



NEWSLETTER
July-16

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July -2016



Dear Members,

Greetings of the day....

It is my pleasure to converse you through this Newsletter, and I believe that this is the best means to precisely communicate the Noida Branch activities conducted. I wish you all the Happy CA Foundation day, the day of our pride and glory of the profession.

Friends, to celebrate the CA Day we have gone through various activities including, Health check-up camp, go green plantation drive, clean India Swatch Bharat drive, serving the needy community Orphanage home, Literacy Kit distribution to needy students, CITIZEN – Member awareness seminar on Income Disclosure scheme-2016, etc.

Friends, we have decided to have our Institute flag wave in the Noida branch premises 24*7. This month is very busy for the professional for the Income tax return filing best wishes to all.

Friends there are new area of profession for Forensic Audit, Fraud Detection and prevention is up coming, and to cater the professional we have organized full day seminar on 9th July, and moreover we are going to start the 1st Batch of Noida Branch of the certification course on forensic audit in August.

Friends we are also organizing Seminar on Women empowerment, under the edges of Women Empowerment Committee, along with Ghaziabad Branch. We welcome all the female candidates to come forward to grace the occasion.

Wish you all the best.....

Best Regards
CA Sanjay Sharma
Chairman, NOIDA Branch CIRC
9899709954

*Thank
you* 



PROGRAMME DETAILS

DATE

**SEMINAR ON FORENSIC ACCOUNTING AND FRAUD
PREVENTION - AT ICAI BHAVAN A 29, SECTOR-62,
NOIDA**

09th ,July, 2016

SEMINAR ON NPO - AT BRANCH PREMISES

16th ,July, 2016

**SEMINAR ON WOMEN EMPOWERMENT - HOTEL
COUNTRY IN GHAZIABAD**

23rd , July, 2016



Secretary writes.....

Respected Professional colleagues,

This month too, I am getting opportunity to speak you through this newsletter.

Friends, the month of June 2016 has been eventful. I had written in my last address to you that CA fraternity has to play vital role in the implementation of Amnesty like scheme for domestic black money holders from 1st June 2016 to 30th Sep. 2016 for 4 months. Now ICAI is also taking initiative to create awareness about this scheme amongst various trade associations and federation through nationwide seminar on 2nd July, 2016. Your branch is also organising seminar on the topic in associations with Income Tax Officials, various Trade Associations and other federations as a part of 67th CA Day Celebration. All members are requested to join hand to prevent jeopardising the growth of Indian economy as well huge loss in the tax revenue for the Government.

Friends, from 26th June 2016 to 2nd July 2016 is 67th CA Day Celebration week and your branch is also celebrating this week with full of energy and enthusiasm starting with Health and diagnostics check-up camp on 26th June 2016 (Sunday) in association with Felix Hospital, Sector-137, Noida wherein, in addition to diagnostics checks, a team of doctors like dentist, physician, dietician and Naturopathy have examined the health of our members and large numbers were benefitted in this camp. On 27th June 2016 (Monday), members have joined hands to make your city Green by making the TREE PLANTATION at Central Park, Sector-50, Noida. On 29th June 2016, our members had visited Bal Kuteer an orphanage home at Sector-12, Noida and delivered them food packets and other necessary daily needs articles, as desired by kids. In this 67th CA Day Celebration week, other programs are lined up for July, 2016.

Friends, on 7th June 2016, your branch had convened its 26th Annual General Meeting where audited accounts for financial year 2015-16 were presented before the august gathering of our esteemed members for their approval. Audited accounts were approved unanimously.

Friends, from 17th June 2016 to 19th June 2016, Young Members Empowerment Committee of ICAI headed by Hon'ble Central Council Member CA Mukesh Singh ji Kuswah had organised 3 days Residential Refresher Course (RRC) for young members at Haridwar hosted jointly by your branch with Ghaziabad Branch. The RRC was attended by expected numbers.

Friend, your branch had also celebrated 2nd International Yoga Day along with the whole world on 21st June, 2016, at Sanatan Dharam Mandir, Sector-19, Noida in association with Bhartiya Yoga Kendra and in the presence of Mrs. Vimla Batham, Hon'ble sitting MLA from your town. Members in large numbers were benefitted by learning yog vidya.

