

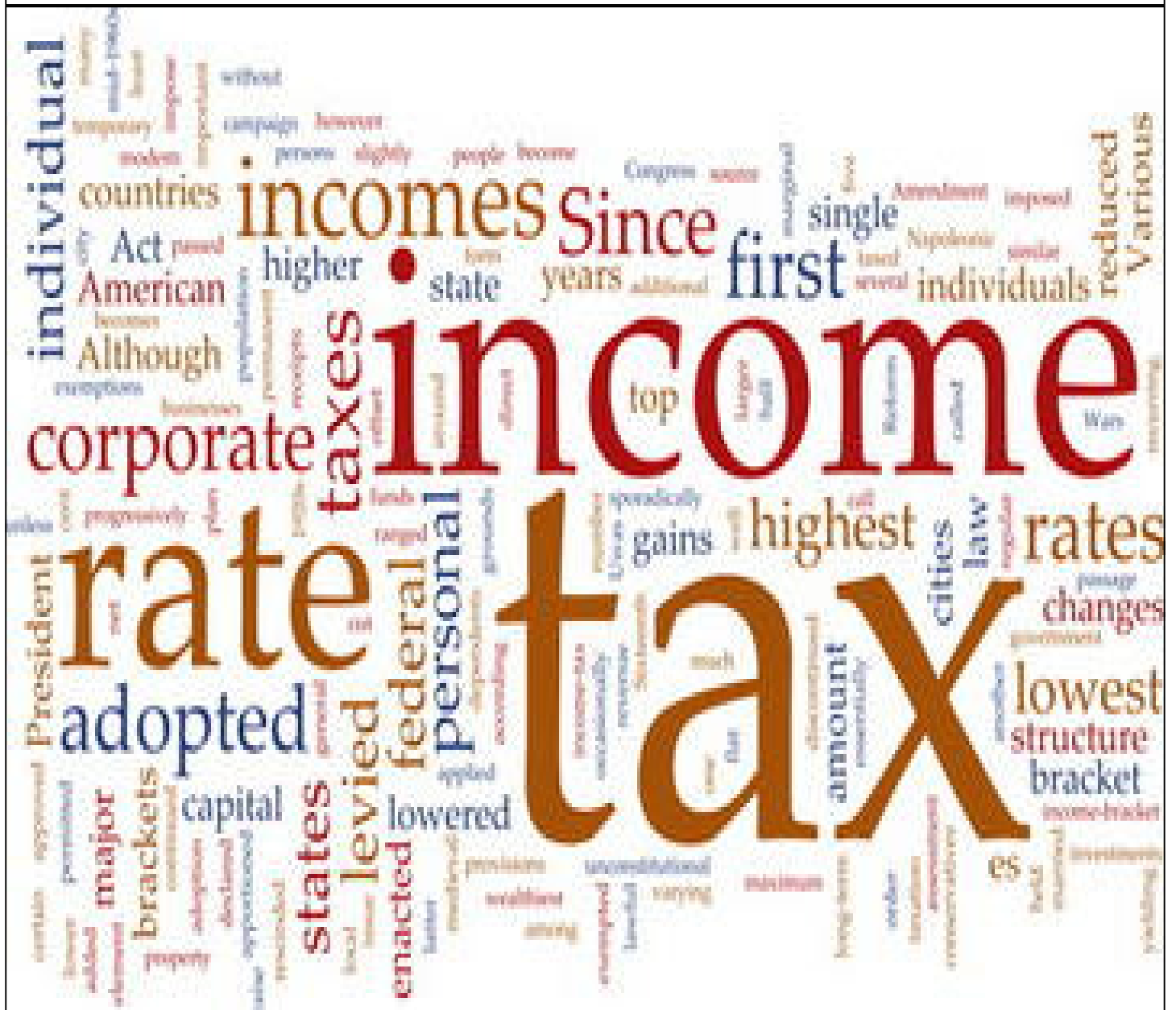


THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(A STATUTORY BODY ESTABLISHED UNDER AN ACT OF PARLIAMENT)



