

RAIPUR BRANCH OF CENTRAL INDIA REGIONAL COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NOVEMBER - DECEMBER 2013

FOR MEMBERS ONLY



*Chairman
Writes...*



EDITORIAL BOARD

Editor : CA Prafulla Pendse
Member : CA Sanjay Jain

Dear Professional Colleagues,

The calendar year 2013 is going to end soon leaving us behind with memories some good and some bad which would be cherished for longtime. Nevertheless the picture should always be seen at the larger side. I take this opportunity to congratulate the members of Raipur Branch for successfully hosting the 34th Regional conference of CIRC. As expected we received tremendous support from not only the members of Raipur Branch but also the members of entire region. The conference witnessed a record participation of 850 delegates under various categories.

The regional conference was culmination of the enormous effort of the entire conference team. I wish to express my deep sense of gratitude towards the Chief Guest Shri Shekhar Dutt Ji, Governor of Chhattisgarh, Guest of Honour Hon'ble Justice R V Eswar, Delhi High Court, Special Invitee Shri Madhusudan Kela, Chief Investment Strategist, Reliance Capital Limited graced the Occasion alongwith, Past President ICAI CA Amarjeet Chopra, all the central council and regional council members who were present to add the grace. I also wish to express my gratitude towards all the speakers and the participants at large for making this event a great success.

The month of December has witnessed the largest democratic event of the state i.e. the State General Elections have taken place. It is also a matter of coincidence that the Oathtaking of the newly formed government, under leadership of Dr. Raman Singh Ji, and Inauguration of the 34th Regional conference was on the same day i.e. 18th December 2013.

The Office of the Comptroller and Auditor General of India has invited online applications from the firms of chartered accountants, who intend to be empanelled with their office for appointment as auditors of the Government companies/corporations for the year 2014-2015. The Format of the application will be available from 1st January, 2014, onwards the last date for submission would be 15th February 2014. Members may visit the website www.saiindia.gov.in for further information.

The last date of completion of the CPE requirements of the members for the block calendar years of 2011 to 2013 under various category is 31 December 2013. The Noncompliance may attract the penal consequences. For further details members may visit www.cpeicai.org

The last date to avail benefit under the Voluntary Compliance Encouragement Scheme as announced by Finance Act, 2013 is approaching fast and the deadline thereof i.e. 31st December 2013 is approaching fast.

We are also organizing CA Youth Fest 2013 "Talentino" for the students. This one day event has been aimed at bringing out the hidden talents in the students apart from the academics. The details of the event are available at the branch website www.icairaipur.org.

As we are also entering into the last quarter of the current financial year we would soon get busy in the time barring scrutiny assessments and the Return of Income.

But I would take time to stop here and wish you all a very merry Christmas and prosperous new ahead which brings you health, Fame and prosperity in your life.

CA Sidharth Parakh
(Chairman)



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NEWS LETTER



CORPORATE SOCIAL RESPONSIBILITY

(Under State Act and as introduced under Companies Act, 2013)

By CA Kishore M. Deshpande

Recently an issue came before me for seeking opinion on matter that whether amounts to be contributed towards Corporate Social responsibility (called CSR) under State Act would be considered as used for Corporate Social Responsibility under Companies Act, 2013.

Chhattisgarh Govt. vide Gazette dated 03.05.2013 has asked Industrial units of state to contribute amounts towards CSR dues to Govt.

Since the CSR or Corporate Social responsibility word is used both under this state enactment and Companies Act, 2013, it creates confusion.

