Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
03-Apr-12	265	**Quippo Telecom Infrastructure Ltd. Vs. ACIT, ITA No. 4931 /Del/2010, Dated: 29/07/2011,** In computing book profits u/s 115JA/JB, if actual expenditure to earn tax-free income not debited in P&L A/c, s. 14A can not apply.	14A	ITAT- Delhi
03-Apr-12	266	**Indivest Pte Ltd. Singapore Vs ADIT, Writ Petition No. 315 of 2012, Dated: 13/03/2012,** The validity of the notice reopening the assessment u/s 148 has to be determined on the basis of the reasons which are disclosed to the assessee. Those reasons constitute the foundation of the action initiated by the Assessing Officer of reopening the assessment. Those reasons cannot be supplemented or improved upon subsequently.	148	HIGH COURT OF BOMBAY
05-Apr-12	267	**Council for the Indian School Certificate Examination Vs. DGIT, W.P.(C) 4716/2010, Date of decision: 20/03/2012,** Held that the holding of classes is not mandatory for an institution to qualify and to be treated as an educational institution. If the activity undertaken and engaged is educational, it is sufficient. Decided in favor of the assessee.	10(23C)(vi)	HIGH COURT OF DELHI
05-Apr-12	268	**Shri. Ghanshyam K Khabrani Vs. ACIT, W.P.No. 1246 OF 2012, Date of Judgment: 12/03/2012,** The notice u/s 148 can be issued beyond four year with prior approval of joint commissioner and at the same time joint-commissioner should be satisfied that this is fit case for issue of a notice in view of section 151(2). In the present case no new evidence or fresh evidence were produced by AO and the joint-commissioner granted approval without seeing the record for issuance of notice u/s 148. The court held that there was no compliance of the mandatory requirements of Section 147 and 151(2), the notice reopening the assessment cannot be sustained in law.	148	HIGH COURT OF BOMBAY
06-Apr-12	269	**KAPIL DEV VS. JCIT SPL. RANGE, ITA NO. 2259/DEL/2002 – AY: 1997-98, Date: 22.03.2012,** No addition on protective basis in respect of income from alleged undisclosed sources on the basis of the credit entries supposedly in the name of the appellant found mentioned in the seized note books/ diaries of any other person. There cannot be a protective assessment on the basis of above assumptions and facts with a bald direction that if the addition is not made in the hands of person searched, the same should be added in the hands of the assesse.	158BD	ITAT – DELHI

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
06-Apr-12	270	**Reid & Taylor (India) Ltd. Vs. CCE, Final Order No. 397/2011 and Misc. Order No. 305/2011, Dated: 20-06-2011 in Appeal No. ST/780/2009 and Cross Objection No. ST/CO/110/2010 Issue:** Department has issued SCN by invoking extended period on the ground that assesse has suppressed the fact or made mis-declaration as assesse has utilized CENVAT credit for the payment of Service tax on GTA Services. **Held:** In view of divergent decision taken by different tribunals, appeal fails on the ground of limitation alone and I am not going into merits since appeal can be rejected only on this ground.	Rule 2(r) and Rule 2(q) of Cenvat Credit Rules	CESTAT Bangalore
06-Apr-12	271	**Bell Ceramics Ltd. Vs. CCE, C.E.A. No. 114 of 2010, decided on 15-09-2011,** Cenvat credit of Service tax paid on Rent-a-cab service and Outdoor Catering service to employees working in factory is allowable.		CESTAT Bangalore
09-Apr-12	272	**M/s Sumitomo Mitsui Banking Corporation Vs. DDIT, ITA No. 5402 /MUM/2006, AY: 2003-04, Date: 30.03.2012,** While interest paid by PE of foreign bank to H.O. is deductible in hands of PE, same interest is not taxable in hands of H.O.	90(2)	ITAT - MUMBAI
09-Apr-12	273	**CIT Vs. M/s Gopal Clothing Co. Pvt. Ltd., ITA No. 333/2006, Date: 22.03.2012,** Even after the amendment with effect from 1988 and introduction of the words "a person who is the beneficial owner of shares" cannot be construed to in a way alter the position that the shareholder has to be the registered shareholder. The amendment imposes an additional condition that the registered shareholder must also be the beneficial shareholder of the company that has furnished loan/advance.	2(22)(e)	HIGH COURT OF DELHI

