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The Institute of Chartered Accountants of India 



**VASAI BRANCH OF WIRC**

# NEWSLETTER

[www.vasai-icai.org](http://www.vasai-icai.org)

Arise and Go

January-2014

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**WIRC Nominee :**...CA. Sandeep Jain  
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## EDITORIAL BOARD

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**Seminar on Investor Awareness (8th Dec. 2013)**



**(L-R)** : CA. Ramanand Gupta (Chairman-Vasai Branch), CA. Sumeet Doshi (Committee Member), CA. Kishor Vaishnav (Committee Member), CA. Tarun Ghia (CCM), CA. K.B.Kothari (Treasurer) & CA. Pramod Dhamankar (Past Chairman-Vasai Branch) at the Seminar Dias

**Speakers**



CA. Tarun Ghia (CCM)



Mr. Akshay Javkhedkar



Participants

**Certificate Course on Concurrent Audit of Banks (21st Dec. 2013 to 5th Jan. 2014)**



**(L-R)** - CA Dayaram Paliwal, CA. Ramanand Gupta (Chairman-Vasai Branch), CA. Ajay Kumar Jain (Speaker), CA Umesh Mestry, CA Kishor Vaishnav & CA. Sandeep Jain (WIRC-Nominee) addressing the participants



Participants

**Our Speakers**



CA. Kamatchi K Antonsamy



CA. Ajay Kumar Jain



CA. Dhananjay Gokhale



CA. Kuntal Shah



CA. Shashish Chandra Gupta



CA. Lokesh Gupta

**Residential Refresher Course at Igatpuri (13th to 15th Dec. 2013)**



Group Photo Taken at RRC Igatpuri

*Dear Professional Colleagues,*

At the dawn of a New Year, people plan for future. Recent experiences are assessed at the start of the Year and new ideas are planned for having enhanced levels of results.

“The object of a **New Year** is not that we should have a new year. It is that we should have a new soul and a new nose; new feet, a new backbone, new ears, and new eyes. Unless a particular man made New Year resolutions, he would make no resolutions. Unless a man starts afresh about things, he will certainly do nothing effective.” — **G.K. Chesterton**

In the Year 2013, Vasai Branch had organized a number of Technical and social events for the benefit of the Members. Particularly in the month of December, we had organized a number of programs to assist Members to enhance their knowledge.

A number of Conferences were organized for the members. A Mega Members Conference 2013, Conference on International Taxation and Conference on SME Financing Opportunities with Banks had been organized and went well. Other Programs such as Workshop on Companies Bill, Seminar on Investor Awareness, Seminar on Excel and Seminar on Companies Law 2013 had been arranged and all went smoothly. The last certification course of the year 2013 was conducted on Concurrent Audits of Banks.

Concerning students, a event which turned out to be a grand success was the CA Students Youth Festival. The theme of the Festival was FLAMES, Ignite the flames in Students. Huge Number of Students gathered for the same and overcame their exam pressure.

A Library and a Reading Room was inaugurated for Students at the CA Vasai Hostel. It is a request that all your articles avail benefit of the same.

### Forthcoming Programmes

In the month of January, we have organized a meeting with the Sales Tax Department for discussion on various problems faced by CA Members.

In addition, to cheer up the mood of the members from the stressful Professional Environment of today, the branch has taken the initiative in organizing some social events like Cricket Tournament and Marathon. Further, we have also planned to organize Seminar on Companies Law and Seminar on Bank Branch Audit. I request all of you to participate and avail the benefit of the same.

“Kind words can be short and easy to speak, but their echoes are truly endless.”—**Mother Teresa**

