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NEWSLETTER

PUNE BRANCH OF
WIRC OF ICAI

(Subscribers copy not for sale)

Interactive Meet with Hon. Minister of Finance & Corporate Affairs



Smt. Nirmala Sitharamanji, Hon. Minister of Finance & Corporate Affairs
and
Shri. Anurag Thakur, Minister of State for Finance



Interaction



Interaction



Felicitation

ICAI's Interactive Meet with CFO's and CEO's



Inauguration



Mr. Keki Mistry
Chief Guest



CA Anil Bhandari
CCM and Chairman (CMIB)



CA. C. V. Chitale
CCM



CA. Priti Savla
Chairperson - WIRC of ICAI



Pannel Discussion (L to R Panelists) :- CA. Dilip Apte, CA. S. B. Zaware,
CA. Anil Bhandari, Mr. Prakash Apte, CA Anil Kulkarni - Moderator



Participants

Chairperson's Communique

Respected Members,

We all are amidst the return filings, tax audits, trust audits and company audits. I'm really moved by the plight of professionals who are working relentlessly despite natural calamities and man-made odds (a.k.a system goof-ups). Hope we get much more respect than what we actually get; not only for keeping up with odd working hours just so that there is no penalty or fines to our clients but also for keeping up with various changes in Act and Rules of various Laws and Statutes. It's a mammoth job in itself.



CA. Ruta Chitale
Chairperson
Pune Branch of WIRC of ICAI

Extension of due-dates are an everyday reality and I personally feel that the time has come to re-look at our profession as a Chartered Accountant. One cannot but reflect that we are moving into era of compliances- so are we to be Compliance Accountants? No harm in being one though. The coming days shall answer the same. However I strongly feel that we must pro-actively stick to our core competence which is Audit and Analysis.

There may be hardly any other professionals who are trained not only for the superb analysis of situation with an overall view of the relevant Law in force but who also possess an unmatched acumen of its commercial effects. I feel focusing on these qualities shall make the chartered accountancy profession the most sought after profession in the world.

Time and again the importance of practical training gets underlined. It is possible in future that the practical training may be segregated and more focused on what one really needs to do- as in- training and skill set required for carrying out a practice is much different from that required for doing a job. There is no good or bad but just that they are different. I feel there is a dire need to identify these two different categories of skill sets. It will go on to make a much more refined and considered articles training program.

With increase in FDI and the world market opening up slowly but surely for the professionals, there is an urgent necessity to bring ourselves at par with global professionals. How are we going to do it? The answer of course lies in the future but the planning and process can begin now. Even today!!! Your ideas are more than welcome.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

Awaiting your email at chairman@puneicai.org and/or message at my personal mobile number.

Warm Regards,
CA Ruta Chitale

Note on Maharashtra Industrial Policy, 2019

Contributed by :- CA. Aalhad Deshmukh

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Maharashtra Industrial Policy, 2019 – Preface

In order to encourage the dispersal of industries to the less developed areas of the State, the Government of Maharashtra has been giving a package of incentives to New / Expansion Units set up in the developing region of the State since 1964 under a Scheme popularly known as the Package Scheme of Incentives.

Vide Government Resolution No. PSI - 2019 / (CR 6) / IND – 2 dated March 07, 2019, new Industrial Policy was announced. The earlier scheme i.e. Package Scheme of Incentives, 2013 was valid up to March 31, 2018 which was initially extended up to September 30, 2018 and further till the date of announcement of new policy.

With an intention to attract more industrial investment in the state, the new policy has offered several fiscal benefits including Stamp Duty Exemption, Interest Subsidy, and GST Refund etc. This note aims to highlight major provisions of the Maharashtra Industrial Policy, 2019.

Salient Features

- >>The new policy has targeted attending manufacturing growth rate of 12% to 13% by 2023-24.
- >>In terms of investments, the target is INR 10 Lakhs Crores by 2023-24 and creating employing opportunities for around 40 Lakh people by 2023-24.
- >>The period under the new policy shall be 5 years from April 01, 2019.
- >>The government intends to conduct of study of land requirements in phased manner across the state. Accordingly, sufficient land bank shall be made available through MIDC.
- >>Special Projects like Delhi – Mumbai Industrial Corridor (DMIC) shall be coordinated by MIDC as a Nodal Agency. Under DMIC, two major projects have been planned in Maharashtra. The Shendra – Bidkin Industrial Area which is also known as Auric City is proposed to be promoted under the policy. Further, Dighi Port Industrial Area will be given a push in order to augment Industrial Development in Western Maharashtra region.

