

RBI

NBFCs not to be Partners in Partnership Firms- Clarifications:

NBFCs were advised vide Notification dated March 30, 2011 that they were prohibited from contributing capital to any partnership firm or to be partners in partnership firm.

RBI has now clarified that Partnership firms will include Limited liability partnerships (LLPs) and aforesaid prohibition will also be applicable with respect to contributions to Association of person (AOP) being similar in nature to Partnership firms.

RBI has advised all NBFCs who have contributed to the Capital of Partnership/LLP / AOP to seek retirement at the earliest.

Realization and Repatriation period for units in Special Economic Zones (SEZ):

Period of realization and repatriation of full value of goods/software/services, to India in case of Units located in SEZs has been increased from period of six months to **twelve months** from the date of export.

The above changes will be applicable ➤ with immediate effect and shall be valid for one year, subject to review.

(RBI A.P. DIR series Circular No. 108 Dated June 11, 2013)

FEMA

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, notified vide *Notification No. FEMA 3/2000–RB dated May 3, 2000 and the A.P. (DIR Series) Circular No. 5 dated August 1, 2005* relating to the External Commercial Borrowings (ECB), as amended from time to time.

It has been decided to include import of services, technical know-how and payment of license fees as part of import of capital goods by the companies for the use in the manufacturing and infrastructure sectors as permissible end uses of ECB under the automatic / approval route as the case may be subject to certain specified conditions for which the circular can be referred to.

(A.P. (Dir Series) Circular No. 119, Dated June 26, 2013)

INCOME TAX

Section 194-IA:

TDS on purchase of Immovable Property above Rs 50 Lakhs:

Finance Act, 2013 has imposed a new tax deduction at source on purchase of an immovable property (other than agricultural land) costing more than Rs.50 lakhs u/s 194-IA. This tax is to be deducted @ 1%. This amendment has

become applicable from 1st June, 2013.

Section 194-LC:

Amendment to section 194-LC provides that a non-resident who subscribes to Long Term Infrastructure Bond (LTIB) in rupees issued by an Indian company by depositing money in foreign currency in designated account (opened solely for the purpose of deposit of money in foreign currency and utilization of such money for subscription of LTIB) as converted in rupees will be deemed to be subscribed in foreign currency and a lower withholding tax rate of 5% will apply. This has become applicable from 1st June 2013.

New form 3CEB – Specified Domestic Transaction:

In pursuance of the changes made by the Finance Bill 2012 bringing Specified Domestic Transactions under the ambit of Transfer Pricing Regulations, CBDT has amended Form 3CEB. The said notification also amends to incorporate “Specified Domestic Transactions” after the word “International transaction”

Consequential amendments are made in Rules so as to have references to Specified Domestic Transactions.

(Notification number 41 dated 10th June 2013)

Cost Inflation Index:

Central Board of Direct Taxes has notified Cost inflation index for Financial Year 2013-2014 as “939”.

(Notification number 40 dated 6th June 2013)

Furnishing of authorization and maintenance of documents etc. for the purposes of section 94A i.e. Notified Jurisdictional Area:

Central Board of Direct Taxes has amended the Income-tax Rules, 1962 and Rule 21AC has been inserted for the purposes of clause (a) of sub-section (3) of section 94A, i.e. in respect of any payment made to any financial institution located in a notified jurisdictional area shall be allowed under this Act, unless the assessee furnishes an authorization in the prescribed form i.e. **Form No. 10FC** authorizing the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution on behalf of such assessee.

Mandatory Filing of Tax Audit Reports Electronically - Income-tax (Seventh Amendment) Rules, 2013:

Central Board of Direct Taxes has amended Income-tax Rules, 1962 making it mandatory to file audit reports electronically, prescribed under various sections of the Income Tax Act as mentioned hereunder:

Sr. No	Sections	Form No.
1	10 (23C)	10BB
2	12A(b)	10B
3	44AB	3CD
4	80-IA	10CCB
5	80-IC	10CCB
6	80-ID	10CCBA
7	80-JJA	10DA
8	80LA	10CCF
9	92E	3CEB
10	115JB	29B

(Notification number 42 Dated: 11th June 2013)

APPLICABILITY OF COST AUDIT:

Cost Audit is applicable as per the following Orders. For several companies they became applicable for FY 11-12. You may want to refer the below orders for the applicability of Cost Audit:

COST AUDIT ORDER NO. F. No. 52/26/CAB-2010

- 1. CAB Order dated on 02nd May 2011*
- 2. CAB Order dated on 30th June 2011*
- 3. CAB Order dated on 24th January 2012*

In supersession of the above orders, the Central Government has issued order dated 6th November 2012. As per the said order, all companies that were earlier covered under industry specific orders as given above shall continue to comply with the earlier orders up to the financial year commencing prior to 1st January, 2013 and in continuum with these orders in respect of each of its financial year commencing on or after 1st January 2013.