**Freedom in mind, Faith in our heart, Memories in our souls. Let's salute the Nation on Republic Day**

With Warm Regards



**CA Ramanand Gupta**  
Chairman



## FORTHCOMING – Programmes

FORTHCOMING PROGRAMMES FOR MEMBERS								
Date	Seminar on	Timings	Venue	Speakers	Co-ordinators		Fees	CPE
20th Jan 2014	Lecture Meeting on VAT issue	3.00 pm to 6.00 pm	Vasai Branch Premises, Indralok Phase-II, Bhayandar (E)	Shri. J. H. Bhamre (AC-Sales Tax VAT adm., Thane)	CA.Umesh Mestry CA.Preksha Jain	9320473468 9029877140	Free	3
1st Feb 2014	Seminar on Cyber Crime and Ethical Hacking	6.00 pm to 9.00 pm	Vasai Branch Premises, Indralok Phase-II, Bhayandar (E)	Mr. Sachin Dedhia	CA. K.B.Kothari CA. Sumeet Doshi	9594196090 9869525956	500	3
9th Feb 2014	Grand Cricket Tournament with Various Depr.	8.00 am onwards	Mira Road Muncipal Ground Mira Road (East)	–	CA. Dayaram Paliwal CA. Vimal Agrawal	9820331010 9320617447	Free	–
16th Feb 2014	Seminar on Company Law 2013	9.30 am to 5.30 pm	Vasai Branch Premises, Indralok Phase-II, Bhayandar (E)	Eminent Speakers	CA. Vimal Agrawal CA. Umesh Mestry CA. Kishor Vaishnav CA. Sumeet Doshi	9820331010 9320473468 9892194382 9869525956	750	6
23rd Feb 2014	Marathon for Members & Students	7.30 am onwards	Bhayandar	–	All Managing Committee & WICASA Team		Free	–
16th March 2014	Seminar on Bank Branch Audit	9.30 am to 5.30 pm	New Zaika, Bhayandar (West)	Eminent Speakers	CA. Umesh Mestry CA. Dayaram Paliwal	9320473468 9820331010	850	6

FORTHCOMING PROGRAMMES FOR STUDENTS								
Date	Seminar on	Timings	Venue	Speakers	Co-ordinators		Fees	CPE
8th Feb 2014	Grand Cricket Tournament	8.00 onwards	Mira Road Muncipal Ground Mira Road (East)	–	CA.Preksha Jain	9029877140	Free	-
April 2014	CPT Coaching Classes (June & Dec. attempt)	–	Vasai Branch Premises, Indralok Phase-II, Bhayandar (E)	Eminent Speakers	CA.Preksha Jain	9029877140	8000	–

### Highlight of the Activities done during the year 2013 For Members, Students & Society

#### For Members

##### Programme Conducted Jointly with Committee of ICAI

- IRRC programs at Bali jointly with Committee for Capacity Building of CA Firms & Small and Medium Practitioners with overwhelming response on 14th to 19th August 2013.
- Professional Training Course on Information System Audit jointly with Committee on Information Technology with 37 participants.
- Four Investor Awareness Programme under the guidance of Committee of Financial Markets & Investor Protections.
- Certificate Course on Indirect Taxes jointly with Indirect Taxes Committee with the participants of 48 Members.
- First time in Vasai Branch, Conference for Members in Industry hosted under the supervision of Committee for Members in Industry wherein 218 members both from Service and Practices participated.
- Forty Fifth Batch of Certificate Course on Concurrent Audit of Banks jointly with Internal Audit Standards Board with 47 participants.

##### Programme Conducted Jointly with WIRC

- 136th Study Course on Audit of Co-operative Banks & Co-operative Societies with 66 Participants.
- Conference on International Taxation on 28th December with 179 participants and Chief Guest Shri. Pramod Kumar Hon. Commissioner of Income Tax III, Thane appreciates Vasai Branch for organizing such Conference.
- Conference on SME Financing Opportunities with Banks wherein 237 members participated where in Chief Guest CA Uttam Prakash Agarwal, Past President-ICAI and CA. Mangesh Kinare, Chairman-WIRC addressed participants and appreciated to the Vasai Branch Managing Team.

##### Joint Programme with CA CPE Study Circle

- Two Residential Refresher Course were organised jointly with Vasai Virar Study Circle at Silent Resort Palghar and Igatpuri.
- Seminar on Developing Excellence & Mastering Success jointly with Bhayandar and Vasai Virar CA CPE Study Circle.

- Seminar on Personality Development jointly with Bhayandar Study Circle at Iskon Temple, Mira Road(East).
- Seminar on Tax Audit jointly with Bhayandar Study Circle.