Promotion of Thrust Sectors

The Government has identified high tech emerging sectors as thrust sectors which shall be given preference in land allotment and incentives. These sectors include:

- >>Electric Vehicles (Manufacturing, Infrastructure and Servicing)
- >>Aerospace and Defence Manufacturing
- >>Industry 4.0 (Artificial Intelligence, 3D Printing, Internet of Things and Robotics, Nanotechnology, among others)
- >>Integrated Data Centre Parks (IDCP)
- >>Textile Machinery Manufacturing
- >>Biotechnology and Medical and Diagnostic Devices
- >>Agro & Food Processing (Secondary and Tertiary Food Processing units)
- >>Information Technology (IT) & IT Enabled Services (ITeS)
- >>Electronic Systems Design & Manufacturing (ESDM) and Semiconductor Fabrication (FAB)
- >>Logistics & Warehousing

- >>Green Energy/ Bio-Fuel Production
- >>Sports and Gym Equipment Manufacturing
- >>Nuclear Power plant equipment manufacturing
- >>Mineral / Forest based Industries
- >>Upcoming Industries from niche segments / sunrise sectors which shall be accorded as Thrust Sectors in the future

Fiscal Incentives for MSMEs

The Micro, Small and Medium Enterprises form backbone of the economy. For the purpose of promoting MSMEs in the state, a package of incentives based on the specified ceiling as a percentage of fixed capital investment shall be given. For the purpose of the Maharashtra Industrial Policy, 2019, the MSMEs shall include units as defined under the Micro, Small and Medium Enterprises Development Act, 2006 of the Central Government. Furthermore, small industries having Fixed Capital Investment up to INR 50 Crores shall also be construed as MSMEs. Based on the location of the unit, Ceiling based on FCI and benefits shall be determined.

Particulars	Zone A	Zone B	Zone C	Zone D	Zone D+	Specified Areas ¹	No Industry Districts ²
Eligibility Period (Years)	-	7	7	10	10	10	10
Ceiling as a percentage of FCI	-	30%	40%	50%	60%	80%	100%
Power Tariff Subsidy for eligible new units	NA	Up to a period of 3 years from the date of commencement of commercial production; (A) For units situated in Vidarbha, Marathwada, North Maharashtra, and Districts of Raigad, Ratnagiri and Sindhudurg in Konkan>> INR 1/- per unit consumed (B) For units situated in other areas (except Zone A) >> INR 0.50/- per unit consumed					
Interest Subsidy	NA	Subsidy @ 5% per annum subject to max of electricity consumed and bills paid for the year					
Stamp Duty Exemption	Stamp Duty exemption only to IT and BT Manufacturing units in IT and BT Parks		100% Stamp Duty Exemption for acquiring land (including lease rights) and for term loan purpose				
Particulars	Zone A	Zone B	Zone C	Zone D	Zone D+	Specified Areas	No Industry Districts
Electricity Duty Exemption	Electricity Duty Exemption is available only to 100% EOUs and IT / BT units for a period of 7 years		Eligible new units will be entitled to exemption from payment of Electricity Duty during the eligibility period				
State Goods and Service Tax	Eligible MSMEs shall be given Investment Promotion Subsidy (IPS) by way of refund of State Goods and Service Tax paid on first sale of eligible products billed and delivered to the same entity within Maharashtra						

1 Specified Areas include districts of Vidarbha, Marathwada, Ratnagiri, Sindhudurg & Dhule

2 No Industry Districts shall also include Naxalism Affected Areas and Aspirational Districts. Naxalism affected areas are notified in GR No.: PSI-2013/(CR-54)/IND-8 Dated 1st April 2013 issued by Government of Maharashtra Industries, Energy and Labour Department. Aspirational Districts are Osmanabad, Gadchiroli, Washim and Nandurbar.

In addition to the above fiscal benefits, marketing support; standalone incentives (not linked with IPS) to promote quality competitiveness, R&D, Technology Up gradation etc. shall also be provided.

