



MYSORE CHAPTER

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Promotion and Commercialisation of Inventions

Reflections on Depreciation Accounting



Meetings & Minutes





Dear Readers,

The final phase of polling of one of the largest democracies of the world has just concluded. India is now watching with bated breath the announcement of the polling results which is a couple of days from now. There is hope and belief that the election of a stable government at the centre will bring about the much awaited changes and development in our Country.

The Chapter had organized a seminar on 25th April, 2014 on "Directors and Auditors - Role, Responsibilities and Challenges under the Companies Act, 2013" in association with the Institute of Cost Accountants of India.

I wish all the candidates appearing for exams in the June month a lot of success.

With warm regards,
CS. Ajay Madaiah B.B.
Chairman



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Falcon & the branch...!

Once there was a king who received a gift of two magnificent falcons. They were peregrine falcons, the most beautiful birds he had ever seen. He gave the precious birds to his head falconer to be trained.

Months passed, and one day the head falconer informed the king that though one of the falcons was flying majestically, soaring high in the sky, the other bird had not moved from its branch since the day it had arrived. The king summoned healers and sorcerers from all the land to tend to the falcon, but no one could make the bird fly.

He presented the task to the member of his court, but the next day, the king saw through the palace window that the bird had still not moved from its perch. Having tried everything else, the king thought to himself, "May be I need someone more familiar with the countryside to understand the nature of this problem." So he cried out to his court, "Go and get a farmer."

In the morning, the king was thrilled to see the falcon soaring high above the palace gardens. He said to his court, "Bring me the doer of this miracle." The court quickly located the farmer, who came and stood before the king.

The king asked him, "How did you make the falcon fly?"

With his head bowed, the farmer said to the king, "It was very easy, your highness. I simply cut the branch where the bird was sitting."

We are all made to fly — to realize our incredible potential as human beings. But at times we sit on our branches, clinging to the things that are familiar to us. The possibilities are endless, but for most of us, they remain undiscovered. We conform to the familiar, the comfortable, and the mundane. So for the most part, our lives are mediocre instead of exciting, thrilling and fulfilling. Let us learn to destroy the branch of fear we cling to and free ourselves to the glory of flight!



Words
Worth
Millions

**If an egg is broken from outside force –
a life ends.**

**If an egg breaks from within –
a life begins.**

**Great things always begin from WITHIN.
It is within us, how we take things,
that come our way**

Reflections on Depreciation Accounting under Companies Act, 2013



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Depreciation, as an allocation of cost of depreciable assets over their useful life and hence a Charge to the Profit and Loss Account has, for a long time now been, an issue engaging the attention of Corporate world and all the Professionals connected with it, as it forms a very significant element of cost in arriving at the Profit/Loss of an enterprise which is computed for the purpose of Dividend to Shareholders, Remuneration to Managerial Personnel, Bonus to Employees, Tax to Government, etc.

Earlier, the Companies Act, 1956 in Sections 205, 349, 350 and Schedule XIV had dealt with this Issue elaborately. Besides these, various clarifications issued by the Government of India, supplemented/complimented/elaborated more by the Guidance Notes and Accounting Standards, Expert Committee Advisory Opinions of the Institute of Chartered Accountants of India have also added to the plethora of literature available on this Issue.

Though the Companies Act, 2013 has not yet become fully operational in respect of all 470 Sections and 7 Schedules contained in it, majority of the sections are effective from 01-04-2014 and the Section 123 dealing with Depreciation figures in this. That means the new Companies Act, 2013 will become operational on a piecemeal basis. Notwithstanding, having gone through the Schedule-II (presumably drafted in consultation with Institute of Chartered Accountants of India, because it is more accounting oriented and not Company law-oriented), read with Sec. 123 of the Companies Act, 2013 I have tried to comprehend them for a few significant contents/changes and put forth my reflections in this small write-up.

Significant contents or changes in Schedule II:

- 1) The Companies Act, 1956 had dealt with only depreciation of tangible assets. Now, the new Act provides specifically for depreciation of intangible assets which are to be governed as per Accounting Standards. In fact, intangible assets are amortised and not depreciated, though these words and their actions have same effect on the P & L Account.
- 2) Instead of method and rates of Depreciation (whether WDV method or Straight line Method and Single shift or double shift or triple shift) useful Lives of Assets have been prescribed. These Useful Lives based on single shift working appear minimum, but, they can, in practice, be different from what is given in the Schedule.
- 3) If a Company, being a class of company specifically prescribed by MCA, can adopt a different useful life longer than what is prescribed in Schedule II, however the same shall be disclosed, (I suppose, probably, by way of a Note on Accounts) together with justification. For other companies, useful life cannot be longer than what is prescribed in Schedule II.
- 4) Residual value is prescribed at 5% of the original cost as the maximum quantum. Earlier, there was no fixed Residual Value, but, while prescribing the rates, it had factored-in only 95% of the cost of the assets, thereby leaving only 5% as Residual Value.
- 5) List of Assets has become more exhaustive and specific.
- 6) The concept of actual number of days working as a percentage to prescribed number of days of working (seasonal/non-seasonal factory) for double shift or

triple shift has been deleted and if the asset is used FOR ANY TIME during the year in double shift or triple shift, the quantum of depreciation would go up by 50% or 100% more than the single shift working respectively.

- 7) There is no specific mention about useful life of assets whose cost does not exceed Rs. 5000/- as it provided earlier for depreciation at 100% for such assets.
- 8) New words like Residual Value, Retained Earnings etc., find place in the Schedule-II remaining undefined which were not in earlier Schedule – XIV or Sections 205, 349 or 350 and have to be understood

and interpreted based on literature available on Accounting .

- 9) Issues relating to computation of depreciation pro-rata are more Accounting oriented as contained in Accounting Standards AS-6 and AS-10 and not company-law oriented.
- 10) The new Act provides for the concept of componentisation of assets. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

PRACTICAL IMPLEMENTATION ISSUES:

The heart and soul of the Schedule-II lies in Notes No. 5, 6 and 7. Now that the Schedule II and Sec. 123 have become operational from 01-04-2014, actions on how to implement them effectively for Notes No. 7(a) and 7(b) specifically should engage the attention of all the concerned. I have made a humble attempt towards this in the following Paragraphs:

Note No. 7 (a) : From 01-04-2014, the carrying amount of the Asset on that date shall be depreciated over the remaining useful Life of the Asset as per this Schedule:

Example: General purpose Plant & Machinery under earlier Straight Line Method was @ depreciation of 4.75% per annum.

| SI No. | Particulars | Result |
|--------|---|---------------------|
| 1 | Original Cost | Rs.100-00 |
| 2 | Original Useful Life and Depreciation as per earlier Schedule- XIV | 20.00 Years (4.75%) |
| 3 | Revised useful Life as per Schedule-II | 15.00 Years (6.33%) |
| 4 | Expired Useful Life | 10.00 Years |
| 5 | Accumulated Depreciation at the end of Expired Useful Life | Rs. 47-50 |
| 6 | Carrying amount of the asset at the end of Expired Useful Life (Col. 1 minus col. 5) | Rs.52-50 |
| 7 | Remaining useful Life | 5.00 years |
| 8 | Depreciation per year for the next 5 years (52.50/5) | Rs. 10.50 |
| | -OR- | |
| 9 | Depreciation per year for the next 5 years (100 - 5- 47.50 = 47.50/5) | Rs. 9.50 |

What is the Issue here?