### Others Important Programmes

- Felicitations of Hon'ble President of ICAI, CA Subodh Kumar Agrawal on the occasion of Conference on Recent Controversial Issues on Direct & Indirect Taxes at New Zaika, Mira Road (East) on 30th November 2013.
- First time in Vasai Branch Shri. R.K.Gupta (Chief Commissioner of Income Tax) and Shri. Jitendra Yadav additional CCIT addressed the participants at Conference on Recent Controversial Issues on Direct & Indirect Taxes 30th November 2013.
- Felicitations of WIRC Office Bearer and his Team on 13th April, 2013.
- Inauguration of New Branch Premises on 30th June 2013 includes of IT Training Lab & Training Room.
- Mega Members Conference with record number of 400 plus Members across Maharashtra & Gujarat. Conference was held at Green Court Club, Mira Road on 21st & 22nd Dec'2013.
- Residential Refresher Course at Alibagh on 1st to 3rd June 2013.
- Felicitated Senior CA Members on the occasion of CA Days by gracious hands CA. Mangesh Kinare (Chairman-WIRC) and his team.
- This year Branch successfully generated 26222 CPE Hours, the highest range of CPE hours during the year.
- Through out the year branch conducted Seminars 30, Conference 5, Workshop 15, and Study Circle Meeting / Refresher Course 24, for the benefit of Members. **(Total Activity 74 )**
- Branch conducted Motivational lectures for Members.

### For Students

- Branch successfully conducted CA Students WIRC Sub Regional Conference 2013 at Venkatesh Hall, Bhayandar (East) on 2nd & 3rd August 2013.
- First time Branch conducted Residential Refresher Course at Daman & Silvassa for the Students on 21st and 22nd June 2013.
- Inauguration of New Training Centre & Library on 11th August 2013 at Navghar Road, Bhayandar (East).
- Inauguration of Library and reading room 29th December at Vasai Hostel.
- For the benefit of Students, Branch started Distribution centre at Vasai Branch Premises for CPT, IPCC & Final Students.
- 1056 Students successfully completed their ITT training from ITT Center of Branch during the years.
- 1376 Students successfully completed Orientation Course from Branch during the year.
- 1096 Students successfully completed GMCS-I Course from Branch during the year.
- 216 Students successfully completed GMCS course from Branch during the year.
- Branch has conducted crash courses for IPCC and Final Students.
- Branch organized various seminar lectures for the benefit of Students. **(Total Activity - 30)**
- Felicitations programs for Newly qualified CAs on 10th February & 6th October 2013.
- Branch successfully organized an event of Youth Festival to encourage the students' caliber in other activities.
- Branch also emphasizes on Students' talent education by organizing the activities like School Level Debate Competition & Quiz Elocution.
- Branch also conducted Mock Test for CPT, IPCC & Final Students.
- Branch conducted Indoor & Outdoor games for Students such as Cricket match etc.
- Branch is successfully running E-Library & Reading Room Facility for students.
- Branch also conducted Motivational Lectures for Students.
- First time Branch conducted Joint Seminar with Rajput University.

### For Society

- Mega Blood donations Camp jointly with Kutch Yuvak Sangh during the year.
- Free Distribution of Books among the children's of Adivasi School on 26th January, 2013.
- Sweets Distributions among the school children's of Adivasi School on 15th August, 2013.
- Branch has participated in Mega Career Fair which was organized by Sanjeevani Foundation (Trust) wherein Mr. Sanjeev Naik-MP, Mr. Ganesh Naik-MP & Other Corporators were present for guidance of the student's.
- Branch conducted Career Counseling for the benefit of Students with the help of efficient faculty.
- Investor Awareness Programs held during the year.
- Health Check up at subsidized rate on the occasion of CA Days
- Women Safety Awareness programme was organised wherein Women took benefit of the same.
- Around 45 Tree Planted at Jesal park Chowpatty, Bhayandar (East) in the presence of Ms. Suman Kothari-Zilla President Mira Bhayander.
- Branch organized Union Budget Meetings for Public Awareness.

## RECENT Case Laws & OTHER DEVELOPMENT/AMENDMENTS



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### RECENT SUPREME COURT DECISIONS

#### 1) Chironjilal Sharma HUF vs. UOI (Supreme Court)

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

Pursuant to a search conducted U/s 132, cash of Rs.2.35 lakhs was recovered. The AO passed an Order U/s 132(5) in which he calculated the tax liability & appropriated the seized cash. An Assessment Order was also passed to the same effect. The AO's Order was finally set-aside by the Tribunal & it became final. Consequently, the assessee was refunded the amount of Rs.2.35 lakhs with interest from 04/03/1994 (date of last of the regular assessments by the AO) until the date of refund. The assessee claimed that he is entitled to interest U/s 132B(4)(b) of the Act for the period from the expiry of period of six months from the date of Order U/s 132(5) to the date of regular assessment Order. In other words, as the Order U/s 132(5) was passed on 31/05/1990, six months expired on 30/11/1990 and the last of the regular assessments was done on 04/03/1994, the assessee claimed interest U/s 132B(4)(b) from 01/12/1990 to 04/03/1994. The Apex Court has held as under:

The Department's argument that the refund of excess amount is governed by section 240 and that section 132B(4)(b) has no application, is not acceptable. Section 132B(4)(b) deals with pre-assessment period & there is no conflict between this provision and section 240 or for that matter section 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the Order in appeal. The Department's view is not right on the plain reading of section 132B(4)(b) and the assessee is entitled to simple interest at the rate of 15% p.a. U/s 132B(4)(b) from 01/12/1990 to 04/03/1994. The interest shall be paid within two months from today.

