



ERNAKULAM BRANCH

SIRC OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEWSLETTER

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA PLATINUM JUBILEE ANNUAL FUNCTION



Chief Guest

Shri Rajiv Mehrishi

Hon'ble Comptroller and Auditor General of India



CA. P.T. Joy, Chairman Ernakulam Branch receiving the All India 2nd Best Branch Award for the year 2018 from Hon'ble Shri Rajiv Mehrishi, Comptroller & Auditor General of India in the presence of CA. Naveen N.D. Gupta, Hon'ble President of ICAI, CA. Prafulla P Chhajed, Hon'ble Vice President of ICAI and CA. Babu Abraham Kallivayalil, Central Council Member of ICAI.

L To R : CA. G. Sekar, CA. Renjith R Warriar, CA. Balagopal R, Shri Rakesh Sehgal Secretary, ICAI, CA. Sreenivasan.P.R, CA. Lukose Joseph and CA. Roy Varghese.

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CHAIRMAN'S MESSAGE



Dear Professional Colleagues,

The last 12 months in office as the Chairman of the branch has given me an opportunity to serve the profession, our members at large and the budding students. I have been elected to the managing Committee six years back. The two terms in the managing committee have been a learning experience for me in all respects. While preparing to lay down the office by the end of this month, I am deeply indebted to my colleagues in the branch managing committee and other members of our professional fraternity for bestowing on me this prestigious and challenging chairmanship of the Branch. I also thank each one of you for the support and guidance extended to me in discharging my duties as the Chairman.

It was well said by H. Jackson Brown Jr. that "Every person that you meet knows something you don't; learn from them". True to the saying, my interactions with the members and students in the last 12 months were all lessons of learning. Those interactions with the members widened the horizon of my understanding about the needs of members and interface with the students was very lively and delighted to note that they have embarked on the course with confidence to become future members of our profession. As this being the last interaction through this column, I would like to share my good wishes and greetings to you for a happy and successful professional career and growth.

During this year we were fortunate to have the presence of Hon'ble Mr. Justice Antony Dominic, Chief Justice of Kerala, Hon'ble Justice Dama Seshadri Naidu, Judge, High Court of Kerala, Hon'ble Past Presidents-CA. T.N. Manoharan, CA.G. Ramaswamy, CA.K. Raghu, Shri.V. Muraleedharan,MP, Adv.P.T. Thomas, MLA, Adv.V.D.Sathesesan,MLA, Shri Hibi Eden, MLA, Shri Pranab Kumar Das, Hon'be Principal Chief Commissioner of Income Tax, Shri Pullela Nageswara Rao, Hon'ble Chief Commissioner of Customs, Central Tax & Central Excise, CA. A. Sehar Ponaraj, Hon'ble Registrar of Companies, Kerala and Dr.T.Tiju, IRS, Hon'ble Additional Commissioner (Appeals), Central Tax and Central Excise, Kochi. I express my wholehearted thanks to them. I place on record my gratitude to the various committees of ICAI and their respective chairmen for the support extended to us. Let me mention special thanks to the Chairmen and members of other branches for their support. I wish to express my

appreciation and thanks to the contributors of articles in the branch newsletter, to members who helped us in giving feedback and comments to ICAI on exposure drafts etc and to the sponsors of various programmes held at the branch.

With all your support the branch has been awarded Second Prize in the large category at All India level for the year 2018. This award is received by us at New Delhi on 04th February, 2019 from hon'ble C&AG of India Shri. Rajiv Mehrishi at the Platinum Jubilee Annual Function of ICAI in the presence of hon'ble then President of ICAI CA. Navin N D Gupta and hon'ble then Vice President of ICAI CA. Prafulla P. Chhajed I thank all the members, students and stakeholders of the Ernakulam branch for their tireless efforts and whole-hearted commitment which made this achievement possible. Our Central Council Member CA.Babu Abraham Kallivayalil and Regional Council member and Vice Chairman of SIRC CA.Jomon K George gave us limitless support and guidance in all the activities of the Branch for which we express our heartfelt gratitude.

I also place on record my sincere gratitude to all the speakers of various seminars / conferences for sharing their knowledge with us and also the faculty members at the branch. The branch staff are always the unsung heroes behind the curtain. Their services are always praise worthy and I am thankful to them for giving me the fullest support. If the name of any stake holder or other persons are missed in this message, it is only unintentional and by inadvertence.

Brief of programmes held in January, 2019

During the month of January we have conducted CPE Programmes of 18 hours. The details are as below:

19-01-2019	One Day Seminar on "GST, AS & Companies Act"	6 hours
25-01-2019	CPE Workshop on GST	6 hours
30-01-2019	One day CPE Seminar on Companies Act	6 hours

In addition to the seminar we have conducted three study



circle meetings on “Incorporation procedure under Companies Act and Recent Amendments”, “Recent amendments in GST” and on “UDIN”. CA. Nithin. N, CA. Ravinath R Pai and CA. Chirag J Shah were the resource persons respectively.

CSR Activities

During the year 2018, immediately after the Kerala floods in the month of August, the branch managing committee was fully into flood relief activities for almost 1.5 months. We were able to mobilise a reasonable amount from many of our members and with this we procured relief materials at lowest possible price and personally supplied at more than 20 relief camps spread across various parts of Kerala. The miseries of our fellow citizens immediately after the floods were heart breaking and God has given us an opportunity to extend them the possible support. They will be remembering us in their prayers, which is the greatest reward for our gesture.