Friends, on 1st July 2016, ICAI turns 67. On this day, it would not be out of place to mention that our profession is upbeat. 67 years are long and no doubt we have come a long way, but much of the distance yet to be covered before we reach our destination across newer horizons. Friend's numbers of events are lined up for CA Day on 1st July 2016. We shall start our day with flag hosting followed by Swachchh Bharat Abhiyan, Felicitation of senior members completed 25 years in profession, young members qualified between 1st July, 2015 to 30th June 2016, family get to gather etc.

Friends, July month is very busy for CA fraternity as 31st July is the last date of filing of Income Tax Returns for persons, associations, firms and companies whose accounts are not liable for audit under any Act of Laws. Still I request members to attend all CA Day programs and seminars lined up for this July.

Friends, on 2nd July, 2016 (Saturday), we are organising a seminar on Awareness of Income Declaration Scheme 2016 launched by Govt. Of India as written in earlier Para.

Friends, on 9th July, 2016 (Saturday), the committee of Information and Technology of ICAI under the dynamic leadership of CA Manu Agrawal Ji Hon'ble Central Council Member is organising seminar on Forensic Accounting & Fraud Prevention at ICAI auditorium, Sector-62 Noida.

Friends, our members based at Greater Noida and its neighboring cities are not attending programs organised in Noida for some or other reasons. Now your branch is planning a full day seminar in Greater Noida on 16th July, 2016 (Saturday) on taxation and financial reporting with prominent speakers of the subjects. On finalisation of program, we shall intimate you in due course.

Friends, The Women Empowerment Committee of ICAI headed by Hon'ble Central Council Member CA Kamisha Soni Ji, organising a program for the female members of ICAI to be hosted jointly by your branch with Ghaziabad Branch on 23rd July, 2016 at Hotel Country Inn Ghaziabad, a separate information shall be given to all female members in due course. I request all female members to attend program in large numbers.

Friends, I am informing you just for your knowledge that there are minor changes in class room training program for CA students. ICAI has withdrawn GMCS-I which was for 15 days and replaced from Orientation Course for 15 days, GMCS-II has been renamed as GMCS, and Orientation Program for 6 days has been completely withdrawn.

Your suggestions shall always be a source of inspiration for me and my other committee's colleagues.

With best regards,
CA SUDHIR KUMAR
SECRETARY, NOIDA Branch CIRC

*Thank
you* 



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THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016

Home buyers have so far got a raw deal, especially with regards to their dealings in the real estate sector. The Act came with the motive to embolden the buyers and make them more confident about their dealings and also help the sector to grow at macro level in the long run.



PURPOSE OF ACT-

The real estate market is largely non transparent and the reason for the same is the absence of a regulatory authority. Thus, the act seeks to establish the Real Estate Regulatory Authority within a period of one year from the date of coming into force of this act, for regulation and promotion of the real estate sector and to ensure that all the real estate transactions are carried out in a transparent and efficient manner and to establish the Appellate Tribunal for speedy redressal of disputes.

The Act came into force from 1st May, 2016 and it extends to whole of India except the State of Jammu and Kashmir.

REQUIREMENTS OF THE ACT-

- a) The Act makes mandatory for the promoter to deposit seventy percent of the amount realised for the real estate project from the allottees, in a separate bank account maintained in a scheduled bank.
Now, this will ensure that the project would complete on time.
- b) The promoter shall be liable to return the amount received by him along with interest in case he fails to complete or unable to give possession and the allottee also wishes to withdraw from the project. But if an allottee does not intend to withdraw, he shall only be liable to pay interest for every month of delay, till handing over of the possession.

Home Run

Key Features of Real Estate Bill

All projects to be registered with regulatory authority before selling	Disclose all project details, including approvals, plans, land status, etc
70% of buyer money to be deposited in escrow for construction	
No super area; homes to be sold on carpet area only	Builder and buyer to pay same rate of interest for any delays on their part

An illustration at the bottom of the infographic showing a stylized city skyline with orange and red buildings. In the foreground, several silhouettes of people in business suits are walking, some carrying briefcases.

- c) The current practice of selling on the basis of ambiguous super built up area will come to stop as the act comes with the definition of Carpet Area which means the net usable floor area of an apartment.

REGISTRATION–

Real Estate agents who facilitate sale or purchase of property must take prior registration from regulatory authority. They are granted a single registration for the entire State of Union Territory.

