

*By virtue of the proviso referred to above, only 10% can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10% additional deduction can be availed in the subsequent assessment year, otherwise the very purpose of insertion of Clause (iia) would be defeated because it provides for 20% deduction which shall be allowed."* HC further held that the intention of the legislation was absolutely clear, that the assessee would be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one AY, if certain condition was not fulfilled, but that would not restrain the assessee from claiming the balance of the benefit in the subsequent AY.

Thus, dismissing the appeal of Revenue, the Karnataka HC upheld ITAT ruling holding that additional depreciation u/s. 32(1)(iia) is a one-time benefit to encourage industrialisation, and the provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting additional allowance.

**LD/64/103**

**Commissioner of Income Tax, Delhi**  
**vs.**

**Sharda Sinha**  
**22<sup>nd</sup> December, 2015**

*Sum received by assessee on termination of employment contract in order to compensate for loss of source of income is a capital receipt not-chargeable to tax; "Mere fact that the Assessee was free to earn through other sources would not make a difference to this position"; Follows co-ordinate bench ruling in Khanna and Annadhanam.*

The assessee (deceased) was a journalist by profession and was appointed as the Foreign Correspondent in India of a German news magazine Der Spiegel at a monthly flat rate honorarium of \$250 in addition to a further payment for any published contributions whose copyright would be with the German publisher. During the concerned period, Der Spiegel terminated the contract and paid compensation of ₹53,82,000 for the association of the past 23 years and loss of work space. The assessee claimed this amount as a revenue receipt but on revising the return, it was claimed to be a capital receipt. The AO denied assessee's revised claim holding that the termination of contract with Der Spiegel did not mean that the Assessee had lost his right of authorship in future "for all the publications in the universe". CIT(A) and ITAT ruled in favour of assessee noting that compensation was an *ex-gratia* payment as a gesture of goodwill which could not be

regarded as payment for past services for which the contractual remuneration had already been paid. The contract with Der Spiegel appointing the assessee as its foreign correspondent in India was a capital asset and the compensation received was thus a capital receipt.

HC observed that publisher was paying a lumpsum amount upon termination as sign-off compensation for performance of authorship/professional services for a continuous period of 23 years. A letter written by the publisher acknowledged that the compensation was being paid "Due to the loss of his work place and in consideration of his long time association". These factors had a bearing on the character of the receipt in the hands of the Assessee. Indeed, this was compensation for loss of an income-generating asset.

HC concurred with the conclusion of the CIT(A) that the sum paid to the Assessee was "to compensate for the abrupt loss of source of income" and that the termination of contract had fatally injured the assessee's only source of income for the last 20 years. A mere fact that the Assessee was free to earn through other sources would not make a difference to this position. Reliance was placed upon the coordinate bench ruling in the case of Khanna and Annadhanam vs. Commissioner of Income Tax [(2013) 351 ITR 110 (Del)].

HC thus ruled in favour of the assessee.

**Service Tax**

**LD/64/104**

**M/s Bharat Forge Ltd.**  
**vs.**

**Commissioner of Central Excise, Pune**  
**24<sup>th</sup> November, 2015**

**Section 80 of The Finance Act, 1994 - Penalty not to be imposed in certain cases**

*Penalty deleted u/s 80 of the Finance Act since appellant had no intention to avoid payment of service tax which would have been available to it as Cenvat credit and non-payment would not result in any financial benefit; Assessee paid fees to lead-managers abroad under bonafide belief of non levy of service tax, since the funds were raised abroad and the recipient was located abroad, and the service was consumed abroad.*

The assessee availed external commercial borrowings (ECB) in the form of convertible foreign currency bonds in April 2005 and April 2006 and raised capital in overseas market in the form of Global Depository Receipts (GDR). To raise funds for their activities, the appellant availed merchant banking services from Citigroup Global Markets Ltd. (Citigroup) and J. P. Morgan Securities Ltd. based

abroad and who did not have an office in India and who acted as Lead Managers for the two issues of ECB and GDR. Certain fees were paid by the assessee to the Lead Managers.

Revenue authorities stated that the service of merchant banking was leviable to service tax u/s 65(12) r/w Section 65(105)(zm) of the Finance Act 1994. Further Revenue stated that u/s 66A of the Finance Act, 1994, where any taxable service is provided by a person who has an established business in a country other than India, and is received by a person who has his fixed establishment of business in India such service is taxable service. Revenue thus held that the assessee was liable to pay service tax u/s 66A of the Finance act 1994 read with Taxation of Services (provided from outside India and received in India) Rules 2006. Penalties u/s 76, 77 and 78 of Finance Act were also imposed.

The assessee paid entire amount of service tax along with interest thereon. Before the CESTAT, the assessee did not contest the levy of service tax and interest thereon, however argued to take a lenient view for waiver of penalty. The assessee argued that it was

under genuine belief that tax was not payable since the funds were raised abroad, the entities which had provided the service of raising of funds were located abroad, the service was consumed outside India as the funds were raised outside India through the issue of ECB and GDR. Further assessee argued that, in any case, the service tax paid by it would be available as Cenvat credit which it had availed.

CESTAT observed that the assessee paid the service tax on 18.12.2007 whereas the show cause notice was issued on 11.08.2008 and adjudicated on 18.08.2011. CESTAT remarked that the prompt payment of service tax even before the issue of show cause notice showed the genuineness of the assessee and it was a case of bonafide belief of the assessee that service tax was not payable. Further, the CESTAT observed the assessee had no intention to avoid payment of service tax which would have been available to it as Cenvat credit, and non-payment would not result in any financial benefit to the assessee.

CESTAT thus directed to waive the impugned penalty u/s 80 of the Finance Act. ■

## ICAI News



### Notification

#### The Institute of Chartered Accountants of India

[Set up by an Act of Parliament]

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA

NOTIFICATION

19 January, 2016

No. 13-CA (EXAM)/M/2016: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Intermediate (IPC) and Final examinations will be held on the dates given below at the following places provided that sufficient number of candidates offer themselves to appear from each centre.

#### INTERMEDIATE (IPC) EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the

Chartered Accountants Regulations, 1988]

**Group-I: 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup> & 9<sup>th</sup> May 2016**

**Group-II: 11<sup>th</sup>, 13<sup>th</sup> & 15<sup>th</sup> May 2016**

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

#### FINAL EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 31 (ii) of the Chartered Accountants Regulations, 1988.]

**Group -I: 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> & 8<sup>th</sup> May 2016**

**Group -II: 10<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup> & 16<sup>th</sup> May 2016**

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

#### PLACES OF EXAMINATION CENTRES IN INDIA:

| Sl. No. | Name of the Cities | Sl. No. | Name of the Cities | Sl. No. | Name of the Cities |
|---------|--------------------|---------|--------------------|---------|--------------------|
| 1       | AGRA               | 2       | AHMEDABAD          | 3       | AHMEDNAGAR         |
| 4       | AJMER              | 5       | AKOLA              | 6       | ALAPPUZHA          |
| 7       | ALIGARH            | 8       | ALLAHABAD          | 9       | ALWAR              |
| 10      | AMBALA             | 11      | AMRAVATI           | 12      | AMRITSAR           |