Since the words “Carrying amount” have not been defined in the Schedule, the question is whether SI No. 8 is correct or SI No. 9 is correct? I personally feel that SI. No. 8 should be correct, because of the definition for the words “Carrying amount” contained in AS-28 which says that Carrying amount means the amount at which an asset is recognised in the Balance Sheet after deducting any accumulated Depreciation (amortization) and accumulated impairment losses thereon”. There is no mention about Residual Value there.

On the other hand, in case of SI No. 9, since the rate of 4.75% and Rs. 47.50 have already been factored- in for the residual value of 5% and only the 95% value of the asset is divided by its useful life. As such, SI No. 9 does not appear correct. My this view is supported by:

- a) the views of a luminary in the field of Accounting- Sri. Kamal Gupta in his celebrated Book “Kamal Gupta on Depreciation”- 1993 Edn, P.36 and



b) Circular No. 1/85 dated 10-1-1985 issued by the Government of India in the Ministry of Industry & Corporate Affairs,, Department of Company Affairs.

c) As such, if we take Sl No.9, it may tantamount to considering the Residual Value twice, once in arriving at the rate of 4.75% and again by deducting the Residual Value for computing Depreciation for the unexpired period.

Note No. 7(b): From 01-04-2014, the carrying amount of the Asset on that date, after retaining the Residual value, shall be recognized in the Opening balance of Retaining Earnings, where the remaining useful life of the Asset is **NIL** as per this Schedule :

Example: General purpose Plant & Machinery under Straight Line Method was depreciated @ 4.75% per annum.

| Sl | Particulars | Result |
|----|--|---------------------|
| 1 | Original Cost | Rs.100-00 |
| 2 | Original Useful Life and Depreciation as per earlier Schedule- XIV | 20.00 Years (4.75%) |
| 3 | Revised useful Life as per Schedule-II | 15.00 Years (6.33%) |
| 4 | Expired Useful Life | 15.00 Years |
| 5 | Remaining useful Life | NIL |
| 6 | Accumulated Depreciation | Rs.71-25 |
| 7 | Carrying amount of the asset at the end of Expired Useful Life (100-71.25= 28.75) | Rs. 28-75 |
| | OR | |
| 8 | Carrying amount of the asset at the end of Expired Useful Life after retaining the Residual value (100 - 5 - 71.25= 23.75) | Rs. 23.75 |

What is the Issue here?

Now that the Schedule- II- 7(b) is made effective for Financial Years commencing on or after 01-04-2014, the Journal Entry on 01-04-2014 should be as below:

| | | | |
|--|----|-------|-------|
| Retained Earnings Account | Dr | 23.75 | |
| To Provision for Depreciation/Accumulated Depreciation | | | 23.75 |
| (Being the short-fall of Depreciation consequent upon change in the useful Life of Asset provided for after retaining Residual of 5%Value and charged against the Opening balance Retained Earnings) | | | |

It is the carrying amount at Sl. No. 8 and **not 7** that should be considered, because of the following reasons:

- though the definition contained in AS-28 states that - "Carrying amount is the amount at which an asset is recognised in the Balance Sheet after deducting any accumulated Depreciation (amortization) and accumulated impairment losses thereon, it does retain the Residual Value as required by Note No. 7(b) and
- on a strict interpretation, the amount in Sl No.7 does not consider **the Residual value, notwithstanding the fact that it has already factored-in 5%.**

Retained Earnings: Since "Retained Earnings" is not a single ledger Account finding place as such in the Balance

Sheets of Indian Corporates, it becomes necessary to know what exactly this means. Similarly, the 'Accumulated Depreciation'. Accumulated Depreciation is the amount shown in the "Depreciation Block" of Schedule of Fixed Assets as Total Depreciation. Here also there is no single ledger Account called Accumulated Depreciation. As such, "Accumulated Depreciation" means the total of Provisions for Depreciation.

"Retained Earnings" have neither been defined in the Schedule-II nor in the Guidance Note on Terms used in Financial Statements issued by the Institute of Chartered Accountants of India. I may say that Retained Earnings connote "Surplus" grouped under "Reserves & Surplus" in the Balance Sheet.

Continued in page...10

Promotion And Commercialisation of Inventions

IP Now!

Trends
in IP

Only 5 to 7 percent of all inventions, for which patents have been granted, reach the commercialization phase of the innovation process.



Necessity is the mother of invention goes the adage.

Every invention has a background, which has identified a void and is worked towards fulfilling the void. Though an invention need not always be path breaking, but any incremental invention to a product or process can be valuable and will require protection through the process of patenting. An invention which passes through the stringent test of scrutiny, investigation and examination of a patenting process can be termed path breaking and hence valuable.

Technology and inventions are important part of the innovation process, which transforms inventions into marketable products. This process is most complex and as such requires much specialized professional expertise and knowledge. The marketing and commercialization phase of the innovation process is crucial for the success of any invention. The returns in terms of profit upon its commercialization are the ultimate proof of the success of any invention or new product.

Inventors and all those involved in commercialization of inventions and innovations should not forget that only a very small percentage (5 to 7 percent) of all inventions, for which patents have been granted, reach the commercialization phase of the innovation process. The great percentage of failure is usually not due to the quality of the invention, but rather the result of the influence of other factors, such as, for example, the high investment cost for a relatively small effect, need of additional R&D work, the manufacturing and technological environment,

speed of obsolescence of technology, markets are not yet ripe for such invention, no real market need, consumer rejection etc.

Promotion and commercialisation of IP assets are a quid pro quo for the creators of IP assets (especially in the case of patents and designs) in such a manner that certain laws like the Patents Act and the Designs Act provide monopoly rights to the owners of such assets against their disclosure of the same to the Government. Commercialization is the last step of innovation process. The process employs four phases:

a. Idea generation and conception phase

In this phase the idea which forms the crux of the invention needs to be carefully nurtured and experimented without public disclosure or commercialisation. Once the idea reaches the stage of being regarded as a break through, the inventor needs to file for the patent. A detailed and thorough search on the prior art needs to be made since the invention needs to be globally novel. This exercise will reveal similar inventions or technologies and likelihood of objection from both the patent authorities and from owners of such patents. While filing for the patent the inventor could file a preliminary specification which does not disclose the complete working of the invention. This would enable the inventor

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to be first to file so that he is in a position to block the priority date.

- to sell the patent rights, or
- any combination of the above.

b. Development or Design Phase

In this phase the inventor works on the dynamics of the invention so that it reaches the prototype phase.

Care should be taken to see to that the working of the inventor does not fall in the public domain so that it does not go against grant of patent. Further the inventor should be vary of obsolescence rate of the technology involved in the invention. He has to race against the time so that he gets the first mover advantage.