The Act makes it mandatory to register the real estate project with the Real Estate Regulatory Authority in the following cases:

- a) Where the area of land is over five hundred square meters or there are more than eight apartments.
- b) Where the ongoing projects on the date of commencement has not received completion certificate within a period of three months.
- c) For the purpose of advertising, marketing, booking, selling or offer for selling, or inviting persons for purchase.

The registration can be granted or rejected by the regulation authority within a period of thirty days from the date of application but the authority has also reserved the right and power to revoke the registration granted by giving at least thirty days' notice, suo moto or in case of any default or complaint made on part of promoter.

In case of failure of registration, a penalty up to ten percent of the estimated project cost or three years of imprisonment may be imposed which may extend further.

Failure to comply with the orders or decisions of Tribunal, shall attract imprisonment for one year for the agents & allottees and three years for the promoter with a fine for everyday, which may extend

REAL ESTATE APPELLATE TRIBUNAL–

The Bill also proposes to establish a Real Estate Appellate Tribunal within a period of one year from the date of coming into force of this act.

Any person aggrieved by any direction or order or decision of Authority or adjudicating officer may prefer an appeal to Appellate Tribunal within a period of sixty days from the date of receipt of copy of direction or order or decision.

The promoter shall have to deposit with the appellate tribunal at least thirty percent of the penalty or such higher percentage as may be determined or the total amount including interest as the case may be before the said appeal is heard.

OTHER RELEVANT PROVISIONS–

- a) Where any person sustains any loss or damage by the reason of any incorrect or false statement contained in the notice, advertisement or prospectus issued by the promoter, he shall be compensated by the promoter in the manner prescribed.
- b) The promoter shall not accept a sum of more than ten percent of the cost of the apartment, plot or building as an advance payment without entering into an agreement for sale.
- c) The promoter cannot make any changes in the sanctioned plans, layout plans and specifications of the proposed project without the prior consent of the allottee.
- d) The promoter has an obligation not to transfer or assign his majority rights and liabilities to a third party without the prior consent from two third of allottees and without the written approval of the Authority.
- e) The accounts of the promoter shall be audited within a period of six month from the end of every financial year by a chartered accountant in practice and that of the authority shall be audited by Comptroller and Auditor General of India at such intervals as may be specified.

CONCLUSION–

“The government appears to be working towards its promise to deliver its vision of “Housing for All” by 2022 and towards wide growth in the real estate sector by prohibiting the flow of unaccounted money in the long run and providing a major sense of relief to the buyers.”

With best regards,
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sakshigupta022@gmail.com

*Thank
you* 

Drafting of a Limited Liability Agreement

While drafting a Limited Liability Partnership (LLP) Agreement, utmost care has to be taken because it is the main document governing the relationship between the partners of LLP on one hand and between the partners and the LLP on the other hand.

First of all, we have to see that who can become partners of a LLP. The following persons can become partners in a LLP:-

1. Individuals
2. Limited Liability Partnerships
3. Companies
4. Foreign Limited Liability Partnerships
5. Limited Liability Partnerships incorporated outside India
6. Foreign Companies

It may be noted that a Hindu Undivided Family (HUF) or its Karta cannot become partner of a LLP. It has been clarified by Ministry of Corporate Affairs in their Circular No. 12/2013 dated 29/07/2013. It has been defined in Section 5 of the LLP Act that any individual or body corporate can become partner in a LLP and a HUF is neither an individual nor a body corporate.

While applying for registration of a LLP, the persons who have signed the incorporation documents as partners can enter into the LLP agreement and if the agreement had been executed before incorporation, then the partners have to ratify the agreement.

While drafting a LLP agreement and to avoid the confusions and misunderstandings among the partners on the one hand and on the other hand, to enable the orderly function of the LLP, the following aspects should be taken care of:-

- Nature of business must be clearly defined.
- Duration of business must be clearly defined, if the business is going on for a specific period only.

- As far as partners are concerned, the following aspects must be covered in LLP agreement;-
 - (a) Admission of Partners
 - (b) Removal of Partners
 - (c) Contribution towards capital by each partner
 - (d) Consequences in case of death of any partner
 - (e) Transfer of interest in the firm
 - (f) Profit and Loss sharing Ratio
 - (g) Interest to partners on their capital
 - (h) Remuneration to partners
 - (i) Rights of partners
 - (j) Duties of partners
 - (k) Resolution of disputes among partners
 - (l) Amendment in LLP agreement
 - (m) Opening of bank account and its operation
 - (n) Management of LLP on day to day basis
 - (o) Arbitration clause

Before drafting LLP agreement, the partners should discuss all the matters which have to be incorporated in LLP agreement. All such matters should be listed out. It must be ensured by all the partners that all such matters which are listed out must be included in LLP agreement. Moreover, where the partners do not execute the LLP agreement, then the LLP will be governed by the First Schedule of the LLP Act and even if there is a written LLP agreement and where no specific clause for any matter, then such matters will be governed by the First Schedule.

