life of freehold land would be governed by extractable minerals available on land and extraction thereof.
- d. Committee notes that since the right to extract mineral reserves is also subject to the term of mining lease, while calculating / reviewing the depreciation for a period, the remaining lease period and reasonable certainty for its extension in future should also be taken into account.
- e. Committee notes that change in method of depreciation from straight line method to unit of production would amount to change in accounting policy in accordance with paragraph 21 of Accounting Standard 6 and hence change in method of depreciation to be calculated retrospectively.
- f. Committee is of the view that said road in mine area have an independent useful life which would not only depend upon lignite mined but also other factors like normal wear tear due to weather etc. Committee notes the paragraph 13 of Accounting Standard 6 and paragraph 9 of Guidance note on accounting for depreciation in companies since determination of commercial life is technical matter the decision of board based on bona fide technological evaluation should be accepted.

Opinion

- a. The accounting treatment given by company is not in order. The depreciation on freehold land should be determined on the basis of minerals actually extracted during a period with respect to estimated quantity of extractable mineral reserves. The depreciation as per correct method should be provided retrospectively and the effect of the same should be treated and disclosed as a change in accounting policy

- b. Depreciation on internal road in mines to be calculated and charged on the basis of their own useful life which should be based on technology evaluation

2. Exposure Drafts and Guidance Note issued by ICAI

- a. Three Exposure drafts have been issued by the Accounting Standards Board of the Institute of Chartered Accountants of India (ICAI) namely:
 - IND AS – 113 Fair Value Measurement
 - Limited revision to Accounting Standard 10 – Accounting for Fixed Assets
 - Guidance Note on Recognition of Revenue by Real Estate Developers
- b. Technical Directorate of ICAI has issued Exposure draft of Guidance note on Accounting and Auditing of Political Parties.
- c. ICAI has issued Guidance Note on Certification of XBRL Financial Statements

3 Company Law

1. Clarification on Cost records and Cost audit

- a. Following companies are excluded from maintenance of cost records and are now not covered under Companies (Cost Accounting Records) Rules, 2011:
 - i. Wholesale or retail trading activities.
 - ii. Banking, financial, leasing, investment, insurance, education, healthcare, tourism, travel, hospitality, recreation, transport services, business/professional consultancy, IT & IT enabled services, research & development, postal/courier services, etc. unless any of these have been specifically covered under any other Cost Accounting Records Rules.
 - iii. Companies engaged in rendering job work operations or contracting/ sub-contracting activities, and are paid only the job work or conversion charges, such as tailoring, baking, repairing, painting, printing, constructing, servicing, etc.
 - iv. Companies engaged in the production, processing, manufacturing or mining activities till such time they commences their commercial operations.
 - v. Ancillary products/activities of companies incidental to their main operations (i.e. products/activities that do not constitute their main line of business) and wherein the total turnover from the sale of each such ancillary products/activities do not exceed 2% of the total turnover of the company or Rs.20 crores, whichever is lower. However, required details of all such ancillary products/activities may be maintained under a miscellaneous group and disclosed appropriately.
- b. Cost Audit Order issued in June 2011 is now amended to exempt following entities from getting cost audit done.
 - i. Generation of electricity for captive consumption. For this purpose, the term "Captive Generating Plant" shall have the same meaning as assigned in Rule 3 of the Electricity Rules, 2005.
 - ii. Own manufactured products that are consumed exclusively by the company for the sole purpose of production, processing, manufacturing, or mining of its other products or activities that are subject to cost audit.
 - iii. Hundred percent Export Oriented Units.
- c. Items falling under the relevant chapter(s) of the Central Excise Tariff Act, 1985 which constitute intermediate or final or allied products of the industry mentioned in the Cost Audit Order dated 30th June 2011 shall be covered under cost audit and all other items not related to the industry shall be outside the purview of said order.

d. Other clarifications

- i. The companies covered under Cost Accounting Rules shall file a compliance report in Form-B.
- ii. If all products/activities of the company are covered under cost audit then no separate compliance report is required to be submitted.
- iii. The companies covered under Cost Accounting Rule and Cost Audit rule for the first time shall maintain all the records for the next eight financial years beginning with first year of application.
- iv. The term "Turnover" shall exclude taxes and duties. It shall have same meaning wherever it appears under all other cost accounting orders / rules.
- v. Procedure for filing the cost audit reports:
 - If only one product of a company is subject to cost audit and the company appoints more than one cost auditor, only a consolidated cost audit report should be prepared.
 - If more than one product of a company is subject to cost audit and the company appoints same or separate cost auditors then they may file a separate cost audit report for each product or may submit a consolidated report of each product group.
- vi. For ensuring compliance with 'arms length relationship' for appointment as cost auditor of company, the cost auditor should not provide services to company as prescribed under said circular.

