



ERNAKULAM BRANCH

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Happy Onam



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Chairman's Message



Dear Professional Colleagues,

The month of September is the one with the most important festival in Kerala – Onam. While we would be extremely busy with the various audits in hand, we would also be celebrating this festival with much vigour. There were no festivities during Onam last year as water gushed in unexpectedly and many lost their dear ones. Though flash floods and landslips caused concerns in the state this year too, it had caused less destruction compared to the August floods as in the previous year. Over hundreds of people had lost their lives and a large number of houses were damaged, but we Keralites have decided to go ahead with our Onam celebrations this year as it would help people overcome the traumatic experience and focus on putting their lives back following the two consecutive floods.

The 73rd Independence day was celebrated at the branch by hoisting the National flag in the presence of members and students. Sweets were distributed along with the Eco friendly paper seed flags on the occasion.

Mock interview was organized in connection with the Campus Placement Programme Sept – Oct 2019 at ICAI Bhawan, Ernakulam on 4th September, 2019. CA. Venugopal C Govind, CA. K.P. Paulson, CA. Balagopal R, CA. Pius Mathew, CA. Rajiv Warriar and CA. Alex Abraham were the panellists at the mock interview.

A Workshop on Accounting Standards was organized jointly with Mahatma Gandhi University on 4th September, 2019 at Nirmala College, Muvattupuzha for the commerce faculties of the various college coming under Mahatma Gandhi University, Kottayam





On 6th September, 2019, the branch staff along with SICASA & on 7th September 2019, the branch celebrated Onam with great fervour and enthusiasm. Floral carpet was laid at the entrance of the branch on the 6th. Various games were organized on the occasion. Traditional Lunch (onasadhya) was served. SICASA members, branch faculty members, managing committee members and branch staff participated in the celebrations.

We have organized Teacher's Day Programme with the theme "My Teacher – Torch Bearer of My Life". Special motivational session was taken by CA. Deepa Varghese, Chairperson, Ernakulam Branch of SICASA of ICAI. Essay and slogan competition was organized for CA Students based on Teachers Day Theme " My teacher-torch bearer of my life".

As a part of the Corporate Social Responsibility, the branch distributed 'Onakkodi' to the Cancer Patients at the General Hospital, Ernakulam on 6th September, 2019. Onakkodi was handed over to Dr. Anitha, Superintendent, General Hospital, Ernakulam for distributing to Cancer patients at the hospital. Dhoti for Men and Kerala Sari for women were distributed along with fruits.

One day seminar on Tax Audit on 6th September, 2019 was organized at the branch for students. The technical sessions on "Tax Audit Report – Analysis of Key clauses", "TDS provisions with reference to the audit under section 44AB" were taken by CA. Baby Paul, Director, BSR & Associates, LLP and CA. K .Parvathy Ammal.

We have organized CPE Seminar on Income Tax Audit & Professional Ethics on 7th September, 2019. CA. Rajendra Kumar P, Central Council Member of ICAI inaugurated the CPE Seminar. The technical sessions were taken by CA.T.G. Suresh, Chennai, CA. Rajendra Kumar P, Central Council Member of ICAI and CA. Sachin Kumar P B, Bengaluru. The session were on the topics "audit under Section 44 AB

of Income Tax and Issues in Form 3CD, Ethical standards and disciplinary proceedings, Income Computation & Disclosure Standards – an audit perspective. The seminar was a grand success and it was attended by more than 300 members.

Certificate Course on GST concluded on 8th September 2019 at Hotel Park Central, Kaloor, Kochi. 41 members successfully completed the course. Onasadhya was arranged for the participants of the Certificate Course on GST on that day.

SICASA, Ernakulam conducted its 2 major events for the year – the Annual Indoor Sports and "Encore" the cultural fest in this month. The Indoor games was inaugurated by Arjuna Award winner Mr. George Thomas and Encore was inaugurated by the very eminent Music Director Mr. Gopi Sunder. My hearty congratulations to team SICASA Ernakulam for putting up a grand show and for making all of us so proud. A Lecture meeting is planned on the topic " Strategic approach for facing financial management and costing exams – A discussion" on 19th September, 2019 at the branch. CA. Santhi Ganapathy will be taking the session. I request all the students to make use of this opportunity.

We wish each one of you and your beloved ones a very happy and prosperous Onam!. We the managing committee members also take this opportunity to wish a very successful auditing season.

Jai Hind! Jain ICAI!

