Tax News

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INCOME TAX

Reminder for Feb-2014

Action Due	Due Date
TDS/TCS for Jan 2014	07-02-14
PF for Jan 2014	15-02-14
ESI for Jan 2014	21-02-14

SERVICE TAX

Action Due	Due Date
Service Tax for the month of Jan 2014 in case of company	05-02-2014
Service Tax for the month of Jan 2014 in case of a company for which e-payment is mandatory	06-02-2014

INCOME TAX

▪ Important Circulars / Notifications

➢ **Explanatory Notes to the Finance Act, 2013:** The Finance Act, 2013 as passed by the Parliament, received the assent of the President on 10-May-2013 and has been enacted as Act No. 17 of 2013. This circular explains the substance of the provisions of the Act relating to direct taxes. Two key amendments that would come into effect from April 1, 2014 are:

- Section 36 of the Income-tax Act has been amended to provide that an amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head ―Profits and gains of business or profession.
- Sub-section (5) of Section 43 of the Income-tax Act has also been amended to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognized association shall not be deemed to be speculative transaction. The eligible transaction shall include only those transactions in commodity derivatives which are subject to CTT.

Several other amendments have also been introduced to the Income Tax Act, the details of which are given in this *CBDT Circular No. 03/2014 dated 24-Jan-2014.*

➢ **Collection and Recovery of TDS – clarification:** The Board had issued a Circular No.4/2008 dated 28-04-2008 wherein it was clarified that tax is to be deducted at source under section 194-I of the Income-tax Act, 1961 on the amount of rent paid/payable without including the service tax component. Representations/letters has been received seeking clarification whether such principle can be extended to other provisions of the Act also.The matter has been examined afresh.The Board has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component. *Circular No. 1/2014 Dated 13-1-2014.*

➢ **Clarification issued regarding Sec 40(a)(ia) of the IT Act:** There was some lack of clarity regarding the amount not deductible in computing income chargeable under head 'profits and gains of business or profession'. 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". *CIRCULAR NO.10/DV/2013 dated 16-12-2013.*

▪ SC/HC Judgments

➢ **Section 54F benefits:** The assessee, a medical practitioner, had filed his returns of income for the AY 2008-09, claiming exemption u/s 54F. The AO maintained that the property purchased by the assessee was not fit for living, and so it was not a residential property. On appeal, the CIT(A) dismissed the petition. On further appeal, the Tribunal held that the sale deed under which the assessee purchased the property clearly described that the assessee purchased a site together with roofed house, cement floor, jungle wood doors and windows. The Registration form also referred to property as a house, with cement floor and all civic amenities. A receipt showing the payment of property tax for the year 2006-07 and 2007-08 showed that the tax was paid for a site and a house and therefore, it was of the view that, what the assessee purchased was a residential site with house. However, the Assessing Authority, three years after the purchase of the house, inspected and determined that there was no house, Therefore, the Tribunal was of the view that the material on record showed that the assessee purchased a house.

Before the HC, the Revenue's counsel contended that the photographs produced by the assessee himself showed that the construction put up therein was not fit for residence which had no facilities like electricity, water and toilet. There was only a watchman shed where building material of the neighbour was collected. It had no windows, no doors and therefore, it was not a residential property. The HC held that:

- On the day the property was purchased, a residential structure measuring about 200 sq.ft. was in existence. The photograph which was produced by the assessee demonstrates the said fact.
- As per the Act, after selling the property, if the assessee invests the sale consideration in purchase of a residential property, he is entitled to exemption under Section 54F. What should be the extent of construction of residential building, what facilities should be provided in such constructions to be eligible for the exemption, is not set out in the Act.
- All that the Authorities have to look into is, whether what was purchased was a residential construction or not? If the material on record shows, prior to sale, the vendor lived there with his family and he has sold the site along with the residential construction, merely because the property is not suitable to the assessee and construction materials are kept there, is not a ground to deny exemption under Section 54F of the Act. *2014-TIOL-02-HC-KAR-IT.*

