Tax News

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INCOME TAX

Reminder for May 2012

Action Due	Due Date
TDS for April 2012	30-05-12
PF for April 2012	15-05-12
ESI for April 2012	21-05-12
TDS Return for the last quarter	15-05-12
Issue of TDS certificate (Form 16A), in case of other than salary	30-05-12
Issue of TDS Certificate (Form 16), in case of salary	31-05-12

SERVICE TAX

Action Due	Due Date
Service Tax for Apr.2012 in case of company	05-05-12
Service Tax for Apr.2012 in case of a company for which e-payment is mandatory.	06-05-12

INCOME TAX

IMPORTANT NOTIFICATION **Change in the provisions for filing of return of income :**	• An individual or HUF must file the return of income electronically for the previous year 2011-12 and subsequent previous year if his/its total income exceeds Rs. 10 lakhs. • A resident Individual or a resident HUF must file the return of income electronically for the previous year 2011-12 and subsequent previous year, if he/it has: a) assets (including financial interest in any entity) located outside India; or b) signing authority in any account located outside India. • The prescribed ITR Form SAHAJ- ITR 1 cannot be used by a resident Individual to file his return of income, if he has: a) assets (including financial interest in any entity) located outside India; or b) signing authority in any account located outside India. • The Form SUGAM - ITR 4S, prescribed in the case of an individual or a HUF deriving business income computed in accordance with special provisions referred to in section 44AD and section 44AE of the Act, cannot be used by a resident Individual or a resident HUF to file the return of income, if he/it has: a) assets (including financial interest in any entity) located outside India; or b) signing authority in any account located outside India. *[Notification No.14/2012 [F.No.142/31/2011-TPL]/S.O. 626(E), dated 28-3-2012]*.

SC/HC JUDGMENTS **Disallowance of C& F charges:**	The High Court disallowed the payments made by the assessee in respect of C & F Handling Charges to Blue Chip & Co as it was a sham transaction. It was held that the assessee company received no services for these payments, its results were much better when it performed C & F itself before outsourcing to Blue Chip & Co., and there was no reduction of staff strength of the assessee after outsourcing C & F to Blue Chip & Co. Also, major part of payments received from assessee-company was passed on by Blue Chip & Co to Vijay Mallya and Smt.Samira Mallya as interest-free loan. Thus it was a sham transaction, and so the payments were disallowed. *CIT v. Punjab Breweries Ltd* ***[2012] 20 taxmann.com 630 (Punjab & Haryana).***
TRIBUNAL JUDGMENTS **Interest payable by Indian branch (PE) to its overseas HO cannot be taxed in India**:	The Tribunal held that the PE in India is not an independent person that can be assessed to tax separately in India. It is a part of a GE (General Enterprise)/HO and its income is chargeable to tax in hands of the GE which alone is a person assessable to tax in India. Settled position under domestic law is clear that one cannot make profit out of himself and if payment of interest made by Indian PE to foreign GE, of which it is a part, would be payment to self, it cannot give rise to any income which is chargeable to tax in India in the hands of the GE. Therefore, any interest payable by Indian PE to its HO abroad would not be chargeable to tax in India. *Sumitomo Mitsui Banking Corp v. DDIT* ***[2012] 19 taxmann.com 364 (Mum. - ITAT) (SB).***
Business information, contracts, employees, and knowhow acquired in a slump sale are intangible assets eligible for depreciation:	It was held that six categories of intangible assets listed in section 32(1)(ii), viz., knowhow, patents, copyrights, trademarks, licenses and franchises, are not of the same kind, and are clearly distinct from one another. These are intangible assets that form part