The chaos created by mismatch in dates of earlier GR extending Stamp Duty Exemption under PSI 2013 has also been cleared. It has been announced that eligible units under PSI 2013 shall also get stamp duty exemption for their investment period.

In order to attract more Large Scale Industrial Units in the state and to achieve balanced industrial growth, the Industrial Policy has also proposed fiscal incentives to the Large Scale Industries (LSIs). LSIs shall be those units having Fixed Capital Investment more than INR 50 Crores up to minimum investment or Direct Employment as stipulated for such LSIs in the respective areas.

The fiscal incentives shall be subject to the Investment Promotion Subsidy as a specified percentage of the Fixed Capital Investment.

Particulars	Zone A	Zone B	Zone C	Zone D	Zone D+	Specified Areas	No Industry Districts
Minimum Fixed Capital Investment (INR in Crores)	750		500	250	150	100	100
Minimum Direct Employment (No.s)	100		750	500	400	300	250
State Goods and Service Tax	Not Applicable		Eligible LSI units shall be offered Investment Promotion Subsidy in the form of refund of State Goods and Service Tax paid by the unit on first sale of eligible products billed and delivered to the same entity within the state.				
Stamp Duty Exemption	Stamp Duty exemption only to IT and BT Manufacturing units in IT and BT Parks		100% Stamp Duty Exemption for acquiring land (including lease rights) and for term loan purpose				
Electricity Duty Exemption	Electricity Duty Exemption is available only to 100% EOUs and IT / BT units for a period of 7 years		Eligible new units will be entitled to exemption from payment of Electricity Duty during the eligibility period				

The LSI units applying for incentives in the first year of policy period will be given full basket of eligible incentives for respective category and location of the unit. If the unit applies in subsequent years of the policy period, curtailment shall be applicable. The applicable incentives will be reduced by 5% for each year of delay in application. However, the LSI units in the Trust Sector shall be protected from the curtailment.

Eligible LSI units in Agro & Food Processing (secondary and tertiary processing units and Farmer Producer Companies for manufacturing/ processing activity only), Green energy/ bio fuel and Industry 4.0 shall be given additional support.

Incentives to the LSI shall be given to promote quality competitiveness, Research & Development, technology up-gradation, water & energy conservation, cleaner production measures and credit rating.

Fiscal Incentives for Mega Units and Ultra Mega Units

For classification as Mega and Ultra Mega Units, following investment criteria shall be used:

Particulars	Zone A	Zone B	Zone C	Zone D	Zone D+	Specified Areas	No Industry Districts
Minimum Fixed Capital Investment (INR in Crores) for classification as Mega Unit	1,000		750	500	350	200	
Minimum Direct Employment (No.s) for classification as Mega Unit	2,000		1,500	1,000	750	500	350
Minimum Fixed Capital Investment (INR in Crores) for classification as Ultra Mega Unit	4,000						
Minimum Direct Employment (No.s) for classification as Ultra Mega Unit	4,000						

Ultra-Mega/ Mega projects that have been classified so based on the employment criteria shall be required to maintain the qualifying direct employees on payroll throughout the year. If the unit fails to satisfy the employment criteria for any period of the year, then Industrial Promotion Subsidy shall not be allowed for such year.

Minimum Direct Employment as prescribed should be created within a period of three years from the date of commencement of commercial production.

Currently, the MIDC has a policy of allotting plots to such Mega and Ultra Mega Projects on priority basis. It has been proposed to continue this policy.

The High Power Committee constituted by the Government shall be empowered to determine customised basket of benefits to such Mega and Ultra Mega Projects. Such benefits shall be decided from case to case basis.

Through Maharashtra Vikrikar Rokhe Pradhikaran Limited (MVRPL), the State Government shall invest in Large, Mega and Ultra Mega projects in the State and projects with Fixed Capital Investment of more than INR 500 Crores. Such investment shall be made in the form of equity shares to the tune of 9%. If the government decides to sell its equity, the first right of refusal will be with the promoter of the company at prevailing market rates only.

Other Points

>>Unlike other states, Maharashtra does not have specific policy for Start-ups. However, the Industrial Policy of 2019 has provided for promoting Start-up Ecosystem by providing necessary infrastructure and creating facilitating environment involving young entrepreneurs to enable sharing of their ideas and help them by handholding, mentoring and providing them financial assistance.