Applicability of State CSR policy

The Policy of state Govt. is as follows;

1. Funds in Mukhyamanti Samudayik Vikas Kosh, will be received from Established Industries (IU) (especially Mega & Ultra Mega Projects) (clause 4) (*Industries may be Corporate or non-corporate also, However normally they are Corporate*)
2. Funds to be used for affected families of different industrial projects for their education and health facilities. Also for all round development of affected area/district. (clause 4) (*Thus it is compensatory in nature.*)
3. Affected area is defined where the land was acquired by any Industrial unit or have environmental effect as decided by CGEC Board. (clause 5.1.13) (*Thus it is compensatory in nature.*)
4. 2% of Net profit above 500 crores or Rs.15 crores), or 3% where net profit is below 500 crores, where of established IU in state, or CSR amount mentioned in environment clearance letter issued by MOEF will be considered as CSR fund to be contributed. Fund to be given to state will get reduced by amount as per instruction of Central Environmental Ministry.(clause 6.2)
5. Where IU is part of Industrial House than net profit of IU in state would be calculated. (like BSP of SAIL)(clause 6.2) Amount to be deposited by 30th Sept. of each year. (clause 6.4)
6. This policy is limited to those IU which comes under definition of Mega or above Mega Industrial category.(clause 6.5)
7. State CSR will be different from compensation against land and rehabilitation. (clause 6.6)
8. The state Govt. may make changes or revise as per change in Industrial policy.
9. Use of funds will be for development of affected area, decrease pollution etc.

The CSR as per Companies Act, 2013 is provided under Section 135 of the Act.

This applies to:

1. Every Company having net worth of Rs.500 crores or more and or turnover of Rs.1000 crores or more, or net profit of Rs. 5 crores or more. [135(1)]
2. 2% of average profits of last 3 years are spent on CSR. {135(5)}
3. Preference of CSR spending shall be given to the local areas or areas around which the Company operates[135(5) proviso]
4. Schedule VII prescribe activities to be carried out under CSR. They are quite different than as per CSR of State Govt.

In light of above the questions the following questions may come up, which is answered below;

Question:

Whether the state policy shall prevail over the amended Companies Act, 2013 as far as CSR chapter is concerned?



NEWS LETTER



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Question:

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Answer:

Yes. Although a similar word as CSR is used under both enactments, but the meaning of CSR in state policy is restricted to IU only, and that too having impact on environment. Whereas under the



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SELECTED LEGAL UPDATES

Compiled by : CA Manish Agrawal

DCIT vs. ITAT (Punjab & Haryana High Court) October 26th, 2013 <http://itatonline.org>

Adjudicated the dispute in case where there was demand of Rs.210.57 Crores raised due to certain adjustment for M.A.P. expenditure during the pendency of appeal before ITAT and an application before CBDT under M.A.P. as per Article 27 of Indo-USA DTAA in as much as the demand was stayed by ITAT for 180 days and in the meantime during the course of hearing before ITAT, it was informed that similar matter is pending before special bench in LG Electronics therefore the hearing was adjourned by ITAT suo-moto but without application of mind, the A.O. took the view that the assessee had sought adjournment therefore the stay stood automatically vacated hence proceeded to attach the bank account of the assessee. Hon'ble High Court held that trivial (meager consequence) adjournment with over enthusiastic approach by the revenue department for year ending revenue collection has led to this unnecessary litigation. In the present case, ITAT choose to adjourn to await the decision of Special Bench therefore the order of the Tribunal having jurisdiction, very correctly ordered to refund the amount appropriated by the Revenue.

In reference to the above case, the decision of ITAT Agra Bench in case of Farrukhabad Gramin Bank reported in 97 TTJ 159 is very much relevant and also the decision of Hon'ble Supreme Court in case of Shaily Engineering reported in 258 ITR 437 highlighting the abuse of power by the Department.