### RECENT HIGH COURT DECISIONS

#### 1) Oracle India Pvt. Ltd. vs. CIT (Delhi High Court)

**Section 37 (1): Expenditure on acquiring master copy of software  
subject to obsolescence is deductible as revenue expenditure:**

The assessee entered into a license agreement with Oracle Corp under which it acquired a non-exclusive & non-assignable right to duplicate software products which were owned by Oracle Corp and to sub-license the same to parties in India. The assessee paid recurring royalty of 30% for the said right. In addition to the royalty, the assessee periodically paid an amount towards "expenditure on import of software master copy". The said master copy was used to replicate the software. The assessee claimed that the said master copies were versions of Oracle's new product offerings which had very accelerated obsolescence and that at any point of time it was not possible to say whether the version will be current for one day or one month. The AO allowed a deduction for the recurring royalty but held that the expenditure for acquiring the software master copy was capital expenditure.

On appeal, the CIT(A) reversed the AO on the ground that owing to obsolescence, there was no enduring benefit as there were frequent corrections and up-gradation of the software. On appeal by the Department, the Tribunal reversed the CIT(A) and held that the expenditure was capital in nature on the ground that the master copy was an asset of enduring benefit.

On appeal by the assessee, the Hon. High Court reversed the Tribunal and held as above on following grounds/observations:

The assessee's claim that the master copies had high accelerated obsolescence and that even at the point of time of import it was difficult to say whether the version would be replaced by a new or updated version after one day or a month had not been disproved. Also the facts showed that there were periodical imports of the master copies and that the average price per

copy was minimal. This was not a case where the master copies contained operating or system software, which normally did not require frequent up-gradation or changes. It is also not the case of an assessee which is the end user of software. It is a case where the assessee is required to repeatedly pay for the master copy media in view of frequent newer or updated versions of the application software from time to time. Once newer or better version of the application software is available, the earlier version is not saleable and does not have any market value for the seller i.e. the assessee. Also, as per the "matching concept" in accountancy, while determining whether expenditure is capital or revenue in nature, the question whether the expenditure would create an asset which is of value in further assessment periods and should be amortised (i.e. depreciated) as long as it has value (subject to the statutory provisions) requires to be considered. If the expenditure does lead to creation of an asset but of a limited or short life, it has to be treated as a expenses and not as a fixed asset. The said expenditure cannot be valued for price for future financial years (**Oracle Software** 320 ITR 546 (SC), **Ashahi India Safety Glass** 346 ITR 329 (Del), **G.E.Capital Services** 300 ITR 420 (Del), **O.K.Play** 346 ITR 57 (P&H), **IAEC Pumps** 232 ITR 316 (SC) referred)

#### 2) CIT vs. Orient Instrument Pvt. Ltd. (Delhi High Court)

**Loss from shares dealing cannot be deemed to be from "speculation" under Explanation to section 73 if the company is not engaged in the "business" of shares dealing:**

The assessee, engaged in the business of trading of crafts paper etc. claimed a loss of Rs.5.53 lakhs arising on account of a transaction whereby it purchased & sold shares. The AO held that under the Explanation to section 73, the said loss was deemed to be arising from a speculation business & could not be set off against other business profits. However, the CIT(A) & the Tribunal allowed the assessee's claim on the basis that the assessee was not engaged in the "business of purchase and sale of shares" so as to fall into the mischief of the Explanation to section 73. In appeal before the High Court, the Department relied on **Bhikam Chand Jankilal** 131 ITR 554 (MP) & argued that even a single transaction of sale or purchase of shares might amount to a "business". The High Court dismissed the appeal filed by the Revenue on the following grounds:

The assessee was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission. By all means, the transaction whereby it purchased the shares & incurred loss on account of the fall in the value of the share was a solitary one. The findings of the Tribunal that the transaction did not constitute the business carried on by the company, cannot be termed as perverse or unreasonable. No substantial question of law arises (Standipack 350 ITR 251 (Cal) noted)