Volume I, Issue 6, August 11

VAPI BRANCH OF WIRC OF ICAI



CHAIRMAN COMMUNICATION

AN APPEAL TO MEMBERS TO CONTRIBUTE TOWARDS VAPI BRANCH BUILDING FUND

Dear Colleague,

With great pleasure and pride I would like to inform you all that the furnishing work of our branch premises has been over and has been kept open for the use of members. In fact, a programme on Investor Awareness has also been conducted in the premises on 30th August, 2011 which was attended by many of our members and which marked the beginning of the official use of the premises. On this occasion, I would wish that all members and students take a personal visit to our branch premises and have a glimpse of the facilities embedded in it for us as well as students. I recognize and thank from the bottom of my heart, my committee and all members who extended their support, both, for guiding me during the planning and execution of the furnishing work and financially by contributing generously to the branch fund.

We have arranged programmes at our branch premises in the month of September, 2011 the details are published in the foregoing page of this news letter. I wish that you all attend the same as these programmes are at **"OUR"** branch premises.

We had a fruitful students meet with Mr. Chandrakant Ruparelia from Mumbai, who was at our branch for 2 days. He has been conducting coaching and lectures for CA students since last several years. Students had nice interaction with him and could avail useful tips from him for their studies.

Friends, the tax audit season is in full swing for all of us and many of you would be busy in finalization of audits and tax returns. As Aristotle has said **"We are what we repeatedly do. Excellence, therefore, is not an act but a habit.** So, complete your tax audits diligently and utmost care.

Wish you all good luck!

Yours forever,

CA. Jignesh V. Vasani

Branch Chairman.



DIRECT TAX LAW UPDATES

COMPULSORY DIGITAL SIGNATURE WHILE E-FILING OF INCOME TAX RETURN FOR INDIVIDUAL/HUF AND FIRMS TO WHOM PROVISIONS OF SECTION 44AB ARE APPLICABLE. {200 TAXMAN (S.T) 1}

The CBDT vide notification No.37/2011 dated 01/07/2011 gives Income tax (sixth amendment) Rules, 2011. It amends rule 12(3) of Income Tax Rules, 1962.

It provides that a firm required to furnish return in ITR-5 or Individual /HUF required to furnish return in ITR-4 and to whom the provisions of section 44AB are applicable are required to furnish the return for assessment year 2011-12 and subsequent years in the manner specified in rule 12(3)(ii) i.e. “furnishing the return electronically under digital signature”. The provisions are applicable for assessment year 2011-02 and subsequent year.

DTAA BETWEEN INDIA AND MOZAMBIQUE- SECTION 90 OF INCOME TAX ACT {199 TAXMAN (ST) 86}

The Central Government vide notification No. 30 dated 31st May, 2011, notified, in exercise of power conferred by section 90 of Income-tax Act, agreement between the Government of the Republic of India and the Government of the Republic of Mozambique for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income.

It notifies that all the provisions of the said agreement shall be given effect to in the Union of India with effect from 1st April, 2012.

SECTION 10(15)(I) OF INCOME-TAX ACT – EXEMPTION-INCOME BY WAY OF INTEREST ETC. ON BONDS, SECURITIES ISSUED BY CENTRAL GOVERNMENT. {199 TAXMAN (ST) 110}

In exercise of power conferred under section 10(15)(I) of Income Tax Act, the Central Government exempted the Income received by way of interest on Securities and bonds, Saving Certificate, etc vide notification number GSR607(E) dated 9th June, 1989.

The Central Government vide notification no 32/2011 dated 3/6/2011 amends the notification GSR 607 (E) dated 9th June, 1989 and restricts the interest on post office Saving Bank account to the extent of Rs. 3500/- in the case of individual and Rs.7000/- in case of Joint account.