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
10-Apr-12	274	**CCE Vs. Inters Cape, Misc. Order No. M/190/2011-WZB/C-II/(EB), Dated: 21.01.2011 in Application No. E/ROM/1245/2010 in Appeal No. E/1047/2001** **Held:** After considering the submissions, we have found substance in the objection raised by the learned counsel (by Assessee) with reference to Section 35FF of the Central Excise Act. This provision came into force only on 10-5-2008 and hence cannot be made applicable to the instant case inasmuch as the remand order of this Tribunal was passed on 19-7-2005. Therefore interest to be paid from the date when order was passed by tribunal. As rightly submitted by the learned SDR (Department), the rate of interest notified by the Central Government under Section 11BB of the Act is @ 6% p.a. vide Notification No. 67/2003-C.E. (N.T.), dated 12-9-2003. The Commissioner is liable to pay interest only at this rate to the party.	35FF of Central Excise Act	CESTAT-Mumbai
10-Apr-12	275	**P. Muraleedharan, Managing Partner Vs. Union of India, Dated: 19.08.2011, C.N. Ramachandran Nair and P.S. Gopinathan, JJ. Issue:** Whether the explanation introduced to section 65(19)(ii) read with section 65(105)(zzb) of the Finance Act 1994 providing for levy of tax on service rendered in relation to lotteries promoted or marketed by the clients is unconstitutional as claimed by the petitioners/assesee. **Held:** After hearing the arguments of counsel for the petitioners and the Standing Counsel and on going through the later judgment rendered by the Chief Justice of the Sikkim High Court in Writ Petition(C) No.21/2009, we are unable to accept the challenge against the constitutional validity of the amendment. In nutshell, we can say that it was held that contention of the assessee was not accepted and they had to pay tax.	65(19)(ii) of Finance Act, 1994	High Court of Kerala

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
13-Apr-12	276	**RAJASTHANI SAMMELAN SARVODAY BALIKA VIDYALAYA AND ANOTHER Vs. ASSISTANT DIRECTOR OF INCOME TAX EXEMPTION I(1) AND OTHERS, WRIT PETITION NO. 684 OF 2012,Date : 26.03. 2012** AOs and Appellate Authorities act as quasi judicial authorities and not merely as tax gatherers of the Revenue. They have a duty of protecting the interests of the Revenue, they need to mitigate the hardship to the assessee and applications for stay must be considered objectively. The assessee does have serious issues to be urged before the CIT (A) and the AO & DIT ought to have granted a complete stay of demand u/s 220(6).	220(6)	HIGH COURT OF BOMBAY
13-Apr-12	277	**HRI ASPI GINWALA, SHREE RAM ENGG. & MFG. INDUSTRIES Vs. ACIT, ITA NO. 3226/AHD/2011, DATE: 30.03.2012,** Exemption should be granted in cases where there is a delay in making investment due to non-availability of the bonds.	54EC	ITAT – AHMEDABAD
16-Apr-12	278	**IDEA Mobile Communications Ltd. Vs. CCE, Final Order No. ST/603/2011(PB), Dated: 23-11-2011 in Appeal No. ST/268/2007,** The Commissioner's findings that in view of the provisions of Rule 3(1) of Cenvat Credit Rules, 2004 the service tax credit cannot be allowed on the basis of the invoices issued prior to 10-9-2004 is incorrect as an assessee may have earned some service tax credit during period prior to 10-9-2004 under Service Tax Credit Rules, 2002, which may be lying unutilised as on 11-9-2004 and this credit has to be allowed under Rule 11(1) of Cenvat Credit Rules, 2002. The Commissioner's finding that during the period prior to 10-9-2004, in terms of Service Tax Credit Rules, 2002, the Cenvat credit was available only in respect of those input services which were of the same category as that of output service is factually incorrect as these rules had been amended w.e.f. 14-5-2003 by Notification No. 5/2003-S.T. so as to permit Cenvat credit even in respect of those input services which were not falling in the same category as that of output service.	Rule 3(1) CCR, 2004	(CEST at New Delhi)
16-Apr-12	279	**Indian Institute of Forest Management Vs. CCE, Final Order Nos. ST/571-572/2011(PB), Dated: 21-10-2011 in Appeal Nos. ST/695/2008 and ST/1062/2010,** The appellant/assessee organizing short term courses for officers in various subjects relating to Forest Management, Social Forestry, Water shed management, Environmental Management System etc. for which no degree or diploma is given is not covered by the definition of 'Management Consultancy Service'.	76, 77 and 78 of the Finance Act, 1994	(CEST at New Delhi)