	of tool of trade of an assessee facilitating smooth carrying on of business. Therefore, business claims, business information, business records, contracts, employees, and knowhow acquired by assessee under slump sale agreement are 'business or commercial rights of similar nature' entitled to depreciation under section 32. *Areva T & D India Ltd vs. DCIT* ***[2012] 20 taxmann.com 29 (Delhi).***
Sham transaction of buy-back of shares is Dividend:	Only a genuine buyback is excluded from the definition of 'dividend' under section 2(22)(iv) and is exempt from DDT under section 115-O. Where proposed transaction of buy-back of shares is a sham transaction, the consideration received from such buy-back will satisfy the definition of 'dividend' under the Act and consequently attract tax in India under section *115-O-A.****[2012] 20 taxmann.com 52 (AAR).***
In case of co-owners of a property, the threshold limit for TDS under section 194-I applies to each co-owner:	Where property in question leased out to a bank was owned by various co-owners and each owner was having a definite and ascertainable share in property, threshold limit for purpose of deduction of tax at source under section 194-I would apply to each of co-owners separately - *CIT v. Senior Manager SBI* ***[2012] 20 taxmann.com 40 (Allahabad).***
No detailed enquiry required to form a prima facie opinion on alleged misconduct of a CA:	Where alleged misconduct of a CA was involvement in fudging of accounts of a well-known listed company (Satyam), and it was admitted by then Chairman of the company in a widely publicized letter, the Director (Discipline) is entitled to form a prima facie opinion on alleged misconduct under section 21(2) of CA Act, 1949, based on said letter and annual reports of company. At that stage it is not necessary to conduct a detailed enquiry and investigation into commission of professional misconduct by member of Institute. *Talluri Srinivas vs ICAI* ***[2012] 20 taxmann.com 77 (Delhi).***
Exemption upto Rs. 1 crore available under sec 54EC:	It is clear from proviso to section 54EC(1) that where assessee transfers his capital asset after 30th September of financial year, he gets an opportunity to make an investment of Rs.50 lakhs each in two different financial years and is able to claim exemption upto Rs.1 Crore under section 54EC of Act. The assessee is entitled to get exemption upto Rs.1 Crore if he invests Rs. 1 crore in specified bonds within 6 months of transfer - Rs.50 lakhs in financial year of transfer and Rs.50 lakhs in next financial year. *Aspi Ginwala v. ACIT* ***[2012] 20 taxmann.com 75 (Ahmadabad - ITAT).***

DTAA between India and Singapore:	The Tribunal held that the payment received for development of strategic performance management tool (balance score card system) cannot be divided into two segments - one for royalty relatable to software, and other for fees for technical services. The software developed was only a part of the management consultancy and was never to be considered as an independent product. Thus, the whole amount received by the assessee was fees for technical services and it was taxable under DTAA between India and Singapore, as per Sec 9 of the IT Act, read along with Article 12 of the DTAA between India and Singapore. *Organisation Development Pte Ltd. Vs. Deputy Director of Income-tax (International Taxation) February 9, 2012 (ITAT-Chennai).*
Section 28(iiid) read with Section 28(iiib) and Section 80HHC of the Income-tax Act, 1961:	Not entire amount received by assessee on sale of Duty Entitlement Pass Book (DEPB), but sale value less face value of DEPB will represent profit on transfer of DEPB by assessee. *Topman Exports Vs. CIT, Mumbai February 8, 2012 (SC) [Assessment Year 2002-2003]*
Company not legally barred from holding AGM beyond time limit prescribed under section 166:	Penal provisions contained in section 168 of Companies Act do not say that after expiry of time, no annual general meeting can be held or its holding would be an offence. It only says that in case of default, company and every officer responsible for it shall be punishable with fine which might extend to Rs. 50,000. It is clear that a company can convene an annual general meeting beyond time but subject to payment of penalty. *Ruby General Hospital Ltd vs. Sajal Dutta [2012] 19 taxmann.com 330 (Calcutta).*
Interest for credit period for purchase of raw-material:	**Interest for credit period for purchase of raw-material:** Where interest for credit period and price of raw materials purchased was reflected in separate invoices, it was clear that: a) there was no nexus between interest amount and the price of raw materials; and b) nexus of interest was only with period for which purchase price became due. So, it could not be contended that outstanding purchase price was not a 'debt incurred' under section 2(28A). Since usance interest is interest as defined in section 2(28A), it will be deemed to accrue or arise in India under section 9(1)(v). *Uniflex Cables Ltd v DCIT [2012] 19 taxmann.com 315 (Mumbai - ITAT).*

