# Tax News

**PKF SRIDHAR & SANTHANAM**
**Chartered Accountants**

**In this Issue......**

## INCOME TAX

***Reminder for Oct-2012***

| Action Due | Due Date |
|---|---|
| TDS/TCS for Sep 2012 | 07-10-12 |
| PF for Sep 2012 | 15-10-12 |
| ESI for Sep 2012 | 21-10-12 |
| Quarterly return of TDS | 15-10-12 |



## SERVICE TAX

| Action Due | Due Date |
|---|---|
| Service Tax for Sep 2012 in case of company | 05-10-2012 |
| Service Tax for Sep 2012 in case of a company for which e-payment is mandatory. | 06-10-2012 |
| Service tax for Quarter ending 30th Sept in case of assessee other than company that makes payment electronically. | 06-10-2012 |
| Service tax for Quarter ending 30th Sept in case of assessee other than company that does not makes payment electronically. | 05-10-2012 |
| Half Yearly Service Tax Return | 25-10-2012 |

# INCOME TAX

## Important Circular/ Notification

The Central Board of Direct Taxes has introduced 12th Amendment to the Income Tax Rules, 1962, which shall come into force from April 1, 2013. As per these rules, which are rule 21AB, inserted right after rule 21AA, detailed specifications have been given for obtaining the Certificate for claiming relief under an agreement referred to in section 90 and 90A. Details are in *CBDT Notification dated 17-Sep-2012.*

The Central Government has amended the notification of the Government of India in the Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, number S.O.709 (E), dated the 20th August, 1998, namely:-

In the said notification, in the Table, after serial number 31 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

| Sl. No. | Financial Year | Cost Inflation Index |
|---|---|---|
| (1) | (2) | (3) |
| “32 | 2012-13 | 852” |

*Notification No. 38/2012/F.No.142/2/2012-SO (TPL).*

The Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

- These rules may be called the Income-tax (13th Amendment) Rules,2012. They shall come into force on the date of their publication in the Official Gazette.
- In the Income-tax Rules, 1962, in rule 17C, after clause (vii), the following clause shall be inserted, namely: “(viii) investment in debt instruments issued by any infrastructure Finance Company registered with the Reserve Bank of India.”
  *Notification No. 40/2012/ F.No. 149/32/2012-SO(TPL).*

**Section 194LC**

The Finance Act, 2012 has introduced section 194LC in the Income Tax Act. This section provides for lower withholding tax at the rate of 5% on interest payments by Indian companies on borrowings made in foreign currency by such companies from a source outside India. There are principally two modes of borrowing (referred to as “monies borrowed” in the said section) which are covered, subject to approval of the Central Government:

a. Monies borrowed under a loan agreement,
b. Long term Infrastructure Bonds

It is further provided that the rate of interest on such borrowings, for the purpose of eligibility under the section 194LC, shall be as approved by the Central Government at the lower rate of withholding tax is for monies borrowed or bonds issued during the period from 1.7.2012 to 30.6.2015. Therefore, the approval of the Central Government is required in respect of both the loan agreement or bond issue and the rate of interest to be paid on such borrowings. Considering the fact that there would be a large number of cases of overseas borrowings or bond issues to be undertaken by Indian companies, providing a mechanism involving approval in each and every specific case would entail avoidable compliance burden on the borrower/issuer of bond. In order to mitigate the compliance burden and hardship, the Central Board of Direct Taxes [with the approval of Central Government] has conveyed the approval of Central Government for the purposes of section 194LC in respect of the loan agreements and issue of long term infrastructure term bond by Indian companies which satisfy certain conditions. The detailed conditions are given in the Circular CBDT *Circular No. 07/2012 F.No. 142/17/2012-SO(TPL).*

## SC / HC Judgments

### Payment made by account payee cheques

For AY94-95, the appellant had debited a sum towards advertisement and sale in its P&L account, which was nearly 5 times the amount so debited in AY93-94. In the scrutiny of the Return, the assessee was called upon to furnish necessary details of expenditure as to how such steep rise had occurred on advertisement and sale promotion in that year.