The branch, as a token of support and solidarity to the people in their hour of need, has given a livelihood assistance to a dairy farmer Mrs. Leela K.M. Kavalappara house Kottayilkovilakom Chennamangalam PO, paravur who has lost her house and cattle due to the Kerala Floods. In a function held at Chennamangalam, fertile milch cow was donated by ICAI Ernakulam Branch to Mrs. Leela in the presence of Adv. V.D. Satheesan, MLA, Paravur, Kerala. CA. Lukose Joseph, immediate past chairman and CA. Roy Varghese, Member, Managing committee of ICAI were present.

We have also distributed new cloths to the inmates of the orphanage named “Snehamandiram”-Psycho-Social Rehabilitation Centre, Padamugham, Idukki on 26th January, 2019 at the branch premises.

The elections to the managing committee of the branch for the term 2019-2022 was held on 02-02-2019 and counting was done on 03-02-2019. Seven of our fellow colleagues including three sitting committee members were elected. The new team of managing committee will continue to guide the affairs of the branch and I wish them all success and offer my unstinted support in all their endeavours. There will be no dearth for leadership in the new managing committee as all of these new MC members are with required qualities.

Today we have new president and Vice president for ICAI. Congratulations and Best wishes to our new President CA. Prafulla P Chhajer and Vice President CA. Atul Kumar Gupta.

We look forward to your continued patronage and participation in all our programmes and your encouragement is vital for the successful functioning of the branch. I take this opportunity to express my continued commitment to our profession and re-dedicate myself to the service of the ICAI.

With warm professional regards,

CA.P.T. Joy
Chairman

BRANCH ACTIVITIES – JANUARY 2019

FOR MEMBERS

CPE SEMINARS / MEETINGS / CONFERENCES / WORKSHOPS / LIVE WEBCAST

One day CPE Seminar on GST, AS & Companies Act was held at Hotel Renai Cochin, Palarivattiom on 19th January, 2019. CA. N.D. Gupta, Hon'ble Member of Parliament and Past President of ICAI. The topics on recent developments in GST and reporting requirements in financial statements – covering Accounting Standards and revised Audit Report format under Companies Act applicable for the year 2018-2019 was taken by Adv. V. Raghuraman, Bengaluru and CA. Gururaj Acharya K, Bengaluru respectively.

CPE Workshop on GST was organized by the branch on 25th January, 2019. CA. Rohin Koppuravuri, Assistant Director (Cost), Central Taxes and Central Excise, Audit Commissionerate, Kochi

inaugurated the workshop. The technical session on “impact of recent changes by December, 2018 and January, 2019 – Notification and Circulars (a) CGST & IGTS Amendment Act, 2018 (to be applicable from 1st February, 2019) (b) New return filing from 1st April, 2019 and “Concept of valuation and recent issues in GST” were taken by CA. Shankara Narayanan V, Chennai and CA. Rohin Koppuravuri, Assistant Director (Cost), Central Taxes and Central Excise, Audit Commissionerate, Kochi.

One day CPE Seminar on Companies Act was held at Hotel Park Central, Kaloor. The technical sessions on Companies Act – Provisions relating to Audit & Accounts, applicable for the year 2018-2019 and Companies Act (Amendments) ordinance 2019 and update on provisions relating to managerial remuneration and NFRA was handled by CA. S. Sundaresan, Bengaluru and CA. Baby Paul, Kochi.

STUDY CIRCLE MEETINGS



Three Study Circle meetings were conducted in our branch premises during the month of January 2019, details are as follows.

Date	Topic	Session chairman / speaker
02-01-2019	"Incorporation procedure under Companies Act and Recent Amendments"	CA. Nitin N
16-01-2019	"Recent amendments in GST"	CA. Ravinath R Pai
24-01-2019	"UDIN – A way to authenticate document"	CA. Chirag J Shah

CERTIFICATE COURSES

Education course on Valuation was organized by the ICAI Registered Valuers Organization at the branch commenced on 15th December, 2018 was completed on 6th January, 2019. There were 27 participants for the course.

ISA PT batch commenced on 9th December at ICAI Bhawan, Ernakulam with 45 participants was completed on 6th January, 2019.

Post graduate Diploma in International Taxation (through Virtual Learning) organized by the Committee on International Taxation of ICAI was commenced at the branch on 5th January, 2019. There are 11 participants for the course. The classes are for 20 weekends.

Certificate Course on Concurrent Audit of Banks organized by the Internal Audit Standards Board of ICAI commenced at the branch on 12th January, 2019. CA. George Korah M, Senior Member and Additional Independent Director, South Indian Bank Ltd., inaugurated the certificate course. There were 29 participants for the course.

INFRASTRUCTURE

Infrastructure meeting for purchase of land was organized at the branch on 15th January, 2019. CA. Babu Abraham Kallivayalil, Central Council Member of ICAI, CA. Jomon K George, Vice chairman, SIRC of ICAI, CA. Venugopal C Govind, Senior Member, CA. T.P. Tomy, Senior Member, CA. P.T. Joy, Chairman, CA. Jacob Kovoov N, Vice Chairman, CA. Sreenivasan P.R, Secretary, CA. Renjith R warrior, Treasurer, CA. Roy Varghese, Member, CA. Paulose Paul, Chairman SICASA were present. Token advance of Rs 10,001 was given to the land owner Mr. Shajan Joseph K.R.

On 23rd January, 2019 the 4 proposals (along with the copy of the documents and 4 Demand Drafts) for acquisition of land for the branch was handed over to the secretary, Infrastructure Development Committee of ICAI personally by the Chairman, Infrastructure Development Committee of the branch and Central Council Member of ICAI CA. Babu Abraham Kallivayalil in the presence of CA. Jose Pottokaran, CA. V.C. James, Past Central Council Members of ICAI and CA. P.T. Joy, Chairman, Ernakulam Branch.