ITAT's Guidelines to AOs for making additions under section 68:	• No additions in respect of loan repayments can be made under section 68. • Additions cannot exceed new loans/credits received during year. • Opinion of AO that explanation offered by assessee is not satisfactory is required to be based on proper analysis of material and other circumstances available on record. Once explanation of assessee is found unbelievable or false, AO is not required to bring positive evidence on record to treat amount in question as income of assessee. • Evidence produced by assessee cannot be brushed aside in a causal manner. Assessee cannot be asked to prove the impossible; explanation about 'source of source' or 'origins of origin' cannot, and should not, be called for, while making inquiry under section 68. • Matters under section 68 are decided on particular facts of case as well as on basis of probabilities. Credibility of explanation, not materiality of evidences, is the basis for deciding cases falling under section 68 - *ITO VS. Anant Shelters (P) Ltd****[2012] 20 taxmann.com 153 (Mumbai - ITAT).***
Sale of land along with building :	Section 50 of Act is applicable only in respect of sale of capital assets forming part of a block of asset in respect of which depreciation has been allowed. As no rate of depreciation has ever been prescribed for land, it does not form part of 'block of assets'. Thus, the deeming provisions of section 50 are not applicable in case of transfer of land (even if sold along with depreciable building). The surplus of sale price over indexed cost of acquisition would be taxable as long term capital gain if it is held for more than 36 months. *CIT v. I.K. International P Ltd.* ***[2012] 20 taxmann.com 197 (Delhi).***
Interest on unpaid purchase price of property:	Interest on unpaid purchase price of property is deductible under section 24(b) since words used in section 24(b) is 'borrowed capital' and not 'borrowed money' and 'capital' is wider term than 'money'. Further, interest payable at a higher rate in case of default (i.e. penal interest) would be deductible under Sec. 24(b), however, interest on interest would not be allowed as deduction. *Gopi Kishan Purohit v. DCIT [2012] 20 taxmann.com 257 (Jodhpur - Trib.)*

Section 40(a)(ia) disallows only amounts outstanding as on 31st March, not amounts already paid during the F.Y. :	Section 40(a)(ia) would apply only to amounts outstanding as of 31st March of every year on which TDS was not deducted and not to amounts paid during previous year without deduction of TDS for following reasons: • Legislature by consciously replacing words from 'credited' or 'paid' in Finance (No.2) Bill,2004 to 'payable' in Finance (No.2) Act, 2004 has made it clear that only outstanding amount or provision for expenses which are liable for TDS, are to be disallowed in event there is default in not following TDS provisions under Chapter XVII-B of Act. • CBDT's Circular No.5 of 2005, dated 5th July, 2005 clarifies that intent of section 40(a)(ia) is to curb bogus payments by creating bogus liabilities. *Merilyn Shipping & Transports v. ACIT [2012] 20 taxmann.com 244 (Visakhapatnam - Trib.)(SB)*
Benefit of section 23(2) available to HUFs also:	Various High Court decisions denying relief under section 23(2) to partnership firms cannot be invoked to deny relief to a HUF, since unlike a firm which is a fictional entity and cannot physically reside and so cannot claim benefit of provision, HUF cannot be held to be a fictional entity. A HUF is a family of a group of natural persons. Such family can reside in a house, which belongs to a HUF. Therefore, there is nothing, in section 23(2), which excludes application of such provision to HUF, which is a group of individuals related to each other. *CIT v. Hariprasad Bhojnagarwala [201**2] 20 taxmann.com 316 (Gujarat).***
Slump sale does not mean transfer by way of sale only:	A transfer under a scheme of arrangement sanctioned by Court under sections 391 to 394 of the Companies Act,1956 shall qualify as a slump sale if it satisfies conditions of section 2(42C) of the IT Act. The contention that "section 50B read with section 2(42C) is only applicable to "sale" and not to 'transfer' under section 2(47) of the Act" cannot be accepted. *SREI Infrastructure Finance Ltd v. Income tax settlement commission **[2012] 20 taxmann.com 476 (Delhi).***