>>Many locked and closed units have been occupying land which is scarce factor for industrial development. Government wishes to bring in measures like Amnesty Scheme for Government Dues and Penalties. Development of Clusters for Closed Units will also be initiated.

>>For all state related licenses, permissions etc. Maharashtra Industry, Trade & Investment Facilitation Cell (MAITRI) was introduced. Though the platform has been getting praise all over, it is utmost necessary to upgrade and strengthen the platform.

>>Creation of Export Promotion Council, Extending Export Infrastructural Support and Allowing Venture Capital Fund for EOUs are some of the steps proposed as a part of Export Promotion Incentives.

>>Government has mandated that companies to whom Corporate Social Responsibility Rules are applicable and who have received benefits under this Industrial Policy; shall spend a minimum of 50% of CSR amount for CSR activities in the state as a goodwill gesture.

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Whistle Started Blowing

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Introduction:

India's biggest corporate scandals in Satyam Computer, Reebok India and Global Trust Bank devastated the confidence of the investors, employees, suppliers, customers, bankers, government and all other stakeholders.

Satyam scandal Ramalinga Raju master minded a Rs 14,000 crore fraud. Reebok's former MD had 'stolen' products by setting up 'secret warehouses', indulged in fictitious sales to cause a Rs 8,700 crore dent to the company. GTB due to its over exposure to capital markets and huge NPAs was in a financial mess and tried to cover up its monumental NPAs through under provisioning.

The modus operandi of each scam was well planned with the sole aim of siphoning off public money. These corporate fraud companies indulged in fudging the accounts, manipulating income, making under provision, diverting loan, transferring money to their private bank accounts and to their related companies, a complete breach of public trust.

The accounting and the financial crimes committed by big corporate shave opened the eyes of various government regulators to put multiple checks and balances for better corporate governance. The government has introduced many mechanisms to check and report the frauds happening in corporate sector, one such mechanism is "whistle-blowing".

Vigil Mechanism under the Companies Act 2013:

The Companies Act 2013 has introduced vigil mechanism for directors and employees to report their genuine concerns about on unethical behaviour, misconduct, frauds and violation of code of conduct.

Section 177(9) of the Companies Act, 2013 and Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 requires every listed company, companies which accept deposits from the public and companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees to establish a vigil mechanism.

Corporates have framed their vigil mechanism and whistle – blower policy and has mentioned an e-mail ID to facilitate its directors and employees to directly report their genuine concerns. The company will take appropriate action on the complaint received and at the same time safe guard the reporter.

This whistle-blower mechanism started working now, more skeletons started tumbling out.

Thanks to the courageous whistle-blowers, without their whistle blowing many frauds might not have surfaced out. All the recent whistle-blower's exposure is an encouragement for others to follow the suit. In the corporate world knowing a fraud but not reporting it, tantamounts to a crime. Mere failure to report a fraud may not be a fraud by itself but failing to do so is a complete breach of trust.

Type of whistle – blowers:

There are two types of whistle- blowers, one is internal whistle blowers and another is external whistle blowers.

Employees who reveal fraud, corruption or mismanagement to the senior management are called internal whistle-blowers.

Outside agencies like auditors, media, law enforcement agencies etc., blow any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public are called external whistle-blowers.

How a whistle-blower compliant has shunted out CEOs of top companies:

a) Whistle-blower complaint has sacked ICICI Bank MD & CEO- Chanda Kochhar

Chanda Kochhar had joined ICICI as a management trainee, over a period of her 25 years of service she rose to become MD & CEO, she was ruling the roost of ICICI Bank. She was instrumental for bringing big retail business to ICICI Bank. She was considered as one of the most successful woman entrepreneur in India and was a role model for younger generation. She was also recipient of prestigious Padma Bhushan award but all her fame and name fallen suddenly on a whistle blower complaint.