It can be concluded with this fact that there are numerous factors associated with the drafting and characterisation of a LLP agreement and intensive care should be taken care of in this exercise.

With best regards,

CA Vineet Gupta
M. No. 089340

*Thank
you* 

Synopsis of Good & Service Tax (GST) as per Model GST Law

On June 14, 2016 the Finance Ministry has released the 'Model GST Law'. It outlines the structure of GST regime. Further, the draft of 'Integrated GST Bill, 2016 is also released along with such Model GST laws. This draft also provides for the levy and collection of CGST and IGST.

CGST = Central Goods and Service Tax

IGST = Integrated Goods and Service Tax

SGST = State Goods and Service Tax

1. Registration:

The dealer is required to take registration under this law if his aggregate turnover in a financial year exceeds Rs. 9 lakhs. However, if the dealer is in the north-eastern state, he is required to take registration if his aggregate turnover in a financial year exceeds Rs. 4 lakhs.

2. Place of registration:

The dealer has to take registration in the State from where taxable goods or services are supplied.

3. Migration of existing tax payer to GST:

Every person already registered under extant law will be issued a certificate of registration on provisional basis. This certificate shall be valid for period of 6 months. Such person shall have to furnish requisite information within 6 months and on furnishing such information final registration certificate shall be granted by State / Central Government.

4. GST compliance rating score:

Every person shall be assigned a compliance rating score based on his record of compliance with the provisions of this Act. The GST compliance rating score shall be

updated at a periodic intervals and intimated to the taxable person and also placed in the public domain.

5. Levy of Tax:

The person registered under this law is liable to pay tax if his aggregate turnover in a financial year exceeds Rs. 10 lakhs. However, a dealer conducting business in any of the north eastern state the aggregate turnover in a financial year shall exceed Rs. 5 lakhs.

A negative list has also been prescribed for transactions and activities of Government and local authorities which shall be exempt from GST levy, like activities of issuance of passport, visa, driving license, birth or death certificate.

6. Taxable Event:

The taxable event under GST regime will be supply of goods or services. Supply includes all forms of supply of goods / or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made for a consideration. It also includes importation of service whether consideration paid or not.

7. Point of taxation:

CGST / SGST shall be payable at the earliest of the following dates namely:

- a. Date on which the goods are removed for supply to the recipient (in case of movable goods)
- b. Date on which goods are made available to the recipient (in case of immovable goods)
- c. Date of issuing invoice by supplier
- d. Date of payment by supplier
- e. Date on which the recipient shows the receipt of goods in his books of account
- f. TCS on online sales of goods or service

8. TCS on online sale of goods:

Every E-commerce operator engaged in facilitating in supply of any goods / or services (like Amazon, Flipkar etc) shall collect tax at source at time of credit or at time of payment whichever is earlier.

9. Valuation Rules:

Some of the methods for valuation are:

- a. Transaction Value: The value of transaction
- b. Transaction value of similar kind: Where the transaction value cannot be determined
- c. Computed Value method: Cost of manufacture + processing of goods + Provision of services (if any) + general expenses
- d. Residual method: Reasonable basis of ascertaining the value of transaction (if the above method does not apply)

10.Utilization of Credit:

- a. IGST: first to be adjusted against IGST....then towards CGSTremaining amount towards SGST
 - b. CGST: first to be adjusted with CGST ...then towards IGST
 - c. SGST : first towards SGST....then towards IGST
- Input tax credit of CGST shall not be available for payment of SGST

11.Payment:

Any tax, interest, penalty, fee etc., shall be paid via internet banking or using credit / debit cards or NEFT or RTGS. This amount shall be credited to the electronic cash ledger of the dealer.

12.TDS:

The Central or a State Government may mandate certain departments (viz, local authority, Govt. Agencies) to deduct tax at the rate of 1% on notified goods or services, where total value of such supply under contract exceeds Rs.10 lakhs.