Section 50 would not be applicable if depreciation was never allowed:	If the assessee had not claimed depreciation on any capital asset, which was not in use, he could not be burdened with the provisions of section 50. The basic requirement for the applicability of sec 50 is that the assets should form part of the block of assets in respect of which depreciation had been allowed under the Act. In the absence of any depreciation being allowed to the assessee in any of the previous years, deeming provisions of section 50 cannot be invoked. *CIT v. Santosh Structural & Alloys Ltd.**[2012] 20 taxmann.com 501 (Punj. & Har.)***
Rental income from Commercial Complex :	Income from a market complex constructed for commercial exploitation is taxable as business income and not as income from house property. *Narayan Market Complex vs. ITO **[2012] 20 taxmann.com 698 (Cuttack - Trib.)***
Non resident company receiving royalty having no PE in India:	The assessee-company, incorporated in Singapore, had no branch office or permanent establishment in India. However, it had received payments from licensing of software to four customers in India, including its 100 per cent subsidiary company, CSC India. The assessee and all its group companies used SAP software, and remote access facilities, which were provided by an unrelated third party. The payment for the use of this software license and remote access facilities (RAS) by all the group companies, was made by the head office and then shared by all the group companies, on the basis of actual usage. The Tribunal held that: • The taxation of royalty/FTS is on receipt basis. In other words, the amount which has accrued as income to a foreign company cannot be taxed in the source country (India, in this case), unless the amount has been received by the foreign company. • Reimbursement in respect of SAP licence and RAS charges are for the use of the licence belonging to a third party. It is not the case of the Revenue that the expenditure has been incurred in connection with earning of royalty/FTS. The assessee does not have a PE in India. Therefore, such income is not liable to be taxed in India. Accordingly, it is held that reimbursements of SAP licence and RAS charges are not taxable in India. *CSC Tech Singapore Pte Ltd v ADIT, 2012-TII-35-ITAT-DEL-INTL*.

Tax obligation of the Agent of a non-resident:	The assessee - Jet Airways - had agreement with non-resident M/s Airline Rotables of UK, (ARL), under which, ARL provided aircraft components to the assessee in India. The payment was made outside India. The assessee requested the Revenue authorities for non-deduction of tax at source from the payment made to ARL. This request was rejected on the ground that ARL had a PE in India whereby tax was required to be deducted at source. In appeal, the CIT(A) confirmed the order. In further appeal, the Tribunal held in favour of the non-resident, holding that ARL had no PE in India and accordingly, its income from business in India could not be taxed. The Tribunal however, remanded the issue of taxability of consideration attributable to the right to use replacement components. While these proceedings against ARL were pending, the AO initiated proceedings against the assessee under section 163 holding the assessee to be a representative assessee of ARL as it had a business connection with ARL that had received income from the assessee. The A.O held that the case was squarely covered under sections 163(1)(b) and 163(1)(c). In appeal against A.O's contention, the CIT(A) ruled in favour of the assessee holding that ARL had not appointed any agent in India for sale and purchase of aircraft and it did not maintain any branch office or service centre in India. Also, ARL did not have any financial association with the assessee and hence treating the assessee as an agent of ARL was not proper. Having heard the parties, the Tribunal held that: • The agent of the nonresident, including person who is treated as an agent u/s.163 of the Act, will be regarded as representative Assessee of the non-resident. Sec.161 creates a vicarious liability, in so far as the agent is concerned, for the tax which the non-resident has to pay. Because of the aforesaid liability, an agent should retain out of the money payable to the nonresident a sum equal to the estimated liability.

	• The purpose of Sec.163 is to enable the Revenue to proceed against the person in India who is regarded as agent of a non-resident, so that vicarious liability can be imposed on him, if it is found that the income of non-resident is chargeable to tax in India. The income of nonresident whether is chargeable to tax or not, and determination of income so liable to tax are to be determined in separate assessment proceedings in which the person in India who is treated as agent of the non-resident, will have full opportunity and right of appeal, as is available to any other Assessee. At the stage of treating a person in India as agent of a nonresident, the liability to tax of the non-resident need not be established. • The contention of the appellant that since the Tribunal has already held in the case of ARL that receipts from the Assessee by ARL is business income, but not chargeable to tax in the hands of ARL, because of absence of PE in India, the proceedings under section 163 of the Act are an exercise in futility, cannot be accepted. • The Appellant utilised the services of the non-resident in its business in India. There was an element of continuity between the business of the non-resident and the activity in the taxable territory, indicating that there was a business connection, within the meaning of sec. 163(1)(b) as well as Sec.9(1)(i) of the Act. Thus the conclusion of the AO in this regard is upheld, and CIT(A)'s order is reversed. • Also, under Sec.163(1)(c) of the Act, the Agent includes a person from or through whom the nonresident is in receipt of any income, whether directly or indirectly. The appellant makes payment to the non-residents for the services rendered by them in India. Thus the non-residents are in receipt of income from the appellant. Therefore the provisions of Sec.163(1)(c) are also attracted. As already stated receipt of income alone is relevant and the chargeability of such income to tax under the Act is not relevant. For the reasons given above, the orders of CIT(A) are reversed and the orders of the AO passed u/s.163 of the Act are restored. *2012-TII-33-ITAT-MUM-INTL.*