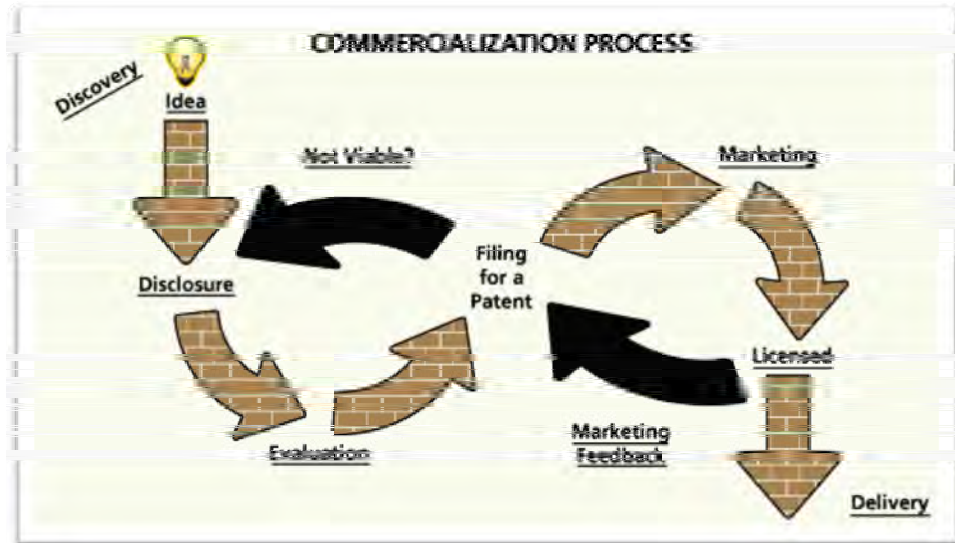
c. Prototype or Pre-production Phase

This is the phase which comes close of commercial production and the inventor works on the customisation of the invention for commercial application. Aesthetics of the invention are worked so that it becomes an eye catchy product when launched commercially. This phase normally overlaps with the production, marketing and commercialization stage, since the invention or the new product or process will be tested as to whether it meets the needs or expectations of the market. It is only when it is accepted on the market by the consumers and users, that the invention or new product will begin to generate income which will compensate inventors, investors and the manufacturers for the investment made and eventually generate also some profit.

d. Production, Marketing Phase.

Commercialization and marketing of inventions is the most complex process and in a highly competitive market it needs a professional approach and a lot professional expertise in order to have chances of success. It might involve huge costs on advertisement and brand positioning. Inventors are advised to seek as much as possible professional expert assistance when they are involved in that process. From the viewpoint of the inventor or invention owner there exist a few possible ways for commercializing inventions:

- to start own manufacturing and marketing the product based on the invention,
- to license the rights in the invention,



The income an invention may generate will depend directly on the investment made for its development and marketing:

- ☐ the highest return (or benefit) for the inventor may be expected when he decides to start its own production based on the invention, but this approach will require also the largest investment coupled with business risk;
- ☐ the benefit for the inventor will be much lower when he decides to license or even to sell his patent rights at an early stage of development of his invention.

Thus commercialisation of inventions is a very cost intensive and at the same time it is a race against time. Any lax in the process will make the entire process ineffective and all the more prone to litigation for infringement of patent owned by a prior owner of a similar patent.

Each individual case should be analyzed and evaluated accordingly, taking into account the nature and properties of the invention, the needs, conditions and potential of the market, the resources available, and last, but not least, the willingness of the inventor to cooperate in further development of the invention.

Well prepared business plans and convincing prototypes are indispensable for attracting investors, manufacturers and potential users.

Reward for guessing: 1. (ii), 2. (ii), 3. (iv) 4. (ii), 5. (i)

AERB and Healthcare Industry

[Part 2]



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In the previous edition, we had covered the Atomic Energy Act, 1962, AERB and Consents w.r.t., healthcare Industry in brief. In this edition, let us see registration process, safety requirements and eLORA, an e-Governance initiative from AERB.

Procedure for Licensing and Registration of medical equipments:

1. Get copy of 'Type approval' of the equipment received from AERB by the manufacturer.
2. Obtain Layout Approval from Radiological Safety Division of AERB by applying in the prescribed form along with the prescribed fee
3. Ensure that one qualified person is appointed as Radiological Safety Officer ['RSO']
4. Obtain the approval from Radiological Safety Division of AERB for appointment of RSO by making an application through eLORA.
5. Prepare QA Test Report in the Form CT (1) and Cath-lab (2)
6. Ensure the availability of radiation protection manual
7. Ensure the regular Personnel Monitoring Service (TLD badges to be provided to all the staff / employees getting exposed to radiations)
8. Obtain license by making an application through eLORA for commissioning of the equipment
9. If applicable, also apply for the registration of the usage of the equipment
10. Ensure compliance under other laws applicable for the equipments as the case may be. For example, usage of CT Scan requires registration and monthly filing of returns under the Pre-Natal Diagnostic Techniques Act, 1994 for number of scans done in the previous month with details.

Safety Requirements, directives and codes:

- The radiation symbol and a warning sign should be displayed on all the radiation equipment, containers, packages, vehicles carrying the material/equipment,

entrance of the room in which such radiations are generated and at the entrance of the control area

- The rate of emission of the radiations/exposure to the radiations of workers and related persons should be within the limits prescribed by the board under safety directives from time to time
- The employer should maintain the personnel monitoring records and health surveillance report of all the employees who are exposed to the radiations
- Sufficient monitoring, plans of control and assessment of exposure must be made at regular intervals

To understand the safety directives in detail, please visit the following link:

http://www.aerb.gov.in/AERBPortal/pages/English/Constitution/directives_jsp.action

eLORA: eLORA (e-Licensing for Radiation Applications) is an e-Governance initiative by AERB. Through this project, AERB intends to automate all its regulatory process and achieve paperless licensing of radiation facilities. This will enhance efficiency and transparency in the regulatory licensing processes of AERB.

Radiation Professionals and Institutes including hospitals and diagnostic centres using radioactive equipments are mandatorily required to get registered in eLORA. Accessibility to eLORA is given for Professionals and Institutes with user name and password. You can access more on procedure involved in Institute registration @

<https://elora.aerb.gov.in/ELORA/PDFs/DMR-AP-Process%20Introduction%20Sheet-06.03.14.pdf> and
<https://elora.aerb.gov.in/ELORA/PDFs/GUIDELINES%20FOR%20SUBMISSION%20OF%20RADIATION%20PROFESSIONAL%20FORM.pdf>

AERB initially launched eLORA application facilities on 12th August 2013 for Radiotherapy facilities only and in phased manner extended this application facilities to all other radiation facilities. On 17th October 2013, eLORA was extended for existing diagnostic radiology facilities facilitating to register institution, declaring existing diagnostic radiology equipments and radiation professional registration. On 20th January 2014, eLORA was extended for licensing medical diagnostic x-ray equipment and approval of Radiological Safety Officer. On 10th March 2014 eLORA application facility was

extended for Manufactures of X-ray equipments and x-ray tubes. The following link would help in understanding procedure involved in declaring x-ray equipments by Institute:

<http://www.aerb.gov.in/AERBPortal/get/R3VpZGVsaW5lc19mb3JfdXNlcnMucGRm>

While there is no last date fixed by AERB for registration in eLORA, it is advisable that all who own radioactive equipment gets registration at the earliest so that renewal of existing consent or application for new consent will be speedy with eLORA system.