13>Returns:

- a. Monthly return: Every registered dealer have to file e-file a monthly return for inward and outward supplies of goods and/ or services, input tax availed, tax payable, tax paid within 20 days after the end of such month.
- b. Return for composition scheme: Dealers paying tax under composition scheme shall have to furnish a return for each quarter with 18 days from the end of such quarter.
- c. TDS return: Every dealer who is required to deduct TDS shall file return electronically within 10 days after the end of month in which tax deduction is made.
- d. Input service distributor: Input service distributor has to file return within 13 days after the end of each month.
- e. First return: Every registered taxable person paying CGST/SGST on all intra –state supplies of goods and / or services shall have to furnish the first return from the date on which he become liable to registration till the end of each month in which the registration has been granted.
- f. Annual return: Every registered taxable person shall have to furnish an annual return for every financial year electronically on or before the 31st day of December following the end of such financial year.
- g. Final return: Every registered taxable person who applies for cancellation of registration shall have to furnish a final return within three months of the date of cancellation or date of cancellation of order, whichever is later, in the prescribed form.

14. Transitional provisions:

Under the Model GST law, a registered taxable person will be entitled to take credit of the amount of CENVAT of service / VAT carried forward in a return furnished by him in respect of the period ending with the day immediately preceding the appointed day.

With best regards,
AMRITA CHATTOPADHYAY
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9717067979

*Thank
you* 

No Clear guidelines for seizure of Jewellery found during search and its assessment thereon

Brief Background:-

Vide CBDT Instruction no. 1916 dated 11-05-1994, it has been clarified that no seizure should be made by the Search Party of the Jewellery and Ornaments found during the course of search proceedings under Section 132, where the same have been duly declared in the Wealth-tax Returns filed by the taxpayer or where such ornaments are within the prescribed limits of 100, 250 or 500 grams as stated in the said instruction. The aforesaid instruction is reproduced herein under:-



“Guidelines for seizure of jewellery and ornaments in course of search

Instances of seizure of jewellery of small quantity in course of operations under section 132 have come to the notice of the Board. The question of a common approach to situations where search parties come across items of jewellery, has been examined by the Board and following guidelines are issued for strict compliance.

- (i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized.
- (ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms per male member of the family need not be seized.
- (iii) The authorised officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorising the search at the time of furnishing the search report.
- (iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.

These guidelines may please be brought to the notice of the officers in your region.

Instruction: No. 1916, dated 11-5-1994.”

Even where no seizure is made during the Search, following the spirit of the aforesaid instructions of the CBDT, in several cases, Assessing Officers, while finalizing the post-search assessments, make additions treating such Jewellery and Ornaments as undisclosed investment, on the ground that the taxpayer does not possess adequate evidence for acquisition of the same.

Issue for Consideration

Instruction No. 1916 (F.No. 286/63/93-IT(INV.II), dated 11-5-1994, issued by the Central Board of Direct Taxes ('CBDT') directs the income tax authorities, conducting a search, to not seize jewellery and ornaments found during the course of search of varying quantities specified in the instructions, depending upon the marital status and the gender of a person searched. The guidelines are issued to address the instances of seizure of jewellery of small quantity in the course of search operations u/s. 132 that have been noticed by the CBDT. A common approach is suggested in situations where search parties come across items of jewellery for strict compliance by the authorities. The CBDT directed that in the case of a person not assessed to wealth-tax, gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms. per male member of the family, need not be seized.

The High Courts, under the circumstances, relying on the above referred instructions of the CBDT, has consistently held that the possession of the jewellery and ornaments to the extent of the quantities specified in the instruction is to be treated as reasonable and therefore explained and should not be the subject matter of additions in assessment of the total income of a person. However, the Chennai High Court has sounded a slightly discordant note to this otherwise rational view accepted by various high courts.

Satya Narain Patni's case

The issue, in the recent past had come up for the consideration of the Rajasthan High Court in the case of CIT vs. Satya Naraain Patni, 46 taxmann.

A search u/s. 132 was carried out at the business and residential premises of the assessee on 30-06-2004. During the course of search, gold jewellery weighing 2,202.464 gms. valued at Rs.10,53,520/- and silver items valued at Rs.93,678/- were found. Looking to the status of the assessee and the statement given during the course of the search operation by various family members and considering the

fact that there were four married ladies in the house, including the wife of the assessee, no jewellery was seized by the authorised officer.