In 2016 a whistle blower, Mr Aravind Gupta, a shareholder has exposed the fraudulent nexus between ICICI Bank, Videocon Group and NuPower Renewables — a company promoted by Chanda Kochhar's husband Deepak Kochhar but no serious action was taken by the bank, the whistle-blower again in 2018 alleged that Videocon Group chairman Venugopal Dhoot invested Rs 64 crore in NuPower in 2010 and later the proprietorship of the company was transferred to a trust owned by Mr. Deepak Kochhar for Rs 9 lakhs after Videocon Group received a loan of Rs 3,250 crore from ICICI Bank in 2012.

Initially the board management had shown their complete faith on Chanda Kochhar and therefore without probing the allegation gave a clean chit to Ms Kochhar, but the outcry from investors, the public outrage, the media and well-wishers forced the government to appoint a panel headed by retired Supreme Court Judge B.N. Srikrishna to probe the allegations. The board had sent Kochhar on long leave till the probe is over.

Justice B N Srikrishna has submitted his report, the committee report indicted Chanda Kochhar for violating the private sector lender's code of conduct in the Videocon loan case.

Perhaps her involvement in this scam could not have come out if the whistle blower not blown the whistle.

b) Whistle-blower information expelled Indian Partner of the Big 6 audit firm BDO:

The income tax department had officially assigned BDO, one of the largest audit and law firm, the task of assisting in search and seizure operations in September last year. The task assigned to BDO by the tax department included retrieving data from laptops and hard drives seized during such operations. The auditor provides forensic services to the tax department in various locations.

"We must let go of the life we have planned, so as to accept the one that is waiting for us would be even more better than the planned one. Hope for the best."

An anonymous whistle-blower accused two BDO executives of demanding bribes from a company that was being investigated by the income tax department in return for altering its report and to destroy evidence on the company. BDO had captured evidence of one of the partners accepting bribes, and expelled him, this is a big pat on the back of the whistle-blower.

Public has immense faith on the big audit firms, if the fence started eating the crop then it will weaken the entire financial system. The whistle-blower act not only exposed the fraud but has also given an opportunity for BDO to protect its name.

c) Whistle-blower complaint terminated CEOs of Credit Rating Agencies:

In Aug 2019, ICRA Board had terminated its MD and CEO Naresh Takkar on a complaint made by a whistle blower that Naresh Takkar meddled with high credit rating to the fallout IL&FS.

ICRA assigned high ratings of AAA to IL&FS but contrary to its ratings IL&FS defaulted in its debt payment, which triggered a liquidity crunch in the financial services market.

Another credit rating agency CARE also sent its MD on a long leave for the same reason of meddling with high credit rating to IL&FS.

Again because of the whistle blown at the right time, many skeletons started tumbling out from IL&FS cupboard.

External whistle-blower cases:

a) PwC resigned from Reliance Group Companies:

One of the big 4 audit firm PwC has resigned from their position of statutory auditors from the Anil Ambani Group companies Reliance Capitals Limited and Reliance Home Finance Limited for the fiscal year 2019. They did not submit the report. The reason for quitting, given by the audit firm that during the course of audit they made certain observation on some transactions for that they did not receive any satisfactory response from the company they also felt that this transaction may have a significant impact or material to the financial statements.

This is an external whistle – blower case. The whistle blower has brought to the notice of government regulator in particular and public in large that all is not well with Reliance Capitals and Reliance Home finance.

Followed by the PwC resignation, the lead lender bank SBI initiated forensic audit of other Reliance Group company RCom for 4 years broadly on the following areas, this is the repercussion of the whistle blown.

- Diversion of loans
- Genuine of group company transactions
- Related party transactions

b) PwC resigned from Eveready Industries:

On the same line of Reliance, PwC resigned as auditors from Eveready Industries by citing the reason that they made certain observation on the inter group transactions made in FY 2019. Eveready did not provide sufficient evidence on the impairment losses. Due to these transactions, which made PwC to quit, PwC blew the whistle by quitting from its position.

d) Resignation of other Big 4 auditors:

In the month of Aug 2019 Deloitte Haskins and Sells has resigned as auditor of DHFL, BSR & Co the associated firm of KPMG resigned from two Reliance Companies - Reliance Infrastructure and Reliance Power from their position of statutory auditors.

Reasons for auditor's resignations may be many but the unusual and sudden resignation of auditor's force MCA to initiate probe to find out there were any financial irregularities at the companies along with ascertaining the real reason behind the auditors' resignation.

