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MAHASANDESH

AN IN HOUSE MAGAZINE OF

MADRAS HIRE PURCHASE ASSOCIATION

PRESIDENT'S MESSAGE

As always it's an immense pleasure to keep our members posted through "MAHASANDESH". I wish all the members a Very Happy and a prosperous New Year. May the year 2013 bring wealth, health and prosperity to all.

An Insurance Seminar conducted was on 20.11.2012 the foremost reason being that most of our members are facing claim related issues and I hope certain issues would have been solved by the seminar.

My sincere request to all members is that it's time we all get "UNITED" as in future there are so many harsh changes which are going to be imposed on NBFC. Being united we can fight against them in court of law.

I feel proud that MAHA has completed two decades of service to its member. Hence we would like to have a grand celebration for which we have invited "Shri Paresh Rawal" Bollywood Cine Star and his teammates to enact a play and make the event a memorable one.

VIJAY SINGH PINCHA
President

MADRAS HIRE PURCHASE ASSOCIATION
(Affiliated to Federation of Indian Hire Purchase Association)
Celebrating two decades of services to the industry and its members
presents
KRISHAN KANHAIYA
Starring Bollywood Star Paresh Rawal in the Hilarious Comedy Hindi Play

Date : 23rd March 2013, Saturday
Time : 6.15 pm
Venue : Lady Andal Auditorium, Chennai

For more details see page no 16 & 17

EDITORS MESSAGE

It gives me immense pleasure to interact with you through this Journal.

Honourable Supreme Court of India has again upheld the right of financier to repossess the vehicle (Asset) in case the hirer defaults in payment of hire money. The important judgement in the above reference is published in this issue of *Mahasandesh*.

The Union Finance Budget of 2012 has clarified the ambiguity with respect to levy of service tax on hire charges. First, service tax is applicable when the taxable value of the service exceeds Rs.10 Lakhs in a Financial Year. In case of Hire Purchase and lease charges, the value of taxable service has to be determined as 10% of the Hire Purchase and Lease Charges. Any other charges collected by the financier i.e. service charges, document charges, processing charges or any such charges are to be added in the taxable value of service as mentioned above. There is no ambiguity at all in this matter and Notification No.33 of 28th June 2012 clarifies the above matter.

Wish you all Prosperous and Happy New Year.

ASHOK CHHAJER
Editor

॥ श्री जिनदत्त-चन्द्र-कुशल-चन्द्र सूरि गुरूभ्यों नमः ॥

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MADRAS HIRE PURCHASE ASSOCIATIO
WELCOMES YOU
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MAHA
CHENNAI

FROM THE OFFICE OF SECRETARY

Dear Friends in "MAHA"

I, on behalf of me and my family and on behalf of all the board members convey my whole hearted congratulations and all the best wishes to you, your family and your business for the New Year 2013. All the happiness be showered by almighty to you and your occupation on all the way of your life.

After grand success of Seminar on Arbitration, recently we had our most successful and most educative Seminar on the Insurance matters. Learned and expert in insurance Mr. Pandian tendered his speech with questions and answers with Video slides effectively among good gathering of our members.

You are well aware that there are so many challenges on head of our finance industry. Polictical situation in our country is very worst and corruption practices among politicians is big head-ache for our nation. Funding is an another problem. Once upon a time there was no problem of funds, we were doing collective works, we had faith in each other but now situation has become totally different and changed. We have lost our faith among us and other side so many bogus companies have spoiled our business. If we want to survive and improve our business situation, we have to work collectively. We have to join our hands together. We have to accept all the challenges, face and fight with our joint hands. Please note that UNITY IS OUR POWER.

Keeping all these and to fulfill our motto, we have decided to celebrate 21st Anniversary of our great organization in a grand manner in fully airconditioned hall at Lady Andal's Auditorium on 23/03/2012. OMG fame artist Sri PARESH RAWAL and his team are pleased to perform their popular stage drama among so many popular digitories of our country. Entire details of the Grand Gala of 21st Celebration cum Fund Raising Program shall be in your hands shortly. Your whole hearted support is expected to bring our organization to greater and greater heights. Please join your hands for our better future of our finance industry and to face various challenges of legal hurdles because together we can do more effectively.

Every member shall be pleased to know that renovation work including POP in our Hall is completed and now it looks like new. I have already requested you to refer to us, if you get any kind of probems, hurdle or complaint either from your customer or from your broker or from any government department, send to us, we shall try our level best to find out solution in consultation with experts.

I convey my humble thanks to our President Sri Vijay Sing Pincha, Chairmen for this grand 21st celebration Sri Padamchand Choudhary and Dinesh Kothari and Program Committee Chairman Sri Anurag Dugar and Treaurer Sri Deepak Parekh who are taking all the possible efforts to shine the name and fame of our Organization.

Once again with all the best wishes for the New Year 2013

Yours Truly

J.C. KATARIA

Secretary

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IMPORTANT SUPREME COURT JUDGMENT ON REPOSSESSION OF VEHICLES

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION

Special Leave Petition (Crl.) No. 8907 of 2009

Anup Sarmah **Petitioner**

VERSUS

Bhola Nath Sharma & Ors. **Respondents**

O R D E R

1. This petition has been filed against the impugned judgment and order dated 22.6.2009 passed by the High Court of Assam at Gauhati in Criminal Revision No. 156 of 2009 rejecting the case of the petitioner against the respondents that they had forcibly taken the custody of the vehicle purchased by the petitioner on hire-purchase from them. The court has quashed the criminal proceedings against the respondent.

2. Learned counsel for the petitioner has submitted that respondent's financer had forcibly taken away the vehicle financed by them and illegally deprived the petitioner from its lawful possession and thus, committed a crime. The complaint filed by the petitioner had been entertained by the Judicial Magistrate (1st class), Gauhati (Assam) in Compliant Case no. 608 of 2009, even directing the interim custody of the vehicle (Maruti Zen) be given to the petitioner vide order dated 17.03.2009. The High Court has wrongly quashed the criminal proceedings pending before the learned Magistrate.

3. On the contrary, learned counsel appearing on behalf of the respondents, has submitted that under the hire-purchase agreement, the financier remains the owner of the vehicle till the entire payment is made and, therefore, possession taken by the financier for non-payment of instalments by the petitioner could not be held an offence. Thus, the High Court has rightly quashed the proceedings and no interference is required.

4. We have considered the rival submissions raised by the learned counsel for the parties and perused the records.

5. In Trilok Singh & Ors. V. Satya Deo Tripathi, AIR 1979 SC 850, this Court examined the similar case wherein the truck had been taken in possession by the financier in terms of hire purchase agreement, as there was a default in making the payment of instalments. A criminal case had been lodged against the financier under Sections 395, 468, 465, 471, 12-B/34, I.P.C. The Court refused to exercise its power under Sections 482, Cr.P.C. and did not quash the criminal proceedings on the ground that the financier had committed an offence. However, reversing the said judgment, this Court held that proceedings initiated were clearly an abuse of process of the Court. The dispute involved was purely of civil nature, even if the allegations made by the complainant were substantially correct. Under the hire purchase agreement, the financier had made the payment of huge money and he was in fact the owner of the vehicle. The terms and conditions incorporated in the agreement gave rise in case of dispute only to civil rights and in such a case, the Civil Court must decide as what was the meaning of those terms and conditions.

6. In K.A. Mathai alias Babu & Anr. V. Kora Bibbikutty & Anr., (1996) 7 SCC 212, this Court had taken a similar view holding that in case of default to make payment of instalment financier had a right to resume possession even if the hire purchase agreement does not contain a clause of resumption of possession for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite mens rea and requisite dishonest intention. The assertions of rights and obligations accruing to the parties under the hire purchase agreement wipes out any dishonest pretence in that regard from which it cannot be interred that financier had resumed the possession of the vehicle with a guilty intention.

7. In Charanjit Singh Chandha & Ors. .v. Sudhir Mehra, (2001) 7 SCC 417, this Court held that recovery of possession of the vehicle by financier-owner as per terms of the hire purchase agreement, does not amount to a criminal offence. Such an agreement is an executory contract of sale conferring no right in rem on

the hirer until the transfer of the property to him has been fulfilled and in case the default is committed any offence for the reason that such a case/dispute is required to be resolved on the basis of terms incorporated in the agreement. The Court elaborately dealt with the nature of the hire purchase agreement observing that in a case of mere contract of hiring, it is a contract of bailment which does not create a title in the bailee. However there may be variations in the terms and conditions of the agreement as created between the parties and the rights of the parties have to be determined on the basis of the said agreement. The Court further held that in such a contract, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchase after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and option is exercised a sale takes place of the goods which till then had been hired. While deciding the said case, this Court placed reliance upon its earlier judgment in M/s. Damodar Valley Corporation v. The State of Bihar, AIR 1961 SC440; Instalment Supply (Private) Ltd. & Anr. V. Union of India & Ors., AIR 1962 SC 53; K.L. Johar & Co. v. the Deputy Commercial Tax Officer, Coimbatore III,AIR 1965

SC 1082; and Sundaram Finance Ltd. .v. State of Kerala & Anr., AIR 1966 SC 1178.

8. In view of the above, the law can be summarized that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him.

9. If the case is examined in the light of the aforesaid settled legal proposition, we do not see any cogent reason to interfere with the impugned judgment and order. The petiton lacks merit and, accordingly, dismissed.

(Dr. B.S. CHAUHAN)

(FAKKIR MOHAMMED IBRAHIM KALIFULLA)

New Delhi, October 30,2012

ITEM NO.9 COURT NO.8 SECTION II

SUPREME COURT OF INDIA

Record of Proceedings

Petition(s) for Special Leave to Appeal (Crl) No (s). 8907/2009 (From the judgment and order dated 22/06/2009 in CRLR No.156/2009, of The HIGH COURT OF GUWAHATI, ASSAM)

ANUP SARMAH
Petitioner(s)

VERSUS

BHOLA NATH SHARMA &ORS
Respondent(s)

(With appln(s) for stay and office report)

Date : 30/10/2012 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B. S. CHAUHAN

HON'BLE MR. JUSTICE FAKKIR MOHAMMED IBRAHIM KALIFULLA

For Petitioner(s)
Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.
Ms. Sujaya Bardhan, Adv.

For Respondent(s)
Mr. Naresh Kaushik, Adv.
Mr. Sanjeev Kumar Bhardwaj, Adv.

Mrs. Vivya Nagpal, Adv.

Mrs. Lalitha Kaushik, Adv.

UPON hearing counsel the Court made the following

ORDER

In terms of the signed reportable order, the Special Leave Petition is dismissed.