CA.Sreenivasan P.R

Chairman



Reported Judicial Decisions

CA.P.M Veeramani FCA

Statute: **Income Tax Act – Sec.251 – CIT(A) has to dispose appeal on merits**

Decision in favour of : Assessee

Title : Deekay Gears vs ACIT

Citation: 175 DTR Trib 267

Bench: ITAT Mumbai

Notwithstanding the fact that the assessee has filed an application seeking withdrawal of appeal, CIT(A) is obliged and duty bound under the Act to decide the appeal on merits within the parameters of section 251(1)(a)

Statute: **Income Tax Act – Sec.251 – Power to enhance by CIT(A)**

Decision in favour of : Revenue

Title : Veeyes Investments Private Ltd vs ACIT

Citation: 175 DTR Trib 109

Bench: ITAT Hyderabad

In view of provisions of section 251(1)(a), CIT(A) had power to enhance the assessment by disallowing the claim for set off of trading loss going by the annual report/statement enclosed with the return

Statute: **Income Tax Act – Sec.253(4) – Power of Attorney to be enclosed**

Decision in favour of : Revenue

Title : DCIT vs Adidas Sourcing Ltd

Citation: 175 DTR Trib 245

Bench: ITAT Delhi

Assessee company being a non-resident entity ,

cross objection filed by the authorized signatory on behalf of the company should have attached the copy of power of attorney as per Rule 45(3) read with section 253(4). Cross objection without enclosing valid power of attorney is not maintainable

Statute: **Income Tax Act – Sec.263 – Power of AO is revision order**

Decision in favour of : Assessee

Title : Principal CIT vs Royal Western India Turf Club Ltd

Citation: 175 DTR 285

Bench: Bombay HC

When the CIT requires AO to carry out inquiries with respect to specified issues, the jurisdiction of the AO to pass fresh orders must be confined to such items failing which it would be giving the power to AO to make re-assessment. Tribunal was justified in holding that the addition on items made by AO in the proceedings u/s 143(3) rws 263 was beyond jurisdiction in respect of points not subject of directions by CIT in the revision order

Statute: **Income Tax Act – Sec.271AAA – specified previous year**

Decision in favour of : Revenue

Title : Sanjay Dattatray Kakade vs ACIT

Citation: 70 ITR Trib 519

Bench: ITAT Pune

A search is conducted when it actually takes place and it could not be held that a search was



conducted on its closure. As search was initiated in February 2009, assessment year 2009-10 would be the specified previous year in terms of explanation b(ii) though the search concluded only on 3rd April 2009. Hence the levy of penalty for the assessment year 2009-10 is valid

Statute: **Income Tax Act – Sec.271AAB – Rate of penalty**

Decision in favour of : Revenue

Title : ACIT vs Vishal AGarwal

Citation: 175 DTR Trib 127

Bench: ITAT Kolkatta

Assessee having made disclosure of undisclosed income during search, having substantiated the manner in which it was earned, paid tax along with interest and filed returns, penalty would @10% as per sub section 1(a) and not 30% as per sub section 1(C)

Statute: **Income Tax Act – Sec.271 C – Failure to pay TDS does not attract penalty**

Decision in favour of : Assessee

Title : Lakshadweep Development Corporation Ltd vs Addl CIT

Citation: 175 DTR 369 FB

Bench: Kerala HC – Full Bench

Section 271 C has two limbs – clause (a) deals with levy of penalty for failure to deduct TDS in all cases falling under Chapter XVIIIB and clause (b) – failure to pay tax under section 115O and 194 B. In the instant case, penalty is levied for delay in payment of TDS made under section 194 C which does not fall under either of the clauses and hence deleted. Kerala HC decision in US Technologies International Private Ltd and Classic Concepts Home India Private Ltd (383

ITR 626) are overruled

Statute: **Income Tax Act – Sec.276 CC – Failure to file return**

Decision in favour of : Revenue

Title : Karan Luthra vs ITO

Citation: 175 DTR 258

Bench: Delhi HC

Offence stood constituted upon failure on the part of the assessee to furnish return of income within the period prescribed in law. Fact that the assessee has subsequently furnished the return of income can also not detract the fact that he had incurred the liability to be prosecuted earlier on account of failure to furnish return of income within the stipulated period. No case made out to discharge the assessee

Statute: **Income Tax Act – Sec.281 - Mortgage not void**

Decision in favour of : Assessee

Title : ICICI Bank Ltd vs TRO

Citation: 411 ITR 518

Bench: Telengana HC

Creation of mortgage cannot be said to have become automatically void in terms of section 281(1) merely because of the pendency of proceedings under section 142 and 143. The order of attachment was illegal. On the date on which the order of attachment was passed, the property had already been sold by the bank, in exercise of the power conferred upon the bank. The order of attachment is set aside and Sub Registrar was to proceed to register the sale certificate issued by the bank upon compliance with necessary formalities.