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
18-Apr-12	280	**Karan Raghav Exports Pvt. Ltd. Vs. CIT, ITA No. 1152/2011, Date: 14.03.2012,** Whether penalty should be imposed u/s 271(1)(c) when a debatable and arguable legal issue is decided against the assessee and the assessee had disclosed full and correct facts - Assessee cannot be faulted and penalty should not be imposed because the assessee had taken a particular stand point, unless there are grounds or reasons to show that the assessee had not disclosed all the facts before the departmental authorities concerned.	271(1)(c)	HIGH COURT OF DELHI
18-Apr-12	281	**CIT Vs. Finolex Cables Ltd., ITA No. 129 OF 2011, Date: 01.03.2012,** Whether where substantial investment has been made and the new plant and machinery is installed in the newly constructed building it can be said that assessee has set-up a new industrial undertaking and it is not the expansion of earlier unit and hence the depreciation of such unit is not to be set-off with the income of that unit which enjoys deduction u/s 80I.	80I	High Court of Bombay
20-Apr-12	282	**CIT Vs. M/S Reliance Communications Infrastructure Ltd., ITA NO. 3155 OF 2009, DATED: 28.03.2012,** when the assessee has significant interest in the business of the subsidiary and utilizes even borrowed money for furthering its business, there is no reason or justification to make a disallowance in respect of the deduction which is otherwise available u/s 36(1)(iii). the latter finding is independent of whether borrowed funds were or were not utilized, for in view of the judgment of the Supreme Court held, the fact that borrowed funds were utilized for making investments or, as the case may be, for making advances would not disentitle the assessee to the deduction so long as business expediency exists.	36(1)(iii	High Court of Bombay
20-Apr-12	283	**ITO Vs. MRS HAJRA I MEMON, ITA NO. 3848/MUM/2010, DATED: 18.01.2012,** Conversion of tenancy rights into ownership right falls under the realm of 'transfer' as envisaged in section 2(47) of the Act - The assessee was accepted as a tenant by the co-owners and as per the well settled law on this issue the tenancy cannot be equated with the ownership. The ownership is the bundle of rights but rights of the tenants are limited. Admittedly, the assessee's tenancy was converted into ownership and that can be the subject matter of the capital gain as it is a 'transfer' within the meaning of section 2(47) r.w.s. 45 of the I.T. Act.	2(47), 45	ITAT–MUMBAI

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
23-Apr-12	284	**DIT Vs. VISHWA JAGRITI MISSION, ITA No. 140/2012, Dated: 29.03.2012,** Whether the income of the assessee being a Trust can be computed on commercial principles and while doing so whether depreciation on fixed assets can be allowed - Yes.	11	HIGH COURT OF DELHI
23-Apr-12	285	**I M CONSTRUCTIONS PVT. LTD. Vs. CIT, Dated: 27.03.2012, W.P.(C) No. 8068/2011,** The petitioner was aware and knew that the AO has issued the notice u/s 148 at the address mentioned in the return; the requirement stipulated in Section 149 is "issue of notice" and not "service of notice", which was the requirement u/s 34 of the Income Tax Act, 1922. The assessment proceedings are still pending and have not culminated in passing of any order. In the meanwhile, the petitioner has come to know about the said assessment proceedings. The assessee can be treated as "served" with the notice u/s 148, which was earlier issued at the address mentioned in the return. The assessee can now filed the return of income pursuant to the said notice and the assessment proceedings can continue.	148	HIGH COURT OF GUJARAT
26-Apr-12	286	**INTERNATIONAL AGRICULTURAL PROCESSING (P) LTD. Vs. CCE, Final Order No. 1169/2011, dated 27-10-2011 in Appeal No. ST/488/2011, Held:** It is not in dispute that the appellants have stored some inputs in addition to export goods in the impugned warehouse and, going by the condition of the previous notification read strictly as has been done by the authorities below, the appellants are not eligible for refund on exports made upto 6-7-2009 in this regard. However, I find no reason to deny them refund for the period from 7-7-2009 onwards as the relevant notification does not prescribe any condition that the storage and warehouse should be exclusively used only for the purpose of export goods.	Notification No. 17/2009	(CESTAT CHENNAI)
26-Apr-12	287	**RAJ RATAN CASTINGS PVT. LTD. Vs. CCE, Final Order No. ST/574/2011(PB) and Stay Order No. ST/740/2011(PB), dated 18-10-2011, Appeal No. ST/353/2011, Held:** Tribunal held that in respect of above services recipient of services is required to pay service tax. Hence the appellant/assessee is not required to pay service tax as it is provider of services. Tribunal also held that if service tax does not stand paid by mutual fund companies or asset management companies, proceedings have to be started against the companies itself and the fact whether they have paid or not paid will not transfer the liability to the mutual fund distributor.	Rule 2(1)(d)(vi).	CESTAT, NEW DELHI)
28-Apr-12	288	**Steel Authority Of India Ltd Vs. CIT, ITA No. 37,38,41/2010, 29/2011, Date of Decision: 30/03/2012,** Whether waiver of loan from Government of India from Steel Development Fund would reduce the cost of the assets by the amount waived in view of section 43(1).	43(1)	HIGH COURT OF DELHI