(O.P. Sharma) *Court Master* **(M.S. Negi)** *Court Master*

(Signed reportable order is placed on the file)

IMPORTANT JUDGEMENTS

NEGOTIABLE INSTRUMENTS

S.R.KANGEYAN vs. INDIAN POTASH LTD.

(2012) 172 Comp Case 217 (Mad) HIGH COURT OF MADRAS

Negotiable Instruments Act,1881,s.138; In favour of : Petitioner

Prosecution – Offence under s.138 – Prosecution of director – There being absolutely no specific, clear and unambiguous allegations as to how and in what manner the petitioner was responsible for the conduct of the business and absolutely no specific role assigned to the petitioner in respect of the conduct of the business of the first accused-company, prosecution of the petitioner director cannot be allowed to continue – Allowing the proceedings to continue against the petitioner would certainly amount to a clear case of abuse of the process of Court and as such, the proceedings are liable to be quashed in so far as the petitioner is concerned.

Conclusion : There being absolutely no specific, clear and unambiguous allegations as to how and in what manner the petitioner was responsible for the conduct of the business and absolutely no specific role assigned to the petitioner in respect of the conduct of the business of the first accused – company, prosecution of the petitioner director cannot be allowed to continue.

BANKING

RAM KISHUN & ORS. Vs. STATE OF UTTAR PRADESH & ORS.

(2012) 173 Comp Cas 105 (SC) SUPREME COURT OF INDIA

Indian Contract Act, 1872, s.128; In favour of : Respondents

Recovery of loan – From heirs of guarantor – Scope – Liability of guarantor being co-extensive with that of principal debtor, heirs of guarantor are liable to pay the amount of outstanding loan.

Held : The liability of a surety is co-extensive with that of principal debtor. Admittedly, the father of the appellants stood guarantor when GP took loan from the bank. Though there are some documents to show that there were two guarantors but who was the other guarantor is not evident from the record, nor such a plea had ever been taken by the appellants before the Courts below. As the appellants had inherited the estate of the guarantor, they are liable to meet the liability of unpaid amount. No fundamental procedural error had been pointed out which would vitiate the order of confirmation of sale and issuance of sale certificate. However, the appellants may move an application before the Collector, concerned authority, in case the excess amount had not been paid to them, for recovery of the same.

Conclusion : Liability of guarantor being co-extensive with that of principal debtor, heirs of guarantor are liable to pay the amount of outstanding loan

SUNDARAM FINANCE LTD. Vs. ASSISTANT COMMISSIONER OF INCOME TAX

(2012) 252 CTR (SC) 353 SUPREME COURT OF INDIA

Income – tax Act, 1961, ss.36(1)(vii)&37(1)

In favour of : Revenue; Assessment year 1998-99

Business expenditure – Allowability – Provision for non-performing assets – Assessee is not entitled to deduction of the provision made by it for non-performing assets – Sundaram Finance Ltd. Vs. Asstt. CIT (2009) 318 ITR 452 (Mad) affirmed; Southern Technologies Ltd. Vs. Jt. CIT (2010) 228 CTR (SC) 440: (2010) 34 DTR (SC) 11: (2010) 320 ITR 577 (SC) followed

Conclusion : Assessee is not entitled to deduction of the provision made by it for non-performing assets.

Income-tax Act, 1961, ss.4 & 28 (i)

In favour of: Revenue; Assessment Year 1998-99

Business income – Trading receipt – Amount collected as contingent deposit – Assessee has been collecting certain sums as contingent deposit from the leasing / hire purchase customers with a view to protect itself from sales-tax liability – Said money was not kept in a separate interest - bearing bank account and formed part of the business turnover. Applying the substance over form test, said money constituted business income of the assessee.

Held : It is now well – settled that in determining whether a receipt is liable to be taxed, the taxing authorities cannot ignore the legal character of the transaction which is the source of the receipt. The taxing authorities are bound to determine the true legal character of the transaction. In the present case, the assessee received Rs.36,47,585 in the asst. yr. 1998-99. As per the statement made by the counsel for the assess in Court on 6th Sept., 2012, the said sum of Rs.36,47,585 was not kept in a separate in Court on 6th Sept., 2012, the said sum of Rs.36,47,585 was not kept in a separate interest – bearing bank account but it formed part of the business turnover. Applying the substance over form test, the said sum of Rs.36,47,585 constituted income. The said amount was part of the turnover. The said amount was collected towards sales-tax liability. The said amount formed part of the turnover. The tribunal was therefore right in treating the amount of Rs.36,47,585 collected as contingent deposit as income of the assessee. – Sundaram Finance Ltd. vs. Asstt .CIT (2009) 318 ITR 452 (Mad), Sundaram Finance Ltd. vs. Asstt. CIT (Tax Case No.45 of 2008, dt. 11th Feb., 2008) affirmed; CIT vs. Bazpur Co-operative Sugar Factory Ltd. (1988) 70 CTR (SC) 94: (1988) 3 SCC 533 distinguished.

Conclusion : Amount collected as contingent deposit by

the assess company from its leasing / hire – purchase customers with a view to protect itself from sales-tax liability which was not kept in a separate interest-bearing bank account formed part of the business turnover and constituted business income.

COMMISSIONER OF INCOME TAX vs. RAVINDER KUMAR ARORA

HIGH COURT OF DELHI
A.K. Sikri, Actg C.J. & M.L. Mehta, J.
IT Appeal No. 1106 of 2011
27th September, 2011
(2012) 252 CTR (Del) 392
Income-tax Act, 1961, s. 54F
In favour of : Assessee ;

Capital gains - Exemption under s. 54F-New residential property purchased in joint names of assessee and his wife Assessee having invested the entire amount of long-term capital gains in purchase of new residential house, through in the joint names of himself and his wife, assessee was entitled to full exemption under s. 54F-Objective of s. 54F and the like provision such as s. 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the legislature has allowed-Moreover, s. 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only.

Held : Important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house through in his own name but along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of the registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the house. The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a single penny was contributed by the wife in the purchase of the house. The Tribunal also noted the argument that the property was purchased by the assessee in the joint name with his wife for 'shagun' purpose and because of the fact that the assessee was physically handicapped. The Tribunal further concludes that as a matter of fact, the assessee was the real owner of the residential house in question. On the aforesaid facts, the conditions stipulated in s. 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife. If the view of the AO or the contention of the revenue is accepted, it would be a derogatory step. Even looking the matter from another angle, fact remains that the assessee is the actual and constructive owner of the house. Moreover, s. 54F mandated that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only. Objective of s.54F and the like provision such as s. 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technically should not impede the way of deduction which the legislature has allowed. Sec. 54F is the beneficial provision which should be interpreted liberally in favour of the taxpayer and deduction should not be denied on hyper technical ground.-CIT vs. V. natarajan (2006)203 CTR (Mad) 37 : (2007) 287 ITR 271 (Mad) and CIT vs. Gurnam Singh (2008) 218 CTR (P&H) 674 : (2008) 6 DTR (P&H) 83 : (2010) 327 ITR 278 (P&H) concurred with.
(Paras 8 to 11)

Conclusion : Assessee having invested the entire amount of long-term capital gains in purchase of new residential house was entitled to exemption under s. 54F in respect of the entire amount even though the new property was purchased in the joint names of assessee and his wife.

CASES REFERRED TO

CIT vs. Podar Cements (P) Ltd. Etc. (1997) 141 CTR(SC) 67 : (1997) 226 ITR 625 (SC)
Late Mir Gulam Ali Khan vs. CIT (1986) 56 CTR (AP) 144: (1987) ITR 228 (AP)
Counsel appeared : Abhishek Maratha, for the Appellant : Dr. Rakesh Gupta for the Respondent

JUDGMENT – A.K.SIKRI.J.:

The sole issue raised in this appeal is that whether the exemption under s.54F of the IT Act, 1961 (hereinafter referred to as the 'the Act') is extendable to the assessee for the total consideration paid by him, for the purchase of the new asset (the residential property) in the join name or the exemption would be limited to the extent of the share of the assessee in the said purchased property. This has arisen in the following circumstances.

2. The assessee filed his return for the asst.yr.2007-08 showing total income of Rs. 64,32,220. In the assessment proceedings, it was noticed by the AO that the assessee is proprietor of M/s Arora Service Station and is running a petrol pump. During the relevant year, the assessee has shown long-term capital gain of Rs. 45,49,045 on sale of plot of land bearing Khasrs No. 526/1, Min and Old No. 526, min Khasra no. 552 and old Khasra No. 37 situated at Mohuddinpur Kanwani, Tehsil Dadrai, District Gautam Budh Nagar, UP. This plot of land was purchased by the assessee in his name on 27th Jan., 1989. As per the details

filed by the assessee, it was noticed by the AO that this land was sold for a sale consideration of Rs. 4,33,00,000 to M/s Nirala Developers (P) Ltd. Vide sale deed dt. 1st july, 2006. Out of total gain arising from the sale of land, the assessee claimed exemption of capital gain to the extent of Rs. 3,18,59,276 under s. 54F of the Act on account of purchase of a new house property. The assessee vide reply dt. 19th Nov., 2009 filed a copy of the purchase deed through which a residential house bearing No. 8, Block No. 7, situated in layout plan of Safdarjung Enclave, New Delhi was purchased on 1st March, 2007 for a total consideration of Rs. 3,28,15,000 and claimed exemption under s. 54F of the Act for Rs. 3,18,59,276.

3. On going through the purchase deed of the above residential house, it was noticed by the AO that the purchase deed was made jointly in the names of the assessee and his wife Smt. Manju Arora. The assessee had claimed exemption under s. 54F of the Act with reference to the whole amount invested in the said house property. The AO vide questionnaire dt. 4th Dec., 2009 asked the assessee to explain his claim of exemption under s. 54F of the Act with reference to the whole amount invested in the said house inasmuch as the property was purchased jointly with his wife. The assessee vide reply dt. 15th Dec., 2009 submitted that wife's name was only included in the sale deed just to avoid any litigation after his death though all the funds invested in the said house were provided by the assessee, therefore, submitted before the AO that the exemption under s. 54F of the Act is to be allowed with reference to the full amount of purchase consideration paid by him for the aforesaid residential house.

4. The assessee's submission was considered by the AO. The AO noted that though all the payments were made by the assessee, the residential house was purchased jointly in the names of the assessee and his wife. The AO then refered to s. 54F of the Act only to the extent of his right in the new residential house purchased jointly with his wife. The AO, therefore, allowed 50 per cent of the exemption claimed under s. 54F of the Act as against total claim of Rs. 3,18,59,276 made by the assessee. The AO allowed claim only to the extent of Rs. 1,59,29,638 and the balance 50 per cent being Rs. 1,59,29,638 was disallowed.