Hatkesh Co-op Housing Society Ltd vs. ACIT (ITAT Mumbai) October 28th, 2013 <http://itatonline.org>

A Co-op Hsg Society is not a mutual association because its members can earn income from its property. The transfer fee and TDR premium charged by the Society from its members is a commercial transaction and not eligible for exemption on grounds of mutuality

MAK Data P. Ltd vs. CIT (Supreme Court) October 31st, 2013 <http://itatonline.org>

Under Explanation 1 to s. 271(1)(c), voluntary disclosure of concealed income does not absolve assessee of s. 271(1)(c) penalty if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed

The Tribunal has not properly understood or appreciated the scope of Explanation 1 to s. 271(1)(c). The AO shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to s. 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise

Prakash Vasantbhai Golwala vs. ACIT (ITAT Ahmedabad) November 5th, 2013 <http://itatonline.org>

Law of jurisdictional High Court is not binding if there is a later contrary judgement of non-jurisdictional High Court. S. 22: Property used by firm in which assessee-owner is partner is not used for assessee's business & not entitled for exemption

Though the jurisdictional High Court in **Rasiklal Balabhai** 119 ITR 303 held that the annual letting value of house property owned by the assessee and used for the business carried on by him in partnership was not liable to be included in his total income u/s 22, the Calcutta High Court has dissented from this view in **Prodip Kumar Bothra** 244 CTR 366 and held that the exemption in respect of house property cannot be allowed to assessee if the property is used by the partnership firm because the owner of the house property and the



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occupier of the property must be the same person. The Karnataka High Court in **K.N. Guruswamy** 146 ITR 34 (Kar) and the Allahabad High Court in **Shiv Mohan Lal** 202 ITR 60 (All) & **Mustafa Khan** 276 ITR 602 (All) has taken the same view as the Calcutta High Court that user by a partnership firm/ HUF is not user by the assessee-owner for business purposes. In view of the divergent views expressed by the High Courts, the thumb rule that the latest decision of the High Court is required to be followed to maintain judicial discipline. As the judgement of the (jurisdictional) Gujarat High Court is earlier in point of time and the judgement of the (non-jurisdictional) Calcutta and other High Courts is later in point of time, the view expressed by the Revenue Authorities has to be affirmed and the assessee's ground dismissed

London Star Diamond Company (I) P. Ltd vs. DCIT (ITAT Mumbai) **November 4th, 2013** <http://itatonline.org>

Loss on forward foreign exchange contracts is incidental to the exports business and not a "speculation loss". However, if the contract is prematurely cancelled, the assessee has to justify the loss

Though a forward contract for purchase or sale of foreign currency falls in the definition of "speculation transaction" u/s 43(5) as it is settled otherwise than by the actual delivery or transfer of the commodity, it cannot be regarded as constituting a "speculation business" under Explanation 2 to s. 28. A forward contract, entered into with banks for hedging losses due to foreign exchange fluctuations on the export proceeds, is in the nature of a "hedging contract" and is integral or incidental to the export activity of the assessee and cannot be considered as an independent business activity. Therefore, the losses or gains constitute business loss or gains and do not arise from speculation activities. The fact that there is a premature cancellation of the forward contract does not alter the nature of the transaction. There is also no requirement in the law that there should be a 1:1 correlation between the forward contracts and the export invoices. So long as the total value of the forward contracts does not exceed the value of the invoices, the loss has to be treated as a business loss (**Sooraj Mull Magarmull** 129 ITR 169 (Cal), **Badridas Gauridu** 261 ITR 256 (Bom), **Panchamahahal Steel** 215 Taxman 140 (Guj) and **Friends and Friends Shipping (Guj)** followed; contrary view in **S. Vinodkumar Diamonds (ITAT Mum)** referred)

Paresh S. Shah vs. ITO (ITAT Mumbai) <http://itatonline.org>

CIT vs. M/s Dynamic Enterprises (Karnataka High Court Full Bench) <http://itatonline.org>