2. Extension of time limit for filing under XBRL Mode

Last date for filing financial statements in Extensible Business Reporting Language (XBRL) mode without any additional fee due to delay by those of Phase-I class of companies (excluding exempted class) whose Balance Sheet date for FY 2010-11 is on or after 31.03.2011, has been extended upto 31.12.2011 or within 60 days of their due date of filing, whichever is later.

4 FEMA

1. External Commercial Borrowings (ECB)

a. Parking of ECBs:

The borrowers henceforth are not permitted to retain the ECB Proceeds abroad, to the extent borrowing is meant for rupee expenditure in India such as local sourcing of capital goods, on-lending of Self-Help Group or for micro credits, payment of spectrum allocation. Hence, borrowings meant only for foreign currency expenditure can be retained abroad pending utilization.

b. There is no change in the condition that rupee funds will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

c. Enhancement of all-in-cost ceiling limits for ECBs:

The all-in-cost ceiling limits for ECBs are revised as under:

Average Maturity Period	All-in-cost over 6 month LIBOR*	
	Existing	Revised
Three years and up to five years	300 bps	350 bps
More than five years	500 bps	500 bps (no change)

* for the respective currency of borrowing or applicable benchmark

The above mentioned all-in-cost ceiling shall be applicable upto 31st March, 2012.

2. Liberalization – Set off of export receivables against import payables:

The RBI has liberalized the procedure of set-off of export receivables against import payables by delegating the power to AD Category-I banks to deal with such cases subject to following condition:

- The import is as per the Foreign Trade Policy in force.
- Invoices/Bills of Lading/Airway Bills and Exchange Control copies of Bills of Entry for home consumption have been submitted by the importer to the Authorized Dealer bank.
- Payment for the import is still outstanding in the books of the importer.

- d. Both the transactions of sale and purchase may be reported separately in 'R' Returns.
- e. The relative GR forms will be released by the AD bank only after the entire export proceeds are adjusted / received.
- f. The " set-off" of export receivables against import payments should be in respect of the same overseas buyer and supplier and that consent for "set-off" has been obtained from him.
- g. The export / import transactions with ACU countries should be kept outside the arrangement.

3. Transfer of Shares- Liberalisation

Reserve Bank of India has in the following cases dispensed with the condition of prior approval before transfer of shares is affected from Non Resident to Residents and vice versa:

a. Transfer of shares from a Non Resident to Resident or vice-versa under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that :-

- i The original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities reporting requirements, documentation, etc.;
- ii The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations / guidelines and
- iii Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations / guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

b. Transfer of shares from Resident to Non Resident in other cases:

- i In case, transfer of shares requires prior approval of the FIPB, the same has been obtained and pricing guidelines & documentation are adhered to.
- ii In case SEBI (SAST) guidelines are attracted, the pricing guidelines and documentation requirements are adhered to.
- iii In case the investee company is in the financial sector provided that :
 - NOCs are obtained from the respective financial sector regulators of the investee company, transferor and transferee entities and such NOCs are filed along with the form FC-TRS with the AD bank; and
 - The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

4. Realisation and Repatriation of export proceeds – Liberalisation

Permission for realization and repatriation of the amount representing the full export value of goods or software exported to India from six months to twelve months from the date of export extended till September 30, 2012.

5. Trade credit for Imports into India:

All-in-cost ceiling is enhanced for Trade Credit (upto period of Three years) from 200bps to 350bps over 6 month LIBOR.