Reflections on the Depreciation Accounting under the Companies Act 2013

Continued from page 6

Looking into other reliable sources becoming necessary to understand the exact meaning of the words "Retained Earnings", reliance is placed, inter-alia numerous literature, on the following to ascertain the exact meaning of the word "Surplus":

- "Accumulated Net Income less distributions to stockholders and transfer to paid in capital Accounts; also known by older title Earned surplus" (Eric L Kohler- A Dictionary for Accountants, - 5th Edn -P. 409)
- "Accumulated amount of Profits and earnings of the business which has not been capitalised, offset by losses or given out to stockholders as property dividends. (D.S.Pasion- Introductory Accounting, P. 195)
- "After all dividends are paid to investors, the earned surplus/undistributed earnings comprise the net earnings that will become the companies'

equity. AKA earned surplus and undistributed earnings " (Black's law Dictionary)

- "It is a credit balance or series of credit balances denoting the existence with the Undertaking of profits which have not been distributed to its proprietors"- (Principles of Accounting" -Stanley W Rowland- 3rd Edn, P. 272.)

I may add that the amounts **transferred** to "Reserves" though appear to be the cumulative sum of unappropriated surpluses of the past years, its utilisation is governed by a different provisions of Company Law whether for issue of Bonus Shares or payment Dividends, etc. As such, I feel it cannot fall within the meaning of the word "Retained Earnings" used in the Schedule-II.

Inviting scintillating reactions from my co-professionals, I wish to be enlightened and corrected for any errors that may have crept in unwittingly.

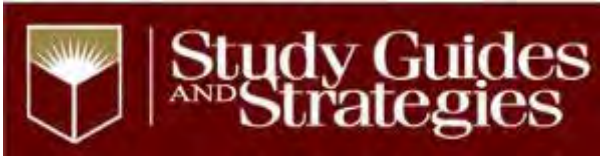
Half Day Seminar

Mysore Chapter of ICSI jointly with Mysore Chapter of Institute of Cost Accounts of India conducted a Half Day Seminar on the topic "Directors and Auditors – Role, Responsibilities and Challenges under the Companies Act 2013" on 25th April 2014 in the Chapter Premises.

Dr. P.V.S. Jagan Mohan Rao, Central Council Member ICAI & Past President of ICSI was the speaker of the seminar. He explained the roles and responsibilities of the Directors & Auditors under the Companies Act 2013 & clarified the doubts raised by the participants. CS Ajay Madaiah B.B., Chairman, Mysore Chapter of ICSI welcomed the Chief Guest and the delegates. Session ended with vote of thanks from CMA T.L. Sangameswaran, Chairman, Mysore Chapter of ICAI.



Activities
at Mysore
Chapter



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Strategies that boost a person's ability to study and achieve excellence in exams can be termed study strategies and this includes time management and motivational techniques. It is asserted that, most students fail in examinations simply because they lack study skills/strategies and examination taking techniques.

Here is a site www.studygs.net/ which provides the best strategies for study. It is intended for students, as well as their parents, teachers and support professionals also. Its resources are intended to empower all learners without regard to any institutions. Site broadly consists of following contents:

- Learning/studying
- Time/project management
- Reading/research
- Writing
- Memorizing/testing
- Teaching/curriculum
- Workplace
- Math/bibliographies
- Exercises/games
- Author pages

With the help of this site study skills and strategies can be learned in a short time and applied to majority of the fields of study. And one of the most interesting is the www.studygs.net/ available in more than 35 languages. Let us know if you find this site interesting.....



eTOOLS FOR THE PROFESSIONALS

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Price Spy: An Android app to spy barcode price!

When we are out for shopping, we tend to think whether the labelled price in barcode is same as what is charged to us or need to be verified/confirmed or if it is the real price? No need for such worry, as here is the solution from Android to check and confirm the price in barcode.

PriceSpy enables us to either scan the products barcode or do an in-app search to compare the prices. Hardly any similar applications are found in this space. PriceSpy does offer useful extra features to help us get the best deals around. These include customisable price alerts via notifications and email, a favourites list (with sharing and collaborative options), online prices of items in nearby shops and reviews of items and retailers by PriceSpy members.

Key features:

1. Check real price of the products/goods.
2. Enables to check Price Spy users reviews/comments for particular products.
3. Work with Google maps to find out appropriate stores for products.

Specification: Price- Free. Required Android Version - 4.0.3 or above. Download Link:
<https://play.google.com/store/apps/details?id=se.prisjakt.pricespyspy>





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Minimum Wages Act, 1948

The Royal Commission on Labour considered, for the first time, the question of fixing minimum wages. It recommended that the small industries, for ex: *bidi* making, wool cleaning, mica factories, *shellec* manufacturing and tanning were considered for fixation of Minimum wages. In the back ground of these considerations and the recommendations of the Select Committee, The Minimum Wages Act, came into being in 1948.

Objectives:

- A. Fixing minimum wages by appropriate government
- B. Ensure fair wages are fixed
- C. Ensure irrespective of the amount of work performed, minimum wages are paid

What is "Wages" under MWA, 1948? – Sec.2 (h):

- A. All remunerations capable of being expressed in terms of Money
- B. Become payable if the terms of contract, express or implied were fulfilled
- C. Includes HRA and Doesn't include:
 - House accommodation, supply of light, water, medical attendance

- Contribution to EPF, Superannuation, Gratuity and payment of Bonus
- Travelling allowance or value of travel concession
- Any sum paid as special allowance to defray special expenses

What is Minimum Wages?

- A. Not defined in the said Act
- B. A wage which provides not only for bare sustenance of life but also for preservation of the efficiency of the worker

Can the Minimum Wages prescribed by the Appropriate Government be once again split into different components by the employer while making payment?

No, Minimum wages cannot be further split into various components when it is already prescribed by the Appropriate Government. This is usually done by some of the employers to evade PF, Bonus and Gratuity liability.

Penal Provisions: Contravention attracts: Imprisonment up to 06 Months or Fine of Rs.500/- or both

Try / Guess:

1. Can you adjust payment in lieu of notice period from the Provident Fund Dues of an employee on his separation from the services of the Company?

- i) Yes ii) No iii) Don't Know

2. Which one of the following is not a triple test to determine whether is an industry or not?

- i) Systematic Activity ii) Profit Motive
- iii) Employer – Employee relationship

3. Determination of whether an employee is a workman or not under Industrial Disputes Act, 1947 – Salary drawn ceiling limit of Rs.10, 000 p.m. is the criteria?

- i) Agree ii) somewhat agree iii) Somewhat disagree iv) Disagree

4. Freedom of expression and speech is one of the guaranteed fundamental rights?

- i) Yes ii) No iii) Don't Know

5. Pensionable salary is restricted to Rs.6500/- p.m. as on date?

- i) Yes ii) No iii) Don't Know

Look out for answers somewhere in the same edition...