On 28th January, 2019 additional land documents were submitted by email as well as by hardcopy to Infrastructure Development committee of ICAI.

CSR Activities

Ernakulam Branch of SIRC of ICAI, as a token of support and solidarity to the people in their hour of need, provided a liveli-

hood assistance to the dairy farmer Mrs. Leela K.M., Kavalappara house, Kottayilkovilakom, Chennamangalam P.O, Ernakulam who had lost her house and cattle due to the Kerala Floods. A Fertile milch cow was donated to Mrs. Leela on 24th January, 2019 in a function held at Chennamagalum, in the presence of Adv. V.D. Satheesan, MLA, Paravur, Kerala. CA. Lukose Joseph, Immediate past Chairman and CA. Roy Varghese, Member, Managing committee of ICAI Ernakulam and Adv. T.G. Anoop, President, Chennamangalam Panchayath presided the function. Shri.A.M. Ismail, Standing Committee Chariman, Chennamangalam Panchayath offered his felicitations. Sri. Jose Jacob, Deputy Director, Diary Development Department, Sri. Abdul Kabeer, Assistant Director, Diary Development Department, Sri. C.S. Rathesh Babu, Diary Development Officer, Paravur, Kerala were also present.

On 26th January, 2019 as a part of the CSR initiatives of the branch, new cloths were distributed to the inmates of the "Snehamandiram"- Psycho-Social Rehabilitation Centre, Padamugham, Idukki.

OTHER ACTIVITIES - Members

Golden Jubilee souvenir was released on 19th January, 2019 at Hotel Renai Cochin, Palarivattom by CA. N.D Gupta, Hon'ble Member of Parliament and Past President of ICAI. CA. Joseph Thomas, Past Chairman was honoured on the occasion for his dedicated and commendable services as the Editor of the Golden Jubilee Souvenir.

Comments on "Standard on Auditing for Audits of Smaller and Less Complex Entities (SASE) 200", was submitted to Auditing and Assurance Standards Board of ICAI on 15th January, 2019.

Comments on exposure draft on "Accounting Standard (AS) 37 -Provisions, Contingent Liabilities and Contingent Assets" and "Accounting Standard (AS) 1 – Presentation of Financial Statements" was submitted to the Accounting Standards Board of ICAI on 28th January, 2019 and 31st January, 2019 respectively.

The practical issues and suggestions under GST which can be resolved at Chief Commissioner level were submitted to Indirect Taxes Committee of ICAI on 31st January, 2019.

Republic Day flag was hoisted by CA.P.T. Joy, Chairman of the branch on 26th January 2019. Other Managing Committee Members, students and staff were present on the occasion.

OTHER BRANCH ACTIVITIES – STUDENTS

Industrial visit was organized by the Ernakulam Branch of SICASA of ICAI on 12th January, 2019, at Doddabetta Tea Factory, Ooty. 27 students participated.

Education Tour Paickara Falls, Pine Forest, Government Botanical Garden, Ooty Lake, Doddabetta peak, Shooting Point was organized by the Ernakulam Branch of SICASA of ICAI on 13th January, 2019. 27 students attended the study tour.

ICAI Commerce Wizard 2018 Level II test was conducted at the branch on 27th January, 2019. 18 students wrote the test.

Ernakulam Branch of SICASA of ICAI conducted half day workshop on "Recent amendments in GST on 31st January, 2019 at ICAI Bhawan, Ernakulam. Technical Session on the topic – Recent amendments in GST was taken by CA. Ravinath R Pai. 127 students attended the workshop.



Reported Judicial Decisions

CA.P.M Veeramani FCA

Statute: Income Tax Act - Sec.4, 14A – Accrual of income ; own funds

Decision in favour of : Assessee

Title : CIT vs Maruthi Udyog Ltd

Citation: 407 ITR 159

Bench: Delhi HC

Income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee. In the context of the case which concerned the benefit under a scheme of advance licence under the duty entitlement passbook scheme even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement passbook, there was no corresponding liability on the customs authorities to pass on the benefit of duty-free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is, therefore, not the income of the assessee.

Disallowance under section 14A of the Act is no longer res integra. As far as question (vi) is concerned, regarding onus to establish nexus between expenditure disallowed and earning tax free income, it is covered in favour of the assessee by the decision of the Supreme Court in Godrej and Boyce Mfg. Co. Ltd. v. Deputy CIT [2017] 394 ITR 449(SC) and of this court in CIT v. Taikisha Engineering India Ltd. [2015] 370 ITR 338 (Delhi). Further, the Income-tax Appellate Tribunal has rendered a factual finding that the assessee was seized of sufficient funds which it could have invested and therefore, there was no question of disallowance of any amount on account of interest under section 14A of the Act.

Statute: Income Tax Act – Sec.23(1) (c) – Vacancy allowance

Decision in favour of : Assessee

Title : Sachin Tendulkar vs DCIT

Citation: 66 ITR Trib SN 74

Bench: ITAT Mumbai

It was the plea of the assessee that he had made reasonable effort by requesting the builder to identify tenants for the flat. Since an appropriate tenant could not be found, the flat remained vacant. Hence, he claimed the benefit of section 23(1)(c) which duly permits deduction in this regard. That the assessee should maintain a dispatch reg-

ister for his letters was an abnormal expectation. That the assessee should get a stamped receipt from the builder for the receipt of his letters was equally quixotic proposition. The expectation that despite his unarguably busy professional engagements commanding huge amount of money he should have embarked upon and displayed a more robust and exuberant expedition to find a tenant for his vacant flat by approaching other real estate brokers and keeping an infallible record thereof, was beyond normal conception. The assessee was entitled to vacancy allowance.