The assessee provided the details of advertisement, sales promotion and sampling and display expenditure, but did not cooperate in the further enquiries made by the Department for verification of those details. The AO disallowed the various deductions claimed by the assessee. Before the CIT (Appeals), the assessee, claimed that the AO had violated the principles of natural justice inasmuch as copy of the Inspector's report was not supplied to it and the persons who had been interrogated were not called for cross-examination. The assessee also claimed that the major payments were made by account payee cheques and hence the deduction of such expenditure ought not to have been disallowed. The CIT(A) set aside the disallowance of expenditure. Upon appeal by the Department, the third member of the Tribunal upheld the disallowance of expenses by the AO, on the ground that the assessee was given adequate opportunity to rebut the materials collected against him and that it was the assessee who failed to discharge his initial onus to establish such claims for deduction. On appeal by the assessee, the High Court held that:

- From the correspondence between the assessee and the AO, it is established that the principles of natural justice have been substantially complied with in the instant case.
- When the identity of the entities through whom such expenses were made were doubtful and the assessee had failed to dispel such doubt by discharging its initial onus, mere fact that payments were made through

account payee cheques would not be the sole criteria to accept the genuineness of such transaction.

- Furthermore, the issue as to whether such expenses were necessary or not in terms of the commercial expediency u/s 37 (1) of the Act would arise only after the assessee had discharged its initial onus to prima facie establish such claim for deduction, which has not been done in this case. The disallowance was therefore upheld*. 2012-TIOL-726-HC-KOL-IT.*

### Issuance of TDS Certificate u/s 197(1)

The assessee was a Private Limited Company engaged in providing business support services to domestic customers through its BPO units in India. Due to market conditions, it made significant losses and it estimated that the taxable income for the upcoming assessment years would be NIL. Revenue contended that even though the assessee had incurred losses in the past, yet the estimated tax liability did not justify the issuance of certificate u/s 197 read with Rule 28AA and the assessee had not availed the statutory remedy of revision u/s 264. The assessee submitted that u/s 197 read with Rule 28AA, the revenue department can decline issuance of Tax Deduction Certificate in case the AO was not satisfied that the recipient had justified the deduction of income tax at any lower rates or NIL rates. Any other consideration was legally not permissible. The High Court held that:

- As per sec 197, the tax is deductible at source at the prescribed rate, and if the recipient justifies the deduction of tax at any lower rate or no deduction of tax, to the satisfaction of the AO, the AO shall issue the requisite certificate. The effect of issuance of such certificate would be that the person responsible for paying the income shall or shall not deduct tax in terms of the certificate so issued.
- Issue of certificate under sec 197(1) is mandatory on fulfilment of conditions enumerated under the rules. The AO is not justified to plead that though the assessee fulfills the requisite conditions stipulated under Rule 28AA, but shall not grant the certificate in exercise of his discretion.
- Thus, the order for declining issuance of certificate in terms of section 197 read with Rule 28AA cannot be legally sustained. *2012-TIOL-707-HC-P&H-IT.*

### Interest Payments and Receipts

The assessee had received interest from DHIL, a wholly own subsidiary of the Assessee and had credited the same to its profits and and loss account. The Assessee was also paying interest to DHIL in respect of an entirely different contract. The AO held that exemption u/s 10 (23G) can be allowed only on the net interest received. The CIT (A) held that subject to necessary approval from the Central Government, the deduction u/s 10(23G) ought to be allowed without adjusting interest paid by the assessee. The Tribunal upheld the order.

Moreover, the assessee incurred expenses towards the depository services and charges for dematerialisation of share certificates. The AO held that the expenses had been incurred by the Assessee for keeping its capital assets in a dematerialised form instead of in physical form and that therefore, the expenses incurred are capital in nature and cannot be allowed as a deduction. The CIT (A) held that the depositary and dematerialisation charges are allowable as normal business expenditure. The Tribunal upheld the order. On appeal having heard the parties, the HC held that:

- Section10 (23G) does not require or permit the netting of payments under two independent contracts albeit between the same parties.
- Every expenditure in respect of a capital asset is not necessarily capital in nature. The expenditure would either be business expenditure or expenditure to earn dividend. Either way the respondent would be entitled to a deduction.
- Dematerialisation of shares did not result in either a quantitative or qualitative enhancement in the respondent's assets. It resulted in the respondent's complying with the SEBI regulations. It did not affect the value of the shares to any extent whatsoever. Even assuming that the said expenditure was incurred to earn dividend, the respondent would in any event be entitled to claim a deduction u/s 57. *2012-TIOL-702-HC-MUM-IT*.