Meetings & Minutes

Key Changes Under The Companies Act, 2013



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BOARD MEETINGS

1. Time limit prescribed for holding first board meeting. First Board meeting to be held within 30 days of incorporation. [Section 173(1)]
2. Minimum number of meetings to be held in a year:
 - For OPC, having more than 1 director, small and dormant Company – 2 [Section 173(5)]
 - For all other companies – 4 [Section 173(1)]
3. Time Gap between two board meetings
 - For OPC, having more than 1 director, small and dormant Company – Not less than 90 days. [Sec 173(5)]
 - For all other companies: Not more than 120 days [Sec 173(1)]
4. Board meetings through video conferencing:
 - Directors are permitted to attend board meetings through video conferencing and other audio visual means subject to compliance with the rules in this regard.
 - Each director has to attend atleast one meeting in person in a year.
 - Presence of director in through video conferencing will be counted for the purpose of quorum.
 - Approval of Annual Financial Statements and Board's Report cannot be dealt in a meeting held through video conferencing. [Section 173(1) read with relevant rules]
5. Minimum length of notice for Board Meetings prescribed. Atleast 7 days notice in writing needs to be given to all directors, at their addresses registered with the company, by hand deliver, post or by electronic means. Shorter notice is permitted subject to presence of or ratification by atleast 1 independent director, if any. [Section 173(3)]
6. In case of passing of resolution by circulation, where not less than $1/3^{\text{rd}}$ of the total directors require that a resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board. [Section 175(1) proviso].
7. A resolution passed by circulation needs to be noted at subsequent Board meeting and made part of minutes of such meeting. [Section 175(2)]
8. Matters which cannot be transacted though passing of resolution by circulation:
 - to make calls on shareholders in respect of money unpaid on their shares [Section 179]
 - to authorise buy-back of securities under Sec 68 [Sec 179]
 - to issue securities, including debentures, whether in or outside India [Section 179]
 - to borrow monies [Section 179]
 - to invest the funds of the company [Section 179]
 - to sell investments held by the company (other than trade 5% or more of the paid – up share capital and free reserves of the investee company [Section 179]
 - to grant loans or give guarantee or provide security in respect of loans [Section 179]
 - to approve quarterly, half yearly and annual financial statements and the Board's report [Section 179]
 - to diversify the business of the company [Section 179]
 - to commence a new business [Section 179]
 - to approve amalgamation, merger or reconstruction [Sec 179]
 - to take over a company or acquire a controlling or substantial stake in another company [Section 179]
 - to appoint a director in casual vacancy [Section 179]
 - to make contribution to a political party [Section 179]
 - to appoint or remove key managerial personnel (KMP) and senior management personnel one level below the KMP [Section 179]
 - to take on record disclosure of interest by directors and shareholding [Section 179]
 - to enter into a joint venture or technical or financial collaboration or any collaboration agreement [Sec 179]
 - to adopt common seal [Section 179]
 - to appoint internal auditors [Section 179]
 - to shift the location of a plant or factory or the registered office [Section 179]
 - to accept public deposits and related matters [Section 179]
 - to enter into any contract or arrangement with a related party (Section 188)
 - to appoint and fix remuneration of a Managing Director / Whole Time Director / Manager [Section 196(4)]
 - to appointment a person as Managing Director who is already a Managing Director / Manager of one other company [Section 203(3) Proviso]

- to fill vacancy in the office of any whole time Key Managerial Personnel [Section 203(4)]
- to make loans or investment or give security or guarantee [Section 186(5)]
- to make declaration of solvency in case of voluntary winding up (Section 305)
- to place Register of contracts or arrangements in which directors are interested (Sec 189)

General Meetings

1. All provisions relating to general meetings like length of notice, explanatory statement etc. is applicable to private companies also.
2. First Annual General Meeting should be held within 9 months of closure of first financial year. The provision regarding holding first AGM within 18 months from date of incorporation has been done away with. [Section 96(1)]
3. AGM needs to be held during business hours, i.e. between 9.00 A.M. to 6.00 P.M. on any day that is not a National Holiday. [Section 96(2)]
4. In case AGM has to be called at a shorter notice, consent from 95% of the members is required [Sec 101(1) proviso]
5. Notice of every general meeting needs to be served on every director also. [Section 101(3)]
6. In case of an adjourned meeting, the company shall give not less than 3 days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
7. In explanatory statement, nature of concern or interest of every Key Managerial Personnel and their relatives and relatives of directors also need to be disclosed. If the special business relates to any other company, then shareholding of any director or manager in that other company has to be disclosed if the holding is not less than 2% of paid up capital of the other company. [Section 102]
8. Quorum for public companies [Section 103]

| Number of members as on date of meeting | Quorum requirement |
|---|-------------------------------|
| Upto 1000 | 5 members personally present |
| 1000-5000 | 15 members personally present |
| More than 5000 | 30 members personally present |

9. Proxy:
 - In case of companies formed not for profit, a member only can act as proxy for another member.
 - No person shall act as proxy on behalf of members not exceeding 50 and holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.
 - Restriction that unless the articles otherwise provide a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion has been removed.

10. Voting through electronic means
Every listed company or a company having 1000 or more shareholders shall provide to its members facility to exercise their right to vote at general meetings by electronic means. [Section 108]

11. Postal Ballot

- No postal ballot for Ordinary business
- All items of business on which a director or auditor has right to be heard cannot be transacted through postal ballot.
- A brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.
- Following items of business can be transacted through postal ballot only, **except in case of OPC and companies having less than 200 members:**
 - ❖ Alteration of objects clause of MOA
 - ❖ Alteration of AOA by means of insertion or removal of provisions necessary to constitute a company as a private company in terms of Section 2(68)
 - ❖ Change of registered office outside the local limits of any city, town or village as specified in section 12(5).
 - ❖ Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under section 13(8).
 - ❖ Issue of shares with differential rights as to voting or dividend or otherwise under Section 43(a)(ii)
 - ❖ Variation in the rights attached to a class of shares or debentures or other securities as specified under sec 48
 - ❖ Buy-back of shares by a company under section 68(1)
 - ❖ Election of a director under section 151
 - ❖ Sale of the whole or substantially the whole of an undertaking of a company as specified under sec 180(1)(a)
 - ❖ Giving loans or extending guarantee or providing security in excess of the limit prescribed under Sec 186(3).

Minutes

1. In case of Board and Committee meetings, the minutes shall also contain names of the directors present and names of directors who voted for and against each resolution.
2. Minutes shall not contain any matter which is defamatory to any person, is irrelevant or immaterial or detrimental to the interest of the company. Chairman to exercise discretion in this regard.
3. Secretarial Standards prescribed by ICSI to be observed in preparation of minutes.
4. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period of immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.



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Setback to Sun Pharma-Ranbaxy Merger deal

The merger of Ranbaxy Laboratories with Sun Pharmaceuticals Industries has received a setback with the Andhra Pradesh high court asking both the BSE and the NSE to withhold their approval for the proposal as it hears a petition alleging insider trading in the Ranbaxy scrip.