Statute: Income Tax Act – Sec.36(1)(iv) – Gratuity Premia to LIC

Decision in favour of : Assessee

Title : Nortrans Marine Services Private Ltd vs ACIT

Citation: 170 DTR 108

Bench: Kerala HC

Entire contributions paid by the assessee to the LIC as premium for the policy obtained for indemnification of the gratuity liability towards the employees even for the prior years, would be eligible for deduction under section 36(1)(iv).

Statute: Income Tax Act – Sec.37, Rule 9A – Abandoned Teleserial

Decision in favour of : Assessee

Title : CIT vs Prasad Productions

Citation: 407 ITR 541

Bench: Madras HC

The issue as to whether the cost of production of an abandoned teleserial or feature film should be treated as revenue expenditure or capital expenditure had to be decided according to the Circular issued by the Central Board of Direct Taxes in Circular No. 16 of 2015 dated October 6, 2015. Though the circular pertained to a feature film, there could not be any distinction between teleserial and feature film as the circular dealt with the aspect in respect to the cost of production of a film.

Statute: Income Tax Act – Sec.56(2)(v) - Gift from relative

Decision in favour of : Assessee

Title : Pendurthi Chandrasekhar vs DCIT

Citation: 407 ITR 179

Bench: Telengana & AP HC

Section 56(2)(v) of the Income-tax Act, 1961 was inserted by the Finance (No. 2) Act, 2004 with effect from April 1, 2005. As could be seen from the language of sub-clauses



(a) and (b) of clause (v) of sub-section (2) of section 56, while under clause (a) which deals with a gift from any relative no occasion is envisaged, clause (b) dealing with money received from any other person, specifies the occasion of marriage. The Explanation to the provision defines "relative", as persons including brother or sister of either of the parents of the individual. When the Act itself does not envisage any occasion for a relative to give a gift, it is impermissible for any authority and even for that matter for the court to import the concept of occasion and develop a theory based on such concept.

Statute: Income Tax Act – Sec.72 - Stage to examine claim for set off

Decision in favour of : Revenue

Title : [Shrikant Mohta vs CIT](#)

Citation: 170 DTR 50

Bench: Kolkatta HC

Consideration that the loss in any year may be carried forward to subsequent year and set off against the profits and gains in the subsequent year is a question that has to be determined by the AO who deals with the assessment of the subsequent year

Statute: Income Tax Act – Sec.119, 143(2) – Scrutiny assessment

Decision in favour of : Assessee

Title : [M.Lodha Impex vs ITO](#)

Citation: 170 DTR Trib 113; 171 ITD 659

Bench: ITAT Indore

Assessee filing revised return beyond time claiming refund of TDS. On application u/s 119(2b) for condoning the delay, CIT directing AO to determine the refund after scrutinizing the case as per para 7 of instruction 13 dated 22.12.2006. AO issuing notice u/s 143(2) and completing scrutiny assessment. CIT instruction does not empower AO to make scrutiny assessment and issue of notice u/s 143(2) beyond period of limitation is invalid. Assessment having been quashed due to invalid notice, AO directed to allow refund with interest as per law

Statute: Income Tax Act – Sec.178 – Recovery by ITO after IBC

Decision in favour of : Assessee

Title : [Leo Edibles and Fats Ltd vs TRO](#)

Citation: 407 ITR 369

Bench: Telengana & AP HC

Tax Recovery Officer could not claim any priority merely because of the fact that the order of attachment was prior to the initiation of liquidation proceedings under the Code against the company. Section 36(3)(b) of the Code indicates in no uncertain terms that the liquidation estate assets may or may not be in the possession of the corporate debtor, including but not limited to encumbered assets. Therefore, even if the order of attachment constituted an encumbrance on the property, it still did not have the effect of taking it out of the purview of section 36(3)(b) of

the Code. The order of attachment therefore could not be taken to be a bar for completion of the sale effected by the liquidator under the provisions of the Code. The Sub-Registrar had to entertain and register the sale transaction effected by the liquidator in favour of the petitioner, if not already done.

Statute: Income Tax Act – Sec.147 – Notice beyond four years

Decision in favour of : Assessee

Title : [Anne Venkta Vishnu Vara Prasad vs ACIT](#)

Citation: 169 DTR 377

Bench: Andhra Pradesh HC

The jurisdictional conditions precedent that there must be failure on the part of the assessee to disclose fully and truly all material facts necessary for their assessment and that the income which escaped assessment would amount to one lakh or more, did not even find mention in the notices or the reasons for reopening the assessment. Competent Authority could not have recorded the requisite satisfaction under section 151 when the fundamental jurisdictional conditions justifying the reopening of the assessment beyond the normal four year period did not find mention in the reasons recorded by the AO. In the absence thereof, the reopening of such assessment cannot be countenanced.