- **Expenditure on improvement of Software:** The assessee was in the business of software development and software product sales and services. The assessee had acquired an intellectual property, which was capitalized in the books. The assessee spent additional amount in further developing and improving the same product. The development expenditure mainly included salary cost of the employees and other general administrative expenses incurred in connection with development of the product called 'Talisma'. Deduction was claimed on the product development cost as revenue expenditure. The AO rejected the case of the assessee that it constituted revenue expenditure and levied taxes on the ground that it was a capital asset, disallowing the expenses incurred, but allowing the depreciation. On appeal before the CIT(A), the assessee contended that even if it was held as a capital asset, it was in the nature of a scientific research and therefore, the entire amount spent was deductable u/s 35(1)(iv). The CIT(A) accepted the contentions of the assessee, which was also confirmed by the Tribunal. Upon appeal by the Revenue, the HC held:

  - Revenue's contention is that although the expenditure incurred was of capital nature on scientific research but it was not related to the business, and therefore, not deductible u/s 35(1)(iv) of the Act.
  - However, the expenditure has been incurred in developing the product "Talisma Enterprise 2.5", which is a multi-channel customer relationship management solution, which provides sales, marketing, services, human resources and finance through the medium of e-mail, chat, wireless, fax, phone, etc. to the end users. Therefore, the expenditure in respect of the scientific research, was in relation to the business carried on by the assesse, and is allowed to be deducted under Section 35(1)(iv) of the Act. *2013-TIOL-1122-HC-KAR -IT.*

- **Transfer of copyright for 99 years:** The assessee had a business of purchase and sale of Telugu films. In the return filed by the assesse, the AO made a disallowance of Rs.7.16 crore for non-deduction of TDS under Section 194J of the Act, by invoking Section 40(a)(ia). The AO contended that the purchase of film rights fell under the term "Royalty". The First Appellate Authority while reversing the finding of the AO held that the payments made by the assessee could not be termed as 'Royalty' as they were not covered by Explanation 2 to Section 9(1)(vi) of the Act, and the payment were covered by Section 28 of the Act as trading expenses and there was no scope for invoking Section 40(a)(ia) of the Act. On appeal, the Revenue argued before the Tribunal that as per the Agreement, there was no purchase or sale, but a mere assignment of certain rights and the assessee was obligated to deduct tax at source under Section 194J of the Act at the time of making payment and having failed to effect deduction of

tax at source, the assessee was liable for disallowance under Section 40(a)(ia)of the Act. The assessee contended that the so called assignment agreement involved purchase of the copyright itself and was not in any way transfer of all or any other rights but transfer of copyright itself, which was a specific product, comprising a bundle of right. Further the assessee contended that the rights acquired was for 99 years and in terms of Section 26 of the CopyRight Act, 1957 the copy right would be valid and subsisted only for a period of 60 years and consequently any payment made towards cost of acquisition cannot be termed as 'Royalty'. Therefore the assessee submitted that neither Section 40(a)(ia) nor Section 194J of the Act would have any applicability to the assessment. The Tribunal ruled in favour of the Revenue. On appeal, the HC held that:

- Even according to the Assessing Officer, the nature of business of the assessee is purchase and sale of satellite Television rights of the films and upon going through the agreement entered into between the assessee and the third parties, will leave no doubt that the assessee under the agreement acquired absolute rights including theatrical rights over the pictures, negative rights without any geographical area restrictions and the rights so transferred is for a perpetual period and therefore, it would amount to sale and the provisions of Section 194J of the Act nor any provisions of the Act governing the tax deduction at source is applicable.
- From a perusal of the said agreement, it is seen that M/s.Kakatiya films have assigned exclusive World Negative (picture and sound) Rights including theatrical and commercial rights of distribution, world satellite rights, and copy rights in favour of the assessee. Furthermore, such transfer was without restrictions to geographical area for a period of 99 years. The Censor Certificate and all other papers and documents were also handed over to the assessee for their exclusive possession and enjoyment. The assessee was entitled to assign their rights in part or full to other party at their sole and absolute discretion and the transferor was not entitled to claim for any revenue or consideration received by the assessee. In such a situation the nature of transaction, would undoubtedly fall within the scope of sale.
- The order of the Income Tax Appellate Tribunal shall stand set aside and the Tax Case(Appeal) is allowed. *2013-TIOL-1090-HC-MAD-IT.*