6. Interest Rates on Export Credit in Foreign Currency

The ceiling on interest rate on Export Credit in Foreign Currency by banks in respect of fresh advances has been enhanced from LIBOR / EURO LIBOR / EURIBOR plus 200 bps to 350 bps till March 31, 2012, subject to the express condition that the banks will not levy any other charges except for recovery towards out of pocket expenses incurred.

Similarly, the ceiling interest rate on the lines of credit with overseas banks has also been increased from six months LIBOR / EURO LIBOR / EURIBOR plus 100 basis points to six months LIBOR / EURO LIBOR / EURIBOR plus 250 basis points till March 31, 2012.

7. Infrastructure Debt Funds (IDF):

Investments on repatriation basis by eligible Non Resident investors are permitted as follows:

- a. Rupee and Foreign currency denominated bonds issued by the Infrastructure Debt Funds (IDFs) set up as an Indian company and registered as Non-Banking Financial Companies (NBFCs)
- b. Rupee denominated units issued by IDFs set up as SEBI registered domestic Mutual Funds(MFs)

Eligible Non Resident Investors are allowed to invest on repatriation basis as under:

Sr. No.	Eligible Non Resident Investor	Eligible Instruments
i)	SEBI registered eligible non- resident investors in IDFs i.e. Sovereign Wealth Funds, Multilateral Agencies, Pension Funds, Insurance Funds and Endowment Funds	Foreign Currency and Rupee denominated bonds and Rupee denominated units
ii)	SEBI registered Foreign Institutional Investors	issued by IDFs

	(FIIs) who qualify as (i) above.	
iii)	High Net Worth Individuals (HNIs)	
iv)	SEBI Registered FII who do not qualify as (i) above	Rupee denominated bonds and units issued by IDFs
v)	NRIs	

The Original/initial maturity of all aforementioned securities at the time of first investment by a non-resident investor shall be for five years. Further, all non-resident investment in the aforementioned securities shall be subject to the lock in period of three years. However, all non-resident investors can trade amongst themselves within the lock in period of three years.

The conditions for end use have also been specified for the IDFs:

- a. IDFs set up as NBFCs may invest in debt securities of only Public Private Partnership (PPP) infrastructure projects which have a buyout guarantee and have completed at least one year of commercial operations. Refinance by IDF would be up to 85% of the total debt covered by the concession agreement.
- b. IDFs set up as MFs would invest minimum of 90% of its funds in debt securities of infrastructure companies or SPVs across all infrastructure sectors, project stages and project types.

8. Overseas Forex Trading through electronic/internet trading portals:

Overseas foreign exchange internet /electronic trading portals have been luring residents of India to trade in forex by way of paying the margin/initial investment amount in Indian Rupees through credit cards / deposits in various accounts of the agents maintained in the name of individuals or proprietary concerns with different bank branches in India.

It is clarified that any person resident in India collecting and effecting / remitting such payments directly /indirectly outside India would make himself/ herself liable to be proceeded against with for contravention of the Foreign Exchange Management Act (FEMA), 1999 besides being liable for violation of regulations relating to Know Your Customer (KYC) norms / Anti Money Laundering (AML) standards.

9. Issue/transfer of 'participating interest/rights' in oil fields to a non-resident:

The issue / transfer of 'participating interest/ rights' in oil fields to a non- resident is to be considered as Foreign Direct Investment (FDI) transaction under the extant FDI policy and the FEMA regulations and the same shall be reported in FCGPR/FCTRS as the case may be.

5 SEBI

1. Increase in FII debt limit in Government & Corporate debt category:

The limit of FII investment in Government & Corporate debt is increased as under:

Increase in FII Investment limit	Limit of Investments (in billions)		Incremental limit to be invested in
	Pre	Post	
▪ In Government Securities	USD 10	USD 15	Securities without any residual maturity criteria
▪ In Corporate bonds	USD 20	USD 25	Listed Corporate bonds

6 Income Tax

1. Case Laws

- a. **Sec 194C vs. 194I: Test to distinguish “transportation contract” from “hire contract”**

ITO v. Indian Oil Corporation (Delhi ITAT)

Facts:

The company had entered into contracts with transporters for transporting petroleum products from its plant to various destinations through hired trucks/tankers. The assessee deducted TDS at 2% on the basis that transportation contract was ‘work’ as defined under section 194C of the Income Tax Act, 1961. However AO was of the opinion that the assessee was required to deduct TDS u/s 194I of the Act @ 10%

Issue:

Whether the contract was for “transportation of goods” or for “hiring of vehicles” and the rate of TDS applicable on the contract was 2% (u/s 194C) or 10% (u/s 194I)?