**Royalty payment construed as revenue expenditure:**

The assessee, an Indian company, was a joint venture (JV) between Modi Mundipharma Pvt. Ltd. (MMPL) and Revlon Mauritius Ltd. (RML) for manufacturing and marketing Revlon products in India and neighboring countries on an exclusive basis. The assessee entered into a technical know-how agreement with RML for supply of technical know-how to manufacture the goods. Under the said agreement, in consideration for the supply of know-how, the assessee had to pay, every year, royalty (net of taxes) at the rate of 5 %, on domestic sales and 8 %, on export sales. During the year, the assessee paid certain sum as royalty to RML in pursuance of the grant of right to use the technical know-how. The assessing officer disallowed this royalty expenditure stating that the amount paid to the licensor was not expenditure wholly and exclusively incurred for the business of the assessee and that it was incurred partly for the business of the sister concerns of the assessee, i.e., its contract manufacturer M/s. Kamakhya Cosmetics and Pharmaceuticals Pvt. Ltd., and its distributor M/s. Win Medicare Ltd. It was held that deduction of royalty could be allowed in the hands of the assessee on the basis of the proportion of its sales to the total sales on which royalty was calculated and payable to the licensor. The assessing officer treated part of royalty payment as capital in nature, and disallowed 25%, of such royalty payment. The AO's objection while capitalizing 25 per cent, of the royalty paid was on account of his opinion that the know-how agreement was open ended in terms of duration and that the assessee had exclusive right to use the know-how and patents and the new products developed by the licensor. The Appellate Commissioner, on appeal by the assessee held that capitalization of 25% was unjustified; the amount was reduced to 5%. The ITAT allowed the assessee's appeal, on this aspect, and dismissed that of the revenue.

Assessee had claimed publicity expenses during the year, for promotion of the "Revlon" brand. The AO disallowed a part of it holding that such proportionate amount could not be attributable to the assessee's business. This was confirmed by the CIT (A). The ITAT observed that the agreement entered into by the assessee with MMPL obliged the latter only to bear the cost of advertising and other expenses relatable to the customer sector and that the expense for brand promotion was that of the assessee exclusively. The agreement with MMPL did not in any manner prevent the assessee from undertaking that expenditure, since it was a purely commercial decision, entitled to promote the brand. The ITAT went by the previous years' practice, where such expenditure had been allowed by the AO.

The assessee paid consultancy charges to MMPL under the agreement. This payment was for the latter's advice concerning day-to-day conduct of management of the assessee-company. The assessing officer contended that consultancy charges were nothing but an arrangement to siphon off part of the assessee's profits to its sister concern and JVs. The assessing officer allowed Rs. 30 lakhs as directors' remuneration and disallowed Rs. 58.98 lakhs under Section 40A(2), holding it as unreasonable and excessive. The Commissioner (Appeals) deleted this disallowance holding that the assessing officer wrongly concluded that no services had been rendered by MMPL. The Commissioner (Appeals) held that rendering of services by MMPL was proved from the records, and no disallowance was warranted under Section 40A (2). The revenue's appeal to the ITAT on this score was rejected.

On appeal to the High Court, the HC observed that:

- The fact that the assessee chose to manufacture through a contractor, i.e. its sister concern, does not undermine its status as a licensee, responsible to pay the royalty. That the assessee was the exclusive licensee of the brand, in the territories, is not a relevant factor. The revenue's arguments about the royalty amount being really in the nature of capital expenditure, is meritless. The Tribunal's findings on this point are therefore, upheld.
- The AO was conscious of the fact that brand promotion expenses are a necessary ingredient in marketing strategies. Therefore, he allowed about 50% of those expenses. However, the reasoning for disallowance of the rest, i.e. that the assessee could claim only a proportion of such expenses, since advertising expenses were to be borne by the sister concern dealer, and that the proportion was in respect of its territory, was not justified.
- The annual cap of Rs. 30 lakh payable to managerial personnel applied to public limited companies, and not those such as the assessee. This aspect was noticed by the CIT (A) who set aside the disallowance. The Tribunal upheld that finding, which was justified. *2012-TIOL-695-HC-DEL-IT*.