ADVANCE RULINGS **Income deemed to accrue or arise in India:**	Where plant was exported by Indian manufacturer from India to Pakistan, commission paid to agent in Pakistan is taxable in India when export order was executed in India as per Sec 9 read along with Sec 5 and Sec 195 of IT Act. *SKF Boilers and Driers Pvt. Ltd, In Re,February 22, 2012 (AAR).*
Taxability of a member in a Consortium:	A company 'X' floated a Tender for carrying on the work of all activities and services required for the design, engineering, procurement, construction, installation, commissioning and handing over of the plant, on a lump sum turnkey basis for the 'Y' and Associated Units of 'Z' Complex. ABC the applicant, and a Company 'E' decided to come together to take up the work as a Consortium. This was followed up by an 'Internal Consortium Agreement" between the applicant and E. The tender submitted by the Consortium was accepted and the work was awarded. Applicant filed an application under section 197 of the Income-tax Act taking up the position that no portion of the amount payable to it by X was liable to be withheld under section 195 of the Act, arguing that what it performed under the contract was all off-shore and the payments were received off-shore and hence its income was not chargeable to tax in India. According to the applicant, this contract with X, was a divisible contract and its obligations under the contract were well defined. The consideration payable to it was also identifiable and the payment to it under the contract by X was direct payment for the work done by it. It was argued that the off-shore activities were not taxable in India and that a Permanent Establishment would come into existence in India in terms of Article 5.2 (1) of Double Taxation Avoidance Convention between India and Germany only after the equipment reaches the site in India. Revenue, on the other hand contended that it was a lump sum turnkey contract and was indivisible. Any splitting up of the contract would be artificial and it would be unrealistic to split it up into parts just for the purpose of taxation.

	Having heard the parties, the AAR held that: • The terms of the unilateral agreement between the Consortium partners cannot alter the legal position emerging from the agreement between 'X' and the Consortium. The contract in this case is one and indivisible and it is not open to the applicant, a member of the Consortium, the contractor, to attempt to split up each component of the contract for the purpose of taxation. The situs of the contract is in India. The payments are made by a resident for the work done in India and the jurisdiction of the authorities to tax the income from the transaction cannot be questioned. • The work was taken up by the Consortium. The responsibility for establishing the project was that of the Consortium. The members came together to undertake a contract. In this situation, an AOP was formed and the assessment has to be on that basis. • Thus, in the face of an indivisible contract and the existence of an Association of Persons, the claim that the amount payable in respect of design and engineering cannot be taxed in India, cannot be accepted. They are liable to be taxed in India. *2012-TII-21-ARA-INTL*.
Fee for managerial service:	The issue was whether fee for managerial service is taxable as fee for technical services under Article 13(2) of the DTAA between India and France. Mersen India Pvt Ltd was a 100% subsidiary of a French company which, in turn, had another 100% subsidiary incorporated in France- Mersen Corporate Services. Both the Indian company and its parent company in France, were in the business of manufacturing electrical components. Under the services agreement, the French company undertook to provide the Indian company with services in the nature of assistance, professional and administrative consultation and training. The Indian company paid the expenses incurred

	by Mersen for the services rendered plus 5% of that amount. The invoice was in Euro and the money had to be remitted to a bank in Paris, France. The payment had to be made free of and without withholding taxes, and if such withholding was necessary, the same had to be borne by the Indian company. In such circumstances, Mersen India, the Indian company, sought a ruling from the AAR as to whether the amount paid to the French company under the services agreement would amount to fees for technical services as per Article 13 (4) of the India-French DTAA, read with the protocol thereof. The Applicant contended that the payment was made for managerial services and it was not fees for technical services u/s 9(1) (vii) of the Income-tax Act. Also, it was argued that the payments could be understood only as the business income of the French company and such payments could not be taxed in India in the absence of that company having a permanent establishment in this country. The Revenue contended that payments made under the services agreement, would be fees for technical services and taxable as such. Having heard the parties, the AAR held that: • The applicant can claim the application of the DTAC between India and France, or the provisions of the Income-tax Act whichever is more beneficial to it. The applicant has claimed the benefit of the DTAC. Now, under the DTAC, managerial services are taxable as 'Fees for Technical Services' under paragraph 4 of Article 13, so the consultancy fees to be paid by the applicant would be taxable in India. *2012-TII-23-ARA-INTL.*