SUMMARY OF IMPORTANT JUDGEMENTS:

Unless otherwise stated, the sections mentioned hereunder relate to the Income Tax Act, 1961.

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	Karnataka High Court	Liaison Office and Section 9(1)(ii)	Income can't be attributed to LO in India if its operations are confined to assisting manufacturers for export orders.	CIT (International taxation) vs. Nike Inc.
2	ITAT Mumbai	Construction of Property: Sections 54	Acquisition of a new flat in exchange of an old flat is deemed construction and accordingly Sec 54 benefits are permissible.	Smt. Veena Gope Shroff vs. ITO
3	ITAT Hyderabad	Construction of Property: Sections 54F	ITAT disallows sec. 54F exemption to the extent sum invested in construction before transfer of original asset.	Smt. Nimmagadda Sridevi vs. DY.CIT
4	Rajasthan High Court	Method of Accounting Section 145 (2)	AO can't compare assessee's GP rate with third party if no variation found in its past records.	CIT vs. Jaimal Ram Kasturi
5	ITAT Delhi	Permanent Establishment (PE) and Profits attributable to PE	Indian subsidiary providing back office support to its overseas parent co. to be treated as fixed place PE; Tribunal provides a method to allocate profits to PE.	Convergys Customer Management Group Inc. vs. ADIT (International Taxation)
6	Karnataka High Court	Investments and Stock in trade for Banks and RBI Guidelines	Valuation loss is allowable even if stock-in-trade shown as investment in compliance of RBI guidelines .	Karnataka Bank Ltd. vs. ACIT
7	ITAT Lucknow	CA's Conduct for Appealing in Individual Capacity	ITAT rejects recall application filed by CA in 'personal' capacity; directs ICAI to act suitably for his misconduct.	Omkar Nagreeya Sahkari Bank Ltd vs. DY. CIT

1) Income can't be attributed to LO in India if its operations are confined to assisting manufacturers for export orders

[CIT (International taxation) vs. Nike Inc. (Karnataka High Court)]

The Assessee, a world known brand in sports apparels (i.e. Nike), had a main office in USA, which arranged for all its subsidiaries, spread all over the world, various sports apparels for sale to various customers.

Arrangement was through procurement by manufacturer who directly dispatched the apparels to the subsidiaries.

The assessee engaged various manufacturers all over the world on a job basis and made arrangements with its subsidiaries for purchasing the manufactured goods directly and pay for the same to the respective manufacturers.

With a view to ensure quality of its products in India through its liaison office, it employed professionals like merchandiser, product analyst, quality engineer, etc.

Assessing Authority brought to tax 5% of the export value of goods as income deemed to accrue or arise in India. On appeal, the ITAT allowed

assessee's appeal. Thus, the instant appeal was filed by revenue against ITAT's decision.

On appeal by the department to the High Court, HELD reversing the Tribunal:

The assessee was not carrying out any business in India and it had established an LO in India, whose object was to identify the manufacturers, give them the technical know-how and see that they manufactured goods according to the specification which would be sold to their affiliates.

The person who purchases the goods would pay the money to the manufacturer, and in the said income, the assessee has no right. The said income couldn't be deemed to be an income arising or accruing in the Tax Territories vis-à-vis the assessee.

As per Explanation 1(b) to Sec. 9(1) in the case of a Non Resident, no income would be deemed to accrue or arise in India whether directly or indirectly through or from any 'business connection', which are confined for the purpose of export.

The assessee was not purchasing any goods and it was enabling the manufacturers to manufacture goods of a particular specification which

was required by a foreign buyer to whom the goods were sold.

The whole object of the instant transaction was to purchase goods for the purpose of export. Once the entire operations are confined to the purchase of goods in India for the purpose of export, the income derived there from shall not be deemed to accrue or arise in India and it shall not be deemed to be an income under section 9. In this process, the assessee was not earning any income in India.