CENTRAL TAX LAW UPDATES

Tariff Notification

Amendment to exemption granted to goods supplied for defence and other specified purposes: Notification No. 64/1995 –CE dated March 16th, 1995 exempted certain goods supplied for defence & other specified purposes from excise duty. The scope of the said notification has been widened to also include machinery, equipment, instruments, components, spares, jigs, fixtures, dies, tools, accessories, computer software, raw material and consumables required for the Long Range Surface to Air missile (LR-SAM) Programme of Ministry of Defence subject to producing the certificate from Programme Director.

However, this exemption is granted till 25th November, 2011 only.

(Notification No. 34/2011- CE dated July 19th, 2011)

Non-Tariff Notifications

Amendments in existing forms of Central Excise returns/ new Form ER-8 introduced: Following Central Excise returns are amended / introduced:

- Form ER-1 (monthly returns) applicable to all assesses has been amended
- Form ER-3 (quarterly returns) for small scale industries has been amended
- ER-8 has been introduced in respect of assesses availing benefit of exemption under notification No. 1/2011–CE dated February 27th, 2011.

(Notification Nos. 15/2011 –CE dated June 30th, 2011 & 16/2011 –CE dated July 18th, 2011)

Power to grant registration to Large Taxpayers Units (LTU)

Earlier the application for LTU registration was supposed to be made to the Chief Commissioner of Central Excise, LTU. However, now the same can be made to Assistant Commissioner/ Deputy Commissioner of Central Excise, LTU or to the superintendent of Service tax, LTU; as the case may be.

(Notification No 17/2011 –CE dated July 18th, 2011)



SERVICE TAX LAW UPDATES

Central Government vide Notification No.42/2011-ST dated 25th July, 2011 has exempted the taxable service provided by association of dyeing units under the category of “Club or Association Services”(Section 65(105)(zzze)) in relation to common facility set-up for treatment and recycling of effluents and solid waste discharged by dyeing units with a financial assistance from the central or state government .

Central Government vide Circular No.144/13/2011-ST dated 18th July, 2011 clarified the term “Completion of Service” provided under The Service Tax Rules, 1994 and Point of Taxation Rules, 2011 to mean that all the other auxiliary activities such as measurement, quality testing etc. besides the physical part of providing prime service also to be completed, which enable the service provider to be in a position to issue an invoice. However such auxiliary activities shall not be flimsy or irrelevant grounds for delay in issuance of invoice .

CBEC vide letter F.No.106/Commr(ST)/2009 dated 8th July, 2011 clarified that service tax is applicable on the amount charged by airports authorities towards user development fees & passenger service fees. The said amount shall be included while determining value of service under the category of “Airport Services”.

CBEC vide letter F.No.137/35/2011 dated 13th July, 2011 clarified that service tax is applicable on activity of ONGC that of providing staff on deputation to Directorate general of Hydrocarbons (DGHC) under the category of “Manpower Recruitment or Supply Agency Services”(Section 65(105)(k)). The volume of activity undertaken or presence/absence of profit motive is irrelevant for determining applicability of service tax.

CBEC vide letter Dy.No.2305/Commr(ST)/2011 dated 15th July, 2011 clarified that service tax is not applicable on job work of computer embroidery under the category of “Business Auxiliary Services”(Section 65(105)(zzb)), since the said job work is manufacturing activity within the meaning of Section 2(f) of The Central Excise Act,1944 & falling under the chapter heading 5810 of Central Excise Tariff Act.

CBEC vide letter F.No.354/9/2011-TRU dated 12th July, 2011 clarified that life insurance companies are not entitle to take entire CENVAT credit of input services till 30th April,2011 as they were not liable to pay service tax on services related to investment activities. The option to discharge service tax liability @ 1% of total premium does not imply that service tax is paid on investment services also.