November 20th, 2013 Failure to comply with the criterion necessary to represent the matter before the Tribunal, in time, renders appeal liable for dismissal. It deserves to be noticed here that in Mumbai, despite repeatedly pointing out in each and every case, learned counsels rarely follow the practice of filing the power of attorney and many Members of the Tribunal, who do not believe it be their obligation to verify the availability of power of attorney, may not point out the same to the counsels and it results in counsels appearing without filing a power of attorney. There are equal number of occasions where several other Members, including Members of this Bench, have had occasion to point out that there was no power of attorney and counsels filed xerox copies or take further time to file power of attorney. In fact some would go to the extent of stating that they assumed that the power of attorney is on record and when we verify the file (though it is their duty to file power of attorney) and inform the counsel that there is no power of attorney then fresh power of attorney is filed. Particularly in the bench which is presided over by the Vice President, the registry notes on the file that the power of attorney of a person, who is representing the matter, is not on record and then the power of attorney is filed, notwithstanding the fact that before filing the power of attorney the same counsel or Chartered Accountant must have already taken adjournments on several occasions November 14th, 2013. S. 45(4) does not apply if the retiring partner takes only money towards the value of his share and there is no distribution of capital assets among the partners. S. 45(4) deals with a distribution of capital assets on the dissolution of a firm or other AOP or BOI or otherwise and provides that if in the course of such distribution of capital asset there is a transfer of a capital asset by the firm, the firm shall be chargeable to tax on capital gains.



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In order to attract s. 45(4), the conditions precedent are (1) there should be a distribution of capital assets of a firm; (2) such distribution should result in transfer of a capital asset by firm in favour of the partner; (3) on account of the transfer there should be a profit or gain derived by the firm and (4) such distribution should be on dissolution of the firm or otherwise. In other words, the capital asset of the firm should be transferred in favour of a partner, resulting in firm ceasing to have any interest in the capital asset transferred and the partners should acquire exclusive interest in the capital asset. On facts, the partnership firm purchased the property and it was not in the name of any partner. No partner brought that capital asset as capital contribution into the firm. Also, there was no dissolution of the firm because the firm continued to exist even after the retirement of some partners. What was given to the retiring partners is cash representing the value of their share in the partnership. No capital asset was transferred on the date of retirement. In the absence of distribution of a capital asset and in the absence of transfer of capital asset in favour of the retiring partners, no profit or gain arose in the hands of the partnership firm and so the question of the firm being assessed u/s 45(4) would not arise. **Kathiroor Service Cooperative Bank Ltd vs. CIT (Supreme Court) November 13th, 2013** <http://itatonline.org>

S. 133(6): AO empowered to launch fishing and roving enquiry with a view to detect tax evasion

The legislative intention behind s. 133(6) was to give wide powers to the income-tax department to gather general particulars in the nature of survey and store those details in the computer so that the data so collected can be made use of for checking evasion of tax effectively. It would not fall under the restricted domains of being "area specific" or "case specific." S. 133(6) does not refer to any enquiry about any particular person or assessee, but pertains to information in relation to "such points or matters" which the assessing authority issuing notices requires. This clearly illustrates that the information of general nature can be called for and names and addresses of depositors who hold deposits above a particular sum is certainly permissible (**Karnataka Bank Ltd vs. Government of India** (2002) 9 SCC 106 followed; **M.V. Rajendran vs. ITO** 260 ITR 442 (Ker) approved)

Dattani & Co vs. ITO (Gujarat High Court) November 26th, 2013 <http://itatonline.org> **ITAT duty-bound to deal with all judgements cited during hearing**

Whenever any decision has been relied upon and/or cited by the assessee and/or any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not. In the instant case, the Tribunal has failed to consider and/or deal with the aforesaid decision cited and relied upon by the assessee. Under the circumstances, all these appeals are required to be remanded to the Tribunal to consider the addition made by the AO towards alleged bogus purchases/sales and to take appropriate decision in accordance with law and on merits and after considering the decision of this Court in the case of CIT vs. President Industries 258 ITR 654.