➢ **Telecom Licences - Limitations of Enduring Benefit test:** The assessee companies, ie., Bharti Cellular Ltd., Bharti Hexacom Ltd. and Bharti Airtel Ltd are engaged in business of telecommunication services and value added related services. They have procured licence in different circles. Originally the said licences were awarded under licence agreement executed in 1994 under the Indian Telegraph Act, for 10 years. The non-transferable licence was issued under a statutory mandate and was required to maintain and operate

cellular telephone services. Earlier the understanding was that there would be only two players who would operate in a circle. The payment, therefore, had element of warding off competition. Fixed annual licence fee was payable for first 3 years, and thereafter it was variable at the rate of Rs 5 lakh for every 100 subscribers, with a floor price fixed for 4th year, and 7th year onwards. Under 1999 policy, the licencee had to forego the right of operating in the regime of limited number of operators and agreed to multiparty regime competition where additional licences could be issued without limit. There was lock in period on the present shareholding for a period of 5 years. This had the effect of 'modifying' the 1994 agreement. Licence fee calculated as a percentage of gross revenue was payable w.e.f. 1st August, 1999. This was provisionally fixed at 15% of the gross revenue of the licencee but was subject to final decision of the Government after obtaining recommendation of the Telecom Regulatory Authority of India (TRAI). Failure to pay the licence fee on yearly basis would result in cancellation of licences. Therefore, to this extent licence fee was payable for operating and continuing operations as cellular telephone operator.

The issue raised was whether the variable licence fee paid by the assessee under Indian Telegraph Act, 1885, and Indian Wireless Fee Act 1933, payable under the New Telecom Policy 1999 or 1994 agreement, is revenue expenditure or capital expenditure which is required to be amortized under Section 35ABB of the Income Tax Act.

Revenue contended that the assessees who accepted and admitted that licence fee payable under the 1994 agreement was capital in nature, cannot dispute and deny the capital nature of the same payment under National Telecom Policy 1999. Even under the 1994 agreement for the 4th year, the assessee had to pay the fixed sum per 100 subscribers. The nature and character of the payment was same but amount was modified to 15% of the gross revenue under the National Telecom Policy 1999. Further, Revenue contended that mere payment of an amount in installments does not convert or change the capital payment to revenue in nature. It was submitted that the true nature of the payment has to be determined on the basis of the advantage or benefit procured which in the present case relates to initial set-up of business. It was strongly contended that the right to the licence had resulted in acquisition of right to operate, and thus, it was a capital payment.

The assessee contended that the licence fee payable under the National Telecom Policy 1999 was revenue in nature. It was submitted that the earnings were/are shared, and the licence fee depends upon the gross revenue and was/is payable yearly. The counsel submitted that licence by itself was not an asset or a right which could be sold, and also the licence granted was non-exclusive. The new operators were issued licences and were required to pay one time licence fee for

start of operations in addition to yearly turnover based licence fee. It was strongly contended that the onetime payment of licence fee was capital in nature and yearly payable licence fee was not capital in nature as it was essential and an annual necessity/obligation to continue to do business. It was a running expense. The counsel for further establishing his argument submitted that the annual variable expenditure did not create or add to a profit making apparatus. The High Court held that:

- Section 35ABB applies when expenditure of capital nature is incurred by an assessee for acquiring a right for operating telecommunication services. It is immaterial whether the expenditure is incurred before or after commencing the business to operate telecommunication services. But, the payment should be actually made. Thus Section 35ABB by itself does not help us in determining and deciding the question whether licence fee paid under the New Telecom Policy 1999 or under the 1994 agreement, is capital or revenue in nature.
- It is not necessary that for an expenditure to be 'capital', the payment should result in an enduring benefit, nor is it a firm rule that periodical payments do not show enduring benefit. The said test has its apparent limitation, if we apply the said test without equal importance to the questions; what was acquired and why payment was made? The real and core test is whether payment (whether once and for all or in installment) was for acquisition of capital asset or rights of enduring benefit. Lump-sum payment can represent revenue expenditure, if it is incurred for acquiring circulating capital though payment is made in one go and similarly payment made in installments can in fact be for acquiring a capital asset, price of which is paid for over a period of time.
- The expenditure incurred towards initial outlay of business would be in the nature of capital expenditure, however, if the expenditure is incurred while the business is 'on going', it would have to be ascertained if the expenditure is made for acquiring an asset or an advantage of an enduring benefit for the business, if that be so, it will be in the nature of capital expenditure. If the expenditure, on the other hand, is for running the business or working it with a view to produce profits it would be in the nature of revenue expenditure.
- The payment of licence fee was capital in part and revenue in part, and it would not be correct to hold that the whole fee was capital or revenue in entirety. The licence granted by the Government/ authority to the assessee would be a capital asset, yet at the same time, the assessee has to make payment on yearly basis on the gross revenue to continue, to be able to operate and run the business, it would also be revenue in nature. The licence fee paid or payable for the period upto 31st July, 1999 i.e. the date set out in the 1999 policy should be treated as capital and the balance amount payable on or after the said date should be treated as revenue.