SERVICE TAX

IMPORTANT NOTIFICATIONS / CIRCULARS **Service tax paid on taxable services used for export of goods at the post-manufacture stage**:	A Committee has been constituted to review the scheme for electronic refund of service tax paid on taxable services used for export of goods. The Committee would (a) evolve a scientific approach for the fixation of rates in the schedule of rates for service tax refund; and (b) propose a revised schedule of rates for service tax refund, taking into account the revision of rate of service tax from 10% to 12% and also movement towards 'Negative List' approach to taxation of services. *Circular No. 156/7 /2012-ST*.
Service tax on flight tickets issued before April 1, 2012:	Notification No. 2/2012 dated 17th March 2012 had restored the effective rate of service tax to 12% wef 1st April 2012. It was brought to the attention of the Board that some airlines were collecting differential service tax on tickets issued before 1stApril 2012 for journey after 1st April 2012, causing inconvenience to passengers. It has been clarified that the point of taxation is the date of receipt of payment or date of issuance of invoice (flight ticket), whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April 2012 when the payment is received before 1st April 2012. *Circular No.155/6/ 2012 – ST.*
SC/HC JUDGMENT **Rent-a-cab service provided by cooperative society formed by land-losers:**	Appellant is a Co-operative Society rendering rent-a-cab service to M/s ONGC since many years. This service was provided under the contract agreement dated 21/12/99. Initially, as there was no levy on rent-a-cab service at the relevant date of agreement, there was no condition relating to payment of service tax in the contract. With effect from 1/4/2000, levy of service tax was introduced on rent-a-cab service. This being a new levy, the appellant contended that they were unaware of legal provisions and moreover, there was confusion

	regarding such liability of the appellant. Thus, no service tax was paid at the relevant point of time. However, after obtaining its registration on 23/10/2002, the payment of service tax has been made on regular basis. The show cause notice was issued by Deputy Commissioner of Central Excise for the period from 1/4/2000 to 30/9/2004 proposing the recovery of service tax to the tune of Rs. 45,06,576/- with further penalty under section 75(A), 76, 77 and 78 as well as interest under Finance Act, 1994. The appellant appealed against the imposition of penalty. The Tribunal rejected the appeal. The High Court observed: Considering that the levy of service tax was w.e.f. 1/4/2000 on rent a cab service it is not surprising that there may be unawareness with regard to this new levy of tax. It would also not to be difficult to comprehend that there was confusion over applicability of this levy in the appellant's case, as it was a cooperative society rendering service to M/s ONGC under the Contract for many years. There is no justification in levying the penalty. *2012-TIOL-253-HC-AHM-ST.*
CESTAT JUDGMENTS **Value of Dam, Roads & Tunnels executed under Single Composite Contract is vivisectable:**	Appellant contended that they were entitled to exclude Dams, Roads, etc. from the taxable value in terms of the definition of Commercial and Industrial construction service under Section 65 (25b) of the Finance Act, 1994. The Tribunal held that value of Dam, Roads, Tunnels etc. executed under a Single Composite Contract is vivisectable on the basis of the decision of the Tribunal in Vashushilpi Projects & Consultants (P) Ltd, and BSBK Pvt. Ltd. It was held that the definition of Commercial and Industrial Construction Service permitted Appellant to exclude the cost of Construction of Dam, Road, Tunnels from the Gross amount covered by EPC Contract. The Tribunal noted that the appellant had paid Service Tax on the remainder value of the composite contract and Stay was accordingly granted. *2012-TIOL-458-CESTAT-BANG*.