In assessment of the income, however, the jewellery to the extent of 1,600 gms was treated as reasonable by the AO. The balance jewellery weighing 602.464 gms was treated as unexplained in the absence of any satisfactory explanation from the assessee and the value of the same which was determined at Rs. 2,88,176/-, was added back to the income of the assessee, treating the same as purchased out of Income from undisclosed sources of the assessee. In an appeal by the assessee, the Commissioner(Appeals), deleted the additions made by the AO of the value of the jewellery to the tune of Rs. 2,88,176/-. The Tribunal, on appreciation of facts and evidence available on record, also confirmed the order of CIT (A).

The Revenue, in the appeal before the Rajasthan High Court, contended that the AO had given due credit for the jewellery belonging to the various family members; that almost 75% of the jewellery found was treated as explained by the AO himself; only where the assessee or family members were not in a position to explain the balance jewellery, the addition was made; that the assessee or/and other family members were not in a position to adequately explain the source of receipt of aforesaid jewellery and it was the duty of the assessee to lead proper evidence, but since no evidence was led, the AO after giving due credit for 1,600 gms. of jewellery, and being not satisfied with the balance, made the addition which was correct and justified; that the circular of the Board referred to by the tribunal dated 11-05-1994, simply laid down that in case a person was not assessed to wealth tax, then in that case, jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms. per male member of the family need not be seized, but that did not mean that the AO was debarred from questioning the possession of the items found; that the circular emphasised only that jewellery would not be seized. However, the AO was duty bound to seek explanation of owning and possessing of such jewellery. The Rajasthan High Court, on due consideration of the facts of the case. and importantly, relying on the Instruction No. 1916 of the CBDT, dismissed the appeal of the Income tax Department by holding as under;

“12. It is true that the circular of the CBDT, referred to supra dt. 11/05/1994 only refers to the jewellery to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family, need not be seized

and it does not speak about the questioning of the said jewellery from the person who has been found with possession of the said jewellery. However, the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possession of a married lady to the extent of 500 gms, 250 gms per unmarried lady and 100 gms per male member of the family will also not be questioned about its source and acquisition. We can take notice of the fact that at the time of wedding, the daughter/ daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side as well at the time of 'Vidai' (farewell) or/and at the time when the daughter-in-law enters the house of her husband. We can also take notice of the fact that thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the CBDT, looking to such customs prevailing throughout India, in one way or the another, came out with this Circular and we accordingly are of the firm opinion that it should also mean that to the extent of the aforesaid jewellery, found in possession of the various persons, even source cannot be questioned. It is certainly 'Stridhan' of the woman and normally no question at least to the said extent can be made. However, if the authorized officers or/and the Assessing Officers, find jewellery beyond the said weight, then certainly they can question the source of acquisition of the jewellery and also in appropriate cases, if no proper explanation has been offered, can treat the jewellery beyond the said limit as unexplained investment of the person with whom the said jewellery has been found."

The High Court noted that, looking to the status of the family and the jewellery found in possession of four ladies, the quantum of jewellery was held to be reasonable and therefore, the authorised officers, in the first instance, did not seize the said jewellery as the same was within the tolerable limit or the limits prescribed by the Board. Thus, in the view of the court, subsequent addition was held to be not justified and was thus rightly deleted by both the two appellate authorities, namely, Commissioner(Appeals) as well as the tribunal.

V. G. P. Ravidas' case

The Chennai High Court in the case of V.G.P. Ravidas vs. ACIT, 51 taxmann.com 16, offered certain observations that are found to be inconsistent with the near unanimous view of the High Court that the possession of the jewellery and

ornaments, to the extent of the quantities specified by the CBDT, should be held to be explained.

In this case, the assessee filed the original return of income for the assessment year 2009-2010 on 30-09-2009. The Assessing Officer, pursuant to a search u/s.

132, reopened the assessment and a reassessment was completed by him on 29-

12-2010. The AO in so assessing the income, treated excess gold jewellery found and seized, of 242.200 gms. and 331.700 gms. respectively, as the unexplained income.

The assessee's appeals before the Commissioner (Appeals), were dismissed. The Tribunal confirmed the order passed by the Commissioner (Appeals). In the appeal before the High Court, the short question that arose for consideration was whether the assessee in both the cases were entitled to plead that the quantum of excess gold jewellery seized did not warrant inclusion in the income of the assessee as unexplained investment in the light of the Board Instruction No.1916 F.No.286/63/93-IT (INV.II)], dated 11-05-1994.