Held:

The crucial thing in determining whether the arrangement is of hiring or for transportation is to see who is doing transportation work. If the assessee takes the trucks and does the work of transportation himself, it would amount to hiring. However, if the service of the carrier is used and the payment is for actual transportation work, the contract is for transportation of goods and not for hiring of vehicles.

The facts in this case were that -

- i. Tank truck owners engaged their drivers for driving vehicles used in transporting petroleum products. The ownership of the tank trucks remained in possession of the transporters through their staff and there was no transfer of rights to use the vehicle.
- ii. The company did not pay any fixed amount of rent but paid on the basis of distance traveled and quantity transported.
- iii. In the event the tank truck was not made available on any particular day, the company was free to use services of any other tank truck and recover the difference from the carrier.

In view of the above it was held that the agreement was merely for carriage of petroleum products and hence TDS u/s Sec 194C was applicable.

b. Fees for providing technical drawing/reports qualifies as Fees for Included Services under India-Canada tax treaty

DIT v. SNC Lavalin International Inc (Delhi High Court)

Facts:

- i. Assessee, a non resident company, engaged in providing consultancy services for infrastructure projects entered into an agreement with National Highway Authority of India (NHAI) for providing technical drawings and reports of investigation of the availability and viability of various modern technologies, detailed project report including a design plan.
- ii. The assessee treated the fee received from NHAI as Fees for Included Services as per Article 12(4) of tax treaty on which tax is to be deducted at 15 percent. As per article 12(4) para(b), Fees for included services means payment of any kind if such services make available technical knowledge, experience, skill, know-how or processes or consist of development and transfer of technical plan or a technical design
- iii. The AO however treated this income as Fees for Technical Services under Section 9(1)(vii) of the Income-tax Act, 1961 (the Act) and taxed it at 20 percent as per Section 115A of the Act.
- iv. The Revenue was of the view that unless the development and transfer of technical plan or technical design is made available, the assessee would not be covered under paragraph (4) of article 12. The Revenue argued that the designs provided by the assessee were for the specific purpose only and could not be made available for any other projects/ purposes.

Issue:

Whether the fee received by the assessee from providing services was taxable under section 9(1) of the Income-tax Act or article 12 of the Indo-Canadian Treaty?

Held:

The High Court held that that the term "transfer" as used in article 12(4) does not refer to absolute transfer of right of ownership. It refers to transfer of technical drawings or designs for the use by or for the benefit of the other party. It does not contemplate transfer of all rights totally or interest in such technical design or plan. Even where the technical design or plan is transferred for the purpose of mere use of such design or plan, article 12(4)(b) would be attracted and would be taxed at 15 percent and not at 20 percent under the Act

c. No withholding tax on payment of commission to a foreign agent

Dy. CIT VS M/s. Divi's Laboratories Ltd. (ITAT Hyderabad)

Facts:

The assessee had paid commission to foreign agents for the services rendered outside India and the payments were remitted through the banking channel as per RBI regulations. The assessee contended that the payment of sales commission to foreign agents do not attract the provisions of section 40(a)(ia) of the Act. The assessing officer made disallowance u/s 40(a)(ia) in respect of commission paid to non-resident agents on which no tax was deducted at source. On appeal, the CIT (A) deleted the disallowance. Not satisfied with the findings and the decision of the CIT (A), the revenue filed appeal before ITAT.

Issue:

- i. Whether the payment of commission made to the overseas agents without deduction of tax attracts disallowance under section 40(a)(ia) of the Act?
- ii. Whether the export commission payment made by way of cheque or demand draft by posting the same in India would amount to payment in India and consequently would the said income arise or accrue in India or not?