**Selling of loss-making shares:**

Assessee was a company registered under the Companies Act. It had sold certain shares of Rustom Spinners Ltd and had shown a long term capital gain. It had also sold certain equity shares of Rustom Mills and Industries Ltd. and had claimed long term capital loss. The AO noted that the shares of Rustom Mills and Industries Ltd., which the assessee sold were pledged with the IDBI Bank. The original share certificates were also lying with the said Bank. The assessee had also handed over duly executed transfer forms to IDBI. The AO, therefore, called upon the assessee to clarify how under such circumstances the assessee could sell the shares. The AO further noted that the purchaser company, viz. Bijal Investment Ltd and the assessee company, viz. Biraj Investment Pvt. Ltd. were part of the same group of companies. The AO also noted that directors of both these companies were common. These companies, i.e. the assessee company and the purchaser company were therefore aware of the bad financial condition of Rustom Mills and Industries Ltd. The purchaser company was also aware that shares were pledged with IDBI and therefore delivery of shares was not possible. On the basis of these factors, the AO asked the assessee to justify the claim of long term capital loss on sale of such shares. In response, the assessee contended that law did not require that the transfer of share could happen only upon delivery of shares. The shares form a capital asset and for the purpose of computing the capital gain and loss, what was to be seen was the transfer as defined in section 2(47) which included extinction of any rights in the capital asset.

However, the AO was not convinced by such explanation. He was of the opinion that transfer of shares would be complete only when the share certificates along with duly executed transfer forms were delivered. He was of the opinion that full transaction was intended for creating loss to the assessee so that its capital gains resulting from sale of shares of Rustom Spinners can be set off. CIT(A) confirmed the findings of the AO, that the the entire transaction was a colourable device. The assessee appealed before the Tribunal where it was held that merely because the physical possession of the shares was with IDBI, it would not automatically follow that the person who was entitled to legal possession, that was, the assessee would be deprived of his right to deal with such goods until he secured the cooperation of the third party. The Tribunal was of the opinion that the assessee had the right to transfer the shares because legal title vested in the assessee. Aggrieved, the Revenue filed this appeal before the High Court. The High Court held that:

- We are not concerned with internal disputes between the IDBI Bank and the assessee that may arise due to such transfer of shares. In our opinion, the assessee did transfer whatever rights it had in the shares to the purchaser company. If such transfer is not recognized by the IDBI and there are other legal implications of breach of undertaking given to IDBI, such issue would have to be thrashed out between the concerned parties. Insofar as income tax proceedings are concerned, we are of the opinion that by virtue of section 2(47) of the Act, the assessee was entitled to claim that upon transfer of shares or interest thereon, it had suffered long term capital loss which it was entitled to set off against the capital gain on sale of shares during the same previous year.
- We are not inclined to accept the Revenue's contention that this was a colourable device and that the entire arrangement was a paper arrangement. Firstly, there is no provision in the Act which would prevent the assessee from selling loss making shares. Simply because such shares were sold during the previous

year when the assessee had also sold some shares at profit by itself would not mean that this is a case of colourable device or that there is a case of tax avoidance.

- Further, there is no restriction that such sale or transaction cannot be effected with a group company. As long as the Revenue could not doubt the sale price of the shares, it would not be open for the Revenue to contend that the assessee had shown loss which it did not really suffer. Thusthe decision goes in favour of the assessee and against the Revenue. *2012-TIOL-690-HC-AHM-IT*.

## ITAT Judgments

**Tax treatment of Gift of IMD certificates:**

Assessee received gift in the form of IMD of value USD 1,50,000 from an NRI, residing at Sharjah in FY2006 and the assessee prematurely encashed the said IMD and received the maturity amount. The AO stated that the assessee utilized the unaccounted income of Group Company to obtain a non-genuine gift. The AO also contended that gift of IMDs was equivalent to gift of money and thus invoked the provisions of section 56(2)(v) and made an addition to the total income of the assessee.

On appeal before the CIT(A), it was contended that assessee had received gift of IMDs and that the provisions of section 56(2)(v) were not applicable to gift received in kind. Assessee contended that complete details of the gifts were furnished before the AO to establish the genuineness of gift and creditworthiness of the donor. Moreover, section 56(2)(v) applied only in a case where any money was given without consideration, while, IMDs due to their nature and the terms and conditions attached, though convertible into money, were not money. The assessee argued that IMDs at best could be treated at par with any other property which can be converted into money but by itself they cannot be treated as money and that they were not freely exchangeable as money.