If assessee was earning income outside India under a contract, which was entered outside India, no part of its income could be taxed in India either under Section 5 or Section 9 of the Act.

2) Acquisition of a new flat in exchange of an old flat is deemed construction and allows sec. 54 benefits

[Smt. Veena Gope Shroff vs. ITO (ITAT Mumbai)]

The assessee had exchanged an old flat for a new flat and got cash compensation under the development agreement with the builder. She claimed exemptions under section 54 and 54EC from capital gains arising on account of

transfer of old flat. During assessment, the AO disallowed the exemption under sec. 54 and 54EC on the ground that the assessee had neither purchased a house property nor constructed a new residential house. On appeal, the CIT (A) confirmed the disallowance made by AO. The assessee, on the other hand, contended that new flat had been constructed by the builder and its possession was handed over to her within a period of three years from the date of transfer and, therefore, this amounted to construction of a new flat.

On appeal by the assessee to the Tribunal, HELD reversing the CIT(A):

The assessee had exchanged an old flat with a new flat constructed by the builder under development agreement which amounted to transfer under section 2(47).

Thus, the only other condition which was required to be satisfied was that assessee either had to purchase a new residential flat within the prescribed limit or construct a new residential flat within a period of 3 years from the date of transfer.

The acquisition of a new flat under a development agreement in exchange of

the old flat amounted to construction of new flat. This view was supported by the decision of the Tribunal in the case of *Jatinder Kumar Madan v. ITO* [2012] 51 SOT 583 taxmann.com 316 (Mum).

Therefore, the provisions of section 54 were applicable and assessee was entitled to exemption if the new flat had been constructed within a period of 3 years from the date of transfer. Since cash compensation was part of consideration for transfer of the old flat and the assessee had invested the money in NABARD bonds, the exemption under section 54EC would also be available. The assessee's new flat got completed within a period of 3 years from the date of transfer of the old flat. Therefore, the assessee's claim of exemption under section 54 was to be allowed and the order of the CIT (A) was set aside.

3) ITAT disallows sec. 54F exemption to the extent sum invested in construction before transfer of original asset.

[Smt. Nimmagadda Sridevi vs. DY. CIT (ITAT Hyderabad)]

The assessee had filed her return for the relevant assessment year and had claimed deduction under section 54F

in respect of an amount invested in construction of a residential house. During assessment, AO was of the view that the assessee was not entitled to deduction, as *construction of house was substantially completed before the sale of capital asset.* Therefore, the moot question that arose for consideration of the Tribunal was as under:

Whether the cost of construction incurred by the assessee after the sale of capital asset was entitled to deduction under section 54F, even if, the construction was commenced before the sale of capital asset and was completed within two years from the sale of capital asset?

HELD by the Tribunal:

As per the ratio laid down by Karnataka High Court in the case of *CIT v. J.R. Subrahmanya Bhatt* [1986] 28 Taxman 578, the assessee was entitled to deduction under section 54F of the Act, though the assessee has commenced construction before the sale but completed the construction within two years after the sale. The commencement of construction prior to the sale of capital asset was immaterial and the assessee was entitled to deduction under section 54F of the Act.

In the case of *Chandru L. Raheja v. ITO* [1988] 27 ITD 551 (Bom.), it was

held that when the assessee had already purchased land, started construction of a building then only that part of the investment in new house that was made out of the sale proceeds received after the transfer of the old house would qualify for exemption under section 54 of the Act.

The investment in residential house which had taken place after the sale of existing capital asset was to be considered only for deduction under section 54F.

Thus, whatever investment was made by the assessee in construction of new property within the period stipulated under section 54F, after the sale of existing property, would be entitled to deduction, but, the assessee was not entitled to deduction under sec. 54F in respect of the investment made in new property to the extent of investment made before the sale of existing property. Thus, the appeal of the assessee was partly allowed.

4) AO can't compare assessee's GP rate with third party if no variation found in its past records

[CIT vs. Jaimal Ram Kasturi (Rajasthan High Court)]

The assessee was engaged in the liquor business. During assessment,

the AO held that the books of account maintained by the assessee were not reliable, thus, he rejected the same by applying provisions of section 145(2). The AO then held that the profit of liquor business of the assessee had to be determined in comparison with other assessee engaged in the same line of business and made addition by taking higher rate of net profit in comparison to the rate declared by assessee. However, the CIT (A) was of the view that the past history of the case becomes relevant and the same could be a guide for reasonable profit and restricted the addition made by the AO. Further, the Tribunal deleted the entire addition.