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
28-Apr-12	289	**L.G.Electronics India Pvt. Ltd. Vs. CIT, WRIT TAX No. 367 of 2012, Date of Order: 22/03/2012, Held:** that merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. From the perusal of materials brought on record, we are of the view that the Commissioner having himself expressed opinion in the order that there is enough strength in the plea of the assessee for stay of the demand, there was no occasion to direct for deposit of 30 percent. The assessee is entitled to stay on furnishing adequate security **(Dunlop India 154 ITR 172 (SC) & Pennar Industries followed).**	201	Allahabad High Court
05-May-12	290	**M/s Punjab Breweries Ltd. Ludhiana Vs. CIT, ITA No. 217 of 2002, Date of decision: 17.04.2012, Held:** It would not be in public interest to accept such a claim when there is no evidence of rendering any service by Blue Chip & Company to the assessee- company. The sole object of diverting funds to Blue Chip and Company was to facilitate passing of funds as interest free loan to Shri Vijay Mallya and Smt. Samira Mallya. Agreement between the assesee- company and Blue Chip company has been found to be a sham transaction by the Assessing Officer as well as by the CIT (A). The Tribunal committed grave error by recording the order as if it is a consent order though the DR had categorically defended the AO & CIT (A)'s order. Also, the earlier orders of the Tribunal had been challenged before the High Court. Therefore the findings of the Tribunal are wholly erroneous, cryptic, perverse, laconic and perfunctory.	37	High Court of Punjab and Haryana
05-May-12	291	**Shri Yasin Moosa Godil Vs. ITO, I.T.A. No. 2519 /AHD/2009, Date of Pronouncement: 13.04.2012,** For application of Sec. 50C it is essential that the transfer must be of a capital asset, being land or building or both. If the capital asset under transfer cannot be described as "land or building or both" then section 50C will cease to apply. It is seen that the assessee has transferred booking rights and received back the booking advance. Booking advance cannot be equated with the capital asset and therefore section 50C cannot be invoked.	50C	ITAT - AHMEDABAD

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
08-May-12	292	**BSNL Vs. CCE, Final Order No. ST/578/ 2011(PB), Dated: 01.11.2011 in Application Nos. ST/Stay/ 2245/ 2010 and ST/Misc/ 622/2010 in Appeal No. ST/1106/2010, Held:** Revenue is advised not to convert this matter into a tug of war between Lucknow Commissionerate and Allahabad Commissionerate of the Department. Further to safe guard the interest of revenue, commissionnerate having jurisdiction over such offices has been directed to examine the record in detail to asceration from where the impugned services were billed and collections accounted.	Section 69 of the Finance Act, 1994 and Rule 4(1) of Service Tax Rules, 1994	CESTAT-Delhi
08-May-12	293	**RAMESHCHANDRA C. PATEL Vs. Commissioner of Service Tax, Ahmedabad, Final Order No. A/2121/2011-WZB/AHD, Dated: 25.11.2011 in Appeal No. ST/610/2010 Held:** Both the authorities have not at all discussed how the service provided by the appellant amounts to service of manpower recruitment or supply. After considering the records, submissions and the orders passed by the lower authorities, I am unable to find any ground on which the appellant can be held liable to service tax on the activity undertaken by them.	105(k) of Finance Act, 1994,	CESTAT, Amedabad
10-May-12	294	**The Board of Control for Cricket in India Vs. ACIT, Writ Petition no. 373/2012, Date of Decision: 02/04/2012,** **Held:** The assessee, during the course of assessment proceedings for Assessment Year 2004-2005, had not furnished any intimation to the Assessing Officer about the alleged misappropriation of funds. Though the FIR was lodged by the Assessee on 16 March, 2006 and the assessment proceedings for Assessment Year 2004-2005 were completed thereafter on 22 December, 2006, the filing of the FIR was not disclosed to the Assessing Officer. In the light of the alleged misappropriation of funds, the Assessee's claim to exemption under Section 11, for continuation of its registration under Sections 12A/12AA and the provisions of Section 13 need to be examined and the claim of the assessee may have to be disallowed; The fact that the lodging of the FIR was not disclosed before the Assessing Officer is not disputed by counsel. Consequently the jurisdictional requirement in the proviso to section 147 has been duly fulfilled.	148	High Court of Bombay