**JUDICIAL DECISIONS ON INDIRECT TAXES**

CA.P.J.Johney FCA

GOODS and SERVICE TAX

Statute: Value Added Tax

Decision In Favour of: Assessee

Title: Rohtash Sweets and Fast Foods v Deputy Commissioner, Commercial Tax and Others

Pankaj Mithal and Pankaj Bhatia JJ

Citation:[2019] 65 GSTR 107 (All)

Bench/Court: In The Allahabad High Court

Value Added Tax—Assessment—Limitation—Ex Parte Assessment— Ex Parte assessment order reopened by order dated June 30, 2016— Fresh assessment order dated October 28, 2016 served on September 13, 2017 after about 10 and half months of hearing of case — No explanation as to why modes of service of orders as prescribed under rule and circulars not observed—Orders Antedated— Quashed as being beyond prescribed period of limitation—Uttar Pradesh Value Added Tax Act (5 of 2008), Ss. 28(2), 29(6), 32 — Uttar Pradesh Tax On Entry of Goods Act (12 of 2000), S. 4(9)—Uttar Pradesh Value Added Tax Rules, 2008, R. 72.

Writs Under Constitution—Alternative Remedy—Ex Parte Assessment Order Reopened by Order Dated June 30, 2016, and Fresh Assessment Order Dated October 28, 2016 Served On Assessee On September 13, 2017— no dispute regarding expiry of limitation for making assessment on march 31, 2017 and order served after about 10 and half months of hearing of case—Writ Petition challenging assessment order as antedated to get over limitation— Maintainable—Constitution of India, Art. 226—Uttar Pradesh Value Added Tax Act (5 of 2008), ss. 28(2), 29(6), 32—Uttar Pradesh Tax On Entry of

Goods Act (12 of 2000), S. 4(9).

Statute: Value Added Tax

Decision in favour of: Assessee

Title: Cholayil Pvt. Ltd v Assistant Commissioner (Assessment), Special Circle, Commercial Taxes, Thrissur and Others

K. VINOD CHANDRAN and ASHOK MENON JJ

Citation:[2019] 65 GSTR 118 (Ker)

Bench/Court: In The Kerala High Court

Value Added Tax Reassessment — Limitation — Time within which assessing Authority Must “Proceed To Determine” turnover which has escaped assessment — Refers to time within which he must initiate proceedings by issue of notice— Subsequent amendments extending time for “completion of assessments” — Also must be taken to refer to time for issuing notice— Kerala Value Added Tax Act, 2003 (30 of 2004), S. 25(1)- Interpretation of taxing Statutes— Rule in Heydon’s Case—Not Applicable Where Word Clear and Unambiguous and Plain and natural meaning easily discernible.

Statute: Value Added Tax

Decision in favour of: Assessee

Title: Commercial Tax officer, Anchal, Kollam District and Others v S. Najeem and Another

K. Vinod Chandran and Ashok Menon JJ

Citation:[2019] 65 GSTR 127 (Ker)

Bench/Court: In The Kerala High Court

Value Added Tax—Reassessment—Limitation— Time within which assessing authority must



“Proceed To Determine’ Turnover which has escaped assessment—refers to time within which he must initiate proceedings by issue of notice—amendments extending time for “completion of assessments” — Prospective — amendment extending period of limitation from five years to six years not applicable to completed assessments where five year period for re-opening of assessment has expired—Kerala value added tax act, 2003 (30 of 2004), s. 25(1).

Assessments—Limitation— Power of Deputy Commissioner To Extend Period For Completion of Assessments—“Good and Sufficient Reasons” for granting extension should be those arising on facts on objective consideration after hearing dealer—invocation of power after period of limitation—Not Permissible— Kerala Value Added Tax Act, 2003 (30 of 2004), ss. 25(1), 25b. Interpretation of taxing statutes—Amendment by substitution—No Rule That amendment by substitution is invariably retrospective.

Statute: Value Added Tax

Decision in favour of: Department

Title: NTL Logistics (India) Pvt. Ltd. v Commercial Tax Tribunal and Others

PANKAJ MITHAL, MANOJ KUMAR GUPTA and SUNEET KUMAR JJ.

Citation: [2019] 65 GSTR 415 (All) [FB]

Bench/Court: In The Allahabad High Court

Value Added Tax—Goods in transit through state—Failure to carry transit declaration form with goods—Effect—Presumption that goods meant for sale within state—Rebuttable— Authority to take informed decision and can direct seizure of goods if satisfied that goods being transported in an attempt to evade assessment—General Principles—Uttar Pradesh Value Added Tax Act (5 of 2008), ss. 45, 48, 50, 52, 54—Uttar Pradesh Value Added Tax Rules, 2008, rr. 55, 58.