Held:

As per section 9 of Income Tax Act, income is deemed to accrue/arise in India only if it is arising by virtue of connection with any property in India, control and management vested in India. In the present case since commission is paid to overseas agents, who are non resident entities, and who render services only at such particular place, no income can be deem to accrue or arise in India. If the income is not taxable u/s 9 of the Act, no tax is required to be deducted u/s 195 of the Act.

Under these circumstances, withdrawal of earlier circulars issued by the CBDT (Circular No. 23 dated 23-7-09, 163 dated 29-5-75, 786 dated 7-2-00) has no assistance to the revenue, in any way, in disallowing such expenditure. It appears that an overseas agent of Indian exporter operates in his own country and no part of his income arises in India and his commission is usually remitted directly to him by way of TT or posting of cheques/demand drafts in India and therefore the same is not received by him or on his behalf in India and such an overseas agent is not liable to income-tax in India on these commission payments. This view is fortified by the judgment of Apex Court in the case of CIT vs. Toshoku Limited reported in 125 ITR 525.

d. Gains arising on sale of shares of foreign company by NR to NR taxable in India if the foreign co only held Indian assets

In Re Groupe Industrial Marcel Dassault (AAR)

Facts:

- i. Murieux Alliance (MA) a French incorporated entity has 100% subsidiary called ShanH in France. MA wanted to acquire shares in an Indian company called Shantha Biotechnics Ltd (“Shantha”). Shares in Shantha were acquired by MA through its subsidiary ‘ShanH’. Thus ShanH was holding shares in Shantha.
- ii. Thereafter, Groupe Industrial Marcel Dassault (GIMD) another French incorporated company acquired 20% of shares of ShanH from MA.
- iii. MA and GIMD (being 80% and 20% shareholders of ShanH) subsequently sold their stake in ShanH to another French company called Sanofi Pasteur Holding (“Sanofi”)
- iv. MA and GIMD filed an application seeking an advance ruling claiming that since the gains are arising out of sale of shares of a French entity (ShanH) by the applicants being French incorporated entities (MA and GIMD) to a third French entity (Sanofi) can not be brought to tax in India
- v. Revenue opposed to the application and held that ShanH was only a paper company, what was involved in the alleged sale of shares of ShanH by MA and GIMD to Sanofi was the transfer of the assets of an Indian company and certainly the controlling interest in the Indian company, Shantha attracting capital gains tax in India

Issue:

Whether the capital gains arising from the sale of shares of French entity by applicant (French entity) to a third French incorporated entity is liable to tax in India or in France?

Held:

AAR held that:

- i. On facts, the French company’s (ShanH) only asset were the shares in the Indian company & it had no other business. When its shares were sold, what really passes were the underlying assets and the control of the Indian company “Shantha”. A gain was generated by the transaction. If the transaction is accepted at face value, control over Indian assets and business can pass from hand to hand without incurring any liability to tax in India.

- ii. Under Article 14(5) of the India-France DTAA, gains from the alienation of shares representing a participation of at least 10% in an Indian company may be taxed in India. Here, though the shares being transferred are that of a French company, the situs of the underlying assets & controlling interest cannot be ignored. What is involved in the transaction is an alienation of the assets and controlling interest of an Indian company. Consequently, even though such interest is not an alienation of the shares of an Indian company, still, on a purposive construction of Article 14(5), the capital gains are taxable in India.
- e. **Indexation benefit for gifted assets to be taken from year of acquisition by previous owner**

CIT v. Manjula J Shah (Bombay High Court)

Facts:

The assessee had earned long term capital gain on sale of residential flat during A.Y.2004-05 which was gifted by assessee's daughter in F.Y.2002-03. Assessee's daughter has originally purchased the flat in F.Y.1992-93. The assessee computed capital gains by deducting indexed cost of acquisition which was determined with reference to the cost inflation index for the year in which the flat was originally acquired (i.e. F.Y.1992-93).

According to the AO, as per Explanation (iii) to Section 48 of the Act, the asset was held by the assessee from 1st February 2003 and, therefore, the cost inflation index for 2002-03 would be applicable in determining the indexed cost of acquisition. On appeal by assessee, CIT (A) allowed the assessee's claim. On further appeal by Revenue, ITAT and High Court held in favour of assessee.

Issue:

While computing the capital gains arising on transfer of a gifted capital asset, whether the indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset or the year in which the asset was gifted to the assessee?