5. Aggrieved by that order, the assessee filed the appeal before the CIT(A), which was also dismissed. However, in further appeal before the Income-tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), the assessee has succeeded there as the tribunal has held that the assessee is entitled for benefit of s. 54F of the Act with reference to the total investment of Rs. 3,28,15,000.

6. In these circumstances, the instant appeal is filed by the Revenue under s. 260A of the act, which we have admitted on the following substantial question of law:

"Whether the Tribunal was correct in law in granting the exemption unders 54F of the IT Act, 1961, to the assessee for the whole consideration of Rs. 3,28,15,000 for the purpose of the new asset (the residential property) in the joint name of the assessee and his wife, and not to the extent of 50 per cent share of the assessee in the new asset"

7. With the consent of the learned counsal for the parties, we have heard the matter finally at this stage itself and in our opinion, the question of law is to be decided in favour of the assessee and against the Revenue. Sec. 54F(1) of the Act needs to be noted :

"Sec. 54F. Captial gain on transfer of certain capital assets not to be charged in case of investment in residential house.-(1) Subject to the provisions of sub-s. (4), where in the case of an assessee being an individual or an HUF, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to the original asset), and the assessee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed 842a, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,-

a) If the cost of the new asset is not less that the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under s. 45;

b) If the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under s. 45 :

c) Provided that nothing contained in this sub-section shall apply where-

(a) the assessee,-

(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset ; or

(ii) purchases any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; or

(iii) constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and

(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head 'Income from house property'.

Explanation: For the purposes of this section – 'Net consideration', in relation to the transfer of a capital asset, means the full value of the consideration received or

accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

Plain reading of the aforesaid provision indicates that in order to get benefit of this section, the assessee should, inter alia, "Purchase" a house. As per the Revenue, this house has to be purchased in the name of the assessee only and benefit is not given if it is purchased by the assessee jointly with his wife.

8. At the outset, important factual findings recorded by the Tribunal in this case are that it was the assessee who independently invested in the purchase of new residential house though in his own name but along with the name of his wife also and that it was the assessee who paid stamp duty and corporation tax at the time of the registration of the sale deed of the house so purchased and has also paid commission and legal expenses in connection with the purchase of the house. The Tribunal further records that whole of the purchase consideration has been paid by the assessee and not even a singly penny has been contributed by the wife in the purchase of the house. The Tribunal also noted the argument that the property was purchased by the assessee in the hoint name with his wife for 'shagun' purpose and because of the fact that the assess was physically handicapped. The Tribunal further concludes that as a matter of fact, the assessee was the real owner of the residential house in question.

9. On the aforesaid facts, we are of the view that the conditions stipulated in s. 54F stand fulfilled. It would be treated as the property purchased by the assessee in his name and merely because he has included the name of his wife and the property purchased in the joint names would not make any difference. Such a conduct has to be, rather, encouraged which gives empowerment to women. There are various schemes floated by the Government itself permitting joint ownership with wife. If the view of the AO or the contention of the Revenue is accepted, it would be a derogatory step.

10. Even when we look into the matter from another angle, fact remains that the assessee is the actual and construction owner of the house. In CIT vs. Podar Cements (p) Ltd. & Etc. (1997) 141 CTR (SC) 67 : (1997) 226 ITR 625 (SC), the Supreme Court has also accepted the theory of construction ownership. Moreover, s. 54F mandates that the house should be purchased by the assessee and it does not stipulate that the house should be purchased in the name of the assessee only. Here is a case where the house was purchased by the assessee and that too in his name and wife's name was also included additionally. Such inclusion of the name of the wife for the abovestated peculiar factual reason should not stand in the way of the deduction legitimately accruing to the assessee.

11. Objective of s. 54F and the like provision such as s. 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper technicality should not impede the way of deduction which the legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Sec. 54Fof the Act is the beneficial provision which should be interpreted liberally in favour of the exemption / deduction to the taxpayer and deduction should not be denied on hyper technical ground. Andhra Pradesh High Court in the case of Late Mir Gulam Ali Khan vs. CIT (1986) 56 CTR (AP) 144 : (1987) 165 ITR 228 (AP) has held that the object of granting exemption under s. 54 of the Act is that an assessee who sells a residential house for purchasing another house must be given exemption so far wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word "assessee" as that would frustrate the object of granting exemption.

12. We also find judgment of other High Court giving benefit of s. 54F(1) of the Act when the house of the assessee is purchased jointly with his wife. In the case of CIT vs. V. Natarajan (2006) 203 CTR (Mad) 37 (2007) 287 ITR 271(Mad) though this case was decided in relation to s. 54 of the Act, the said section is pari material of s. 54F(1) of the Act. Likewise, the Punjab & Haryana High Court in the case of CIT vs. Gurnam Singh (2008) 218 CTR (P&H) 674 : (2008) 6 DTR (P&H) 83 : (2010) 327 ITR 278 (P&H) took the same view while discussing the provision of s. 54 of the Act which is again pari material of s. 54F(1) of the Act.

13. We, thus, answer the question in favour of the assessee and dismiss this appeal with cost quantified @ Rs. 10,000.

COMMISSIONER OF INCOME TAX vs. SMIFS SECURITIES LTD.

SUPREME COURT OF INDIA

S.H.Kapadi, C.J. & Madan B. Lokur, J.

Civil Appeal No.5961 of 2012 *

22nd August, 2012

(2012) 252 CTR (SC) 233

Income-tax Act, 1961, s.32 (1) (ii)

In favour of : Assessee;

Assessement Year 2003-04

Depreciation – Allowability – Stock Exchange Membership Cards – Stock Exchange Membership Cards are assets eligible for depreciation under s.32 – SMIFS Securities Ltd (Judgment dt.19th Feb 2008 of the Calcutta High Court in IT Appeal No.642 of 2007) affirmed; Techno Shares & Stocks Ltd. Vs. CIT (2010) 234 CTR (SC) 105 : (2010) 44 DTR (SC) 65 : (2010) 327 ITR 323 (SC) followed

(Para 4)

Conclusion : Stock Exchange Membership Cards are assets eligible for depreciation unders.32

Income-tax Act, 1961, s.32(1)(ii) & 32 (1), Expln.3

In favour of : Assessee

Assessment Year 2003 – 04

Depreciation – Intangible asset – Goodwill – Goodwill falls under the expression 'any other business or commercial rights of similar nature' in Expln. 3 to s. 32 (1) – Principle of ejusdem generic would strictly apply while interpreting the said expression occurring in Expln 3 – Therefore, 'goodwill' is an asset under Expln. 3 to s.32(1), entitled to depreciation – CIT (A) has concluded that the difference between the cost of the assets transferred to the assessee company under the amalgamation and the amount paid therefore constituted goodwill and that the assessee company had acquired a capital right in the form of goodwill in the process of amalgamation – This finding has been upheld by the Tribunal – Revenue did not contest the aforesaid finding of fact in the appeal preferred by it to the High Court – There is no reason to interfere with the factual finding.

Held : Explanation 3 to s. 32(1) states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature. A reading of the words 'any other business or commercial rights of similar nature' in cl. (b) of Expln. 3 indicates that goodwill would fall under the expression 'any other business or commercial right of similar nature'. The principle of ejusdem generic would strictly apply while interpreting the said expression which finds place in Expl. 3(b). In the circumstances, ' goodwill' is an asset under Expl. 3 (b) to s. 32(1 – SMIFS Securities Ltd (judgment dt.19th Feb., 2008 of the Calcutta High Court in IT Appeal No.642 of 2007) affirmed.

(Paras 10 & 11)

One more aspect needs to be highlighted. In the present case, the AO, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The CIT (A) has come to the conclusion that the Authorised Representatives had filed copies of the order of the High Court ordering amalgamations of the two companies; that the assets and liabilities of YSN Ltd. were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee – company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assess-company stood increased. This finding has also been upheld by the Tribunal. There is no reason to interfere with the factual finding. One more aspect which needs to be mentioned is that, against the decision of Tribunal, the Revenue had preferred an appeal to the High Court in which it has raised only the question as to whether goodwill is an asset under s.32. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to herein above.

(Paras 12 & 13)

Conclusion : Goodwill falls under the expression 'any other business or commercial rights of similar nature' occurring in Expln.3 to s.32(1) and, therefore, 'goodwill' is an asset under s.32(1),eligible for depreciation.

* From the Judgment and order dt. 19th Feb., 2008 of the Calcutta High Court in IT Appeal No. 642 of 2007.

Income-tax Act, 1961, s.36(1)(vii)

In favour of : Assessee; Assessment Year 2003-04

Business expenditure – Bad debt – Debt incurred in the normal course of business – Both CIT (A) as well as the Tribunal have held that bad debt claimed by the assessee was incurred in the normal course of business and that the assessee has satisfied the provisions of s.36(1)(vii) – It is well-settled now that the manner in which the assessee maintains its accounts is not conclusive for deciding the nature of expenditure – Therefore, the contention that since the tax audit report indicated the amount to have been incurred on capital account, the assesee was not entitled to deduction is not sustainable – Assessee was entitled to claim deduction of the bad debt under s.36(1)(vii) – SMIFS Securities Ltd. (judgment dt. 19th Feb 2008) of the Calcutta High Court in IT Appeal No.642 of 2007) affirmed.

(Para 16)

Conclusion : In view of the concurrent finding of facts recorded by the authorities below that bad debt claimed by the assessee was incurred in the normal course of business and that the assessee has satisfied the provisions of s.36(1)(vii), assessee was entitled to claim deduction of the bad debts.

Counsel appeared : A.S.Chandhiok & R.P. Bhatt with Gurpreet S. Parwanda, Rahul Kaushik, Ms. Sonia Mathur, Ms. Anil Kattiyar & B.V.Balaram Das, for the Revenue : None, for the Assessee.

ORDER - BY THE COURT :

1. None appears for the respondent, though served.
2. Heard learned counsel for the Departments.
3. Leave granted.
4. This civil appeal concerns the asst.yr.2003-04. Three questions arise for determination by this Court. They are as follows

Question No.(a) :

"Whether stock exchange membership cards are assets eligible for depreciation under s.32 of the IT Act, 1961? Whether, on the facts and in the circumstances of the case, deletion of Rs.53,84,766 has been made correctly?"

Answer :

Learned Addl. Solicitor General fairly concedes that the said question is covered by the decision of this Court in the case of Techno Shares & Stocks Ltd vs. CIT (2010) 234 CTR (SC) 105 : (2010) 44 DTR (SC) 65 : (2010) 327 ITR 323 (SC), in favour of the assessee.