See also **Prasad Agents** 333 ITR 275 (Bom), **Lokmat Newspapers** 322 ITR 43 (Bom) & **Paharpur Cooling Towers** 338 ITR 295 (Cal) on the scope of Explanation to s. 73

#### 3) CIT vs. M/s Gem Granites (Karnataka) (Madras High Court)

**Penalty U/s 271(1)(c) cannot be levied if the assessee discharges the primary burden by a cogent explanation & the AO is unable to rebut it. MAK Data (SC) explained**

Pursuant to a search conducted U/s 132 it was revealed that the assessee had "on-money" transactions in real estate dealings. The assessee accepted the "on-money" but claimed that it was taxable only on completion of the projects under the 'completed contract method'. The assessee's claim was rejected by all the authorities including the High Court. In the penalty proceedings U/s 271(1)(c), the assessee claimed that there was a mistake in the entries regarding the sale of flats to JB. Exports in as much as the rate at which the property was shown as sold to the said party was much higher than the rate at which the property was sold to other parties. The AO and CIT(A) rejected the claim but the Tribunal accepted it on the basis that the huge difference in the rate of sale of the flat recorded in other cases and in the case of JB. Exports supported the assessee's contention that there may be a mistake in recording the rate. It held that as the Department had failed to prove concealment without any doubt, penalty could not be imposed. On further appeal by the Department, the High Court dismissed the appeal on the following considerations:

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 section 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 & 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).

## RECENT TRIBUNAL DECISIONS

### 1) DIC Asia Pacific Pte Ltd vs. ADIT (ITAT Kolkata)

**“Education cess” is “additional surcharge” & is included in “tax” under DTAA. If DTAA caps the rate of “tax” payable, cess is not payable by foreign assessee:**

The assessee, a Singapore company, offered interest and royalty income to tax at the rate of 15% & 10% as specified in Articles 11 & 12 of the India-Singapore DTAA respectively. The AO held that the assessee was also liable to pay surcharge and education cess in addition to the tax. The CIT (A) upheld the assessee's claim that surcharge was not leviable though he rejected the claim with regard to cess. On further appeal by the assessee, it was held by the Tribunal that the Cess is not payable by the foreign assessee, on the following grounds:

Articles 11 & 12 of the DTAA provide that the “tax” chargeable in India on interest and royalties cannot exceed 15% and 10% respectively. The expression ‘tax’ is defined in Article 2(1) to include ‘income tax’ and includes ‘surcharge’ thereon. Article 2(2) extends the scope of the ‘tax’ by laying down that it shall also cover “any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 1”. “Cess” was introduced by the Finance Act, 2004 and it is described in section 2(11) of the Finance Act, 2004 as **“additional surcharge for the purposes of the Union, to be called the “Education Cess on income-tax”**. Accordingly, the **“education cess” is in the nature of an “additional surcharge” and is covered by Article 2**. Accordingly, **education cess cannot be levied** in respect of the assessee's tax liability.

### 2) D.H.Securities Pvt. Ltd. vs. DCIT (ITAT Mumbai) (Third Member)

**Section 14A & Rule 8D disallowance applies to tax-free securities held as stock-in-trade:**

The assessee claimed that as it was engaged in the business of trading in shares, its main object is to earn profit on purchase and sale of shares and not to earn dividend income from such shares. It claimed that the accrual of tax-free dividend on such shares was merely incidental to the holding of shares as stock-in-trade and that no disallowance could be made U/s 14A and Rule 8D. It also claimed that though the assessee had not incurred any direct or indirect expenditure to earn the said dividend, the AO had made the disallowance on a presumptive basis. The Division Bench referred the dispute to a Third Member in view of the difference of opinion between the Benches. Before the Third Member, the assessee relied on **CCI Ltd 71 DTR (Kar) 141**, **India Advantage Securities**, **Yatish Trading** etc. in which the law had been laid down that section 14A & Rule 8D does not apply to securities held as stock-in-trade. The Department relied on **Godrej**

**& Boyce Manufacturing Co 328 ITR 81 (Bom)** (where it was held that Rule 8D is mandatory) and **Daga Capital 117 ITD 169 (Mum) (SB)** (where it was held that section 14A applies to stock-in-trade). It was held by the Third Member as above on the following grounds:

It is accepted by both the parties that the assessee is a dealer in shares and that the shares were held by it as stock-in-trade. The issue under appeal is squarely covered by the principles laid down in **Godrej & Boyce, Dhanuka & Sons 339 ITR 319 (Cal)**, **American Express Bank and Damani Estates & Finance** in which the issue has been elaborately considered. The argument that the judgement of the Karnataka High Court in **CCI Ltd.** is the solitary High Court judgement on the point and it should be followed, is not correct because the issue has also been considered by the Calcutta High Court in **Dhanuka & Sons**. Also, while **CCI Ltd.** has not considered the jurisdictional High Court judgement in **Godrej & Boyce, Dhanuka & Sons** has duly considered **Godrej & Boyce** in taking the view that section 14A/Rule 8D applies to shares held as stock-in-trade. Accordingly, disallowance U/s 14A can be made in conformity with the law even where dividend income has been earned on shares held as stock-in-trade.

### 3) Amarlal Bajaj vs. ACIT (ITAT Mumbai) (18/09/2013)

**Merely writing “approved” in the sanction form without recording satisfaction renders the reopening void U/s 147 r.w. section 151:**

The AO issued a notice U/s 147 and reopened the assessment on the ground that the assessee was the beneficiary of hawala entries in the form of loans, expenses & gifts. He alleged that the assessee had deposited unaccounted cash and received cheques in the form of loans, expenses, gifts. The CIT granted sanction U/s 151 to the reopening by writing the words “approved”. The assessee challenged the reopening on the ground that as satisfaction was not recorded by the CIT the sanction was without application of mind and void. The Tribunal allowed the appeal to the assessee on the following grounds:

Section 147 & 148 are a charter to the Revenue to reopen earlier assessments and are, therefore protected by safeguards against unnecessary harassment of the assessee. They are sword for the Revenue and shield for the assessee. Section 151 guards that the sword of Section 147 may not be used unless a superior officer is satisfied that the AO has good and adequate reasons to invoke the provisions of section 147. The superior authority has to examine the reasons, material or grounds and to judge whether they are sufficient and adequate to the formation of the necessary belief on the part of the AO. If, after applying his mind and also recording his reasons, howsoever briefly, the Commissioner is of the opinion that the AO's belief is well reasoned & bona fide, he is to accord his sanction to the issue of notice U/s 148. In the instant case, the Commissioner has simply put “approved” and signed the Report thereby giving sanction to the AO. Nowhere the Commissioner has recorded a satisfaction note not even in brief. Therefore, it cannot be said that the Commissioner has accorded sanction after applying his mind and after recording his satisfaction [**Chhugamal Rajpal 79 ITR 603 (SC)** & **United Electrical Co 258 ITR 317 (Del)** followed]

### 4) Shri Arihant Jain vs. Income Tax Officer (ITAT-Delhi)

[ITA No.1634/Del/2013, Assessment Year : 2009-10, Date of Pronouncement:27/09/2013]

**Assessee discharges his initial onus (burden of proof) if he duly furnishes PAN, Balance Sheet, Computation of Income, Confirmation & bank account of creditor:**

Where, the assessee, apart from furnishing the PAN of the creditor, has also furnished their Balance Sheet, copy of Income Tax Return, confirmation, bank account etc. The amount advanced to the assessee is duly disclosed in the Balance Sheet of all the creditors. Even the assessee has also explained the source of cash deposited in the bank account of the creditors. The initial onus which lay upon the assessee was duly discharged. If the Assessing Officer wanted to examine the issue further, he could have very well issued notice U/s 131, failing that it cannot be said that assessee has not discharged the initial onus.



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**□ SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES - EXTENSION OF LAST DATE OF PAYMENT OF DECEMBER QUARTER INSTALMENT OF ADVANCE TAX FOR FINANCIAL YEAR 2013-14 FROM 15-12-2013 TO 17-12-2013 FOR ALL ASSESSEES, CORPORATES AND OTHER THAN CORPORATES.**

ORDER [F.NO.385/8/2013-IT(B)], DATED 13-12-2013

In exercise of power conferred under section 119(2)(a) of the Income-tax Act, 1961, the Central Board of Direct Taxes has decided to extend the last date of payment of the December Quarter Instalment of Advance Tax for the Financial year 2013-14, from 15th December 2013 to 17th December 2013 for all the assesseees, Corporate and other than Corporates.