Held:

The indexed cost of acquisition has to be determined with reference to the cost inflation index for the first year in which the capital asset was 'held by the assessee'. Since the expression 'held by the assessee' is not defined under Section 48 of the Act, that expression has to be understood as defined under

Section 2(42A) of the Act. Explanation 1(i)(b) to Section 2(42A) of the Act provides that in determining the period for which an asset is held by an assessee under a gift, the period for which the said asset was held by the previous owner shall be included. As the previous owner held the capital asset from 29th January 1993, as per Explanation 1(i)(b) to Section 2(42A) of the Act, the assessee is deemed to have held the capital asset from 29th January 1993 and accordingly the cost inflation index for 1992-93 would be applicable

If the argument of revenue is accepted that deeming fiction can not be applied to date of holding, then assessee would not be liable to any long term capital gain, because, it is only by applying deeming fiction, assessee is deemed to have held asset since 1993 and deemed to have incurred cost of acquisition.

2. Circulars

a. Revision of maximum limit of subscription to PPF, rate of interest and rate of interest charged on loan taken from account.

Following amendments are issued by The Ministry of Finance (DEA), which shall be effective from 1st December, 2011:

- i. The maximum limit of subscription to Public Provident Fund (PPF) Account in a financial year has been increased from Rs.70,000/- to Rs.1,00,000/- for the existing PPF accounts as well as new PPF accounts to be opened on or after 01.12.2011.
- ii. The rate of interest receivable has been increased from 8% to 8.6% w.e.f. 01.12.2011. The revised interest rate will apply to fresh subscriptions made as well as to balances lying in existing PPF accounts.
- iii. The rate of interest charged on the loan taken by the subscriber of a PPF account on or after 01.12.2011 shall be 2% per annum. However, the rate of interest of 1% per annum shall continue to be charged on the loans already taken or taken up to 30.11.2011.

b. PAN of Landlord necessary to claim HRA benefit

As per the Circular, it is now mandatory for an employee claiming HRA to provide PAN details of the landlord to employer where rent exceeds Rs.180,000/- per annum. In case, the landlord does not have a PAN, a declaration to this effect from the landlord along with his name and address should be submitted by the employee to the employer. The Company will therefore need to incorporate this additional information in the declaration form obtained from employees based on which HRA is computed for TDS purpose.

7 Others

1. Interest Rates on Resident, NRE and FCNR Bank Accounts

- a. Deregulation of Savings Bank Account Interest Rate of Resident Indians only:

Banks are free to determine the savings bank deposit interest rate subject to the following conditions:

S. N.	Particulars	Rate of Interest
1	Deposit upto Rs. 1 Lakh	Uniform rate
2	Deposit above Rs. 1 Lakh	Differential rate

- b. Interest rate on NRE and FCNR Accounts in State Co-operative Banks, Urban Co-operative Banks, District Co-operative Banks, Regional Rural Banks and all Scheduled Commercial Banks:

With effect from November 24, 2011, interest rates on fresh Non-Resident (External) Rupee (NRE) and Foreign Currency Non Resident (B) Term Deposits, for US dollar and respective currency of corresponding maturities, respectively is revised as under:

Type of Bank Account	Rate of Interest	
	Pre Amendment	Post Amendment
Non Resident (External) Rupee Account ¹ (one to three year maturity)	LIBOR/SWAP rates plus 175 points	LIBOR/SWAP rates plus 275 points
Foreign Currency Non Resident (B) Account	LIBOR/SWAP rates plus 100 points	LIBOR/SWAP rates plus 125 points

2. Payments of Cheques/Drafts/Pay Orders/Bankers Cheque:

With effect from 1st April 2012, cheques/drafts/pay orders/ banker's cheque will have validity period of only Three months as opposed to Six months earlier.

¹ Changes in Interest rate shall also apply to the NRE deposits renewed after their present maturity period. Further interest rates as determined above for three year deposits will also be applicable in case the maturity period exceeds three years

3. Issue of Demand Draft for Rs.20,000/- and above:

Demand drafts of Rs. 20,000/- and above have to be issued invariably with account payee crossing.

From:

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Chartered Accountants

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