Statute: Income Tax Act – Sec.159 – Notice on deceased person

Decision in favour of : Assessee

Title : [Alamelu Veerappan vs ITO](#)

Citation: 169 DTR 434

Bench: Madras HC

Notice under section 148 issued in the name of the dead person is unenforceable in the eye of law; notice issued to the widow of the deceased person beyond the period of limitation is a nullity, unenforceable in law and without jurisdiction. Since the proceedings were initiated after the death of the assessee, provisions of section 159 have no application to the facts of the case. Impugned notice is wholly without jurisdiction and cannot be enforced

The language employed in section 292B is categorical and clear. The notice has to be in substance and effect, conformity with or according to the intent and purpose of the Act. Issue relating to limitation is not a curable defect for the revenue to invoke section 292B. Revenue is not justified in contending that they having no knowledge about the death of the assessee are entitled to plead that the notice is not defective

Statute: Income Tax Act – 194 H – Discount to Advertising agency

Decision in favour of : Assessee

Title : [Principal CIT vs Shailendra Garg](#)

Citation: 407 ITR 388

Bench: Rajasthan HC

The Tribunal was right in concluding that the payment was on the basis of principal to principal and did not consti-



tute commission and deleting the disallowance made by the assessing authority for non-deduction of tax at source from the commission or discount paid by the assessee to the advertising agency under section 194H .

[The Supreme Court has dismissed special leave petition filed by the Department against this judgment : [2018] 406 ITR (St.) 9] – Decision of SC in 403 ITR 161 in Prasar Bharathi not cited, but HC decision of Kerala over ruled.

Statute: Income Tax Act – Sec.260A – Power to Review order

Decision in favour of : Assessee

Title : [B.Jayalakshmi vs ACIT](#)

Citation: 407 ITR 212

Bench: Madras HC

In *VIP Industries Ltd. v. CCE* [2003] 5 SCC 507, it was held that all provisions, which bestow the High Court with appellate power, were framed in such a way that it would include the power of review and in these circumstances, sub-section (7) of section 260A of the Income-tax Act, 1961 cannot be construed in a narrow and restricted manner. In the case of *M. M. Thomas*, the Supreme Court held that the High Court, as a court of record, has a duty to itself to keep all its records correctly in accordance with law and if any apparent error is noticed by the High Court in respect of any orders passed that the High Court has not only the power but also a duty to correct it.

Statute: Income Tax Act – Sec.292 B – Corrigendum cannot cure defect

Decision in favour of : Assessee

Title : [ACIT vs Vijay Television Private Ltd](#)

Citation: 407 ITR 642

Bench: Madras HC

The order passed under section 143(3) of the Act was a final assessment order and the Revenue, realising the mistake committed by it, issued the corrigendum, amending the section to read section 144C read with section 92CA read with section 143(3) . The demand under section 156 of the Act had been issued and penalty had also been imposed. For all practical purposes, the order of assessment was one under section 143(3) of the Act, though the draft assessment order ought to have been passed under section 144C . Though the corrigendum had been issued it did not indicate that the demand and penalty made in the assessment order had been withdrawn. The mistake committed by the Revenue in not following the mandatory requirement of section 144C by passing an order under section 143(3) could not be cured by the issuance of a corrigendum. The act committed by the Revenue was an incurable illegality, which could not be protected by section 292B . The order of assessment was not valid.

Statute: Income Tax Act – Sec.263, 292 BB - Validity of notice

Decision in favour of : Assessee

Title : [CIT \(Exemptions\) vs Modern School Society](#)

Citation: 407 ITR 228

Bench: Rajasthan HC

The Commissioner (Exemptions) held that the assessee had provided undue benefit to person covered under section 13(3)(d) of the Income-tax Act, 1961 and consequently cancelled exemption u/s 10(23C) by order under section 263. On appeal, the Tribunal held that the language and tenor of the show-cause notice did not exhibit any thought process of the Commissioner (Exemptions) but it revealed that it was issued and signed by the Deputy Commissioner (Hqr.) as per the instructions and directions of the Commissioner (Exemptions) and that it was apparent that the Commissioner (Exemptions) had delegated his powers to the Deputy Commissioner (Hqr.) to issue the show-cause notice and therefore, it was based on the satisfaction of the Deputy Commissioner (Hqr.) and not that of the Commissioner (Exemptions). The Tribunal further held that it was settled proposition of law that the notice issued by an authority other than the prescribed authority was not valid and therefore the consequential order passed by the Commissioner (Exemptions) was without jurisdiction. When the notice itself was not valid the jurisdiction assumed by the prescribed authority based on the invalid notice became invalid, vitiated the proceedings and the consequential order passed by the authority was invalid and void ab initio for want of jurisdiction and accordingly quashed the order passed by the Commissioner (Exemptions). On appeal, held that the order of the Tribunal was proper and that section 292 BB will not rescue.

Statute: Income Tax Act – Sec.271(c) – Higher Income in revised return

Decision in favour of : Assessee

Title : [Principal CIT vs Trisha Krishnan](#)

Citation: 170 DTR 209

Bench: Madras HC

Assessee showing certain receipts as advance in the original return, but offering the same as income in revised return during the course of assessment is not liable for penalty since advances were reflected in the balancesheet filed along with the original return and thus there was no concealment.

Statute: Income Tax Act – Sec.271(c) - Higher claim of depreciation

Decision in favour of : Assessee

Title : [Principal CIT vs Bunge India Private Ltd](#)

Citation: 407 ITR 225

Bench: Bombay HC

Computation of depreciation in advertently at a higher rate following the earlier year, where the depreciation included additional depreciation also. Mistake is inadvertent error and bonafide explained. Deletion of penalty by Tribunal proper.



JUDICIAL DECISIONS ON INDIRECT TAXES

CA.P.J.Johney FCA

Statute: Services Tax

Decision in Favour of : Assessee

**Title: Commissioner, Service Tax-VII
V. Flemingo duty free shop Pvt. Ltd**

Ramesh Nair (Judicial member)
and Raju (Technical member)
September 28, 2017.