DIRECT TAX CASE LAW UPDATES

S.4 Subsidy

If the object of the Subsidy Scheme was to enable the assessee to run the business more profitably the receipt is on revenue account. On the other hand, if the object of the assistance under the Subsidy Scheme was to enable the assessee to set up a new unit or to expand the existing unit the receipt of the subsidy was on capital account. The object of the subsidy received from West Bengal Government under scheme of Industrial promotion for expansion of their capacities, modernization, and improving their marketing capabilities are for the assistance on capital account. Similarly, merely because the amount of subsidy was equivalent to 90 per cent of the sales tax paid by the beneficiary does not imply that the same was in the form of refund of sale tax paid. CIT vs. Rasoi Ltd. 199 Taxman (Mag) 235 (Cal.)

S. 11 Sub-letting of leased property

The sub-letting done by the assessee trust in order to continue its charitable activity cannot be branded as a "business activity". DIT(E) vs. Sahu Jain Trust [2011] 11 taxmann.com 436 (Cal.)

S. 23 Determination of ALV – interest free deposits

Rateable value determine as per local laws can be taken as ALV u/s 23. Notional interest on interest free deposits is not be consider for determining ALV – CIT vs. Moni Kumar Subba 199 Taxman 310(Del.) (FB)

S.32 – Sale and lease back transaction

The real intention of the parties in entering into the sale and lease agreement and that such intention has to be gathered from the words in the said agreement in a tangible and in an objective manner and not upon a hypothetical assessment of the supposed motive of the assessee to avoid tax. It cannot be said that the transaction is not genuine merely because an assessee gets a commercial advantage because of the factoring in of a tax benefit. - CIT vs. Cosmo Films Limited, High Court of Delhi, ITA No. 1404/2008, Decided on: 18 July 2011

S.32 Depreciation – proof of actual use

If the assessee was to install such a machinery on its bona fide business consideration, mere absence of proof of actual use thereof was not enough to deny the claim for depreciation. CIT vs. Shahbad Co-op. Sugar Mills Ltd 199 Taxman (Mag) 267 (P & H)

S.32 Depreciation – ready for use

Even assuming that keeping the machinery ready for use itself is sufficient for claiming depreciation, assessee has to establish that the machinery was brought to its site and installation and commissioning were done which is possible only after trial run. CIT vs. International Creative Foods (P.) Ltd. 199 Taxman (Mag.) 273 (Ker.)

S.37(1) Expenditure on education

When the assessee is running an Engineering and Consulting Services, earning profits and. in pursuance of its business or profession, it laid out certain monies for education of a student in the very same field, such an expenditure cannot be held to be unlawful or prohibited by law. - CIT vs. Ras Information Technologies (P.) Ltd. [2011] 12 taxmann.com 158 (Kar.)

S.37(1) Expenditure on license in the name of partner

The assessee firm engaged in the business of liquor after it is obtain licence in the name of one of the partner. However, the licence belongs to the firm only. Expenditure on licensee is allowable as a business deduction - CIT v. S.B. Pannalkar & Co [2011] 12 taxmann.com 154 (Kar.)

S. 37(1) Allowability of expenditure

The assessee is carrying on a business or not is to be ascertained from the material placed before the Assessing Officer and not by a mere entry in the balance sheet. The assessee was in the business of sale of shares with a profit motive and not for investment and, therefore, entitled to business expenditure as well as deduction of interest towards loan borrowed though shares were disclosed as investments and not as stock in trade. CIT v. Aravind



DIRECT TAX CASE LAW UPDATES

S. 37(1) Deduction of expenditure – written agreement

The incurred hire charges for the coolers which were installed in the premises of the assessee. Deduction as business expenditure for this would be allowed even if there was no written agreement. 200 Taxman (Mag) 43 (Del)

S.43B – Deduction of advance excise duty on payment basis

During the previous year relevant to the AY 1996-97, the appellant paid, inter alia, a sum of Rs.322.46 lakh on account of excise duty, the liability for payment of which was incurred in the previous year relevant to the AY 1997-98. Considering the provision of section 43B (a) of the Act deduction was allowed in AY 1996-97 on payment basis. - Paharpur Cooling Towers Ltd v CIT, High Court of Calcutta, I.T.A. No. 2 of 2004 Decided on: 15 July 2011