The assessee also submitted that the amendment made by Finance Act, 2009 whereby gifts in kind were also brought within the purview of section 56(2) was introduced prospectively w.e.f. 01.10.2009 and therefore, the same could not be applied to the assessee. Also, similar issues on identical facts had been considered by the Tribunal in the case of *ACIT vs. Haresh N Mehta* for the AY 2006-07 in favour of the assessee, wherein CIT(A) had deleted the addition made by the AO. The Tribunal held that:

- This case was similar to the case of ACIT vs. Anuj Agarwal, and HareshN Mehta, wherein it was held that since the gift deed was already completed prior to the date by delivery of IMD bonds by the donor to the donee, the fact that maturity proceeds were received by the assessee during the Previous Year could not be the basis to apply provisions of s. 56(2)(v).
- Also, prior to the amendment effective Oct 1, 2009, gifts in kind were outside the purview of s. 56(2)(v) or (vi), and so IMD certificates which are in the nature of 'kind' and not 'money' were not covered by this section.

- The Department's appeal was rejected. *2012-TIOL-528-ITAT-MUM.*

**Deduction u/s 10A:**

The issue was whether for the purpose of computing deduction u/s 10A, loss of an Industrial unit can be set off against profit of another unit.

The assessee had computed the profit / loss in respect of each unit separately in the Return filed, and had ignored the loss making units for the purpose of computing deduction u/s 10A. It was accepted by the AO in his original assessment order. Later on, AO discovered that the loss of loss-making units was not set off with that of profits of the profit-making units and also deduction in respect of interest had been wrongly allowed for the purpose of calculating deduction u/s 10A. Hence, the AO re-opened the assessment

The assessee objected to the notice issued by the AO and submitted that the original assessment had already been completed u/s.143(3) more than 4 years ago, and so under sec 147, the assessment could not be reopened, because the assessee had disclosed all the material facts at the time of original assessment itself. Also, the deduction u/s.10A was allowable in respect of each unit set up in the free trade zone treating the same as an undertaking. Therefore, treating all the units as one unit for the purpose of deduction u/s.10A was not correct. It was also pointed out that the section 10A referred to only profit derived from the business undertaking and not the losses and there were no provisions of set off of losses against profits of other undertakings. As regards the interest income, it was submitted that the interest income had been received during the normal course of business and assessee had considered net interest income in the P & L A/c.

On appeal, the CIT(A) observed that the deduction u/s.10A(4) had to be computed in the ratio of export turnover to the total turnover of the business, and therefore, the business of all the units had to be taken as part of the same business and so approach adopted by the A.O. was correct. It was also observed that there was no disclosure of the income on the part of the assessee and merely because the AO committed a mistake in applying the provisions of law in the original assessment, it would not be correct to say that he will not be empowered to reopen the assessment. The assessee filed an appeal before ITAT. The Tribunal held that:

- The assessee has maintained separate accounts in respect of each unit and profit and loss has been computed separately. Profit from each unit is eligible for deduction u/s.10A independently. The same issue had also been considered by the Tribunal in the case of M/s. Scientific Atlanta India Technology Pvt. Ltd. in which it was held that the deduction u/s.10A was not an exemption and, therefore, the losses from non eligible units cannot be set off against the profit of the undertaking eligible for deduction u/s.10A.
- Deduction under sec 10A(1) is allowed only in respect of profits derived by an undertaking from the export of articles or things or computer software. In the present case, the deduction has been claimed in respect of

other income which includes dividend income, income from investment, profit from sale of assets, interest from ICD, bank deposits, interest on advance for business or to employees and other receipts. Since the immediate source of such income is not the export of articles or things or computer software, therefore they will not be eligible for deduction u/s.10A. *2012-TIOL-496-ITAT-MUM.*

# SERVICE TAX

## Important Notification

**Form ST-3**

The Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:

- These rules may be called the Service Tax(Fourth Amendment) Rules, 2012. They shall come into force on the date of their publication in the Official Gazette.
- In the Service Tax Rules,1994, in rule 7, in sub-rule(2), the following proviso shall be inserted, namely:-

"Provided that the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only." *Notification No 47/2012-dated 28-Sep-2012.*

## CESTAT JUDGMENT

**Service provided by visa facilitator**

The appellant was engaged in the activity of visa facilitation and providing customer-care services to the Diplomatic Mission Embassies/Consulates and the Visa applicants. It provided facility to the visa applicants for filling of application form for visa and submitting the same with the respective Consulates. It also provided lounge services to the persons who had applied for visa and charges for food items supplied to the visa seekers. The department took the view that the activity undertaken fell under the category of "Business Auxiliary service" and the appellant was liable to pay service tax. The Bench observed:

- Visa facilitators, merely facilitate the procurement of visa and directly assist individuals who intend to travel abroad, to complete the immigration formalities. Visa facilitators collect certain statutory charges like visa fee, certification fee, attestation fee, emigration fee, etc. from the visa applicant, which are remitted to the respective authorities, and in addition collect service charges for themselves as remuneration for the assistance provided by them to obtain the visa.