Citation: (2018) 59 GSTR 465 (CESTAT-Mum)

Bench/Court: Before the Customs, Excise and Service Tax
Appellate Tribunal - Mumbai

Service Tax-refund-rent paid to Airport authority for running duty-free shops in departure lounges of international airports-shops beyond Customs barriers and sales to passengers considered exports-no Service Tax chargeable-refund of Service Tax on rent paid allowable-no unjust enrichment-Finance Act (32 of 1994), S. 66B-constitution of India, art. 286-place of provision of services rules, 2012, R. 5-notification no. 41/2012-st dated June 29, 2012.

Statute: Services Tax

Decision in Favour of: Assessee

**Title: COMMISSIONER OF SERVICE TAX-V, MUMBAI
V. DFS INDIA PVT. LTD.**

RAMESH NAIR (Judicial Member) and RAJU
(Technical Member)
March 22, 2018.

Citation: (2018) 59 GSTR 481 (CESTAT-Mum)

Bench/Court: before the Customs, Excise and Service Tax
Appellate Tribunal-Mumbai

Service Tax-refund specified services used in export of goods-sales of goods in shops at arrival and departure terminals at airport -is export -assessee entitled to refund - principle of unjust enrichment would not apply - assessee was eligible for rebate of whole of Service Tax charged on rent-apportionment based on area of space, proper certification by auditors based on professional guidelines issued by institute of chartered accountants of India - proper - auditors not required to check compliance with Customs, Excise or Service Tax -nor expected to carryout statutory audit-Finance Act(32 of 1994),s.93(a)-Customs act (52 of 1962),ss.50,69,70-notification no.41/2012-st.dated.June 29 2012.

Statute: value added tax

Decision in favour of: petitioner

**Title: Jagteshwar Prasad Bansal and others v. State
of Uttarakhand and another**

Rajiv Sharma j
December 7, 2017

Citation: [2018] 59 GSTR 491 (Uttarakhand)

Bench/court: in the Uttarakhand high Court

Value added tax-recovery of tax-private company--liability of directors-directors not automatically responsible for out-standing dues of company unless responsibility fixed after lifting corporate veil-no material to show directors guilty of fraud misrepresentation-company was dealer and

assessment order in its name-company not under liquidation-notices proposing recovery from directors not sustainable- Uttarakhand value added tax act(27 OF 2005), SS.2(11)(E),12(1).

Statute: Sales Tax

Decision in favour of: assessee

**Title: S. K. Decorations
V. State of Tamil Nadu and another**
T. S. Sivagnanam J, December 4, 2017

Citation: [2018] 59 GSTR 501 (MAD)

Bench/court: In the Madras High Court

Sales tax-best judgment assessments--petitioner not appearing before respondent though five summons issued fixing dates for hearing but filing objections to show-cause notice -assessment orders passed rejecting petitioner's request for furnishing copies of seized records-not justified-direction to respondent to furnish copies of records seized after petitioner remitted cost for same-Tamil Nadu general Sales Tax act (1 of 1959).

Statute: SERVICE TAX

Decision in Favour of : Assessee/Department

**Title: DHL Iemuir logistics Pvt. Ltd. V. Commissioner
of Service Tax, Chennai**

Ms. Sulekha Beevi c. S. (Judicial member) and Madhu
Moham Damodhar (Technical member)
August 23, 2017.

Citation: [2018] 59 GSTR 503 (CESTAT-Chennai)

Bench/court: [before the Customs, Excise and Service Tax
appellate tribunal-Chennai

Service Tax-Customs house agent-freight rebate, airline commission and airline incentive not liable to levy of Service Tax-CCX fees collected from importer taxable in category of business auxiliary service-break bulk fee, agency fee, unallocated income, system currency assessment factor and expenses reimbursement not taxable under business auxiliary service prior to May 1, 2006-Finance Act (32 of 1994). Penalty-short payment of tax-several amendments brought to definition of "business auxiliary service" and new entry "business support service" introduced from May 1 2006-imposition of penalty unwarranted-Finance Act (32 of 1994),s.76.

Statute: Service Tax

Decision in Favour of : Department

**Title: HT Media Ltd. V.
Commissioner of Service Tax and others**
Dr. S. Muralidhar and Prathiba M. Singh
August 8, 2017.

Citation: [2018] 59 GSTR 509 (Delhi)

Bench/court: in the Delhi High Court

Service Tax refund not claimed within prescribed period , assessee not entitled to refund-tax not paid under protest-limitation of one year applicable-Central Excise act (1 of 1944), S. 11B.



Statute: Goods and Services Tax

Decision in Favour of : Directions

Title: **V. Ramakrishnan
V. Union of India and others**

T. S. Sivagnanam J.
July 11, 2018.

Citation: [2018] 59 GSTR 149 (mad)

Bench/court: in the Madras High Court

Goods and services tax-contractor with railways-circular of railway board that supplementary agreement must be entered into for works completed after goods and services tax regime enforced-writ-dealer directed to represent before railway board.

Statute: Service Tax

Decision in Favour of: Assessee

Title: **Commissioner of central Excise, Aurangabad
V. Narsinha Engineering Works**

Dr. D.M. Misra (Judicial member) and Sanjiv Srivastava
(Technical member)
July 16, 2018

Citation : [2018] 59 GSTR 151 (CESTAT-Mum)

Bench/court: Before the Customs, Excise and Service Tax
Appellate Tribunal - Mumbai

Service Tax-"erection installation and commissioning" service-all taxable services provided by any person in relation to distribution of electricity and by distribution company for distribution of electricity exempt-Finance Act (32 of 1994), S. 65(105)(ZZD)-notification no. 1/2006-ST, dated March 1, 2006-notification no. 32/2010-ST, dated June 22, 2010-notification no. 11/2010-ST, dated February 27, 2010.