5. Question No. (b) :

"Whether goodwill is an asset within the meaning of s.32 of the IT Act, 1961, and whether depreciation on 'goodwill' is allowable under the said section?"

6. Answer :

In the present case, the assessee had claimed deduction of Rs.54,85,430 as depreciation on goodwill. In the course of hearing, the explanation regarding origin of such goodwill was given as under:

"In accordance with scheme of amalgamation of YSN Shares & Securities (P) Ltd. With SMIFS Securities Ltd (duly sanctioned by Hon'ble High Courts of Bombay and Calcutta) with retrospective effect from 1st April, 1998, assets and liabilities of YSN Shares & Securities (P) Ltd. were transferred to and vest in the company. In the process goodwill has arisen in the books of the company."

7. It was further explained that excess consideration paid by the assessee over the value of net assets acquired of YSN Shares & Securities (P) Ltd. (amalgamation company) should be considered as goodwill arising on amalgamation. It was claimed that the extra consideration was paid towards the reputation which the amalgamating company was enjoying in order to retain its existing clientele.

8. The AO held that goodwill was not an asset falling under Expln . 3 to s.32 (1) of the IT Act, 1961 ['Act', for short).

9. We quote herein above Expln. 3 to s.32 (1) of the Act:

"Explanation 3 – For the purposes of this sub-section, the expressions 'assets' and 'block of assets' shall mean-

a) tangible assets, being buildings, machinery, plant or furniture;
b) intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature."

10. Explanation 3 states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading (of) the words ' any other business or commercial rights' of similar nature' in cl.(b) of Expl.3 indicates that goodwill would fall under the expression 'any other business or commercial right of similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Expln. 3(b)

11. In the circumstance, we are of the view that 'goodwill' is an asset under Expln. 3(b) to s. 32(1) of the Act.

12. One more aspect needs to be highlighted. In the present case, the AO, as a matter of fact, came to the conclusion that no amount was actually paid on account of goodwill. This is a factual finding. The CIT(A) has come to the conclusion that the Authorised Representatives had filed copies of the orders of the High Court ordering amalgamation of the above two companies; that the assets and liabilities of M/s. YSN Shares & Securities (P) Ltd were transferred to the assessee for a consideration; that the difference between the cost of an asset and the amount paid constituted goodwill and that the assessee-company in the process of amalgamation had acquired a capital right in the form of goodwill because of which the market worth of the assess-company increased. This finding has also been upheld by Tribunal. We see no reason to interfere with the factual finding.

13. One more aspect which needs to be mentioned is that, against the decision of Tribunal, the Revenue had preferred an appeal to the High Court in which it had raised only the question as to whether goodwill is an asset under s.32 of the Act. In the circumstances, before the High Court, the Revenue did not file an appeal on the finding of fact referred to hereinabove.

14. For the aforestated reasons, we answer question No.(b) also in favour of the assessee.

Question No.(c) :

15. The last question raised in this civil appeal is regarding cancellation of disallowance of an amount of Rs.83,02,976 as a bad debt.

16. It has been stated on behalf of the Revenue that, since the tax audit report indicated the amount to have been incurred on capital account, the assess was not entitled to deduction on account of bad debt. Both the CIT(A) as well as the Tribunal concluded that the assessee has satisfied the provisions of s.36(1)(vii) of the Act. They have held that bad debt claimed by the assessee was incurred in the normal course of business and, therefore, the assessee was entitled to deduction under s.36(1)(vii) of the Act. It is well-settled now by a catena of decisions that the manner in which the assessee maintains its accounts is not conclusive for deciding the nature of expenditure.

In the present case, the concurrent finding of facts recorded by the authorities below indicate that the assessee was entitled to claim deduction in the course of business under s.36(1)(vii) of the Act.

17. For the aforestated reasons, we answer all the three questions in favour of the assessee and against the Revenue.

18. The civil appeal filed by the Department stands dismissed with no order as to costs.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE [APPEALS] 26/1, MAHATMA GANDHI ROAD, CHENNAI – 34.

A.No. 240/2012(MST) dt.16 / 4 / 2012

M/s. Adarsh Investment ,
No. 193, Mint Street, Park Town,
Chennai – 600 003. Appellant

Vs.

The Additional Commissioner of Service Tax,
Service Tax Commissionerate, Chennai. : Respondent

Sub : Service Tax – Appeal arising out of the Order-in- Original No.52 / 2012 dated 10 / 2 / 2012 – reg.

Present
For Appellant
Shri.A.C.Chhajer, Partner

ORDER-IN-APPEAL No. 156 / 2012 (MST) dated 30 / 10 / 2012

Passed by Ms. R.SHAKUNTALA, COMMISSIONER (APPEALS)

1. This is an appeal filed by M/s.Adharsh Investments, Chennai – 600 003 (herein after referred to as the 'appellant') along with stay petition against the Order- in-Original No. 52 / 2012 dated 10 / 2 / 2012 passed by the Additional Commissioner of Service Tax Comm'te, Chennai.

2. Briefly stated facts of the case are that the appellant, a partnership firm is registered with the Service Tax department under the category of 'Renting of Immovable property Service'.

1.1 During the course of verification of their accounts by the Audit Party, it was found that they have leased out the commercial complex at No.27, G.N Chetty Road, T.Nagar, Chennai – 17 to M/s.Pyramid Saimira Theatre Ltd as per the lease agreement executed on 1 / 8 / 2007. But they had not paid service tax of Rs.12,54,270 /- on the amenities charges collected during 2007-08, 08-09 and 2009-10 (up to Dec.'09) to the tune of Rs.1,20,24,670 /-.

Further, they had adjusted the rental deposit of Rs.86,84,275 /- Lying in their Balance Sheet as current liability as on 31 / 3 / 2009 for Non-receipt of rent from M/s.Pyramid Saimira Theatre Ltd for the period From 2007-08 to 2009-10. But they had not paid service tax of Rs.16,56,223 /- on the rent adjusted against the rental deposit.

As it appeared that the appellant was liable to pay Servie Tax as explained above, as per Clause (90 a) of Section 65 of the Finance Act,1994, a SCN had been issued demanding the said amounts under proviso to Section 73(1) of the Act along with applicable rate of interest under Section 75 of the Finance Act, 1994 and also proposing penalty under Section 78 of the Finance Act, 1994. After due process of law, the Adjudicating Authority confirmed the proceedings initiated in the SCN, appropriated the amount of Rs. 16,56,223 /- paid by the appellant towards service tax and also imposed a penalty of Rs.29,10,493 /- under Section 78 of the Finance Act, 1994 vide the impungned Order-in-Original.

3. Aggrieved by the above order, the appellant had filed the present appeal along with stay mainly on the following rounds:

(a) that only an amount of Rs.1,12,62,100 /- had been collected as amenities charges during 2007-08, 08-09 and 2009-10 (up to Dec.'09);

(b) that it is an independent building and building in total including lift, parking, common pathways, staircases, lobby, toilet, terraces, etc had been let out to a tenant and these are already included in the rental agreement of the premises for which no separate charges are collected from the tenant;

(c) that they had provided moveable assets such as tables, chairs, air-conditioners, EPABX servas, blow plast work stations, UPS, sofas etc. only which constitute 99% of the total items that are mentioned in their agreement of lease of amenities / facilities for which monthly hire charges were collected ;

(d) that in their agreement for lease of amenities/ facilities, there is no mention of parking, common pathway, staircase, lobby, toilet, terraces, etc as amenities/facilities and do not fit into the definition of immovable property;

(e) that on the insistence of tenant, old / obsolete air conditioning plant was dismantled and 28 new air conditioners were installed;

(f) that the inventory of the items handed over to the tenant does not include air-conditioning plant which proves that there was no air- conditioning plant in the building;

(g) that it is a routine to mention the electric sub-station where as there is no electric sub-station in the building;

(h) that after deducting air-conditioning plant and electric sub-station, the items remaining in the list of amenities including air-conditioners, chairs, tables, EPABX, servers, sofas, blow plast work stations, UPS which do not fit into the definition of immovable property;

(i) that lift is a part of the building which cannot be separated from the building and by oversight it has been mentioned in the amenities agreement;

(j) that the Asst.Commr, Income Tax after scrutinizing the documents has held that amenities are taxable under the head "Income from other sources" and not under the head "Income from House Property";

(k) that the case referred to by the Addl.Commr deals with hotel;

(l) that as there was no composite agreement of rent and amenities charges, separate agreements were entered into for immovable property and amenities

(moveable assets) and for the income tax dept. also, they have furnished income under separate heads;

(m) that the moveable items do not form part of price of the premises;

(m) that AMC charges of all amenities was paid by the tenant only and the items are under their control;

(n) that generator which is capable of being shifted is goods and not immovable property as held by the Supreme Court;

(p) that no service was provided to M/s. Pyramid Saimira Theatre Ltd after 31 / 5 / 2009;

(q) that the demand is time barred and there was no intention to suppress facts when there is no requirement under the statue to include an item not attracting service tax; they also cited various case laws in support of their defence.

3. In this regard, personal hearing was conducted on 21 / 9 / 2012. Shri.A.C.Chhajer, partner appeared on behalf of the appellant and reiterated the submissions made in the appeal. He furnished further written submissions.

5.0 I have carefully gone through the case records, the submissions made, both written and oral. I hereby waive the pre deposit and proceed to decide the issue. I find that the appeal is mainly against the demand of service tax on 'amenities charges' collected and the imposition of penalty under Section 78 of the Finance Act, 1994. Thus the issue to be decided is whether-(i) the appellant is liable to pay Service Tax on the amenities charges collected from their tenant during the disputed period and (ii) penalty imposed under Section 78 of the Finance Act, 1994 is legally correct.

5.1 The department has raised the demand of service tax against the appellant in respect of amenities charges under "Renting of Immovable Property Service". The Adjudication authority has up-held the demand against the appellant leading to this appeal before me.

1.2 As per Section 65 (90a) of the Finance Act, 1994 "Renting of immovable property service" is defined as follows:-

[(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangement of immovable property for use in the course or furtherance of business or commerce but does not include-

(i) renting of immovable property by a religious body or to a religious body;

or

a. renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching center.

Explanation 3[1].-For the purpose of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouse, theatres, exhibition halls and multiple-use buildings;]

4 [Explanation 2.- For the removal of doubts, it is hereby declared that for the purpose of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said.

Immovable Property;

Section 65 (105) (zzzz) defines "Taxable Service" coming under "Renting of Immovable Property Service" as follows : "(zzzz) 5[to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of business or commerce.]