Chironjilal Sharma HUF vs. UOI (Supreme Court) December 5th, 2013 <http://itatonline.org>

S. 132B(4)(b)/ 240/ 244A: Assessee is entitled to interest on cash appropriated during search even if refund is directed in appeal proceedings

The department's argument that the refund of excess amount is governed by s. 240 and that s. 132B(4)(b) has no application is not acceptable. S. 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and s. 240 or for that matter s. 244(A). The former deals with pre-assessment period in the matters of search and seizure and the latter deals with post assessment period as per the order in appeal.



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The department's view is not right on the plain reading of s. 132B(4)(b) and the assessee is entitled to simple interest at the rate of 15% per annum u/s 132B(4)(b) from 1.12.1990 to 4.3.1994. The interest shall be paid within two months from today.

CIT vs. M/s. Gem Granites (Karnataka) (Madras High Court) December 4th, 2013 <http://itatonline.org>

S. 271(1)(c) penalty cannot be levied if the assessee discharges the primary burden by a cogent explanation and the AO is unable to rebut it. MAK Data (SC) explained

Merely because the assessment proceedings have been confirmed does not automatically mean that penalty u/s 271(1)(c) is justified. Unless the case is strictly covered by s. 271(1)(c), penalty cannot be invoked. For sustaining penalty, the bona fide explanation of the assessee must be looked at so that the contumacious conduct of the assessee for the purpose of sustaining the penalty would be taken as condition that is the main requirement u/s 271(1)(c). In Mak Data P. Ltd vs. CIT the Supreme Court held that when a difference is noticed by the AO between the reported and assessed income, the Explanation to Section 271(1) raises a presumption of concealment and the burden is on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the Explanation has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted undisclosed income. On facts, the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. If the department did not agree with the explanation, the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. Such onus has not been discharged by the department and so the Tribunal's finding cannot be interfered with (Dharmendra Textiles Processors 306 ITR 277 (SC) & Reliance Petroproducts 322 ITR 158 (SC) referred)

RAIPUR BRANCH OF CIRC OF ICAI			
Reports of Activities carried out by RAIPUR BRANCH			
IN THE MONTH OF NOVEMBER, 2013			
SR.NO	DATE	PROGRAMME	TOPICS
1	12.11.2013	Teleconference Program	Significance of Peer Review
2	13 & 14.11.2013	Workshop on Domestic Transfer Pricing	Overview of Domestic Transfer Pricing and Concept of Arm's Length Price Documentation- collection of data and its Importance including Practitioners Checklist Transfer Pricing Audit, Approach and Certification Selection, Application and Justification of Most Appropriate Method Concept of FAR Analysis Practical Case Studies
3	22.11.2013	Teleconference	Accounting for Embedded Derivatives & Personality - the ultimate tool of success
4	22.11.2013 To 06.12.13	GMCS-I	CA Chetan Tarwani, CA Ramandeep Bhatia, CA Sapna Golcha, Mr. J.K. Dagar, CA Megha Gupta, CA M.M. Upadhyay, CA Rahul Bharti, Jagdish Hablani, CA Shashikant Chandrakar, CA Deepika Nathani, CA Amit Chinnani, CA Ankush Golechha, Sonam Luthara, CA Bhawna Bajaj, CA Vivek Jhabak & CA Bivora Kumar
5	22.11.2013	Study Circle Meeting Organised By Raipur Branch with IT Bar	Highlights of new Companies Act, 2013
6	24.11.2013	Students (CICASA) Seminar	How to Crack CA Exams
7	26.11.2013	CPT MOCK TEST PAPER	
8	26.11.2013	Students (CICASA) Lecture Meeting	Guidelines for an Internal Audit
9	28.11.2013	Teleconference	Standards of Auditing - 700, 705 & 706
10	29.11.2013	Lecture Meeting Organised By Raipur Branch with IT Bar	ITR - October, 2013 issues