Statute: VALUE ADDED TAX

Decision in Favour of : Remanded

Title: **ZANGAS-KPTL CONSORTIUM
V. State of Maharashtra**

S. C. Dharmadhikari and B. P. Colabawalla JJ
September 4, 2018.

Citation: [2018] 59 GSTR 159 (Bom)

Bench/court: in the Bombay High Court

Value added tax-works contract-turnover-deduction-joint venture of Z (Russian company) and K (Indian company) having separate registrations awarded contract for laying down pipeline for carrying gas between Panvel and Dabhol, k being sub-contractor of JV-appellant assessed by deducting 96 per cent. of receipts but disallowing deduction on payment to z towards Technical services and one per cent. Expenses for 2007-2008, and for 2008-2009 one per cent. Expenses alone dis-allowed-joint commissioner confirming assessment and tribunal partly allowing appeals and remanding matter for computation of correct tax liability setting out what was to be taxed and what not-joint commissioner on remand holding no deduction admissible since appellant not submitted scheme of taxation followed by sub-contract without seeking clarifications from chartered accountant or appellant's representative-tribunal upholding order of joint commissioner by cryptic order without reference to its earlier order and without calling for documentary evidence matter remitted to joint commissioner to pass fresh order on issues remanded to him by tribunal-Maharashtra value added tax act, 2002 (9 of 2005).

Statute: goods and services tax

Decision in favour of: directions

Title: **MGI Infra Private Limited
V. Assistant commissioner, State Goods and Service
Tax and others**

Debangsu Basak J.
July 9, 2018

Citation: [2018] 59 GSTR 169,(CAL)

Bench/court: in the Calcutta High Court

Goods and services tax-registration-petitioner enjoying provisional registration unable to take final registration as area in which his office located faced various political problems over a considerable period of time-writ petition seeking extension of time to obtain final registration-concerned authorities to take pragmatic and sympathetic approach and consider grant of final registration in accordance with law-West Bengal goods and services tax act (28 of 2017) -central goods and services tax act (12 of 2017).

Statute: Sales Tax

Decision in favour of :assessee

Title: **State of Tamil Nadu
V. Suraj Steels**

S. Manikumar and Subramonium Prasad JJ
June 25, 2018.

Citation: [2018] 59 GSTR 171 (Mad)

Bench/court: in the Madras High Court

Sales tax-assessment - escaped turnover assessing authority revising assessment based on slips found during inspection of place of business of dealer -order by appellate deputy commissioner setting aside revised assessment order on facts and tribunal affirming it--documents filed during hearing not demonstrating findings of appellate authorities below on nil evidence-no interference called for Tamil Nadu general Sales Tax act (1 of 1959), s. 16(1).

Statute: goods and services tax

Decision in favour of: directions

Title: **Earthcon constructions Pvt. Ltd. V. Union of
India and others**

Bharati Sapru and Ajay Bhanot JJ,
July 6, 2018.

Citation: [2018] 59 GSTR 181 (all)

Bench/court: in the Allahabad High Court

Goods and services tax-migration to goods and services tax-input tax credit on closing stock-writ petition seeking extension of time for filing of GST tran-1 contending that electronic system of respondent no. 2 did not respond, on last date for filing of application resulting in likelihood of petitioner losing credit-respondents allowed one month's time to file counter-affidavit and directed to reopen portal within two weeks failing which application to be entertained manually and orders passed after due verification of credits as claimed-Uttar Pradesh goods and services tax act (1 of 2017).

Statute: services tax

Decision in favour of: department

Title: **City makers Pvt. Ltd
V. Central board of Excise and Customs, New Delhi
and others**

Mukesh R. Shah C J. and Dr. Ravi Ranjan J.
August 29, 2018.

Citation: [2018] 59 GSTR 185 (Patna)



Bench/court: in the Patna High Court

Service Tax-notice --recovery of tax- interest - penalty - writ petition-show-cause notice for recovery of tax including cesses under section 73(1), interest, penalties and late fee-yet to be considered by appropriate authority-writ petition challenging show cause notice-refusal by court to entertain - finance act (32 of 1994), ss. 70, 73(1), 75, 76, 77, 78-- Service Tax rules, 1994, r. 7(c).

Statute: value added tax

Decision in favour of: assessee

Title: **Kesharwani enterprises**

V. State of Chhattisgarh and others (and other cases)

P. SAM KOSHY J

March 5, 2018

Citation:[2018]59 GSTR187(Chhattisgarh)

Bench/court: in the Chhattisgarh High Court

Value added tax-entries in schedule-"bread"-to be construed as generic entry and given wide interpretation-rusk and toast-ingredients the same as for bread and only baking time different-would fall within entry "bread" and not under residuary entry-Chhattisgarh value added tax act (2 of 2005), sch. I, entry 7, sch. H, part iv.

Interpretation of taxing statues-entries in schedule-when two views possible, that which favours assessee to be adopted.

Interpretation of taxing statutes-entries in schedule-burden of proof that product falls under residuary item-is on department.