S.45 – Gift of shares by company

The definition of 'gift' given in section 122 of the Transfer of Property Act, 1882, 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called donee, and accepted by or on behalf of the donee. The meaning of gift reflect no element of love and affection. The gift of shares by the applicant to John Deere Asia (Singapore) is made without any consideration and therefore the transfer has to be held to be a gift and is not taxable as per the provisions of the Act. So far as applicability of transfer pricing provisions is concerned, section 92 provides computation of income arising from an international transaction having regard to the arm's length price. This provision cannot be applied to a transaction which is not chargeable to tax under the Act. In Re Deere & Co., [2011] 11 taxmann.com 388 (AAR - New Delhi)

S.192 – TDS on Salary

In view of the statutory provisions of the Income-tax Act, the employee having any objection regarding deduction of tax source from salary, the proper remedy for the respondent is to approach the authority/officer concerned and not by filing complaint under IPC or Cr.PC. - Rajeswar Tiwari v. Nanda Kishore Roy [2011] 11 taxmann.com 407(SC)

S.148 date of issue of notice

Considering the definition of the word 'issue', it was apparent that merely signing the notices on 31-3-2010, could not be equated with issuance of notice as contemplated under section 149. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the assesseees. Till the point of time the envelopes were properly stamped with adequate value of postal stamps, it could not be stated that the process of issue was complete. In the facts of the case, the impugned notices having been sent for booking to the speed post centre only on 7-4-2010, the date of issue of the said notices would be 7-4-2010 and not 31-3-2010 - Kanubhai M. Patel (HUF) v. Hiren Bhatt or His Successors to Office [2011] 12 taxmann.com 198 (Guj.)

S.179 – Opportunity of hearing before recovery proceedings

It will be appropriate and proper if the director is given a hearing and a fresh order under section 179 of the Act is passed - Sanjay Ghai v Dy. CIT, High Court of Delhi, W.P.(C) 7395/2010 Decided on: 7 July 2011



ACCOUNTING ASPECTS OF REAL ESTATE DEVELOPMENT & REVENUE RECOGNITION

Aspects considered for Accounting of Real Estate Development and Revenue Recognition.

1. Guidance Note
2. Applicable Methods
 - Percentage Completion Method
 - Project Completion Method
 - Change Of Method Of Accounting
3. Tax Audit

GUIDANCE NOTE BY ICAI

AS 9 – Revenue Recognition: Conditions

- a. Seller has transferred significant risk and reward.
- b. No significant uncertainty about consideration.
- c. Not unreasonable to expect ultimate collection

AS 7 – Construction Contracts: Conditions

- a. When seller is obliged to perform substantial act after transfer of risk and reward
- b. Revenue should be recognized on proportionate basis applying % of completion method in the manner explained in AS 7.



APPLICABLE METHODS:

TREATMENT UNDER PERCENTAGE COMPLETION METHOD- JUDICIAL PRECEDENT

CIT vs. Advance Construction Co. (P) Ltd. (2005) 275 ITR 30 (Guj)

It is held that assessee-contractor having offered profits for tax on the basis of percentage completion method which is a standard accounting practice and has been constantly followed by the assessee in subsequent years; the same could not be rejected.

TREATMENT UNDER PROJECT COMPLETION METHOD- JUDICIAL PRECEDENT

CIT vs. Bilahari Investments (P) Ltd. (2008) 299 ITR 1(SC)

It is held that Recognition/identification of income under the Act, is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. Completed contract is one such method. Similarly, percentage of completion is another such method.

Prestige Estate Projects (P) Ltd. – 33 DTR 514 (Bang)

Assessee developer having regularly employed project completion method which is an accepted method of accounting, and the Central Government having not notified AS-7 u/s. 145(2), AO could not reject the accounts u/s. 145(3) on the ground that the assessee had not followed the percentage completion method.