India increases pressure on Switzerland to share black money details

India has stepped up pressure on Switzerland to share information on money stashed away in Swiss banks by Indians who figure in a so-called HSBC list. Central Government said that, Swiss government was obliged to provide the information requested by India under the double taxation avoidance convention (DTAC) between both the countries, as well as under international conventions

India's wheat, rice exports raise hackles at WTO

US, Canada and Pakistan have questioned India's export of wheat and rice, suggesting that subsidized grains have been shipped out providing gains to local traders.

After Flipkart, now Myntra under ED lens

The Enforcement Directorate (ED), which tracks violations of foreign exchange regulations and charges of money-laundering, is investigating online fashion retailer Myntra for likely violation of foreign direct investment (FDI) norms in multi-brand retail.

ITPO in India Fined for Anti-competitive Practices

The CCI has fined the India Trade Promotion Organisation (ITPO) US\$1.1 million for "abuse of a dominant position". The case stems from a complaint filed by the Indian Exhibition Industry Association (IEIA) that alleged that in 2006 and 2007, the ITPO arbitrarily imposed "time gap restrictions" on two successive exhibitions "having similar product profiles/ coverage."

Express News →

- Vodafone serves arbitration notice in tax dispute
- Govt to drop peace offer India threatens WTO action against EU over mango import ban
- India rejects US request for WTO panel to settle trade dispute on India's national solar program
- India rejects WHO report saying New Delhi has worst air pollution
- RIL slaps arbitration notice on Govt over implementation of a new gas price from April 1, 2014.
- Ranbaxy recalls nearly 30,000 packs of allergy-relief drug in U.S.
- Govt seeks higher borrowing limit for Exim Bank from RBI
- SEBI can seek call records of any person who is being probed by telecom service providers: Bombay HC
- Cap on Auditors for audit of 20 Companies not justified: ICAI to MCA
- SEBI amends Clauses 35B and 49 of Equity Listing Agreement in line with Companies Act 2013.
- A European Court orders Google to delete personal data from search results

India needs to modify IPR regime to attract FDI: EU

EU and US stated that India needs to modify its IPR regime and fast-track legal system to attract foreign investments and to make them in line with WTO Norms. However, Indian government has maintained that its IPR laws are in compliance with WTO norms and rules and does not need any modification.

Whistleblowers Protection Act gets President's nod

The Whistleblowers Protection Act, 2011, which provides a mechanism for protecting the identity of whistleblowers — a term given to people who expose corruption in Government and Public functionaries — got the assent of President and the same was notified in Gazette as well.



Learners' Corner

The Advertising Standards Council of India (ASCI)

The Advertising Standards Council of India (ASCI) is a self regulatory voluntary organization of the Advertising Industry established in 1985, ensuring the protection of the interests of Consumers. ASCI was formed with the support of all four sectors connected with advertising, viz. Advertisers, Advertising Agencies, Media (including Broadcasters and the Press) and others like PR Agencies, Market Research Companies etc.

The Consumer Complaints Council (CCC) is ASCI's heart and soul. It is the dedicated work put in by this group of highly respected people that has given tremendous impetus to the work of ASCI and the movement of self-regulation in the advertising.

There is no other non governmental body in India which regulates the advertising content that is released in India. If an ad that is released in India seems objectionable, a person can write to ASCI with their complaint. This complaint will be deliberated on by the CCC after providing due process to advertiser to defend the ad against the complaint and depending on whether the ad is in alignment with the ASCI code and law of the land, the complaint is upheld or not upheld and if upheld then the ad is voluntarily either withdrawn or modified.

As the fraternity starts accepting the code, it will result in fewer false claims, fewer unfair advertisements and increased respect for advertisers.

Did You Know?



- The average adult Indian watches Television for 108 minutes a day. (Source: IRS in 18yrs+ All India)
- The National Advertising Monitoring Service (NAMS) monitors about 1500 TV Commercial and 45000 Print advertisements in a month
- 16 out of 28 members of ASCI's Consumer Complaint Council (CCC) represent Civil Society (i.e. are not from the advertising sector)
- In 2012, Television channels in India played 1.04 billion seconds of advertisements. (Source: TAM AdEx)

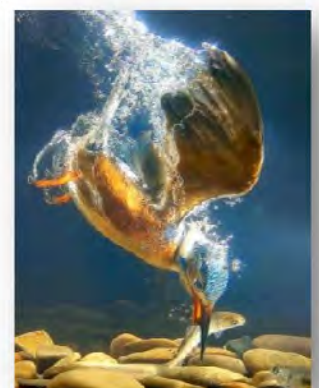
Whether 'intellectual property' such as 'clinical trial data' would fall within the definition of 'property' as understood in Article 300A of the Constitution?

Ans: Yes. One such authority in the context of 'intellectual property rights' is the judgment of the Supreme Court in the case of Entertainment Network India Ltd. (ENIL) v. Super Cassette Industries Ltd. (SCIL). In pertinent part the Court held the following:

The ownership of any copyright like ownership of any other property must be considered having regard to the principles contained in Article 19(1)(g) read with Article 300A of the Constitution, besides, the human rights on property. The judgment goes on further to say that - But the right of property is no longer a fundamental right. It will be subject to reasonable restrictions. In terms of Article 300A of the Constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation.

The fact that the Supreme Court recognizes 'copyright' to fall within Article 300A is indicative that even 'clinical trial data', collected after extensive experimenting, should in all likelihood fall within the definition of 'property' as understood in Article 300A.

Pick of the month





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FEMA Updates
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CUSTOMS & FTP Notifications/ Circulars

Seeks to amend Notification No. 30/2011-Customs, dated 4-03-2011 [Mid-term review of anti-dumping duty imposed on imports of glass fiber and articles thereof originating in or exported from China PR. [19/2014-Cus \(ADD\), dt. 09-05-2014](#)

The CBEC relying on decision of the High Court of Gujarat in the case of Crop Life India Vs. Super Industries [2014—TIOL-444-HC-AHM-CUS] instructed in respect of import of pesticides that concerned Commissioner of Customs should ensure that sample of technical grade/material in respect of each consignment is subjected to all tests applicable in case of indigenous manufacturer such as examination of chemical composition, test with regard to bio efficacy and human safety and its probable effect on soil and human life. [No. 7/2014-Cus. Dt. 07.04.2014](#)

The CBEC has instructed that manual filing and processing of import/export documents should not be allowed except in exceptional and genuine cases where electronic filing and processing of import/export documents is not feasible. Further, authority to allow manual filing and processing of documents rests with Commissioner of Customs only.

[No. 410/81/2011-Cus.III dated April 07, 2014](#)

Case Law

The Tribunal held it is well settled law that date of entry inwards is the date recorded as such in the Customs Register. Therefore, rate of duty that would apply is rate prevalent on date of entry inwards.

[The Great Eastern Shipping Co Ltd. Vs. Commissioner of Customs \[2014-TIOL-654-CESTAT-MUM\]](#)

The High Court of Delhi held that policy for waiver of demurrage charges would be applicable where on conclusion of adjudication proceedings there is no imposition of any fine, penalty, personal penalty and/or warning by customs authorities. Further, in case of provisional release pending adjudication proceedings, goods would be released subject to furnishing of bond and/or security as may be prescribed that in case any fine, penalty, personal penalty and/or warning is imposed by the customs authorities, Importer would pay demurrage charges.