Explanation 1. – For the purpose of this sub-clause, "immovable property" includes –

(i) building and part of a building, and the land appurtentant thereto;

(ii) land incidental to the use of such building or part of a building

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilties relating thereto, within such complex or estate"

1.3 The Adjudicating Authority had confirmed the SCN relaying only on the explanation 1(iii) above, which states "the common or shared areas and facilities relating thereto". The expression would mean and include the common or shared areas and facilities relating to such rented building or part thereof like lifts, parking, common pathways, staircase, lobby, toilet, terrace, etc., Since the entire premises has been rendered out to M/s. Pyramid Saimira Theatre Ltd., the question of sharing the above facilities will not arise and it has to be taken that these facilities will form part of the rental agreement for which the appellant had paid the rent and they had paid the service tax on that amount too.

1.4 Regarding 'Amenity Charges' the appellant had submitted that though the agreement states that the Amenities / facilities which include lifts, furniture & fixtures, generator, UPS, Servers, EPABX, Air Conditioning Plant and Split and Window Air Conditioners, the items such as lifts, Air Conditioning Plant and Electric Sub-Station were not figuring in the items handed over to the tenant. They have also stated that the Air Conditioning Plant became obsolete and was sold as scrap on 12.09.2007 and additional 28 new Air Conditioners were fitted in the

Building. The appellant had produced purchase bills for the newly purchased Air Conditioners and also the transaction documents in respect of the sale of the obsolete Air Conditioning Plant. They had also stated that the air conditioning plant was dismantled and sold on 12.09.2007 and the tenant actually occupied the building only on 15.09.2007. From this it is evident that at the time of occupation of the building Air Conditioning Plant was not there. The appellant also stated that the items that were handed over to the tenants and duly acknowledged by them do not include lifts, Air Conditioning Plant and Electric Sub-Station. Thus, the appellant had argued that the items under the 'Amenities Contract' are only movable items and hence the amenity charges collected by them will not be liable for service tax under 'Renting of immovable property service". I have gone through the list of items provided under Amenities contract. They include table, chairs, workstation of UPS, EPABX Servers, Air Conditioners, etc. which are all movable goods and hence will not come under immovable property at all and hence told that they need not suffer service tax. It is also pertinent to note here that there are two agreements between the appellant and their client, one for the renting of immovable property and the other for the amenities provided. I find that the appellant had already discharged service tax on the rent received from the immovable property. As already concluded that the amenities provided are all of movable in nature and hence will not form part of taxable value under "renting of immovable property service". As already mentioned the appellant had received amenity charges based on a different contract other than the contract for rent. In view of the above, demand of service tax on amenity charges is set aside. Consequently interest and penalty imposed also will not survive.

1.5 Regarding the penalty of Rs.16,56,223/- imposed under Section 78 o f the Finance Act, 1994 in respect of the rent adjusted against the security deposit on 31.01.2010, the appellant had stated that they had voluntarily paid the tax due before due date i.e.31.03.2010. The Department has demanded the Service tax due vide letter dated 01.03.2010, whereas they had paid the Service tax due on 18.02.2010 and 19.02.2010. Thus they had argued that there was no intention to evade payment of service tax and imposition of equal penalty under Section 78 is totally unwarranted.

6.0 I find that the reasons attributed by the appellant for the delay are genuine and hence the penalty of Rs.16,56,223/- imposed under Section 78 of the Finance Act, 1994 is set aside invoking Section 80 of the Finance Act, 1994. However the appellant is liable to pay interest under Section 75 of the Finance Act, 1994 for delayed payment of service tax.

7.0 In view of the above, I set aside the demand of service tax confirmed on "Amenity Charges". I also set aside penalty imposed under Section 78 of the Finance Act, 1994.

8.0 The appeal is disposed of on the above terms

Rules

SERVICE TAX

Service-tax (Fourth Amendment) Rules, 2012

Notification no. 47 of 2012, dt. 28th Sept., 2012

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act 1994 (32 of 1994), the central Government hereby makes the following rules further to amend the Service-tax Rules, 1994, namely :

(1) These rules may be called the Service-tax (Fourth Amendment) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

In the Service-tax Rules, 1994, in rule 7, in sud-rule (2), the following proviso shall be inserted, namely :

"Provided that the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only."

Orders

SERVICE TAX

Orders under r. 7(4) of the Service-tax Rules, 1994

Order No. 3 of 2012, dt. 15th Oct., 2012- Extension of due date for submission of quarterly returns from 25th Oct., 2012 to 25th Nov., 2012

In exercise of the powers conferred by sub-rule (4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the returns for the period 1st April, 2012 to 30th June, 2012, from 25th October, 2012 to 25th November, 2012.

The circumstances of a special nature which have given rise to this extension of time are as follows :

ACES will start releasing the return in Form ST 3 in a quarterly format, shortly before the due date of 25th October, 2012.

This will result in all the assessee attempting to file their returns in a short time period, which may result in problems in the computer network and delay and inconvenience to the assessee.

[F.No. 137/99/2011-ST]

छाजेड़ भवन

261, Llyods Road, Gopalapuram, Chennai - 600 086. Ph. : 044-2835 1937

एक अत्याधुनिक गेस्ट हाउस

चेन्नई की हृदयस्थली गोपालपुरम इलाके में अपने अतिथियों का सत्कार करने के लिए, शुभ एवं मांगलिक कार्य सम्पन्न करने हेतु महानगरवासियों के लिए छाजेड़ भवन एक अत्याधुनिक सुविधाओं से युक्त गेस्ट हाऊस है। इस गेस्ट हाऊस को शादी-विवाह के अवसर पर कल्याण मंडपम के रूप में उपयोग किया जा सकता है।

आरामदायक सुविधाओं वाले छाजेड़ भवन में 22 सुपर डिलक्स कमरें है, जिसमें एटैच्ड बाथरूम, हीटर, गीजर, टेलीविजन एवं एयर कंडीशनर लगा हुआ है। इस भवन में 3000 वर्ग फीट का एक अति सुन्दर स्वागत कक्ष है, जहाँ एक साथ 350 कुर्सियाँ लाई जा सकती है। इसके अतिरिक्त 10 कमरों वाला गेस्ट हाऊस राजमहल भी है। जहाँ सभी सुविधाएँ उपलब्ध हैं वातानुकूलित डाइनिंग हॉल, कीचन तथा अन्य साधन उपलब्ध है।

सुन्दर, मनोहारी, स्वच्छ एवं हवादार छाजेड़ भवन सगाई, जन्मदिन, सालगिरह, धृतधान, संगीत संध्या, शुभविवाह, विदाई आदि मांगलिक कार्यों के लिए महानगर का सर्वश्रेष्ठ गेस्ट हाऊस है। जहाँ आपके और आपके अतिथियों के लिए सब सुविधाएँ उपलब्ध है।

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Celebrating two decades of serv

Request

As a part of our activity, this year Madras Hire Purchase Association has planned to celebrate two decades of services to the Industry and its members.It has been planned to organize a Mega Hit Hindi Play Krishan vs Kanhaiya, starring **Shri Paresh Rawal,** a well known Cine Actor of Bollywood and his team on **Saturday, the 23rd March 2013** during evening hours at **Lady Andaal Auditorium,** Chennai.

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APEX COURT RULES FINANCIERS CAN RE-POSSESS VEHICLES

The Supreme Court has categorically upheld the financiers' right to re-possess a vehicle in case of default.

CRIMINAL ACTION

Also, in case the vehicle is seized by the financier, no criminal action can be taken against the financier as he is the legal owner, the apex court said in a recent ruling.

The ruling in the Anup Sharma vs Bhola Nath Sharma & other case, will strengthen the hands of asset-financing non-banking financing companies, say industry observers.

"The law can be summarized that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee in behalf of the financier/financial institution and ownership remains with the latter.

Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him," the two-judge bench of B.S.Chauhan and Fakir Mohammed said in an order dated October 30.

Reacting to this ruling Raman Aggarwal, Director, Finance Industry Development Council (FIDC), said it has cleared the confusion around "re-possession".

It would go a long way in improving the recovery scenario for asset financing NBFCs, Aggarwal said earlier there was negativity around repossession in the light of mis-interpretation of various judgments.

The court orders never questioned the right of financier's to re-possess, but they wanted the malpractices (in repossession) to be checked, he said.

In September 2009, FIDC, a self-regularly organization for asset financing NBFCs in India, had come out with a handbook on 'Repossession', which contained all the do's and dont's of repossession.

THE HINDU – BUSINESS LINE, 07.11.2012

DON'T USE FORCE TO SEIZE VEHICLES FOR LOAN DEFAULT : SC

New Delhi: The Supreme Court has warned financial institutions and banks against forcible taking away of vehicles under hire-purchase agreement when there is a default in payments of loans and said they could be saddled with punitive costs if they did so.

"Even in case of mortgaged goods subject to hire-purchase agreements, the recovery process has to be in accordance with law and the recovery process referred to in the agreements also contemplates such recovery to be effected in due process of law and not by use of force," said a bench of Justices Altamans Kambir, Cyriac Joseph and S S Nijar. Writing the judgement for the bench, Justice Kabir agreed that till the time the loans were paid in its entirety and ownership had not been transferred to the purchaser, the financier normally continued to be the owner of the vehicle.

"But that does not entitle him (the financier) on the strength of the agreement to take back possession of the vehicle by use of force. The guidelines which had been laid down by Reserve Bank of India as well as the appellant bank (Citicorp Maruti Finance Ltd) itself, in fact, support and make a virtue of such conduct," the bench said.

If any financier of a vehicle resorts to force to take back possession in violation of such guidelines or principles as laid down by the Supreme Court, "such an action cannot but be struck down", the bench said in its judgement delivered on Monday. The verdict came on a petition filed by Citicorp Maruti Finance Ltd challenging a July 2007 decision of the National Consumer Disputes Redressal Commission upholding a state commission's verdict. The state commission had increased the punitive damage on Citicorp Maruti Finance Ltd from Rs.5,000 which was imposed by the district forum, to Rs.50,000.

The case related to a hire purchase agreement between one S.Vijaylaxmi and Citicorp Maruti Finance Ltd for purchase of a Maruti Omni Van. When she defaulted repeatedly and failed to honour payment of even a mutually settled amount, the financier took away the van with prior information to the police. It later sold off the vehicle. Vijaylaxmi approached the district forum and complained of deficient service.