- Capital expenditure will qualify for deduction as per Section 35ABB of the Act. *2013-TIOL-1085-HC-DEL-IT.*

➢ **Genuineness of charitable activities of Cricket association u/s 12AA:** The assessee is a Society registered under the Tamil Nadu Societies Registration Act. The objective of the assessee is to maintain a general control of the game of cricket in the State, to spread and develop the game throughout the State. The assessee is a member of Board of Control for Cricket in India (BCCI), which in turn is a member of ICC (International Cricket Council). BCCI allots matches with visiting foreign teams to various member cricket association which organise the matches in their stadium. The franchisees conduct matches in the Stadium belonging to the State Cricket Association. The assessee, being a State Cricket Association is entitled to all in-stadium sponsorship advertisement and beverage revenue and it incurs expenses for the conduct of the matches. BCCI earns revenue by way of sponsorship and media rights as well as franchisee revenue for IPL and it distributes 70% of the revenue to the member cricket association. Thus the assessee is also the recipient of the revenue. In 2011, a notice was issued by the Department that the statement of income and expenditure revealed that the assessee derived income from the following activities i.e., subscription; rent for hiring cricket ground, rooms and premises; fees for providing services to IPL; income from advertisement; subsidy from BCCI; sale of ticket for conducting of matches and restaurant and catering income etc. The DIT held that these receipts were in the nature of trade or commerce or business.

The assessee replied that the receipts were not in the nature of trade or commerce or business, since, its income was only the subsidy from BCCI, which was a voluntary grant from the parent body for promotion and development of the game of cricket in Tamil Nadu. It was also pointed out that the assessee was not running any canteen or restaurant, and as far as fee for providing services to IPL is concerned, the entire income from the sale of tickets belonged to the franchisee, and therefore, there was no service rendered or charges made by the assessee.

The assessee also submitted that only once the satisfaction was recorded as to the genuineness of the objects of the association under the provision contained in Section 12AA, the registration was granted. Further, the assessee pointed out that the genuineness of the objects of the trust, thus not being in question and the objects of the trust remaining the same as before and the activities also being in accordance with the objects of the trust, there was no case made out for cancelling the Registration. However, the contentions of the assessee were rejected and the registration of the assessee was cancelled.

Upon appeal, the Tribunal pointed out that the activities were genuine, however the matches conducted did not go to the extent

of "advancement of any other object of general public utility". The Tribunal also pointed out that the activities of conducting matches did not come within the conceptual framework of charity. On the crucial question of general public utility, the Tribunal held that the activities of the assessee are all commercial activities and not in the nature of activities for advancement of any object of general public utility. Upon appeal, the High Court held that:

- Even if the trust is a genuine one i.e., the objects are genuine, if the activities are not genuine and the same not being carried on in accordance with the objects of the trust, this will offer a good ground for cancellation of registration under sec 12AA.
- The question as to whether the particular income of trust is eligible for exemption under Section 12 of the Act is a matter of assessment.
- We do not think that by the volume of receipt one can draw the inference that the activity is commercial. The Income Tax Appellate Tribunal's view that it is an entertainment and hence offended Section 2(15) of the Act does not appear to be correct. The order of the Income Tax Appellate Tribunal is set aside. *2013-TIOL-1074-HC-MAD-IT.*

▪ Tribunal Judgments

➢ **Depreciation on transferred assets:** The assessee company was engaged in cogeneration of power and wind energy. It had claimed depreciation on the 37 wind mills (WEG) purchased during the month of March, 2006 from M/s IEL. However, the AO had disallowed the claim mainly for the reason that in the survey conducted in the business premises of the assessee on 28.3.2006, no bills/invoices relating to the purchase of windmills were found and no entry regarding the windmills was found in its books. On appeal, the ITAT held that:

➢

- The transaction of WEGs was put under the scanner by the AO mainly on the premise that the Accountant of the assessee stated that he was unaware of such transaction took place on 15th & 24th of March, 2006, and also the end users of the wind energy were unaware that such a transaction had taken place between IEL and assessee.
- The assessee had contended that the said transaction was finalized at the level of the MD of the assessee who had the powers to negotiate, finalise and enter into any transaction, and the MD of a company while negotiating/finalizing any transaction need not and not expected to take his Accountant into confidence for such transaction.
- Moreover, the contract of purchase of WEGs was between the assessee and IEL who knew the terms, conditions and obligations of such contract and, thus, as rightly pointed out by the assessee, the end-users were not required to be informed about such transaction. Even if IEL continued to act as owner of WEGs and received the power charges from the end users, and subsequently, transferred the same to the assessee etc., even then, the

transaction cannot be termed as fictitious as the assessee was the actual owner of the asset since the transaction of WEGs was between the assessee and IEL.

- Hence the sale did take place during March 2006 itself which has also been accounted for in its books of account for the year ended 31.3.2006. Assessee was right in claiming depreciation. *2013-TIOL-1097-ITAT-BANG*.

- **Deduction under head 'provision for fraud' in regular operations of the bank:** Assessee, a scheduled bank, claimed as a deduction under the head "Provision for Frauds" in the profit & loss account. Assessee submitted that in the regular operations of the bank, irregularities and embezzlements occur. Such losses had a direct connection to the business and therefore claim of the assessee for deduction on account of anticipated liability towards irregularities and embezzlement is business expenditure. Wherever a fraud or embezzlement occured, the vigilance department submitted a report and also suggested recovery action to the audit committee. Such cases of fraud were reported to RBI and provisions were made only after netting off the recoveries. FIRs were filed in respect of such frauds. The assessee thus submitted that the liability in question had crystallized during the previous year. AO accepted the fact that the assessee had a well-placed mechanism to identify frauds and initiate recovery action, however he was of the view that the amount which should be considered to have crystallized as liability of the assessee should be the amount shown as recoverable in the FIR or Vigilance Report whichever was lower.
  Assessee contended that the loss considered in the vigilance report having been crystallized in the previous year, has to be allowed as deduction for the relevant assessment year. The ITAT held that:

  - AO has gone by the figures as stated in the FIRs. The figures mentioned in the FIR are only a provisional figure. The vigilance report, on the other hand, is prepared after detailed study. Since the vigilance report is prepared after a deeper study, that figure should be considered as a loss to the assessee.
  - The loss in question has to be held to have crystallized during the previous year. Thus, the revenue's appeal is dismissed. *2013-TIOL-1056-ITAT-BANG*.

- **SLR investment made by bank:** AO disallowed depreciation on Held To Maturity investment on the ground that the claim was not routed through P&L account but a claim was made through a note and therefore was not allowable. Upon appeal, the ITAT held that investment made by the bank to comply with the SLR requirement would constitute their stock in trade and depreciation in value of the same is an allowable deduction. *2013-TIOL-1051-ITAT-HYD*.

SERVICE TAX

▪ Important Circular / Notification

➢ **Levy of service tax on services provided by a Resident Welfare Association (RWA) to its own members:** Service tax on 'club or association service' which covers Resident Welfare Association (RWA) was introduced with effect from 16.06.2005, vide section 65(105)(zzze) read with section 65(25a)[(25aa). Under the negative list approach, with effect from 1st July, 2012, notification No.25/2012-ST provided for exemption to service by a RWA to its own members by way of reimbursement of charges or share of contribution up to Rs. 5000 per month per member for sourcing of goods or services from a third person for the common use of its members. Certain doubts that existed, have been clarified in this Circular:
[Circular No.175 /01 /2014 – ST, dated 10-Jan-2014]