Nandi Housing (P) Ltd. NTD (2003) 80 TTJ (Bang.) 750

The assessee projects were of a longer duration than one particular accounting year. The project may take a few years and actual sale may take place subsequently. The Project Completion method is a permissible method recognized by the ICAI. This is regularly employed by the assessee and the Department had not found any mistakes. The addition of 8% on WIP was totally uncalled for.

H.M. Constructions (2003) 84 ITD 429 (Bang)

A Builder followed the Project Completion Method regularly. The AO attempted to adopt 8% of Contract receipts as the income. It was held that this is a recognized method recommended by the ICAI and if the Revenue attempts to tax the income on the basis of receipts, it could lead to absurd results because receipts may come earlier and the expenditure would have to be incurred over a period of time. It was held that Project Completion Method was correct.



Champion Construction Co 5 ITD 495

The assessee contended that the profit should be taxed only on completion. The ITAT held that as the construction was completed and 80% of the flats had been sold, the income could be estimated in that year and that substantial completion was what was relevant.

Dalmia Promoters Developers (P) Ltd. (2006) 281 ITR 346 (Del)

The issue in this case was whether interest income was to be held as incidental to the Real Estate business or whether it was to be taxable as Income from other Sources. The Judgement however refers to the fact that assessee followed project completion method of accounting.

Certain other judgments where Project Completion Method has been accepted:

- Shree Nirmal Commercial Ltd. 193 ITR 694 (Bom)
- D.K. Enterprises – 39 ITD 394 (Bom)
- WD Estate (P) Ltd. – 45 ITD 477 (Bom)
- Shapoorji Pallonji & Co. (Rajkot)(P) Ltd. 49 ITD 479 (Bom)

CHANGE OF METHOD OF ACCOUNTING – JUDICIAL PRECEDENT

Satish H. Patel 93 TTJ 458 (Pune)

It is held that the assessee having changed his method of accounting from work-in progress in original return to project completion method in revised return, project completion method also followed by assessee in subsequent year and same also accepted by revenue- assessee can change one system of accounting to another system before assessment is completed.

TAX AUDIT – JUDICIAL PRECEDENT

Gopal Krishnan Builders [92 TTJ 215 (Luck)]

- Amount received as advance by builder following project completion method whether tax audit applicable and penalty under section 271B imposable.
- It is held that amounts received as advance by the assessee-builder from customers had an element of profit and same were to be adjusted towards the cost of flats booked by each customer and thus, the amounts of advance have to be included in "gross receipts" for the purpose of s. 44AB; assessee being under obligation to get its accounts audited under s. 44AB. It cannot be contended that the assessee following project completion method would get the books of account audited in the last year and not in earlier years when he is debiting the expenses and other items and showing different types of receipts penalty under s. 271B was imposable for its failure to get the same done.
-



REAL ESTATE—FORMS OF DEVELOPMENT AGREEMENTS & TAX ISSUES



Different types of forms of development agreements and related tax issues.

- a. Fixed Price Agreement.
- b. Allotment of space in building to the Land-owner
- c. Sharing of Revenue
- d. Sharing of Profits – AOP issues

FIXED PRICE AGREEMENT.

A Land Owner enters into a development agreement to sell land for a fixed monetary consideration.

Tax Perspective:

•Section 2(47)(v) of the I.Tax Act, 1961 states: Transfer in relation to capital asset includes – Any transaction involving the allowing of possession of any immovable property to be taken or retained in part performance of contract of the nature referred to in Sec. 53 A of the Transfer of Property Act, 1882”

•By entering into a “Development Agreement” and permitting construction to be commenced, the Owner would state that he had merely given a licence to the Developer to enter upon the property for the limited purposes of construction and had not handed over “possession” to the Developer. Hence, he would contend that no capital gains tax was leviable.