During pendency of the appeal, the financier had complied with the district forum's decision. Taking note of this, the apex court said, "In the instant case, the situation is a little different, since after the vehicle had been seized, the same was sold and third party rights have accrued over the vehicle. It is possible on such account that the appellant bank chose to comply with the directions of the district forum not withstanding the pendency of this case".

The Times of India, 16.11.2011

CARS

Whether you're buying a new car or getting your old one serviced, be prepared to pay more than you had intended to.

Logistics and handling charge

One of the biggest grey areas, the dealer can include anything under this heading. It could be warehouse charges, the fuel that has been put in the car, the cost of the number plate, the pollution control check and the insurance cost while the vehicle was in transit. Logistics fee is 2-5% of a car's value, and, unfortunately, all dealers now levy this charge, though you could try to bargain for it to be lowered. " The ex-showroom price is the cost of the car at the dealer's, so why should you have to pay for a transit fee or warehouse charge? If you consider that a dealer is levying Rs. 3,000- 5,000 as handling fee on a car worth Rs. 4 lakh, then dealers are minting thousands of crores every year. Where is this money going? " asks Adil Jal Darukhanawala, editor-in-chief of *Zigwheels*.

Free servicing is not really free

If you're a new car owner, be prepared that your free servicing will come for a price. You may find that you're paying for tyre rotation or body polishing, even if you hadn't asked for it. However, the major money spinner is the overhauling that needs to be done at 40,000 km. The service centre will begin pestering you when your odometer starts inching upwards of 37,000 km. As a conscientious owner, you'll agree to it. However, the service centre will insist on the same overhauling after you cross the 40,000 mark. So, you may end up paying twice for the same thing.

The Economic Times Wealth, 03.09.2011

SALES OF MEDIUM AND HEAVY TRUCKS FELL 30%

Sales of medium and heavy trucks fall 30% in November, the steepest fall seen since the global financial crisis in 2008-09, as slowing industrial activity, curbs on mining and delays in infrastructure projects force buyers to postpone purchases.

The trucks segment, often touted to reflect the wheels of a nation's economy has suffered deeply due to a stagnant economy and slumping industrial activity with truck purchases at its lowest since March of 2009, despite highest ever discounts Rs.40,000 to Rs.1.75 lakh, an official affiliated to a leading truck maker said.

India's largest commercial vehicle maker. Tata Motors led this decline, revealing a 40% drop for November 2012 with sale of 9,495 units compared with over 16,000 units in November 2011.

Prior to this, the steepest fall in sales of medium and heavy trucks seen by Tata Motors was 43 months ago on February of 2009, when India's largest automobile firm in terms of sales revenues witnessed a decline of 48%.

Not surprisingly, just last week, the company announced a block closure of three days starting November 29 to December 1. This was the second block closure in November and third for this year.

In an analyst conference call, Tata Motors had said that it is operating at 70-75% of capacity currently. "We do not want inventory pile-up at the dealers end and want to adjust our production as per demand," Tata Motors spokesperson had told to a news agency.

Accordingly to several vendors supplying to the top three truck makers in India, there is an under utilization in capacity of around 30-35% across the sector. And some of the key dealers, **ET** spoke to say the inventory has started piling up post October. According to rating agency ICRA, the year FY13 is likely to witness the second slowest year for M&HCV since FY07 with the market likely decline by almost 10% (9.6%) to 3,15,226 units, which will be lower than FY10 volume.

"What is worrying is the inventory is pilling up despite huge discounts. We are expected to post a significant loss this year," said a leading dealer of one of the country's leading truck makers.

"November was one of the worst months seen for a long time. The truck sales were down 50% plus. There is no clarity on the December (outlook) on the kind of volumes, we will do. The stock is piling up. Traditionally the second half is better than first half, if we are able to match last years number, it will be very good. If the downslide continues, it will be very tough to make profits this year," said another leading truck dealer from Mumbai said.

The dealers said despite big discounts and 100% finance, trucks are not moving from the stock yards due to delays in payments. "The payments to the truckers and infrastructure companies, which used to happen in 15 days, are starting to get extended to 90 days. That is why people are either deferring purchases or buying second-hand trucks, which are available at attractive price," the dealer added.

"The trend is definitely worsening. Whether it has reached the bottom or worse is yet to come, one does not know. One view which is clearly emerging is that the market will only pick up momentum for medium and heavy trucks in the second half of 2013," said AK Birla, executive VP, Sales & Marketing at VE Commercial Vehicles, a joint venture between Volvo and Eicher said.

Five vendors that ET spoke to said the production schedules given by the top truck makers in the country before the beginning of financial year has dropped almost 30-40% today.

Birla agrees that November 2012 is one of the worst months since 2008 crisis, but also asserts, that traditionally November has been softer month, with majority of people buying trucks in September October festive season.

An industry expert who did not wish to be named said the mining ban has taken a toll on the medium and heavy duty tipper trucks.

"Tippers constitute almost 25-30% of the 200,000-unit medium and heavy duty truck annual. With major iron ore, sand and coal

mines still remaining closed, there is hardly any movement for tipper trucks ," the expert said.

On one hand there is discounting of 5-7%, on the other the under utilization of capacity by 30-35%, which is having major toll on the profitability of these companies, which has seen 200 t 300 basis points dip for many players.

Plus the top two players- Tata Motors and Ashok Leyland –have also resorted to aggressive advertisements never seen before, which too is adding to the cost.

" In the business, commercial vehicle and passenger cars we have seen significant increase in variable marketing expenses. Going forward, we expect the external environment for commercial vehicle will remain somewhat challenging in terms of volumes, external market environment and marketing cost pressures," said C Ramakrishnan, CFO of Tata Motors, in a recent analyst conference call.

The Economic Times, 03.12.2012

FESTIVE SEASONS, A MIXED BAG FOR AUTO UNITS

High interest rates and inflation continue to pose challenges for growth

New Delhi : The festive season this year has turned out to be a mixed bag for the automobile industry with Maruti Suzuki and Mahindra & Mahindra posting good growth, while Hyundai Moters and Tata Motors witnessing their domestic sales declining in November.

In the two-wheelers segment, Honda Motorcycle and Scooter, India, Yamaha and Suzuki motorcycle witnessed a jump in sales, while market leader Hero MotorCorp and TVS Motors witnessed lower dispatches last month.

In November, the country's largest carmaker Maruti Suzuki recorded domestic sales of 90,882 units compared to 82,870 units in the year-ago period, registering a rise of 9.7 per cent.

Adverse Conditions

However, Hyundai Motor India's sales in the domestic market declined marginally to 34,751 units from 35,000 units in the year-ago period.

"The adverse market conditions due to high interest rates and inflation continued to pose challenges for growth.

Increased diesel fuel price temporaily affected the strong momentum of diesel car sales. "HMIL Vice-president (marketing and sales) Rakesh Srivastava said.

Mahindra & Mahindra's passenger vehicle segment (which includes the utility vehicle and Verito) registered an increase of 38 per cent at 24,604 units against 17,813 units.

Commenting on the numbers, Mahindra & Mahindra Chief Executive (automotive division) Pravin Shah said : "We are happy to maintain our growth trend on the back of our portfolio of products, especially the Quanto, which has crossed more than 12,000 booking in just two months."

However, rival homegrown auto major Tata Motors' total passenger vehicle sales in the domestic market stood at 18,031 units in November, down 34.99 per cent from 27,735 units in the same month last year.

Toyota Kirloskar motor reported a 26 per cent decline in sales at 10,352 units during November 2012 against 13,956 units year.

"Sales have dropped this month due to a plant shut down, to ramp up the annual production capacity from 2.10 lakh units to 3.0 lakh units for the next calendar year," TMK Deputy Managing Director (marketing) Sandeep Singh said.

Ford India

Ford India's domestic sales declined by 28.5 per cent to 5,944 units in November this year from 8,322 units in the same month last year.

Commenting on the sales performance, Ford India Executive Director (marketing sales and services) Vinay Piparsania said : "Despite ongoing market challenges, we are very pleased to see customers sentiment improving and their confidence in the Ford brand continuing to growth."

Honda Cars India posted 87.2 per cent increase in its total sales for November at 3,711 units against 1,982 units in the same month last year. In the two-wheeler category, Hero MotorCorp reported sales of 5.02 lakh units in November, registered a decline of 6.42 per cent over 5.37 lakh units sold in the year-ago period. "This year, the November dispatch is lower than last year on account of the holidays due to Diwali, while there were no such holidays in November 2011, the festive period being in October last year," the company said.

TVS Motor Company's domestic sales of two wheelers dropped by 3.53 per cent to 1.67 lakh units from 1.73 lakh units. Sales of two and three wheelers stood at 1.71 lakh units (1.75 lakh units). Honda Motorcycle & Scooter India reported 12.2 per cent growth in its total sales for November at 2.23 lakh units. Its sales stood at 1.99 lakh units in the corresponding month of the previous year. India Yamaha Motor's domestic sales during the month grew by 33 percent to 37,347 units from 28,178 units in the same month last year. "The festive season did play a role in changing the market sentiment. However, due to the current economic conditions and rise in inflation, the festival season has been weak compared to last year," India Yamaha Motor National Business Head Roy Kurian said. Suzuki Motorcycle India witness 24.9 percent increase in sales at 39,134 units as against 31,332 units in the same month year. "We have received a good response from the market for all our products, "Suzuki Motorcycle India Vice-President (sales and marketing) Atul Gupta said. –PTI

THE HINDU, 2.12.2012

NBFCS MAY NEED PRIOR RBI NOD FOR OWNERSHIP CHANGE

Non-banking financial companies (NBFC) would need RBI's prior approval before making changes in their ownership control, a draft guideline of the central bank said on Wednesday.

The draft guidelines, based on the Usha Thorat Committee report, also seek to make mandatory for all deposit taking NBFCs to obtain credit rating.

Appointment of CEOs of NBFCs with asset size of Rs.1,000 crore and above would require the RBI approval, it added.

"In the interest of good governance and the sensitivies associated with NBFCs.. such companies, whether listed or not, will need to comply with Clause 49 of SEBI's listing agreement on corporate governance including induction of independent directors" the draft said.

The draft norms said existing unrated NBFCs-D will be given one year to get rated, "thereafter, they would not be allowed to accept any fresh deposits or renew existing deposits, till they get themselves rated," it said.

On change in control or transfer of shareholding, the draft said that all registered NBFCs should take prior approval from the RBI where there is a change in control and increase of shareholding to the extent of 25 per cent by individuals or groups, directly or indirectly.

Regarding non-performing assets (NPAs), the RBI has proposed that asset classification and provisioning norms should be made similar to that banks for all registered NBFCs irrespective of the size.

At present, the period for classifying loans into NPAs incase of NBFCs is higher at 180/360 days compared to 90 days for banks.