Statute: goods and services tax

Decision in favour of: directions

Title: **Abhay traders**

V. State of u. P. and others

Pankaj Mithal and Jayant Banerji JJ

June 8, 2018

Citation: [2018] 59 GSTR 199 (A11)

Bench/court: in the Allahabad High Court

Directions goods and services tax--seizure-goods in transportation along with vehicle seized on ground not accompanied by e-way bill-submission by petitioner site not operative but e-way bill downloaded next day and produced before authorities-petition challenging seizure listed for hearing on expiry of period specified for filing counter-affidavit and rejoinder affidavit and direction to release goods and vehicle on furnishing security other than cash and bank guarantee of amount equivalent to value of goods only- Uttar Pradesh goods and Service Tax act(1 of 2017),s.129.

Statute: goods and services tax

Decision in favour of: directions

Title: **Multiplex Cine vision Pvt. Ltd.**

V. State of u. P. and others

Krishna Murari and Ashok kumar j j.

May 8, 2018.

Citation: [2018] 59 GSTR 206 (all)

Bench/court: in the Allahabad High Court

Goods and services tax-change of law-entertainment tax-petitioner engaged in business of construction and development of entertainment facilities including multiplex theatres-permitted vide order dated November 24, 2013 to collect and retain entertainment tax for five years to speci-

fied extent as per scheme under u. P. Entertainments and betting tax act, 1979 -central goods and services tax act and Uttar Pradesh services tax acts implemented with effect from July 1, 2017 and act repealed -writ petition by petitioner contending petitioner entitled to benefit up to November 24, 2018 in view of section 174 of Uttar Pradesh goods and services tax act with saving clause till November 24, 2018-direction to parties to file counter-affidavit and rejoinder affidavit within specified period and petition listed for hearing in July, 2018-u. P. Entertainments and betting tax act (28 of 1979)-Uttar Pradesh goods and services tax act (1 of 2011), s. 174-central goods and services tax act (12 of 2017).

Statute: value added tax

Decision in favour of :department/assessee

Title: **TVS motor company ltd**

V. State of Tamil Nadu and others

A. K. Sikri and Ashok Bhushan JJ

October 12, 2018.

Citation: [2018] 59 GSTR 1 (SC)

Bench/court: in the supreme court of India

Value added tax-legislative powers-input tax credit-inter-state sales-provision disallowing input tax credit on inter-state sales to unregistered dealers-valid-inter-state sales to state governments-provision to be read down-state governments though not registered sales to them eligible for input tax credit-Tamil Nadu value added tax act (32 of 2006), s. 19(5)(c)- Tamil Nadu value added tax rules, 2007, R. 10(9)(a)-central Sales Tax pier (74 of 1956), s. 8(2)-constitution of India, arts. 14, 19(1)(g), 256, 301.

Statute: goods and services tax

Decision in favour of: directions

Title:

Sri krishna chemical industries

V. Government of Tamil Nadu and others

Mrs. J. Nisha Banu J

September 17, 2018.

Citation: [2018] 59 GSTR 54 (Mad)

Bench/court: in the Madras High Court - Madurai bench

Goods and services tax - transition provisions - input-tax credit-inability of assessee to upload form tran-1 owing to Technical glitches writ - High Court-direction to assessing officer to forward assessee representation to nodal officer - nodal officer, in consultation with goods and services tax network to take note of assessee grievance and forward it to grievance committee-grievance committee to take appropriate decision -CBIC circular no. 39/13/2018-GST dated April 3, 2018.

Statute: Sales Tax

Decision in Favour of: Assessee

Title: **Commissioner of Sales Tax, Maharashtra state, Mumbai**

V. Khush Bhaikht Electronic Engineers Pvt. Ltd.

S. C. Dharmadhikari and b. P. Colabawalla JJ

. September 14, 2018.

Citation: [2018] 59 GSTR 74 (Bom)

Bench/court: in the Bombay High Court

Sales tax-entries in schedule-hybrid amplifier. or li extender used to boost signal-not accessory of cable televiser but a general electronic item-Bombay Sales Tax act (51 of 195 sch. C, part ii, entries 124, 126.



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For Newly Qualified Chartered Accountants (NQCA's)

February-March, 2019

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Invitation to Organisations

Any corporation, irrespective of its size, standing in the market and boundary of its business, can take part in this placement programme being held at several centers across the country during February-March, 2019.

Campus Interview Schedule

No.	Centre	Dates
1.	Mumbai & New Delhi	5 th , 6 th , 7 th , 8 th & 9 th March, 2019
2.	Bangalore	6 th , 7 th , 8 th & 9 th March, 2019
3.	Chennai	7 th , 8 th , 9 th & 11 th March, 2019
4.	Kolkata	8 th , 9 th , 11 th & 12 th March, 2019
5.	Ahmedabad, Jaipur, Pune & Hyderabad	11 th , 12 th & 13 th March, 2019
6.	Durgapur & Ernakulam	28 th March, 2019
7.	Bhubaneswar, Chandigarh, Coimbatore, Indore, Kanpur & Thane	29 th & 30 th March, 2019

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The above Campus is meant for the candidates who would be passing the CA Final examination held in November, 2018 and also for others who have qualified earlier and are fulfilling the criteria mentioned in the announcement.

Organisations intending to recruit NQCA's through campus scheme are requested to get in touch with the CMI&B Secretariat, ICAI Bhawan, Indraprastha Marg, New Delhi-110002, Tel. No. (011) 30110526/548/555/430 E-mail: campus@icai.in and to register log on to <https://cmib.icai.org/>.

Candidates may contact at cajob@icai.in or Tel. No. (011) 30110491/450 and to register log on to <https://cmib.icai.org/>.

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The Institute of Chartered Accountants of India



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