Sl. No.	Doubt	Clarification
1.	(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable? (ii) If the contribution of a member/s of a RWA exceeds five thousand rupees per month, how should the service tax liability be calculated?	Exemption at Sl. No. 28 (c) in notification No. 25/2012-ST is provided specifically with reference to service provided by an unincorporated body or a non–profit entity registered under any law for the time being in force such as RWAs, to its own members. However, a monetary ceiling has been prescribed for this exemption, calculated in the form of five thousand rupees per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members. If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members.
2.	(i) Is threshold exemption under notification No. 33/2012-ST available to RWA? (ii) Does 'aggregate value' for the pusrpose of threshold exemption, include the value of exempt service?	Threshold exemption available under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding ten lakh rupees in any financial year is exempted from service tax. As per the definition of

		'aggregate value' provided in Explanation B of the notification, aggregate value does not include the value of services which are exempt from service tax.
3.	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST ?	In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule. For illustration, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.
4.	Is CENVAT credit available to RWA for payment of service tax?	RWA may avail cenvat credit and use the same for payment of service tax, in accordance with the

▪ CESTAT Judgments

➢ **Claim of Abatement:** The applicant was engaged in construction of commercial and residential complexes. While executing such projects, applicant was receiving steel and cement from its customers. The applicant received consideration equal to the value of services undertaken by it. It claimed abatement under notification 15/04-ST and 1/06-ST and paid service tax on 33% of consideration received. Revenue was of the view that such abatement is available only if value of the entire materials used is included in the gross amount. The applicant submitted that material given by its customers cannot form part of the value of consideration received by it. The Tribunal held that when abatement is claimed, it should be from value inclusive of all the materials used for providing the service. *2014-TIOL-06-CESTAT-MAD.*

- **Promoting particular sport is not public service:** The appellant – M/s Vidarbha Cricket Association - was a member of the Board of Control for Cricket in India (BCCI). From the income proceeds of BCCI, the members were given reimbursement under various categories such as, TV Rights subsidy, Tournament receipts, IPL subsidy players' expenses reimbursements and subsidy for international matches. These amounts were given to promote the game of cricket and also to undertake construction of infrastructure for playing cricket within the jurisdiction of the members. Revenue took the view that the amounts received from BCCI by the appellant was for providing infrastructure support to BCCI for conducting tournaments and, therefore, the same was classifiable under the category of 'Business Support Services'.

  The applicant submitted that it was not providing any services to BCCI, rather it was affiliated to BCCI. From the BCCI's income it was given grant/subsidy for promoting cricket within the region and, therefore, the question of levy of Service tax would not arise at all. The 'majority view' of the Tribunal was:

  - Public utility services are generally taken to mean services relating to education, hospital, sanitation, cleaning etc. Promoting a particular game or sport is not a public service, though it may be in public interest. It cannot be considered as service to poor and needy and therefore cannot be considered as charitable in nature. In fact, it is used by the people who have social status and are financially well off. The appellant is thus liable to service tax on the services rendered to its members under the 'club or association service'.
  - The demand of service tax under the category of Business Support Services is unsustainable in law and the same is set aside. Consequently, there will be no interest and penal liability on account of this demand. *2013-TIOL-1915-CESTAT-MUM.*

- **Service received from Foreign Contractors:** The appellant was engaged in exploration and production of mineral oil and natural gas. For this, it received various services like seismic survey, data acquisition and processing, mud engineering service, erection/installation service etc. provided by the Foreign Service Contractors at various offshore locations. These services when provided/used/consumed in the off-shore locations beyond 12 nautical miles, i.e in the Continental Shelf (CS) and Exclusive Economic Zone of India (EEZ) were not taxable prior to 27/02/2010. As per notification issued on 27/2/2010 (No. 14/2010-ST), service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and

natural gas and supply thereof, became chargeable to service tax.

The appellant contested that services received in the CS and EEZ were liable to service tax only if such services were provided to duly constructed installations, structures and vessels located therein and not otherwise. The Revenue contended that all services provided in the CS and EEZ were taxable after 27/2/2010, as long as they were related to prospecting, extraction or production of mineral oil and natural gas hence the pre-construction services were liable to service tax on reverse charge mechanism. Upon appeal, the CESTAT held:

- The appellant had not provided any service to installations, structures and vessels or for supply of any goods connected with such activity to installations, structures and vessels within the CS and EEZ, and so it was not covered by the provisions of Notification issued on 27/2/2010.
- The orders of the lower authority were set aside and the appeals were allowed. *2013-TIOL-1900-CESTAT-MUM***.**

➢ **Renting of immovable property:** The appellants had entered into Franchisee Agreement with Café Coffee Day. The property belonging to appellants were given to M/s. Amalgamated Bean Coffee Trading Company Ltd. to run café, making and selling coffee and other eatables under the brand name of 'Cafe Coffee Day'. The Revenue raised the demand of service tax under the category of Business Auxiliary Service, as the Agreement indicated that they were involved in selling of the goods. The appellants submitted that though the agreement was titled as "Franchisee Agreement" but essentially they had rented out their property to M/s. ABCTCL for a consideration which was a fixed amount or percentage of turnover whichever was higher.