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
10-May-12	295	**Shri Piyush C. Mehta Vs. The ACIT, ITA NO. 1321/MUM/2009(A.Y. 2005-06), Date of pronouncement: 11/04/2012,** deposit of TDS u/s 194C after the end of the year, but before the due date of filing the ROI is valid for the reason that the Amendment to the provisions of Sec.40 (a)(ia) of the Act, by the Finance Act, 2010 is retrospective from 1.4.2005.	194C & 40(a)(ia)	ITAT-Mumbai
15-May-12	296	**Black & Veatch Consulting Pvt. Ltd. Vs. CIT, ITA No. 1237 OF 2011, Date of Decision: 09/04/2012,** **Held:** Brought forward unabsorbed depreciation and losses shall not be set off against the current profit of the eligible unit for computing the deduction under Section 10A of the IT Act.	10A	High Court of Bombay
15-May-12	297	**A Vs DIT, A.A.R. No. P of 2010, Date of judgment: 22/03/2012,** Though the Applicant was making regular profits, it did not declare any dividends after the introduction of s. 115-O and allowed its reserves to grow. This was only to avoid paying DDT. The buy-back was a "colourable device" devised to avoid tax on distributed profits u/s 115-O because while it would result in repatriation of funds to the Mauritius company, that would constitute "capital gains" in the hands of the recipient, and not be assessable to tax in India under Article 13 of the India-Mauritius DTAA.	115-O	AAR
17-May-12	298	**A.G. HOLDINGS PVT. LTD. Vs. ITO, W.P.(C) 8031/2011, Date of Decision: 25/04/2012,** There is no requirement in Sec 147 or 148 or 149 that the reasons should also be served on the assessee before the period of limitation. There is also no requirement in Section 148(2) that the reasons recorded shall be served along with the notice of reopening the assessment.	147	High Court of Delhi
17-May-12	299	**KRISHAK BHARATI COOPERATIVE LTD. Vs. CIT, ITA No, 955/2008, Date of order: 23/04/2012,** **Held:** In the absence of aforesaid evidence and material placed by the appellant assessee, the transportation charges cannot be treated as profit and gain derived from the manufacturing activity, which qualifies for deduction under Section 80-I.	80I	High Court of Delhi
22-May-12	300	**M/S AUCHTEL PRODUCTS LTD. Vs. ACIT, ITA NO. 3183 /MUM/2011, DATE: 30/04/2012,** If the assessee proves before the AO that it incurred a particular expenditure in respect of earning the exempt income and the AO is satisfied, then there is no requirement to proceed with the computation under Rule 8D.	14A	ITAT – MUMBAI

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
22-May-12	301	**AZEEM INVESTMENT PVT. LTD. Vs. CIT, ITA NO. 252/2012, DATED: 24/04/2012,** Whether the share application money received is a genuine transaction when there is only reference to the bank account entries - Held No.	68	HIGH COURT OF DELHI
24-May-12	302	**Ambala Central Cooperative Bank Ltd. v. ITO, ITA No. 332 (Chd.) of 2012, Date of Judgement 23/05/2012,** The Chandigarh Tribunal observed as under : "…..we would like to take this opportunity to bring to the notice of CBDT that after the procedure of Central processing of returns, many issues have come before various forums where unnecessary demands have been raised due to non-grant of TDS, wrong computation of income, adjustment of the previous year demand which have already been deleted by the jurisdictional assessing officer. Therefore, we would like to urge the CBDT to take up this matter urgently and establish proper coordination between the assessing authority and Central Processing Authority so that these problems are immediately solved and unnecessary litigation can be avoided. Copy of this order should be forwarded to the Chief Commissioner of Income-tax, Chandigarh and Chairman of CBDT for necessary action."	254(2B) read with 154	ITAT - CHANDIGARH
24-May-12	304	**M/s All Cargo Global Logistics Ltd. Vs. DCIT, ITA Nos. 5018 to 5022 & 5059/M/10, Date of pronouncement: 21-05-2012,** The Tribunal is not confined only to issues arising out of the appeal before the CIT(A) but has the discretion to allow a new ground to be raised. If a pure question of law arises for which facts are on record of the authorities below, the question should be allowed to be raised if it is necessary to assess the correct tax liability. The submission that the ground could not be raised earlier as the assessee did not have the services of an advocate at its command is reasonable and bona-fide	153A	ITAT – Mumbai
24-May-12	303	**M/s Phool Singh Yadav & Co., Gurgaon Vs. CIT, ITA No. 278 of 2005 & 79 of 2004, Date of decision: 17/04/2012**, The assessee has followed mercantile system of accountancy in regard to the expenditure incurred during that year and results were declared on actual receipt and this method is constantly followed by the assessee since last so many years, therefore, addition of the amount received in the next year in the month of April should not have been added in the previous year merely on the basis of bills issued and expenditure shown in the assessment year.	37(1)	High Court of Punjab and Haryana