HELD by the High Court in favour of the Assessee:

The CIT (A) had given cogent reason for not endorsing the approach of the AO in making assessment with reference to the case of another assessee, after finding that the case of assessee was not directly comparable case.

Assessee's past history was available and there was no material difference in the facts pertaining to the relevant assessment year and the past history year.

The CIT (A) even while accepting past history as the relevant basis for assessment, proceeded to retain a

part of the addition without cogent and sufficient reasons thereof. The Tribunal, therefore, while endorsing the basis adopted by the CIT(A), has found no reason to sustain any addition and deleted the addition altogether.

The High Court further held that the Tribunal had rightly accepted the profit rate declared by the assessee while not approving the rate as applied by the AO. Thus, the order passed by the Tribunal didn't suffer from any perversity or from the application of any wrong principle so as to call for interference.

5) Indian subsidiary providing back office support to its overseas parent company to be treated as fixed place PE; Tribunal provides a method to allocate profits to PE.

[Convergys Customer Management Group Inc. vs. ADIT (International Taxation) (ITAT Delhi)]

The assessee, 'CCMG', a US based company, providing IT enabled customer management services, had a subsidiary in India in the name of CIS which was providing IT enabled call centre or back office support service to assessee to service its Indian customers.

Issues that arose before the Tribunal were as under:

- i) Whether assessee had a Fixed Place PE?
- ii) Determination of profits attributable to the alleged PE in India.

HELD by the Tribunal:

On the issue of PE:

The employees of the assessee frequently visited the premises of CIS to provide supervision, direction and control over the operations of CIS and such employees had a fixed place of business at their disposal

CIS was practically the projection of assessee's business in India and carried out its business under the control and guidance of the assessee, without assuming any significant risk in relation to such functions

Thus, the finding of the CIT(A) that assessee has a fixed place PE in India under Article 5(1) of the India-USA DTAA was upheld. There was no infirmity in the order of the CIT(A) that CIS did not constitute a dependent agent PE of the assessee in India as the conditions provided in paragraph 4 of Article 5 of the India-USA DTAA were not satisfied.

On the issue of profits attributable to the PE;

An overall attribution of profits to the permanent establishment is a transfer pricing issue and no further profits can be attributed to a PE once an arm's length price has been determined for the Indian associated enterprise, which subsumes the functions, assets and risk profile of the alleged PE.

The correct approach to arrive at the profits attributable to the PE should be as under:

Step 1: Compute global operating income percentage of the customer care business as per annual report of the company.

Step 2: This percentage should be applied to the end-customer revenue with regard to contracts/projects where services were procured from CIS. The amount arrived at would be the operating income from Indian operations.

Step 3: The operating income from India operations is to be reduced by the profit before tax of CIS. This residual is now attributable between US and India.

Step 4: The profit attributable to the PE should be estimated on residual profits as determined under Step 3 above.

6) Valuation loss is allowable even if stock-in-trade shown as investment in compliance of RBI guidelines

[Karnataka Bank Ltd. vs. ACIT (Karnataka High Court)]

The assessee, Karnataka Bank Ltd., disclosed shares as investments in balance sheet to comply with RBI Guidelines. It was not estopped from treating the same as stock-in-trade for income-tax and claiming valuation loss thereon as these shares had been consistently shown as stock-in-trade in income-tax in the past years also.

On appeal by the assessee to the High Court, HELD in favour of the Assessee:

For the purpose of IT Act, as the assessee had consistently been treating the value of investment for more than two decades as stock-in-trade and claiming valuation loss thereon, it was not open to the authorities to disallow the said loss on the ground that in the balance-sheet it was shown as investment in terms of the RBI Regulations.

The question whether the assessee was entitled to particular deduction or not would depend upon the provisions of law relating thereto and not the way, in which the entries were made in the books of account. It

was not decisive or conclusive in the matter.

The value of the stocks being closely connected with the stock market, at the end of the financial year, while valuing the assets, necessarily the Bank had to take into consideration the market value of the shares.

If the market value of shares was less than the cost price, they were entitled to deductions and it couldn't be denied by the authorities under the pretext that it was shown as investment in the balance sheet.

The order passed by the authorities holding that in view of the RBI guidelines, the assessee was estopped from treating the investment as stock-in-trade was not correct. That finding recorded by the authorities was to be set aside and held accordingly.