Statute: Value Added Tax

Decision in favour of: Assessee

Title: Superton Electronics Private Limited v State of Assam and Others

A. S. Bopanna C. J. and Arup Kumar Goswami J.

Citation: [2019] 65 GSTR 267 (Guwahati)

Bench/Court: In The Guwahati High Court

Value Added Tax—Check-Post— Evasion of Tax—Penalty— Seizure of Goods—Rule providing for uploading documents in electronic format —no indication of consequences of failure to do so — presumption of evasion of taxes rebuttable by production of documents — penalty not to be levied merely because of failure to upload them online — Documents Claimed by Dealer to Have Accompanied Goods To Be Examined—if authorities satisfied that documents in physical form available on date of movement of goods, whether penalty leviable only because documents not uploaded in electronic format to be considered— Matter remanded—Assam Value Added Tax Act, 2003 (8 of 2005), S. 75— Assam Value Added Tax Rules, 2005, r. 41.

Legislative Powers— Delegated Legislation — Check-Posts — Commissioner empowered by rules to direct information in electronic format to be uploaded—not a case of sub-delegation of power— Assam Value Added Tax Act, 2003 (8 of 2005), Ss. 75, 106—Assam Value Added Tax Rules, 2005, r. 41.

Statute: Service Tax

Decision in favour of: Department

Title: State Bank of India v Commissioner of Service Tax-I, Mumbai

Dr. D. M. Misra (Judicial Member) and SANJIV SRIVASTAVA (Technical Member)

Citation: [2019] 65 GSTR 35 (CESTAT-Mum)

Bench/Court: The Customs, Excise and Service Tax Appellate Tribunal



Service Tax—Recovery of Tax—Penalty—Nationalized Banks— Notice—Limitation—Mens Rea—Show-cause notices on basis of audit issued invoking extended period of limitation to each branch of appellant-banks for period from April 1, 2004 to march 31, 2010 demanding tax short-paid along with interest and proposing penalties—Adjudicating Authority Confirming Demand Along with Interest and Imposing Penalties and Order Confirmed By Commissioner (Appeals)—tax demanded deposited by appellant with interest and further appeal filed challenging levy of penalty—On Facts Submission of Appellant Lacked Merit —Appeal Dismissed— Finance Act (32 of 1994), Ss. 73(1), Proviso, 75, 76, 77, 78.

Statute: Service Tax

Decision in favour of: Assessee

Title: **Manisha Projects Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Ghaziabad**

Smt. ARCHANA WADHWA (Judicial Member) and ANIL G. SHAKKARWAR (Technical Member)

Citation: [2019] 65 GSTR 260 (CESTAT-AI)

Bench/Court: The Customs, Excise and Service Tax Appellate Tribunal — Allahabad

Service Tax—“Commercial Or Industrial Construction Service” —Exception—construction for not primarily for commercial use— Assessee constructing building for hospital and consistently taking stand that it was excepted —Onus on Department to show building was for commercial purposes— Failure to Discharge— Assessee Not Liable to Tax —CBEC Circular No. 80/10/2004-St, Dated September 17, 2004.

Service Tax – Penalty – Cenvat Credit – Wrongful Availment- Audit Party pointing out short-payment of Tax— Assessee accepting objection and

discharging service Tax Liability — No Show Cause Notice Issued on shortfall and no opportunity provided to assessee to justify such mismatching—Not a case of suppression with mala fide intention to evade payment of Tax—Penalty not leviable — Assessee given written promise before commencement of audit that if any discrepancy pointed out and was complied with, no further litigation would ensue— Audit conducted on basis of books of Account and Documents — Penalty not Leviable — Finance Act (32 of 1994), ss- 76,77, 73—Cenvat Credit Rules, 2004, r. 15.

Statute: Service Tax

Decision in favour of: Department

Title: **MDP Infra (India) Pvt. Ltd. v. Commissioner, Customs, Central Excise and Central Goods and Services Tax**

Sanjay Yadav and Vivek Agarwal JJ.

Citation: [2019] 65 GSTR 51

Bench/Court: In The Madhya Pradesh High Court

Service Tax — Refund—Exemption in respect of works carried out for government departments withdrawn by notification— Assessee Paying Tax thereafter—exemption restored later— Application For Refund of tax thereafter claiming to have been paid under mistake— Not Allowable—Assessee knowingly paid tax at time when transactions taxable—Nothing to show tax was paid under mistake—Rejection of application for refund as barred by time—Justified—Central Excise Act (1 of 1944), S. 11B— Notification No. 12 of 2012-ST, Dated March 17, 2012— Notification No. 25 of 2012-St, Dated June 20, 2012— Notification No. 9 of 2016-ST, Dated March 1, 2016.