Sale of fully built flats - not taxable before Finance Act 2010 came into force:	The Respondents were builders/promoters for constructing residential complexes. They identified prospective buyers for flats and entered into agreements for sale of constructed flats and took money from the persons with whom they had agreements to sell the built flats. They finally transferred the built flats to the buyers and registered them in the names of the buyers. The period involved was prior to enactment of Finance Act, 2010. The question involved was whether the respondents were doing any service for the prospective buyers or were doing the construction activity for themselves and were only engaged in sale of flats with no component of service to the buyers. It was held that where a buyer entered into an agreement to get a fully constructed residential unit, the transaction of sale was completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belonged to the builder or promoter and any service provided by him towards construction was in the nature of self service, and hence would not attract service tax. If the ultimate owner entered into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax. *2012-TIOL-440-CESTAT-DEL.*
Charges for pipes & measuring equipment at time of providing new gas connection:	Adani Gas Ltd. (appellant) was engaged in manufacture and distribution of Compressed Natural Gas and was registered for providing taxable services under the category "Transportation of goods through pipelines". During the course of audit, it was found that the appellant had received income under the head of Gas Connection Charges from their industrial, commercial and domestic consumers. Such charges were collected for supply of pipes, measuring equipments etc. at the time of providing new gas connection to the customers, but no service tax had been paid on them.

	The appellant contended that it was merely supplying, installing, maintaining the measuring equipment to facilitate determination of quantum of gas supplied by it, and there was no service element involved in this supply, installation and maintenance of equipment. The Tribunal held that there was a service element involved and both the parties benefitted and definitely the appellant was providing the service to facilitate measurement of supply of gas to the customer. Also, the customer never got the right of possession of the measuring equipment, since at any given point of time, the appellant could take re-possession of the equipment. So, the conclusion was that the appellants had provided the service and were liable to Service Tax. *2012-TIOL-407-CESTAT-AHM***.**
Appellant manufacturing Aluminium structures used for providing Construction Service:	The applicant availed Cenvat credit in respect of the inputs used in the manufacture of aluminium structures which were cleared on payment of appropriate duty. These structures were further used for providing 'Construction Service' and on this service the applicant paid Service Tax by claiming the benefit of notification 1/2006-ST. Revenue contended that the applicant was not entitled to avail Cenvat Credit on the inputs used in the manufacture of 'Aluminium Structures' and imposed a penalty. The Tribunal held that as the applicant was clearing aluminium structures on payment of appropriate duty and availing the benefit of credit in respect of inputs used, and thereafter the applicant was not availing credit of the duty-paid structures when the same were used for providing construction service, so the case was strongly in favour of the applicant. Therefore, the amount already deposited is sufficient for hearing of the appeal. *2012-TIOL-401-CESTAT-MUM*.
Payment made to SWIFT for transfer of funds to member Banks is liable to tax on reverse charge basis:	The issue before the CESTAT was 'whether the payment made by the applicant (Union Bank of India) to Society for Worldwide Inter-bank Financial Telecommunication (SWIFT) for transfer of funds to member Banks was liable to service tax or not'. The applicant submitted that service provided by SWIFT is specifically covered under the telecommunication service and so not liable to pay service tax under the 'banking and other financial services' category.

	The Tribunal held that considering the provisions of Section 65(12) of the Finance Act, 1994, the activity undertaken by the applicant was covered under the 'banking and other financial services'. Therefore, the applicant had failed to make out a case for waiver of pre-deposit of the service tax. *2012-TIOL-385-CESTAT-MUM.*
Using brand name of motorcycle company on Oil Company's products:	The appellant M/s. Hero Honda Motors Ltd. entered into an agreement with M/s. Bharat Petroleum Corpn . Ltd., M/s. TIDE Water Oil Co. Ltd. and M/s. Savita Chemicals Ltd., permitting them to use the brand name of 'Hero Honda' on the containers of the products manufactured by them, for the purposes of marketing and promoting their said products. The appellant was receiving royalty as per terms and conditions of the said agreement. Revenue contended that the appellant had rendered taxable services falling under the category of "Intellectual Property Services" and so service tax was payable. Upon appellant's appeal, the Tribunal observed: Appellant has conferred upon the three parties, the right to use its trade mark for the purpose of marketing and promoting their products. It has reserved its rights to grant use of said trade mark to any other person. Similarly, other parties are also permitted to sell their products under the trade mark by any other person. The appellants are getting royalty for use of the said trade mark by the oil companies. Hence the transaction is covered under the definition of intellectual property right and intellectual property services as appearing in the Finance Act and service tax is payable. *2012-TIOL-379-CESTAT-DEL***.**

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