[Trip Communications Vs. Uol \[2014-TIOL-468-HC-DEL-CUS\]](#)

The High Court of Delhi held that scope of Section 15(1)(b) of the Foreign Trade (Development and Regulation) Act, 1992 is wide enough for the Director General of Foreign Trade to entertain appeal against order of rejection of application for refund of terminal excise duty. - [Motherson Sumi Electric Wires Vs. Uol and Ors \[2014-TIOL-417-HC-DEL-EXIM\]](#)

The Tribunal held that stay order passed by the Tribunal cannot be held to lay down any binding precedent of ratio.

[Rajesh Atmanand Agarwal Vs. CC\[2014-TIOL-566-CESTAT-MUM\]](#)

The Tribunal held that once there is a mis-declaration, entire quantity is liable to be confiscated and not the differential quantity. - [Laxmi Exports Vs. Comnr of Customs \[2014-TIOL-21-CESTAT-MUM\]](#)

MCA

New Companies Rules not binding till Publication in official gazette: *Gazetted copy of many MCA rules are not available, hence in the opinion of the court they are not binding so far or at least from 1st April 2014. The order says: "...till such time as these rules are gazette, or there is some provision made for the dispensation of official gazette notification, none of the rules in the Ministry of Corporate Affairs PDF document that are not yet gazette can be said to be in force."*

[Bombay High Court in scheme of amalgamation between Wadala Commodities Limited with Godrej Industries Limited](#)

As per the circular issued by MCA on May 7, 2014, the professional certifying the e-Forms and the directors are required to be careful while uploading the eForms to avoid penal action under the Act and disciplinary action from the respective Institute for the professional. The ROC/RD is likely to launch a quick inquiry and only 15 days time would be given to reply to the notice.

[General Circular No. 10/2014 dated May 7, 2014](#)

FEMA/RBI/SEBI Notifications/Circulars/News

FDI in LLP- Reporting: DIPP vide Press Note No. 1(2011 series) dated May 20, 2011 has allowed FDI in LLP subject to the conditions as stipulated in the said press note. As per the said press note, LLP operating in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions, is permitted to get FDI subject

to approval from FIPB. Now, RBI vide A.P. (DIR Series) Circular No. 123 dated April 16, 2014 has notified the reporting requirements of such FDI into LLP which shall come effective from the date of the circular. LLPs shall report to the Regional Office concerned of the Reserve Bank, the details of the receipt of the amount of consideration for capital contribution and profit shares in Form FOREIGN DIRECT INVESTMENT-LLP (I) within 30 days from the date of receipt or 60 days in case of disinvestment / transfer of capital contribution. LLPs who have already received foreign investment between the period May 20, 2011 and April 16, 2014, shall comply with the reporting requirement within 30 days, in case of receipt of amount of consideration or 60 days, in case of disinvestment/transfer of capital contribution, from the date the above said circular.

External Commercial Borrowing (ECB) Policy - Review of All-In-Cost Ceiling: RBI vide A.P. (DIR Series) Circular No.121 dated April 10, 2014 has decided that the existing all in cost ceiling (3 to 5 year loan tenure - LIBOR + 350 basis points, for more than 5 years - LIBOR + 500 Basis points) for ECBs shall continue to be applicable till June 30, 2014.

Delegation of Power to Regional Offices For Compounding Of Offences: RBI vide A.P. (DIR Series) Circular No.117 dated April 4, 2014 has decided to delegate the following powers to Regional Offices for compounding of offences:

- Delay in reporting inward remittance for issue of shares.
- Delay in filing form FC-GPR towards issue of shares.
- Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
- Violation of pricing guidelines for issue of shares.
- Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.
- Issue of shares without approval of RBI or FIPB respectively, wherever required

The above contraventions shall be compounded by all Regional Offices without any limit. However, in case of Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees one hundred lakh (Rs.1,00,00,000/-). The contraventions above Rupees one hundred lakh (Rs.1,00,00,000/-) under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai.

CENVAT

The Supreme Court upheld decision of the High Court of Allahabad that assessee would be entitled to Cenvat credit on inputs contained in scrap generated during manufacture of exempted goods because waste and scrap are 'final products'.

CCE Vs. Albert David Ltd. [2014-TIOL-36-SC-CX]

The Tribunal held that if claimant himself has treated refund amount due as expenditure and not as "claims receivable", claimant cannot be said to have passed the test of unjust enrichment.

Hindustan Petroleum Corporation Ltd. Vs. CCE [2014-658-CESTAT-MUM]

The Tribunal held that condonation sought for delay in filing appeal on the ground of Annual General Transfers is not condonable.

CCE Vs. Crompton Greaves Ltd. [2014-TIOL-644-CESTAT-MUM]

The Tribunal, observing that there was definitely some value addition involved as goods in question have been removed at a higher rate of duty resulting into additional duty to exchequer, held that once duty on final products has been accepted by department, Cenvat credit availed need not be reversed. In this case, show cause notice had alleged that impugned process did not amount to manufacture.

Colour Roof (India) Ltd. Vs. CCE [2014-TIOL-628-CESTAT-MUM]

The Supreme Court held that assessee is entitled to avail cenvat credit of inputs contained in scrap generated during manufacture of exempted goods because waste and scrap are final products.

CCE Vs. Albert David Ltd. [2014-TIOL-36-SC-CX]

The High Court of Delhi held that notification having character of exemption cannot be forced upon an assessee if it does not suit him.

CCE Vs. Grand Card Industries & Ors. [2014-TIOL-496-HC-DEL]

The High Court of Andhra Pradesh laid down the following guidelines for adjudicating application for waiver of full deposit: If on apparent reading, it is found that impugned order was passed patently without jurisdiction, a litigant should not be subjected to suffer a condition of pre-deposit. If the impugned order was passed though having jurisdiction but on an apparent non-application of appropriate law, patently contrary to Supreme Court or High Court decision on identical issue which has reached finality, it will also be a case for full waiver of pre-deposit. In cases where it is found that there has been an arguable case, apparently, without inviting the counter arguments, the matter cannot be decided, litigant should be asked to make pre-deposit to some extent as thought fit. But, where it is found that there is no absolute debatable case, appeals may be allowed to be preferred, but with the full pre-deposit.

Hira Ferro Alloys Ltd. Vs. Commissioner of Appeals [2014-TIOL-334-HC-AP-CX]

The Tribunal held that furnace oil used for generation of steam which was captively consumed in the manufacture of dutiable as well as exempted goods is Cenvatable.

CCE Vs. Raptakos Brett & Co. Ltd. [2014-TIOL-543-CESTAT-MUM]

VAT, Sales Tax and Entry Tax

The High Court of Andhra Pradesh held that contract for imparting computer education in High Schools including leasing of computer hardware, software and connected accessories on Build Own Operate Transfer basis is a 'works contract'. Therefore, turnover of property involved in execution of said works contract is liable to be taxed.