- Such a service provided by a visa facilitator, does not fall under any of the taxable services under section 65(105) of the Finance Act, 1994. Hence service tax is not attracted. *2012-TIOL-1284-CESTAT-MUM.*

**Construction service is input service for renting of immovable property**

The question was whether CENVAT Credit on construction can be allowed for payment of service tax on renting of immovable property service. The Tribunal held that:

- Credit of duty paid on inputs is available when the inputs are used for providing an 'output service'. In a previous case, the High Court took the view that without use of cement and TMT bars for construction of warehouse, assessee could not have provided 'storage and warehousing service (2011-TIOL-863-HC-AP-CX).
- Similarly, in this case, without utilizing the service, mall could not have been constructed and therefore the renting of immovable property would not have been possible. Thus construction service is an input service for the service of renting an immovable property. *2012-TIOL-1245-CESTAT-AHM.*

**Fees and royalty related to Horse Racing**

The appellant – Turf Club - was engaged in the activity of conducting horse races. During the horse race, licensed book makers (bookies in short) accepted bets from public in the premises of Turf Club and these bookies were provided stalls and other infrastructural facilities within the premises. The Turf Club charged fees from the bookies in two components, one was a fixed amount under the Head "Stall fees" and the other was variable amount under the Head "Commission" which was a percentage of the betting amounts collected. The Club conducted live telecast of races which could be viewed from other racing clubs in India located in various cities. For such broadcasting, the Turf Club received royalty income from other racing clubs which was either on fixed percentage of betting placed at the respective clubs or a fixed lump sum amount. The Turf Club also received royalty from caterers who had been permitted to use the infrastructural facilities and to operate within the premises of the Club.

The Department issued a show-cause notice demanding service tax under two categories – the royalty/commission received from the clubs was categorized as 'Broadcasting Services' and royalty/commission received from bookies and caterers were categorized as 'Business Support Services'. The Commissioner of Central Excise, upheld the demand of service tax under the category of 'Mandap Keepers Services', 'Broadcasting Services' and 'Business Support Services'.

Another show-cause notice was issued demanding service tax categorizing the variable income received from other race clubs, and bookies as 'Intellectual Property Rights Services' and categorizing the fixed income received from the race clubs and bookies under the category of 'Broadcasting Services'. As regards the royalty amount from the caterers the same was treated under the category of 'Business Support Services'. The Commissioner confirmed the demand classifying the services under 'Broadcasting Services', 'Intellectual Property Right Services' and 'Business Support Services'.

The Bench after considering the submissions held that:

- There is a total confusion in the minds of the adjudicating authorities as to the nature of the tax and the measure of the tax.
- Further where the demand for service tax has been made under the category of Intellectual Property Right Services, the show-cause notices do not give a clear proposal as to what is the intellectual property rights involved in the transactions.
- Under the Prasar Bharati Act, broadcasting means the dissemination of any form of communication through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations. The dissemination in this case has been undertaken by M/s Essel Shyam Communication who has discharged the service tax liability on the consideration received by them. The appellant himself is not involved in the broadcasting activity. The broadcast is available for viewing only in other race clubs and only members or bookies in the other race clubs can view the programme. It cannot be, therefore, said that the broadcast is available for public viewing.
- The appellant herein is involved in conducting the event of horse racing. The appellant has permitted other race clubs to commercially use or exploit this event. The appellant receives a royalty from these race clubs towards this right to commercial use or exploitation. Thus the activity undertaken by the appellant merits classification under the taxable category of services of permitting commercial use or exploitation of any event organized by a person or organization which was brought under the tax net with effect from 1-7-2010. It is only from this date, the service tax liability is attracted on this activity.
- As regards bookies and caterers, the activity of the appellant was to make available space within the premises of the turf club by way of stall or canteen, for a consideration. This activity is nothing but hiring/leasing of immovable property defined under clause (zzzz) of section 65 (105) of Finance Act, 1994. Therefore, there is no justification in the argument that the renting of office space to the caterer/book maker is liable to be classified as business support service. *2012-TIOL-1145-CESTAT-MUM.*

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