The RBI has sought stakeholder comments on the draft norms by January 10.

THE HINDU, 13.12.2012

CAR SALES DIP 8.25 % IN NOVEMBER

December looks to be even worse for the industry

Passenger car sales declined by 8.252 per cent in November as the festive season spirit failed to prolong enthusiasm among consumers, whose sentiments remained low due to high interest rates and fuel prices and other macro-economic factors.

With a subdued growth in sales of two-wheelers, the Society of Indian Automobile Manufactures (SIAM), on Monday, said it might revise the forecast downwards for 2012-13 next month.

According to November sales date of automobiles released by SIAM, total sales of vehicles across categories registered an increase of 1.79 per cent at 15.16 lakh units last month as against 14.89 lakh units in the year-ago month.

In the passenger car segment, sales fell by 8.25 per cent to 1.58 lakh units last month from 1.72 lakh units in the same month last year.

"The carryover from the festive season was not there. Market continues to be tough due to the same reasons such as high interest rates and fuel prices, and low consumer sentiments," SIAM Director General Vishnu Mathur told reporters here.

This was the steepest decline since August when sales dropped by 18.56 per cent, he added.

Talking about the current month, Mr.Mathur said : "Decemebr month looks to be even worse as historically we never had higher sales in the month compared to October and November."

When asked if the industry body revise the yearly car sales forecast for the fourth time next month, he said SIAM might not revise it as the April-November sales growth stood at 1.28 per cent, which falls within the forecast of 1-3 per cent for the fiscal.

".....but for the two-wheelers that (sales growth forecast for 2012-13) was at 4.05 (per cent, for the period, is lower than 5-7 per cent for the fiscal. Therefore, we may have to revise it, " Mr.Mathur said.

He said the overall slow economic growth of the country and consumers becoming insecure about their jobs had compounded problems and had hit the entry level small car segment.

During the month, market leader Maruti Suzuki's sales rose by 2.35 per cent to 74,793 units. Rival Hyundai Motor India's Sales, however, decreased marginally to 34,698 units. Homegrown auto major Tata Motors' car sales were down by 42.49 per cent at 13,538 units.

In the two-wheeler segement, total sales in November rose by 1.23 per cent to 11.75 lakh units from 11.61 lakhs units in November 2011.

Motorcycle sales last month went up marginally to 8.68 lakh units from 8.67 lakhs in the year-ago month.

The scooter segments overall sales grew by 6.64 per cent to 2.44 lakh units from 2.29 lakh units. Total sales of commercial vehicles in November were down by 7.31 per cent at 61,410 units against 66,254 units in the year ago period, SIAM said.

Medium and heavy commercial vehicle sales declined by 33.22 per cent to 17,441 units from 26,119 units in November last year.

According to SIAM, light commercial vehicle sales grew 9.55 per cent to 43,969 units in November 2012 from 40,135 units in November 2011. In the three-wheeler category, sales went up by 20.67 per cent to 51,6740 units from 42,821 units in the same month last year.

THE HINDU, 11.12.2012

BASIC EXEMPTION LIMIT IN SERVICE TAX FOR HIRE PURCHASE BUSINESS

By A.C.Chhajer, B.Com, FICWA

Notification No.6/2005. ST dated 01.03.2005 provides an option to the service provider to avail exemption from tax leviable on taxable service of aggregate value exceeding Rs.4 lakhs in any financial year subject to fulfillment of the conditions specified in the said notification. Notification No.4/2007 ST dated 01.03.2007 has amended the aforesaid notification so as to substitute Rs.8 Lakhs for Rs.4 Lakhs with effect from 01.04.2007. Notification No.8/2008 ST dated 01.03.208 has further amended and substituted Rs.10 lakhs for Rs.8 Lakhs w.e.f.01.04.2008.

It means that Service provider having Taxable service upto the value of Rs.4 Lakhs was not required to register with the service tax department and was exempt from Service Tax upto 31.03.2007. This exemption limit was raised to Rs.8 Lakhs w.e.f 01.04.2007. From 01.04.2008 the exemption limit was raised to Rs.10 lakhs.

Two categories of persons have ab intio been excluded from benefits of this exemption as explained below:

1. Taxable services provided by a person under a brand name or trade name whether registered or not of another person or
2. Such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub section(2) of section 68 of the said Finance Act read with Service Tax Rules 1994.

In Explanation to Notification No.8/2008 ST dated 01.03.2008 (with effect from 01.04.2008) it is stated that

"Aggregate value not exceeding Rs. Ten lakhs means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to eight lakh rupees but does not include payment received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification".

Explanation B to Notification No.8/2007 S.T dated 01.03.2007 expressly clarified that taxable value of the service should cross basic exemption limit of Rs.10 Lakhs to bring the service provider into service tax. If the taxable value of the service is less than Rs.10 lakhs w.e.f 01.04.2008 in any financial year, the provider of service is not liable to get registration from service tax and pay service tax except in the two exceptions mention above.

In Supreme Court 'in CCE vs Bajaj Auto Finance Ltd (2008) 16 STT 474 it was held that Hire Purchase Finance in which appellant was engaged was different from Hire Purchase and Hire Purchase Finance is not covered under the provisions of section 65(10) and accordingly impugned order was set aside and appeal was allowed.

It is to be noted that Hire Purchase Service is taxable under Banking and Financial services. In Hire Purchase Finance / Hypothecation / Loan though amount collected in installment is not taxable under Banking & Other Financial Services as per this Supreme Court Judgment. An agreement has to be Hire Purchase Agreement to come under the net of "Banking and other Financial Services".

Taxable Value of Service:

As per para 19.2 of Circular No.8/10/2004 dated 17.09.2004 (Relevant Extras)

"The Interest on loans has been specifically excluded by way of amendment to the provisions relating to valuation (s.67). All such interests that are in the nature of interest on loan would thus remain excluded from taxable value". Further clarifications on these issues would be issued shortly".

It means interest income from Loan Agreement / Hypothecation Agreement are totally exempt from Service Tax as per above Circular dated 17.09.2004. Notification No.4/2006 ST dt.01.03.2006 exempt 90% of Income from Hire Purchase Transaction as being interest income and balance 10% is taxable subject to crossing of threshold exemption limit applicable in respective years.

Notification No/4/2006 ST date 01.03.2006:

"In exercise of powers conferred by sub section (1) of section 93 of the Finance Act 1994 (32 of 1994) (herein referred to as Finance Act), the Central Government, on being satisfied that it is necessary in public interest to do so hereby exempts the taxable service, specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, that it is to say the financial leasing services including equipment leasing and hire purchase as defined in item(1) of sub clause (a) of clause (12) of section 65 of the finance act provided or to be provided to any person from so much of the service tax leviable there on under section 66 of the Finance Act, as it is equivalent to the service tax calculated on ninety percent of an amount, forming or representing as interest i.e. difference between the installment paid towards repayment of the loan amount and principal amount contained in such installment paid.

Explanation: This exemption shall not apply to any amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fees, processing fee, documentation charges and administration fee."

Guidance Note issued on 20.06.2012 clarifies in Question Number 8.8.2

Q. Would the gross amount charged for financial leasing services, including equivalent loans and hire purchase also include the interest amount charged for such financial services?

Ans : The gross amount charged for this service will be sum total of the following:

- 10% of the amount forming or representing interest and
- Other charges such as lease management fees, processing fees, documentation charges and administration fees.

Therefore there is no service tax liability till the taxable value of service provider exceeds Rs.10 lakhs in the first year. In Hire Purchase transaction, if the Hire profit income is Rs.90 lakhs, the taxable value will be Rs.9 Lakhs only and if other charges received are Rs.50,000/- towards documentation charges etc.,. The taxable value shall be considered Rs.9.50 Lakhs and as such it will be fully exempt from service tax liability.

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RBI EXTENDS DEADLINE FOR NEW CHEQUE STANDARD

Special correspondent

Mumbai : The Reserve Bank of India (RBI), on Friday, extended the deadline given to migrate to new-look cheques (CTS-2010 Standard cheques), with more security and standardised features, to March 31,2013. Earlier, it had set a December 31 deadline.

However the RBI said that the residual non-CTS-2010 Standard cheques that are presented in the clearing system beyond this extended period would continue to be accepted for the clearing but would be cleared at less frequent intervals.

Banks were in the process of issuing new-look cheques to all its customers by December 31, 2012.

"While most of the banks have confirmed that they are issuing only multi-city/payable at a CTS-2010 standard cheques at present representation have been received from various stake-holders requesting for extension of the time beyond December 31, 2012, for withdrawal / replacement of non-CTS-2010 standard cheque / post-dated EMI cheques / with CTS-2010 standard cheques," RBI said in the notification to all banks.

"Cheque Truncation System (CTS)-2010 standard is a set of benchmarks towards achieving standardization of cheques issued by banks across the country. These include provision of mandatory minimum security features on cheque forms such as quality of paper, watermark, bank's logo in invisible ink, void pantograph and standardization of field placements on cheques.

Adherence to CTS-2010 Standards has inherent advantages as the security features in cheques forms help the presenting banks to identify the genuineness of the drawee bank's instrument while handling them in the image-based scenario. "The homogeneity in security features act as deterrent against frauds, and the fixed field placements specification facilitate straight-through-processing at the drawee banks' end through the use of optical/image character recognition technology," the RBI had said in a notification earlier.

SAMPLE CHEQUE LEAF

Why you need to apply for a new cheque book

Considered to be a major milestone in the history of Indian banking , Cheque Truncation System (CTS) aims to make cheque clearness more efficient and reduce the clearness time of cheques to one day, thereby trimming down the floating time considerably. India process as many as 1.2 billons cheques annually and therefore, the implementation of this system would drastically cut down the waiting period involved. The system will be implemented nationwide from January 1, 2013.

How does it work?

An online image-based cheque clearing system, the collecting bank branch would deploy scanned images along with the magnetic ink character (MICR) of the cheque which will be sent out electronically using their Capture System, removing the need for physical/ manual transfer of cheques. The captured images and the data is then signed and encrypted and sent to the Clearing House or the central processing location and thereafter forwarded to the drawee or paying bank.

This helps speed up the cheque collection process that eventually helps provide better and faster customer service.