NIIT Limited Vs. The Dy Commissioner (CT) [2014-VIL-109-AP]

The High Court of Bombay held that the even though products "RA THERMOSEAL" and "THERMOSEAL" are predominantly used as medicine for curing, treating and preventing teeth-sensitivity, they would still not be classifiable as 'medicine' as they are capable of being used as tooth-paste by application of common parlance test.

IPCA Health Products Vs. Maharashtra [2014-VIL-108-BOM]

In respect of Government Resolution providing for a loan equal to gross value of VAT and Central Sales Tax for Tata Nano project, the High Court of Gujarat held that deferment of tax to encourage industrialization should not be confused with refund of tax. The amount in the present case paid by the Government to Tata Motors is a loan and not refund of tax.

Himanshu Patel Vs. State of Gujarat [2014-VIL-105-GUJ]

The High Court of Karnataka held that batteries manufactured as per specifications of Railways can be treated as part of Railway coaches, wagons, etc. and are classifiable under Entry 76 of the Third schedule of the Karnataka Value Added Tax Act, 2005 and liable to be taxed at the rate of 4%.

Karnataka Vs. Mysore Thermo Electric [2014-VIL-103-KAR]

The High Court of Punjab and Haryana upheld penalty for evasion of tax when two invoices of same number and date were found.

Surendra Steel Sales Vs. Deputy Excise and Taxation Commissioner [2014-VIL-102-P&H]

The HC of Karnataka held- gross profits attributable to labour charges are eligible for deduction from value of works contract in terms of Rule 6 of the Karnataka Sales Tax Rules, 1957.

Sobha Developers Pvt. Ltd. Vs. Additional Commissioner of Commercial Taxes [2014-VIL-101-KAR]

The High Court of Kerala held that Industrial Margarine popularly known as Bakery Margarine is not exigible to tax at 4% as Edible Oil but at residuary rate of tax under the Kerala Value Added Tax Act, 2003.

Foods, Fats and Fertilizers Ltd. Vs. State of Kerala [2014-VIL-98-KER]

The High Court of Himachal Pradesh held that SIM cards cannot be termed as "goods" within the meaning of the Himachal Pradesh General Sales Tax Act, 1968 as SIM cards have no intrinsic sale value and it is supplied to customers for providing telephone service to them.

Bharat Sanchar Nigam Ltd. Vs. State of Himachal Pradesh & Others [2014-VIL-93-HP]

The High Court of Delhi while interpreting Section 9(2) of the Central Sales Tax Act, 1956 ("the CST Act") held that whilst substantive rights and liabilities are to be located within the main enactment i.e. the CST Act, the procedure to be followed for assessment, collection of duty etc. is dictated by the local, prevailing State law.

Anand Traders Vs. Commissioner of Sales Tax [2014-VIL-78-DEL]

The High Court of Delhi held that industrial cables are classifiable under entry No. 40 of the Schedule III of the Delhi Value Added Tax Act, 2005 and chargeable to VAT @ 5% and not residuary rate of tax.

Anchor Electricals (P) Ltd. Vs. Comnr of ST [2014 -VIL-81-DEL]

The Supreme Court of India held that glassware though made of glass cannot be manufactured by dealer be called as 'type of glass' Since Notification S.O.25 dated June 25, 2001 ("Notification dated June 25, 2001") only provides for reduction in the rate of tax on 'types of glass' and not for 'form of glass', benefit of Notification dated June 25, 2001 is not available to dealer.

State of Jharkhand Vs. LA Opala R.G. Ltd. [2014 -VIL-08-SC]

The High Court of Karnataka held that in the absence of necessary records, expenditure incurred for works contract has to be assessed by invoking Rule 3(2)(m) of the Karnataka Value Added Tax Rules, 2005 which provides for deduction of twenty five percent towards labour charges from kind of works contract executed by assessee.

Creative Markings & Controls Pvt. Ltd. Vs. Additional Commissioner of Commercial Taxes [2014-VIL-85-KAR]

The High Court of Uttarakhand held that manufacturing pharmaceutical preparations is one thing and selling pharmaceutical preparations is another. Therefore, by branding its pharmaceutical product 'Jeeva' as soap, assessee held out to

its prospective buyers that he is selling nothing but soap. Accordingly, the same would be covered by the entry 'soap other than washing soap' attracting sales tax liability of 12 percent.

- *Jyothy Laboratories Limited Vs. Commissioner Commercial Tax [2014-VIL-87-UTR]*

The High Court of Karnataka held that a sale which occasions movement of goods from one State to another is a sale in the course of inter State trade, no matter in which State the property in goods passes. It is not necessary that the sale must precede the inter-State movement. Further, covenant regarding inter-State movement need not be necessarily specified in the contract. It would be sufficient if the movement was in pursuance of and incidental to the contract of sale.

Asea Brown Boveri Ltd. Vs. Karnataka [2014-VIL-90-KAR]

Service Tax

The High Court of Mumbai held that activity of foreign parties requisitioning services of assessee to provide import worthiness certificates of sample goods in India is not exigible to service tax when payment is received in foreign exchange.

Commissioner of Service Tax Vs. SGS India Pvt. Ltd. [2014-TIOL-580-HC-MUM-ST]

The High Court of Allahabad held that no fee is payable in respect of appeals relating to rebate or refund as Section 86(6) of Chapter V of the Finance Act, 1994 which prescribes fees in case of appeals does not speak of refund/rebate.

CCE Vs. Glyph International Ltd. [2014-TIOL-525-HC-ALL-ST]

The Tribunal held that activity of levelling of area and preparing of courtyards, plantation of trees/ shrub and laying pebbles and water fall around lake, maintenance of lawn, providing water supply arrangement and maintenance of trees and plants including trimming, removing grass shrubs etc. cannot be considered as advisory or consultancy or technical assistance so as to be charged to service tax under the category of Interior Decorator Service.

Shobha P Bhopatkar Vs. CCE [2014-TIOL-603-CESTAT-MUM]

The HC of Mumbai: Parliament is competent to impose ST on restaurants and hotels.

- *Indian Hotels and Restaurant Association Vs. Union of India [2014 TIOL-498-HC -MUM-ST]*

The High Court of Gujarat held that deputing staff by one company to its subsidiaries or group companies where control and supervision over staff remained with the company and only actual cost incurred was reimbursed by group companies cannot be held to be taxable under Manpower Supply and Recruitment Agency service.

- *Commissioner of Service Tax Vs. Arvind Mills Ltd. [2014 -TIOL-441-HC-AHM-ST]*

The HC of Karnataka held that demand raised by invoking obsolete provision is not sustainable.

Commissioner of Service Tax Vs. The Peoples Choice [2014-TIOL-431-HC-KAR ST]

The High Court of Uttarakhand held that computer training is vocational training and hence a computer training institute is entitled for exemption from service tax in terms of Notification No. 24/2004-ST dated September 10, 2004.

CCE Vs. Doon Institute of Information Technology [2014 2014-TIOL-429-HC-UKHAND -ST]

The Tribunal held that law is well settled that failure of natural justice at the primary level cannot be cured by affording due process at the appellate stage.

Bank of Baroda Vs. CCE [2014 -TIOL-560-CESTAT-DEL]