The appellants had taken permission from the Co-operative Housing Societies Ltd. and from the local bodies for running café by M/s. ABCTCL. Although certain paragraphs in the agreement gave an impression as if they had some role to play in day to day working of the "Café Coffee Day" outlets, the fact was that they had no role whatsoever to play. All the outlets were run by the staff of M/s. ABCTCL. Monthly expenditure on electricity and water was borne by M/s. ABCTCL. Hence, the activity could not be classified under business auxiliary service. Rather it was classifiable under 'Renting of immoveable property', for which tax was already being paid by the appellants. Upon appeal, the CESTAT bench held that:

- Even though the agreement is termed as "Franchise Agreement", it is essentially an agreement relating to letting out immoveable property for running outlet of "Café Coffee Day".
- Appellants have not done any activity relating to promoting or marketing or sale or goods produced or provided by, belonging to the client. They have not

provided any service of the type enumerated in the last clause of the definition of "Business Auxiliary Service." Hence the appellant's appeal was allowed. *2013-TIOL-1880-CESTAT-MUM.*

- **Survey & Exploration of mineral service:** The appellant was an American company registered in British Virgin Islands (tax haven) operating in the specialized area of mineral exploration and prospecting and had developed advanced technology for the purpose. The recipients of this service - ONGC and RIL - entered into agreements with the appellant for exploration and prospecting, for identification of oil and gas reserves in the sea bed within the territory authorised for exploration by India. The appellant used its advanced technology to provide data to the recipients. The data acquisition and a part of the processing of the acquired data occurred offshore. The Revenue contested that the final processing and delivery of the data was in Indian territory, so the service was taxable as "Survey and Exploration of mineral" service. The appellant contended that the dominant activity was of acquisition of data by using its Q-Marine technology, a process that occurred offshore and beyond the purview of the Act. Upon appeal, the CESTAT bench held:
  - As the transactions are covered under composite contracts, the transactions are integrated and since the eventual deliverables occurred within the Indian territory the entire transaction and the gross value received therefor is taxable.
  - The appellant was directed to make a pre-deposit with proportionate interest thereon for grant of stay in the matter. *2013-TIOL-1859-CESTAT-DEL***.**

- **Clearing & Forwarding Agent service:** The appellant was engaged in providing services to M/s. Ford India Ltd., in Chennai. Revenue raised a demand under 'clearing and forwarding agent' service. However, the appellant contested that its activities should rather be covered under the "Business Support Services". The appellant submitted that the warehouse, where the spare parts of motor vehicles being manufactured by Ford were kept and its activities were carried out, belonged to Ford. Also, Ford had provided computers with related software to carry out its day to day operations. Further, it was not arranging the transport for receiving or dispatching the goods and in view of this position, its activities could not be covered under the definition of "Clearing and Forwarding Agents" Services. Upon appeal, the CESTAT bench held:
  - The appellants were receiving goods from various sources, warehousing the goods, receiving orders and based upon the orders the goods were being packed for outbound transportation. Therefore, the activities carried

out by the appellant are covered within the definition of "Clearing and Forwarding Agent" service.