The Chennai High Court while dismissing the appeals, on the facts of the case before it, inter alia observed in paragraph 10 of its order as under;

“10. The Board Instruction dated 11.5.1994 stipulates the circumstances under which excess gold jewellery or ornaments could be seized and where it need not be seized. It does not state that it should not be treated as unexplained investment in jewellery. In this case,

The High Court also approved the observations of the Commissioner(Appeals) in paragraph 8 of its order as follows;

“8. The Commissioner of Income Tax (Appeals) as well as the Tribunal came to hold that since there was no explanation offered by the assessee before the Assessing Officer or Commissioner of Income Tax (Appeals) or Tribunal, their mere placing reliance on the Board Instruction No. 1916 [F.No.286/63/93-IT (INV.II)], dated 11.5.1994 will be no avail. In fact, the Commissioner of Income Tax (Appeals) has correctly held that the Board Instruction does not make allowance in calculation of unexplained jewellery and it only states that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family, need not be seized. Whereas, -----“

Conclusion

The divergent view of the Chennai High Court, in paragraphs 8 and 10 of the its order in the case of V. G. P. Ravidas, suggest that the Instruction No. 1916 has a limited application and should be applied by the search authorities in deciding whether the jewellery & ornaments found during the search to the extent of the specified quantities be seized or not. Such divergent view of the judiciary appears to be suggesting that the scope of the instructions is not extended to the assessment of income and an assessee therefore cannot simply rely on the said instructions to plead that the possession of the jewellery to the extent of the specified quantity be treated as explained. An outcome of the observations of the High Court, is that an assessee is required to explain the possession of the jewellery in assessment of the income to the satisfaction of the AO independent of the fact that the jewellery was not seized and has to lead evidences in support of its possession though for the purposes of seizure, its possession was found to be reasonable by the search authorities.

Nothing can highlight the conflict better than the interpretation sought to be placed by the two different authorities of the Income tax Department. One of them, the search authority, does not seize the jewellery on the understanding that the possession thereof within the specified quantities is reasonable in the context of customs and practises prevailing in India while the another of them, the assessing authority, does not accept the possession as reasonable and puts the assessee to the onus of explaining the possession of the jewellery found to his satisfaction and failing which he proceeds to add the value thereof to his total income.

The conflicting stand of the authorities belonging to the different departments of the same set up also highlights the pursuit of petty aims ignoring the larger interest of administration of justice by adopting a highly technical approach, best avoided in implementing the revenue laws. The Gujarat High Court in CIT vs. Ratanlal Vyaparilal Jain, the Allahabad High Court in Ghanshyam Das Johri's case, 41 taxmann.com 295 and the Rajasthan High Court in yet another case, Kailash Chand Sharma 198 CTR 271 have consistently held that the possession of the jewellery of the quantities specified in the instruction issued by the CBDT is reasonable and therefore should be held to be explained in the hands of assessee and should not be the subject matter of addition by the AO on the ground that the assessee was unable to explain the possession thereof to his satisfaction.

The Rajasthan High Court in Patni's case and the other High Courts before it, rightly noted that considering the practices and the customs prevailing in India of gifting and acquisition of jewellery and ornaments since birth and even before birth, it is not only common but is reasonable for an Indian to possess the jewellery of the specified quantity. The question of applying another yardstick for determining the reasonability in assessment does not arise at all.

The CBDT in fact goes a step further in its human approach to the issue under consideration, in paragraph (iii) of the said instructions, when it permits the search party to not seize even such jewellery that has been found to be excess of the specified quantities in paragraph(ii) where the search authorities are satisfied that depending upon the status of the family and community customs and practices, the possession of such jewellery was reasonable. The said paragraph reproduced here clearly settles the issue in favour of accepting what has not been seized as duly explained for the purposes of assessment as well.

“(iii) The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income tax/Commissioner authorising the search at the time of furnishing the search report.”

This grace of the CBDT clearly confirms that the search authorities do make a spot assessment of the reasonability of possession. It is therefore highly improper, on a later day, for the assessing authority, to take a dim view of the reasonability. It is befitting that the AO allows the grace to percolate downstream to the case of assessment, as well. It's high time that the CBDT should issue clear directions to Assessing Officers not to make any additions in such cases. It needs to be pointed out that several judicial pronouncements have also granted relief to taxpayers relying on the aforesaid instructions.

With best regards,

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*Thank
you* 



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