**□ SECTION 40(a)(ia) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE - INTEREST, ETC., PAID TO RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE - CLARIFICATION REGARDING CONFLICTING INTERPRETATIONS BY JUDICIAL AUTHORITIES ON APPLICABILITY OF PROVISIONS OF SECTION 40(a)(ia) WITH REGARD TO AMOUNT NOT DEDUCTIBLE IN COMPUTING INCOME CHARGEABLE UNDER HEAD 'PROFITS AND GAINS OF BUSINESS OR PROFESSION'**

CIRCULAR NO.: 10/DV/2013[F.NO.279/MISC./M-61/2012-IT(VOL.II)], DATED 16-12-2013

It has been brought to the notice of the Board that there are conflicting interpretations by judicial authorities regarding the applicability of the provisions of section 40(a)(ia) of the Income-tax Act, 1961 ('the Act') with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'.

2. Section 40(a)(ia) of the Act reads as under:

"...any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139...":

3. In the case of *Merilyn Shipping & Transports v. Addl. CIT* [2012] 20 taxmann.com 244 (Visakhapatnam) it was held by Special Bench of ITAT, Vishakhapatnam, that the provisions of section 40(a)(ia) of the Act would apply only to the amount which remained payable at the end of the relevant financial year and could not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source. The order of the Special Bench

has since been put under interim suspension by the Andhra Pradesh High Court.

3.1 The Hon'ble Calcutta High Court and Hon'ble Gujarat High Court in the case of *Commissioner of Income-tax, Kolkata-XI v. Crescent Exports Syndicate* [2013] 33 taxmann.com 250 (Calcutta) and *Commissioner of Income-tax-IV v. Sikandarkhan N Tunvar* [2013] 33 taxmann.com 133 (Gujarat) respectively, have held that section 40(a)(ia) of the Act would cover not only the amounts which are payable at the end of the previous year but also which are payable at any time during the year.

3.2 The Hon'ble High Courts have further held that the intention of the legislation was to disallow certain types of expense, subject to provisions of Chapter XVII-B which at payable at any time during the year but no tax was deducted at source or if deducted was not paid within the stipulated time. There is no such condition that amount should remain payable at the end of the year.

3.3 The Hon'ble Allahabad High Court in *CIT v. Vector Shipping Service (P.) Ltd.* [2013] 38 taxmann.com 77 (Allahabad) has affirmed the decision of the Special Bench in *Merilyn Shipping* that for disallowance under section 40(a)(ia) of the Act, the amount should be payable and not which has been paid during the year. However, the decisions of the Hon'ble Gujarat and Calcutta High Courts (*supra*) were not brought to the attention of the Hon'ble Allahabad High Court.

3.4 In the case of *ACIT, Circle 4(2), Mumbai v. Rishti Stock and Shares Pvt. Ltd.* in ITA No. 112/Mum/2012, Hon'ble ITAT, Mumbai in its order dated 2-8-2013 has examined the decision of the Hon'ble Allahabad High Court (*supra*) as regards to section 40(a)(ia) of the Act and concluded that the same was an 'orbiter dicta' while the decisions of the Hon'ble Gujarat and Calcutta High Court (*supra*) were 'ratio decidendi'. The ITAT accordingly applied the view taken by the Hon'ble Gujarat and Calcutta High Court as ratio *decidendi* prevails over an orbiter dicta.

4. After careful examination of the issue, the Board is of the considered view that the provision of section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act the term "payable" would include "amounts which are paid during the previous year".

5. Where any High Court decides an issue contrary to the 'Departmental View', the 'Departmental View' thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the CTC. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

6. The above clarification may be brought to the notice of all officers.



**Seminar on Company Law (14th December 2013)**



(L-R) : CA K. B. Kothari (Treasurer-Vasai Branch), CA. Ramanand Gupta (Chairman-Vasai Branch), CA. Rajkumar Adukia (CCM), CA. M . Abhishek (Speaker) & CA. Lalit Bajaj (Past Chairman-Vasai Branch) at Seminar Dias



CA. Ramanand Gupta (Chairman-Vasai Branch) Presenting Bouquet to CA. Rajkumar Adukia (CCM),

**Our Speakers**



CA. Abhay Arolkar



CA. M . Abhishek



CS. Nirav Gala



Mr. Ajay Thakur (BSE Head SME)



Mr. M. P. Sharma



Participants

**Seminar on Excel (16th December 2013)**



CA. Preksha Jain (Chairperson Vasai WICASA) felicitating CA. Abhishek Mundhra (Speaker)



Participants

**Workshop on Companies Bill (10th to 19th December 2013)**



CA. K. B. Kothari (Treasurer-Vasai Branch) felicitating CA. Durgesh Kabra (Past Chairman-WIRC) also seen CA Ramanand Gupta (Chairman-Vasai Branch)