ALLOCATION OF AREA

The Owner enters into an agreement with the Developer under which the Developer is to carry on construction at the Developer’s cost. The Owner receives a certain percentage of area in return.



Chaturbhuj Dwarkadas Kapadia vs. CIT
180 CTR Bom 107

- Transfer of property under a development agreement
- Arrangements conferring privileges of ownership even without transfer of title fall under s. 2(47)(v)
- In cases of development agreements, the year of chargeability of capital gains is the year in which the contract is executed
- Substantial performance of the contract is not relevant
- If the contract, read as a whole, indicates passing of or transferring of complete control over the property in favour of the developer, then the date of the contract would be relevant to decide the year of chargeability
- Under the terms of the agreement between the assessee and the developer a limited power of attorney was intended to be given to the developer to deal with the property
- Hence, the date of contract was the relevant date of transfer under s. 2(47)(v)
- Finding of the Tribunal that the transfer had taken place during the relevant asst. yr. is also vitiated by mistakes apparent on the face of the record.

SHARING OF REVENUE

The Owner enters into an agreement in which he is to get a share of top line. Since this consideration is not quantified at the initial stage of development, such a situation would normally result in the receipts by Owner, being treated as business receipts. If the land had been held until then as a Capital Asset, the Owner may convert the Capital Asset into Stock-in-Trade for clear classification and treatment of reve-

nues.
Conversion of Capital Asset into Stock-in-trade [Section 45(2)]

- Section 45 ---
- (2) “ Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as, stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.”

SHARING OF PROFITS

“Land Owner is to get a certain basic price and thereafter a share of profit” The AO may contend that this is an AOP

Option 1:

- a. Formation of an AOP/LLP:
- b. Introduction of land into the AOP/LLP at a mutually agreed price [u/s. 45(3)]
- c. Division of profits between the parties.

Option 2:

- a. Combination of profit sharing and sharing of revenue or other such basis so that the parties are entitled to an independent share in the income.



ICAI UPDATES

FOR ATTENTION OF MEMBERS

In order to avoid removal of their names from the Register of Members and cancellation of Certificate of Practice, Members who have not paid their fees are requested to remit the same on or before 30th September, 2011 as per the fee structure given below:-

Particulars of Fees	Fee (Rs.)	
	Below age 65 yrs as on 1st. Apr.2011	Age 65 or above on 1st. Apr.2011
Annual Membership Fee		
Associate Fee	800	600
Fellow Fee	2,200	1,600
Certificate of Practice Fee	2,000	1,500
Restoration Fee	1,200	1,200
Entrance Fee	1,200	1,200
Fellow Admission Fee	1,800	1,800

In case fees is not paid by 30/09/2011, member will not be entitled to train any articled assistant w.e.f. 01/10/2011 and the existing articled assistant(s) will be terminated w.e.f. 01/10/2011.

Clarification regarding non-inclusion of audits conducted under sections 44AD, 44AE and 44AF in the “specified number of tax audit assignments”

In order to clarify the doubt raised by majority of members in respect of inclusion of audits conducted under sections 44AD, 44AE and 44AF of the Income-tax Act, 1961 in the specified number of tax audit assignments, the extracts of Para 6 of Chapter VI “Tax Audit assignments under section 44AB of the Income-tax Act, 1961” of the Council General Guidelines No.1-CA(7)/025/2008 dated 8th August, 2008 have been reproduced below:

“Provided also that the audits conducted under section 44AD, 44AE and 44AF of the Income-tax Act, 1961 shall NOT be taken into account for the purpose of reckoning the “specified number of tax audit assignments”.



Members at Investor Awareness Programme on Dt :- 30/08/2011 at Vapi Branch of WIRC of ICAI



Cross Section of Audience at Seminar on Investor Awareness Programme held at Vapi Branch of ICAI.

To,

If Undelivered Return to:

VAPI BRANCH OF WIRC OF The Institute of Chartered Accountants of India.

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