7) ITAT rejects recall application filed by CA in 'personal' capacity; directs ICAI to act suitably for his misconduct

[Omkar Nagreeya Sahkari Bank Ltd vs. DY. CIT (ITAT Lucknow)]

CA appearing as Authorised representative ('AR') for client had no *locus standi* to file any application before ITAT in his individual

capacity without the client's consent, after disposal of client's appeal. CA's conduct of filing such application after the date of Tribunal's order disposing it off in his client's favour was contemptuous, abuse of process of law and scandalized the system of delivery of justice.

HELD by the Tribunal:

Once the appeal was disposed off, the power conferred upon the professionals or the AR by virtue of the Power of Attorney by the assessee, came to an end. They didn't have any *locus standi* to file any application before the Tribunal in his individual capacity because the Tribunal was not created to redress the grievances of the professionals.

Its function was to adjudicate the disputes between the assessee and the Department. The appeal was allowed in favour of the assessee and the assessee had no grievance against the order passed by the Tribunal. Instant application was filed by the CA with an ulterior motive for the reasons best known to him, disputing the facts recorded in the order sheet.

After disposal of the appeal, an application could be filed on behalf of the assessee under section 254(2) of the Act for seeking rectification in the order passed under section 254(1) of

the Income Tax Act. However, there was no provision under the Act in which an application could be filed by any Advocate or CA or AR in his individual capacity for seeking rectification in the proceedings of the hearing, without the consent of the assessee.

Moreover, to dispute the proceedings of the court, without any cogent material, was also an attempt to scandalize the court and also to create hindrance in the proper judicial functioning of the court, which couldn't be permitted under any circumstances. If it was allowed the judicial system would collapse.

Since the facts recorded in the order sheet had not been controverted by filing an affidavit, the judicial proceedings were correct and the contentions raised in the application were highly misconceived, wrong and contemptuous. Therefore, the instant application was moved with an intention to browbeat and scandalize the court. Since the action of CA was gross abuse of process of law, application was dismissed with

cost of Rs 5,000 to be recovered from him.

This tough stand was being taken only to maintain the dignity, decorum of the institution and justice delivery system so that it might not be misused by any professional to settle their personal score. If they had any grievance against any judicial forum they could approach the higher forum instead of scandalizing the concerned court or judicial body.

Reference is also made to the President of ICAI with a request to take necessary action as per law against the CA for his professional misconduct and also to take corrective measures and necessary steps to educate its members, to behave with the judicial authorities befitting to their status.

This brings an important issue for CA and other Authorised Representative to strictly act under instructions of the client.

NOTE: The Judgments should not be followed without studying the complete facts of the case law.

DUE DATES CHART FOR THE MONTH OF JULY (Various Acts):

Date	Particulars
5 th	Service Tax payment for the previous month (6 th if paid electronically)
6 th	Payment of Excise Duty for all assesses (including SSI Units) for the previous month
7 th	TDS remittance for the previous month
7 th	STPI (Software Technology Parks of India) Monthly return for the previous month
10 th	Monthly Excise return by all assesses (except SSI Units) coming under CEA in Form ER1
10 th	Quarterly Excise return by EOU assesses coming under CEA in Form ER 2
10 th	Quarterly Excise return by SSI units availing small scale exemption under CEA in Form ER 3
10 th	Monthly Excise return by specified class of assesses regarding principal inputs coming under CEA in Form ER 6
10 th	Quarterly Excise return by units paying 2% duty under CEA in Form ER 8
15 th	Filing quarterly return (Annexure 13B) by the registered dealers.
15 th	TDS/TCS quarterly Statements (Other than Government deductor) for the period April - June
20 th	Quarterly return (Annexure 75) by units availing area-based exemptions.
20 th	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
21 st	Payment of contribution under Employees State Insurance Act, 1948
21 st	Payment of Monthly MVAT under MVAT Act, 2002

HARBINGER™

Updates on regulatory changes affecting your business

21 st	Quarterly return of MVAT for period April to June under MVAT Act, 2002
30 th	Issue of TDS certificate (Form 16A) by non government deductor for Q1
30 th	Payment of Profession Tax for the employees
31 st	Filing of Return of Income and Wealth for non corporate assessee.

----- XXXXX-----

This communication is intended to provide general information, guidance on various professional subject matter and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.