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RAIPUR BRANCH OF CIRC OF ICAI			
Reports of Activities carried out by RAIPUR BRANCH			
IN THE MONTH OF DECEMBER, 2013			
SR.NO	DATE	PROGRAMME	TOPICS
1	28.11.2013 To 30.12.2013	ITT Class	
2	06.12.2013	Teleconference	Companies Act 2013
3	08.12.2013 To 16.12.2013	Sports Activity Organised By Raipur Branch with IT Bar	Chess, Carrom, Chinese Checker, Table Tennis, Badminton & Cricket
4	09.12.2013 To 13.12.2013	OTC	
5	09.12.2013 To 26.12.2013	GMCS-I	
6	10.12.2013	Students (CICASA) Industrial Tour Bhilai Steel Plant	
7	14.12.2013	Students (CICASA) Lecture Meeting	Service - Tax Registration Negative List & Reverse Charges
8	17.12.2013	Teleconference Program	Forensic Audit
9	18 & 19 .12.2013	34th Regional Conference organized By CIRC of ICAI	-New companies act-increased Responsibilities & Accountability of Auditors - Practical Issues in CENVAT credit with special reference to input credit in real estate business - Taxation of real estate transaction & Business - Private Limited Companies -1956 Vis a Vis 2013 -LLP Post Companies Act 2013 an easier platform to create limited liability business entity -Aplicability of as & Accounting changes in New Companies Act 2013
10	21.12.2013	Students (CICASA) Seminar	Project Report & Financing
11	24.12.2013	Teleconference	Taxability of Collaboration & Joint Development Agreement in Real Estate and Taxability of Foreign Remittances
12	27.12.2013	Lecture Meeting Organised By Raipur Branch with IT Bar	ITR - November, 2013
13	26.12.2013 & 27.12.2013	Students (CICASA) Sports Activity	Chess, Carrom, Chinese Checker, Table Tennis, Badminton & Cricket
14	28.12.2013	Students (CICASA) Seminar	A New Era of Corporate Laws
15	30.12.2013	Students (CICASA) Talento Youth Festival 2013	

... MEMORABLE INDIANS ...

NANI ARDESHIR PALKHIVALA

1920 – 2002



An Intellectual Colossus, genius advocate, brilliant tax expert, a defender of the constitutional, author, economist, lecturer, poet, diplomat, ambassador, fearless orator, strong critique of govt. economic & fiscal policies, expounder of India's cultural heritage, human rights activist, patriot, a generous personality (Daanveer) and above all human being par excellence.

In 1946 he passed the Advocate (O.S.) examination which was considered the most difficult exam at that time standing first in every individual paper. He represented India in the Special Tribunal in Geneva and before world court at Hague. He appeared in exceptional cases like the *Privy purse* case where supreme court struck down the Governments plea of refusal to pay the Indian princes the income guaranteed when they merged their kingdom into the republic of india; *bank nationalisation* case where court struck down nationalization of private banks; *bennet coleman* case where he could link Govt. regulation of allocation of newsprint a scarce commodity in India at that time to freedom of speech and finally in the famous *Keshavnanda Bharati* case where he persuaded the supreme court to rule that basic structure of the constitution could not be altered.

His famous writings include the monumental work Kanga & Palkhivalas 'Law & Practice of Income', our constitution defaced and defiled, India's priceless heritage, we the nation & we the people which have made indelible mark on the sands of time. Dr. P.C.Alexander said that Palkhivala was the best Finance Minister India never had. At that time there were two budget speeches one by the finance minister and other by Nani Palkhivala. He was also deeply attracted to the spiritual writings particularly of Sri Aurobindo.

Despite his dreadful stammer as a child he made his life a dazzling success in all the spheres of life.. Palkhivala was an exceptional human being and a great gentlemen of versatile interests and accomplishments, a man of learning, refinement and culture, compassion and humanism. He was tender to the bashful, gentle towards the distant and merciful to the absurd. Success had not gone into his head, something that is rare with human beings.

Golden words of Nani Palkhivala:

"A nation's strength lies not much in its wealth as in its character. A nation with a future has to be a nation with a character."