Key Feature of Cheque Truncation system

- User friendly graphic user interface
- Automated coding and endorsing of cheques
- Encryption of data file before transmission to the clearing house or the service branch
- Employs a unique transaction follower process to confirm the status of cheque
- Improved and efficient settlement and prevention of fraud

- Equipped with enchanced archival procedure that stores images and data facilitating report generation along with future enquiry
- Alerts RMs in case of return of cheque due to insufficient funds

IMPACTS OF CTS ON CUSTOMERS

Handling of EMIs with the Introduction of CTS

In case where customers have issued post-dated cheques (PDC) for payment of monthly installment towards an ongoing loan, they would need to issue fresh cheques to the bank or service provider as per the new directive on CTS by the RBI. The replacement of these cheques needs to be done latest by December 31,2012 and is applicable on all banks and NBFCs.

Encashment of Old Cheques

If you have an old cheque with you, you should get it enchased by December 31, 2012. The RBI mandate states that payment for such cheques will be honoured only till them.

Banks need to issue the new types of CTS –compliant cheque books with the prescribed features to all their customers latest by the December 31,2012. Customers may need to surrender their old cheque books or cancel them and show proof of cancellation. No replacement fee will be charged by the bank for issuing new cheque books

Apart from these aspects, the system does not, in any way, affect the way things function for a customer. They would continue using cheques as they do currently; however, cheques that have been altered or modified will not be permissible under the new system. The other precautions that need to be taken while issuing or written a cheque are:

Ensure that all details are clear and readable, using black or blue ink

Write the name of the payee, amount and the date and sigh the cheuqe correctly

In case you use seals on the cheque, ensure that they are imprinted in a manner that they do not mask or hide the other important fields of the cheque.

Benefits of CTS for Customer

There are many benefit of the cheque trunscation system form the perspective of a customer.

Clearness cycle gets shorted. As this system is being implemented, the physical or manner movement of cheques for clearness has ceased. With cheques being transmitted electronically, the settlement process becomes quicker facilitating reduction in the clearness cycle.

The fear of loss of cheque during transfer from the collecting bank to the drawee or payee bank is eliminated

Limitation of the current clearness system with respect of jurisdiction and geography are eradicated. This enables integration and consolidation of several clearing location across various banks offering different service levels into one standard clearance system applicable throughout the country.

CTS helps reduce the scope of fraud significantly. Moreover, the electronic transmission is quick and allows early detection of fraud or any alteration with respect to the payee, amount or the issue of the cheque. CTS prescribe minimum security features under 'CTS-2010 standard along with superior verification process that further facilitates in the reduction of frauds.

The operational efficiency of both the banks as well as the customer is enhanced with the introduction of this system.

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AN OVER VIEW ON OD INSURANCE

P.Pandiyan, Surveyor, Chennai 600006
Phone 9841032566

Declaration

- It is my understanding,
- Name need not be quoted,

Motor Policy

- IMT,
- Standard Covers,
- Add on covers,

IDV

- Insured Declared Value
- IEV – Insured's estimated value,
- Sum Insured

What is covered?

- Negligence
- Section I under sub sections 10.
- VI – Accidental External Means

Mode of settlements

- Repair – Partial Loss
- Total Loss / Constructive Total Loss

Repair – Partial Loss

- Repairing the vehicle

Limit of repairs

- Self Authorization.
- Varies depending up on the type / vehicle policy

Total Loss

- Total Loss or Constructive Total Loss.
- What is total loss?
- Beyond repairs.
- Constructive Total Loss.
- Reparable and Economically not viable.

Cash Loss

- CL is not spelt out in the policy,
- Market practice,
- For no sentimental reasons.
- Insured not interested.
- Request by Insured and / or Financier.
- To be accepted by the Insurer.
- Basic Principle for CL – No benefits to the Insured out of claim.
- Formula for Cash Loss Settlement.

Case study for Cash loss

- 2008 – Tata Sumo Victa – T.Taxi – 8 Seats – 3 years completed as on date of accident
- IDV – Rs 2 Lac,
- Market value Rs 2.2 Lac,
- Repair liability - local garage Rs 75,000/-,
- 75% of the IDV 1.5 L,
- Insured is not financially sound,
- Fit Case for Cash Loss,
- Is any specific conditions,
- No – Specific conditions.

Cash loss

- When the Insured died – no one there to take care.
- Spare parts not available – Imported vehicle
- Vehicle obsolete
- Border line cases.
- Vehicle not attended for long time, Prices gone up.
- Market value gone down
- Economically not viable.
- Repair technic & repairer not available –
- North Type Cabin in South.

Alternate

- Repairer can invest and repair,
- Financier can invest and repair,
- Insured can find a person and repair on his behalf.
- Financier to monitor & beware.

Garage

- Dealer Vs Private Garage

Parts Cost

- Local,
- Dealer,

FIR

- FIR is must?
- Any offence as per MVAct and IPC it is to be informed to Police
- If the claim is major, it is always better,

Spot Survey & Spot Photo

- Printed matter rules
- Typed matter above printed matter rules
- Handwritten above typed and printed rules.
- Spot survey and Spot photo is must for commercial vehicles

Transfer of Insurance

- TP
- Package policy – MV Act Chapter VII – Section 144 & GR 17 in IMT
- Upto 14 Days
- TP is automatic till its expiry
- OD is not so.
- Necessary documents.

Documents for transfer

- By Recorded delivery
- Consent from the seller
- Request from the buyer
- Regn Number
- Date of transfer
- The previous owner
- Policy number and period
- No NCB – Difference to be paid
- Fresh Proposal
- Evidence for sale – RC Copy
- Old Certificate to be submitted to Insurer
- Rs 50/ for new certificate.

Case study for DL

- DL – Expiry LMV Non Transport & Transport
- LMV – Non Transport
- Badge
- LMV + Badge = Non Transport
- Other state driver with out Badge

Theft Recovered

- Jhansi Rani

Role of HP

- Check the type of policy
- Regn number
- Chassis number
- Engine number
- Hire purchase entry
- IDV – Correct IDV
- Initial Excess cum Compulsory Excess – Voluntary Excess – Imposed Excess.
- Endorsements – 21 – 22
- Add on covers if any,

If Cheque Dishonoured

- No Claim

Non Standard Claims

- Over load by weight in goods vehicle
- Over load in passenger vehicle
- FC is expired
- DL is expired

In Case of Fire Accident

- Fire accident claim,
- Police Report,
- Fire Brigade,
- Spot survey,
- News paper cutting,
- Investigation – Sabotage,
- Final Survey,
- RC Cancellation,
- Salvage Disposal,
- Settlement only to Financier,

Issues in Policy

- Negligence
- Wilful Act ,
- Gross Negligence,
- Gross negligence equal to Wilful Act.
- Material Alteration
- Risk increases,
- LPG Fitment,
- Risk decreases,
- ABS Fitment,
- Suppression of Fact

Problems

- Tipper Claim
- Load drops on the vehicle
- IMT 47
- Drivers of other State Badge
- 1095 Eicher – LMV

CONSENSUS OVER KEY ISSUES OF GST

States have agreed to the compensation formula suggested by the Centre for their CST (Central Sales Tax) revenue loss for implementing the Goods and Services Tax (GST), said Sushil Kumar Modi, Chairman of the Empowered Committee of State Finance Ministers, and Deputy Chief Minister of Bihar, here on Monday.

"States will be given 100 per cent compensation of their claims for 2010-11, 75 per cent for 2011-12 and 50 per cent for 2012-13. The compensation formula has been prepared on the basis of the August 22, 2008, guideline" Mr. Modi Said.

He said, "States are not responsible for the delay in introduction of GST. They have lost heavily on account of gradual cut in the Central Sales Tax (CST). GST was scheduled to be launched on April 1, 2010. The Parliament Standing Committee has not given its views on the 115th Constitutional Amendment Bill, 2011".

Payment Schedule

"According to initial estimates, the total compensation which the states will receive comes to around Rs. 34,000 crore. The provision of CST compensation could be reflected in the forthcoming budget", Mr. Modi Said.

The Empowered Committee has asked the Centre to prepare a payment schedule. Some States are of the view that they should revert to the earlier 4 per cent CST to make up for the huge losses in case there is a delay in introduction of GST beyond April 1, 2014.

States having manufacturing base and mineral export are the worst sufferers. States that have lost more than Rs.1000 crore due to gradual cut in CST include Gujarat, Andhra Pradesh, West Bengal, Tamil Nadu, Odisha and Haryana.

Critical Finances

For the year 2010, states had demanded a compensation of Rs.19,000 crore, but the centre could pay only Rs. 6,000 crore owing to the critical financial position.

Mr. Modi said States would continue to lose even after rolling out of GST. "States are afraid of incurring heavy losses in the initial years of the GST regime. We have asked the centre to evolve a mechanism to compensate States for subsequent five years as was done in the case of value added tax".

Mr. Modi said all the States were in favour of introducing GST. The Empowered Committee would discuss the GST design on Tuesday.

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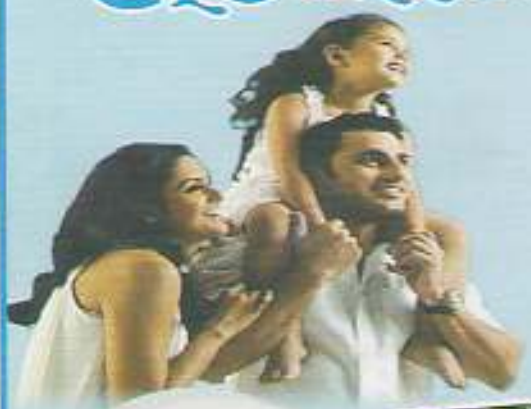
तिरुपति टाउनशिप



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TIRUPATI TOWNSHIP

REAL INVESTMENT - REAL RETURNS

24 घंटे बिजली की व्यवस्था। | 24 घंटे पानी की व्यवस्था। | 24 घंटे सुरक्षा व्यवस्था (सीक्योरिटी गार्ड) | इन्टरकॉम सिस्टम व्यवस्था | सीक्योरिटी के लिए सीसीटीवी कैमरे। | टेबल टेनिस एण्ड चैस रूम
शानदार ऐलिवेशन | स्विमिंग पूल | विशाल गार्डन | मेडिसिनल सिटीरोज़न पार्क | स्केटिंग रिंग | वाटर फाउंटेन | क्लब हाउस (मिटिंग रूम, मोडिज एण्ड जेन्ट्स जिम) | जोगिंग ट्रेक
पुस्तकालय | पार्टी प्लॉट व फूल पार्किंग व्यवस्था | शानदार शहर के अनुसार 2/3 BHK अपार्टमेन्ट। | प्रतीक्षित मॉल | डिस्कशन वालाओं एवं चैस कॉर्नर | हाई स्पीड लिफ्ट (प्रति ब्लॉक 2 लिफ्ट) | वर्टिकल ओपन प्लाट (भव्य गार्डन)

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