**Our Speakers**



CA. Durgesh Kabra



CA. Pramod Dhamankar



CA. Unmesh Narvekar



CA. Xavier Rajan



CS. Ravi Kothari



Participants

**Glimpses at Mega Members Conference (21st & 22nd December 2013)**



**L-R :** CA. Sandeep Jain (WIRC Nominee), CA. Lalit Bajaj (Past-Chairman Vasai Branch), CA. Ramanand Gupta (Chairman Vasai Branch), Shri Narendra Mehta (BJP President of Mira Bhayandar), CA. Neel Majithia (Secretary WIRC), CA. Sunil Patodia (RCM), CA. Vimal Agarwal (Vice-Chairman Vasai Branch) CA. Anil Bhandari (RCM), CA. K. B. Kothari (Treasurer Vasai Branch) at Inauguration Session



CA. Ramanand Gupta (Chairman Vasai Branch), Presenting Bouquet to Shri Narendra Mehta (BJP President of Mira Bhayandar),



**L-R :** CA. Sumeet Doshi (Committee Member Vasai Branch) CA. Kamal Dharewa (Co-ordinator), CA. Umesh Mestry (Secretary Vasai Branch), CA. Lalit Bajaj (Past-Chairman Vasai Branch), CA. Amarjit Chopra (Past-President ICAI), CA. Ramanand Gupta (Chairman Vasai Branch), CA. Parag Rawal (Vice-Chairman WIRC), CA.Vimal Agarwal (Vice-Chairman Vasai Branch), CA. Kishor Vaishnav (Committee Member Vasai Branch), CA.Shweta Jain (Past-Chairperson Vasai Branch) at the Conference

**Our Speakers**



CA Amarjeet Chopra (Past President-ICAI)



CA Anil Bhandari (RCM)



CA. Jeenendra Bhandari (Partner at MGB & Co.)



CA Sujal Shah (Partner at SSPA & Co.)



CA Sunil Gabhawala (Sr. Partner at S B Gabhawala & Co.)



Mr. Sachin Dedhia (Certified Ethical Hacker)



CA. Kunal Karnani (CFO of Yes Securities Ltd.)



CA Nandan Savnal (MD of Peoplesys consulting Pvt. Ltd.)



Photo Taken of Dignitaries & Managing Committee Members at the Conference



Participants at the Conference

**Conference on International Taxation (28th December 2013)**



(L-R) : CA. Rutvik Sanghvi (Speaker), CA. Ramanand Gupta (Chairman-Vasai Branch), CA. Mahesh Madkholkar (Chairman-WICASA), CA. Lalit Bajaj (Past Chairman-Vasai Branch) & CA. Lucky Talreja (Coordinator) at Conference dias



Participants

**Our Speakers**



CA. Mayur Nayak



CA. Rajgopalan



CA. Rutvik Sanghvi



CA. Mital Patel



Shri. Pramod Kumar (Hon. Comm. of Income Tax-III, Thane)



Smt. Anuradha V. Ravi (Comm. of Income Tax Range 4, Thane)

**Conference on SME Financing Opportunities with Banks (29th December 2013)**



(L-R) : CA. Umesh Mestry (Secretary-Vasai Branch), CA. Kishor Vaishnav (Committee Member-Vasai Branch), Mr. R. G.Kelkar (Speaker), CA. Ramanand Gupta (Chairman-Vasai Branch), CA. Mangesh Kinare (Chairman-WIRC), CA. Unmesh Narvekar (Past Chairman-Vasai Branch) and CA. Dayaram Paliwal (Past Chairman-Vasai Branch) addressing at the Conference.



CA. Ramanand Gupta presenting bouquet to CA. Uttam Prakash Agrawal (Past President, ICAI)



Participants

**Our Speakers**



CA. Rajesh Sharma



CA. Sameer Kakar



Mr. R. G. Kelkar



CA. Santosh Sharma

**Inauguration of Library & Reading Room at Vasai Hostel on 29th December 2013**



National Youth Festival (1st Dec. 2013)



Group Photo Taken in the presence of CA. Mahesh Madkholkar (Chairman-WICASA) CA. Preksha Jain (Chairperson Vasai-WICASA), various Eminent Dignitaries & WICASA Team at Youth Festival

Students Performance



Blood Donation Camp Jointly with Kutch Yuvak Sangh (1st December 2013)



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