- The fact that the warehouse or the place of activity was owned or provided by Ford, did not make any difference in the nature of service.
- Regarding the demand being based upon the bills raised, and not upon actual receipts, the Bench observed that since the payments in respect of all the bills were received by the appellant albeit with a delay as admitted by it, the same would not make any difference in the liability except shifting the dates. *2013-TIOL-1852-CESTAT-MUM.*

➢ **Sodexho Vouchers are part of Business Auxilliary Services:** The assessee is in the business of issuing meal/gift coupon vouchers. The assessee has large number of affiliates. These affiliates are different business entities such as restaurants, eating places and other establishments who have agreed to accept the vouchers of the assessee as payment for goods or services provided by them. After providing goods or services to the user, these meal/gift vouchers are presented to the assessee by the affiliates who, after deducting certain amounts as service charge, make payment for the face value of the vouchers. The assessee approaches various customers who are generally in business, public and private organizations, and who wish to make benefits in kind available to the employees. The customers purchase the meal vouchers from the assessee. The assessee charges in addition to the face value of the meal vouchers certain amount as service charges as also delivery charges. The customers, in turn, distribute such meal vouchers to their employees as per the terms of the employment. The employees use such vouchers for purchase of food from one of the affiliates. These vouchers are not honoured by the business establishment in general but only by the affiliates of the assessee. One of the advantages of this system is that such meal vouchers are considered as fringe benefit for employees. The value of such vouchers is therefore, not taxable in the hands of user under the Income Tax law. For the customer it becomes expenditure and this helps in saving taxes. Similar to the meal vouchers, the assessee also issues gift vouchers which can be used for purchase in book shops, music shops and other departmental shops which are their affiliates. The issues considered by the CESTAT bench were:

- Whether Sodexho Meal Vouchers promote sale of goods/services - When a user/employee gets such meal vouchers from his employer (assessee's customer), the user has to look the list of affiliates and thereafter approach one of the affiliates of the assessee to buy goods and services. The user cannot approach any other entity or business establishment except the affiliates of the assessee. Such a scheme promotes the sale of goods and services of the affiliates and therefore meal vouchers of the assessee definitely helps in promoting sale of goods and services of assesses affiliates. The assessee,

therefore, are providing business auxiliary service to its affiliates.

- Whether Sodexho Meal vouchers are similar to credit/debit cards - Credit/debit card are nothing but substitute of carrying the cash by an individual. Thus, in case of credit/debit card, the user has wide option to go practically to any business establishment and buy any goods or service. In the case of assessee' voucher, user is constrained to go and buy goods/services from the assessee's affiliates. In case of credit/debit card, card holder pays to the bank, however, in case of voucher, it is not the user but the employer of the user who pays to the assessee. Further, it is common that certain percentage of vouchers purchased by customers and in turn given to user/employee are never used (due to expiry date etc.) but appellant still gets and retain value of such vouchers. In credit/debit card, card holder pays only for the goods & services purchased. Moreover, when a user presents such meal vouchers to an affiliate and if value of goods and services availed in less than the value of vouchers, he does not get refund and excess amount is retained by affiliates. No such thing happens in credit/debit card. In India, the above voucher system is used mainly to save tax. Therefore, meal voucher cannot be compared with credit/debit cards and cannot be called a payment system. So, it is held that services provided by the appellant are covered under BAS. The appeal filed by the assessee was dismissed. *2013-TIOL-1838-CESTAT-MUM.*

➢ **Interest on loan is not liable to service tax:** The applicant was a motor vehicle manufacturer. Revenue claimed that the applicant was also undertaking the activity of financing the motor vehicles manufactured by it, in the name of Tata Finance Ltd, which was a subsidiary of the applicant and subsequently merged with it. The Revenue agreed that the applicant was paying appropriate tax in respect of lease agreements, processing fee, pre-closure charges, termination charges etc, however Revenue's demand was in respect of the interest which was received on the loans. Since the applicant was also selling the debts to various banks, the Revenue wanted to tax the amounts for consideration of selling of debts under the banking and financial services. The applicant contended that the service tax on payment of loan was not liable to service tax earlier under Section 67 of the Finance Act and now under Rule 6(2) of the Service Tax Rules. In respect of selling of debts, the applicant contended that this could not be treated as banking and financial services hence the demand was not sustainable. Upon appeal, the CESTAT Bench observed:

- The applicants are financing the vehicles manufactured by them by way of loan. The interest on the loan is not liable to service tax as per the provisions of the Finance Act.
- In cases where the applicants were selling the debts to various banks, the applicants received consolidated amount in respect of the assignment of the loan and the

buyer of the debts will get the amount in due course as per the terms and conditions of the loan, under which it has been disbursed to the customers. In view of this, prima facie the applicants have a strong case on this issue also.*2013-TIOL-1818-CESTAT-MUM.*

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