Auditors should disclose their key findings:

Statutory auditor's resignation creates a strong repercussion, it will not only send a shock wave in the share market, it also brings pressure on credit rating agencies, banks, independent directors and on senior management to review their position. Last year auditors of 204 listed companies resigned, this number is unusual.

In this these cases though the resignation of the auditors may be considered as whistle blown but it is not loud and clear. Merely stating that the auditors did not receive satisfactory reply on certain transaction is not going to clear the air, in fact it creates more confusion in the share market. The auditors should disclose their findings and observations which forced them to resign this would be helpful to the stakeholders.

NFRA requirements:

National Financial Reporting Authority (NFRA) going to seek auditors of the companies falling under their purview to file key findings specifically on adverse comments and observations. They are going to notify an annual disclosure form in line with the one already existing in USA to bring more transparency in the audit.

Henceforth auditor's mere certification of "true and fair view" may not be sufficient. The auditors are expected to do little bit of forensic audit also to bring out the frauds happening in the corporates, this is a part of whistle blowing.

Whistle Blowers increased in numbers substantially

A recent report says that in FY 2019 more than 4000 whistle blower complaints has been received in the Nifty 50 companies, which is 30% more than complaints received in FY 2018. This is the very healthy sign.

Prior to the vigil mechanism was mandated in The Companies Act 2013, the Board management did not take seriously on the complaints received but the positions are entirely changed now, Board has started to discuss the complaints received, audit committees also started to review the complaints received and the action taken on that. This is an encouragement to the whistle blowers.

SEBI suggests cash award for the whistle blowers:

SEBI suggest a cash reward of 10% of the money collected subject to a maximum of Rs 1 Crore to the whistle blowers to bring out the insider trading. In USA such rewards are already in operation.

Whistle-Blower Protection Act 2014:

Whistle Blowers Protection Act, 2014 provides a mechanism to investigate alleged corruption and misuse of power by public servants and also protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The wrongdoing might take in the form of fraud, corruption or mismanagement. The Act will also ensure punishment for false or frivolous complaints.

Conclusion:

All the above recent cases indicate that the whistle – blowers started blowing the whistle and it is loud and clear. Whistle blowers are self-less people; their sole aim is to protect the organisation from any misdeeds.

The whistle – blower needs lot of courage and guts, they put their life and family in danger. More than 15 whistle blowers have been murdered in the past three years in India. Though many organisations assure that the identity of the whistle – blower will be protected, in practical it is not happening in some cases. Satyendra Dubey who has exposed the corruption in National Highway Authority of India thought that his identity will be kept secret but it was leaked out and led to his murder.

Some times in private sector, instead of taking action against a whistle-blower's valid complaint, the complainant employee got fired, shooting the messenger is an act of cowardice.

The whistle-blower should take utmost care while sending information, he should not discuss with anyone, and the information should be kept as a top secret. If he is afraid of his life, then he / she can safely send anonymous mail / letters to the concerned people by hiding their identity with the sole aim of safe guarding the organisation.

Quote:

"Often the best source of information about waste, fraud, and abuse in government is an existing government employee committed to public integrity and willing to speak out. Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled. We need to empower federal employees as watchdogs of wrongdoing and partners in performance."- Barack Obama, 44th President of the United States of America.

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Reimbursed salary costs of seconded employee are not fees for technical services

Contributed by :- CA. Suraj R. Agrawal

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Case Law Citation:-

M/s.Faurecia Automotive Holding versus DCIT, International Taxation (ITA No. 4 of 2017 with ITA No. 784/PUN/2015)

Case Summary:-

Facts of the case:

- The taxpayer (a company tax resident in France) had entered into an agreement with an Indian associated entity to second one of its senior employees to the Indian entity. The employee was appointed by the Indian entity as its Chief Executive Officer (CEO), with managerial, administrative and supervisory responsibilities.
- The seconded employee was appointed in accordance with the terms and conditions specified in the offer of appointment from the Indian entity, containing provisions for payments in respect of basic salary, housing assistance, conveyance allowance, child education allowance, special allowance, etc. The employee qualified for the benefits of the provident fund and superannuation schemes of the Indian entity and his leave entitlement was determined in accordance with the rules of the Indian entity.
- Part of the employee's salary was paid in France by the taxpayer and subsequently reimbursed by the Indian entity without any mark-up. The Indian entity deducted tax at source from the total salary paid to the employee, including the amount reimbursed to the taxpayer. The taxpayer contended that the amount received from the Indian entity was a "reimbursement of expenses," and not Fees for Technical Services (FTS), and hence was not chargeable to tax in India.
- The Indian assessing officer (AO) determined that the taxpayer provided technical services to the Indian entity through its staff and issued an order including the reimbursed amount as taxable FTS in the hands of the taxpayer. The taxpayer filed objections against the order with the Dispute Resolution Panel (DRP).
- The DRP held that the employee made available to the Indian entity his technical knowledge, experience and skill that was of an enduring nature. Accordingly, the amount should be regarded as FTS within section 9(1)(vii) of the Income-tax Act, 1961 (ITA) and royalty income under article 13 of the France-India tax treaty. The taxpayer appealed the DRP's decision to the Pune Bench of the Income Tax Appellate Tribunal (ITAT).

Issue

- Whether reimbursement of salary costs of seconded employee can be treated as fees for technical services?

Ruling:

- The ITAT observed that the employee was working as the CEO of Indian entity under the control, supervision or direction of that entity and that his remuneration was fixed by the Indian company.
- No evidence had been produced to demonstrate that the employee was working under the control, supervision or direction of the taxpayer.
- In accordance with explanation 2 to section 9(1)(vii) of the ITA, the definition of FTS does not include income of the recipient chargeable under the head "salaries." The ITAT held that the word "recipient" in explanation 2 meant the real recipient of the payment and not the literal recipient.
- The real recipient of the payment made by the Indian entity was the employee who was taxed on the total salary, including the amount paid by the taxpayer and, hence, the same amount cannot be taxed again via assessment on the taxpayer.
- The ITAT distinguished the 2014 decision of the Delhi High Court in Centrica India Offshore Pvt. Ltd. by observing that in that case, money paid by the Indian entity accrued only to the overseas entity and may or may not have been paid to the seconded, depending upon the terms of the contract.
- In the case at hand, the money never accrued to the taxpayer. As a result, the ITAT held that the amount received by the taxpayer from the Indian entity was not chargeable to tax in the hands of the taxpayer. It was a reimbursement of costs and not within the scope of FTS as defined in section 9(1)(vii) of the ITA.

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Panel Discussion



Participants



Participants



"The correct temperature at home is maintained by warm hearts & cool heads, not by good ventilation, fans & air conditioners."

One Day Training Programme for Peer Reviewers



Inauguration



CA. C. V. Chitale
CCM & Speaker



CA. Uday Sathaye
Speaker



CA. Alvares Paul
Speaker



CA. Dr. Dilip Satbhai
Speaker

Seminar on "Information Technology Law and its Challenges"



CA. Makarand Herwadkar
Speaker



Mr. Gokul Narayan
Speaker



Participants

Programme on "Introduction of Income Tax & How to File Income Tax Return" for Press Reporters



CA. Chetan Daga
Speaker



Participants

GST BARE ACT

AS AMENDED BY FINANCE (NO. 2) ACT 2019



SCAN & SEE INSIDE



	GST Acts	GST Acts with Rules	GST Acts with Rules/ Forms & Notifications
CGST Act 2017	✓	✓	✓
IGST Act 2017	✓	✓	✓
UTGST Act 2017	✓	✓	✓
GST (Compensation to States) Act 2017	✓	✓	✓
Annotation under each Section shows			
Relevant Rules	✓	✓	✓
Relevant Forms	✓	✓	✓
Date of Enforcement	✓	✓	✓
Relevant Notifications & Circulars	✓	✓	✓
Allied Laws referred to in the section	✓	✓	✓
GST Guide	✓	✓	✓
CGST Rules 2017		✓	✓
IGST Rules 2017		✓	✓
UTGST Rules 2017		✓	✓
GST Compensation Cess Rules 2017		✓	✓
GST Settlement of Fund Rules 2017		✓	✓
GST Forms		✓	✓
GST Notifications			✓
GST Forms' Action Point			✓
	₹ 475	₹ 875	₹ 1650

Pune Branch of WIRC of ICAI

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