

Gist of CFI Second Meeting with Chairman of High Level Committee on Taxation

As a follow-up of our earlier meeting, a delegation of CFI Taxation Committee members once again meet **Dr. Ashok Lahiri, Chairman of High Level Committee on Tax Laws (HLC)** on 15th September 2015 at New Delhi. **Shri Sidhartha Pradhan** and **Shri Gautam Ray**, respectively **Member of the Committee, Mr. S M Tata, Commissioner (Service Tax), CBEC** and **Mr. Rajesh Kumar, Director, Tax Policy & Legislation-III, CBDT** also joined the meeting.

CFI representatives participated in the meeting included Mr. Girish Gangal, Vice President, Mr. Shyam Ramadi, Consultant/Taxation respectively of Hindustan Construction Co. Ltd., Mr. Mahesh Kothari, Chief Manager-Commercial, Simplex Infrastructure Ltd., Mr. Rajesh Goel, General Manager-F&A, Mr. Vijay Singhal, Advisor (Direct Taxation), respectively of Punj Lloyd Ltd. and Mr. Shiv Rawat, Deputy Director, CFI.

CFI submitted a revised representation on the Direct and Indirect tax issues with the relevant Court judgments, government circulars as per the suggestions made by HLC in the earlier meeting held on 27th July 2015.

HLC gave a very positive hearing to the submissions made by CFI and agreed in particular to consider the following:

DIRECT TAXATION:

- a) **Income Computation and Disclosure Standards (ICDS) issues relating to construction contracts; Foreign Exchange rates** – The ICDS III provides that retention money is to be considered as part of contract revenue for recognition on Percentage of completion method (POCM). This is a significant deviation from AS 7 as well as settled legal position and would lead to acceleration of chargeability of revenue in a year where income has not been earned. However, with the stated intent to overcome the judicial pronouncements, the ICDS provides for recognition of retention money on POCM basis. In this regard, it is necessary to observe that the provisions of ICDS are in direct conflict with the basic concept of real income theory under the Act based on which, even under mercantile system of accounting, income accrues in the hands of a taxpayer only there is an unconditional right to receive such income. *CFI has therefore suggested that erstwhile treatment for retention be continued under the Income Tax Act and also provide reference of Simplex Infrastructure judgement for the consideration of the Committee.*
- b) **Disallowance under Section 14A of the Act –Investment by Holding Co in its subsidiaries considered for computing disallowance – Rule 8D**

CFI suggested the Committee to exclude investment by Holding Co in group companies / subsidiaries/SPV's through which it executes projects, while computing average investments' – Rule 8D. Disallowance may be made only against investments which have actually earned exempt income during relevant year & wherein nexus is established towards borrowed funds.

In any case disallowance cannot be more than exempt income earned during relevant year or expenditure incurred in relation to earning exempt income during the relevant year.

- c) **Applicability of Section 143 (1D) of Income-Tax Act:** The CFI memorandum suggested that instruction No.01/2015 needs to be withdrawn at the earliest and a new instruction needs to be issued where the field officers would be entitled to issue refunds to the assessee u/s 143(1), provided they have reasons to believe (depending upon history of the assessee, demand pending if any, etc) that the refund to the assessee is warranted and the issue of such refunds will not prejudice the interest of the revenue.

INDIRECT TAXATION:

- a) **Allocation of cost to Group Companies or Reimbursement of cost incurred by parent company by group companies at actual : *Suggestion*** - *Necessary clarification is issued that Service Tax will not be applicable in case of allocation of cost to Group Companies / reimbursement of expenses by Group Companies since there is no element of service involved nor any consideration is passed on. CFI highlighted the following Judiciary Orders/CBE&C Circulars clarify the issue :*
- **JM Financial Services Pvt. Ltd vs. CST., Mumbai [2014 (36) S.T.R. (Tri. Mumbai)]** held reimbursement of common expenses in the nature of electricity and other expenses incurred no service can be stated to have been rendered and same not liable to service tax.
 - **In Coca Cola (I) Pvt. Ltd. vs. CST, Delhi [2015 VIL 177]** Reimbursement of part of marketing expenses which are actual expenses is not liable to service tax.
 - **CBE&C Circular No.109/03/2009-S.T. dated 23.02.2009** revenue sharing on principle to principle basis one does not provide service to another.
- b) **Rule 5 of POPS Rules, 2012:** *To notify Rule 5 as Place of Provision of Service for service directly related to Immovable Property (Land and Building) in Non – Taxable territory (say Jammu & Kashmir) irrespective of location of Service Provider and Service Receiver.* CFI has submitted decision received by one of member Vide letter No. ST-I/Dn-I/Gr.VIIIA /N/CL/Misc/2013/ 1861 dated 11.02.2014, from the Dy. Commissioner of Service Tax Div.I, Mumbai, informing to the General Insurance Co. that Service Tax is payable by the Service Provider **for insurance of a construction project rail/road (Tunneling) in Jammu & Kashmir** as advised to him by the Office of the Commissioner of Service Tax-I Mumbai Office vide letter dated 5.2.2014. In this letter it is stated that in terms of Rule 8 and Rule 14 of POPS Rules, 2012 Service Tax is payable, though the insurance is directly related to Immovable property in J&K which is in a non-taxable territory. In exercise of the powers conferred under rule 13 of the said rules, CFI has suggested the Committee to notify Rule 5 as place of provision of service for projects located in Non-Taxable Territory, irrespective of the location of the service provider and service receiver.
- c. **Important: On the issues of Unutilized credits due to partial reverse charge mechanism (AOPs/ Joint ventures) and Severe Slab of interest on delayed payment of Service Tax & imposition of penalty under Sections 76,77 & 78, the Chairman and members of the Committee has taken positive note of the issues and has suggested Mr. S M Tata, Commissioner (Service Tax), CBEC to consider these issues.**

Full text of the memorandum submitted to Committee is attached for your information please.