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
26-May-12	305	**SOUTH CITY MOTORS LTD. Vs. COMMISSIONER OF SERVICE TAX, DELHI(CESTAT DELHI) Final Order No. ST/602/2011(PB), dated 22-11-2011 in Appeal No. ST/493/2010,** 1. In para 11 & 12 tribunal held that services provided by assesse prior to 10.09.2004 were also taxable services under Business Auxiliary Services 2. This matter relates to scope of the entry for "Business Auxiliary Services". There was considerable doubt about its coverage because of the very nature of the entry. There are contrary decisions of the Tribunal in the matter. The Higher Courts have been taking the view that in such situations the extended period of time cannot be invoked for raising demand. In this case also the demand is raised beyond the time limit of one year and such demand cannot be sustained. However, demand if any, which is within the normal period of one year is sustainable. Interest is payable on such amount but no penalty is imposable.	2(f) Central Excise Act, 1944	CESTAT DELHI
26-May-12	306	**RAJ RATAN CASTINGS PVT. LTD. Vs. CCE, Final Order No. ST/574/2011(PB), dated 18-10-2011** Held: 1. In terms of provisions of Rule 2(1)(d)(vi), we find that such liability stands shifted to the recipient of the services i.e. the mutual fund company. We agree with the learned advocate that the said legal issue does not stand dealt with by the learned Commissioner (Appeals). (Para 6) 2. If that does not stand paid by the company, proceedings have to be started against the companies itself and the fact whether they have paid or not paid will not transfer the liability to the mutual fund distributor	Rule 2(1)(d)(vi)	CESTAT DELHI

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
29-May-12	308	**Roxar Maximum Reservoir Performance WLL Vs. Authority of Advance Rulings(Income tax), A.A.R. No. 977 of 2010, Date of Pronouncement: 07/05/2012,** The AAR Held that: 1. All payments received by the applicant under the composite contract with ONGC are income chargeable to tax in India under the Income-tax Act. The contract entered into by the applicant is a composite contract and cannot be treated as an independent one for offshore supply of 36 manometer gauges and another one for erection of it. Further, part of the payment towards price of the manometer gauges cannot be considered divorced from the payments received for the performance of entire obligations under the contract. 2. The services for supply, installation and commissioning of 36 manometer gauges are rendered in connection with the prospecting and/extraction of oil by ONGC, thus the amount is chargeable to tax u/s 44BB.	44AB	AAR NEW DELHI
29-May-12	307	**Munjal Showa Ltd. Vs. DCIT, W.P.(C) 4753/2011, Date of Decision: 14/05/2012,** where the assessee had filed and furnished all details and particulars relating to the royalty payment including agreements, calculation and the approval before the Ld. AO during assessment proceedings. The new AO has observed that royalty payment should have been disallowed as it was capital in nature. This is a question of legal inference or interpretation drawn from the same material facts on record. Therefore, the case falls in the category of change of opinion and cannot be made the subject matter of reassessment proceedings	148	High Court of Delhil.

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
01-Jun-12	309	**Analysis of NN 16/2012 ST dated 29.05.2012 [Service Tax (Settlement of Cases) Rules, 2012]"** **Relevant Extract of D.O. F. No 334/1/2012-TRU New Delhi, dated: 16-03-2012,** Provisions relating to Settlement Commission are being brought in the Service Tax by adding sections 31, 32 and 32A to 32P of the Central Excise Act in section 83. On the date of the enactment of the Finance Bill (i.e., 28.05.2012), notification containing Service Tax (Settlement of Cases) Rules, 2012 along the lines of Central Excise (Settlement of Cases) Rules, 2007, will come into effect. This should encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations." Clause 143(M) of Finance Act, 2012 amended section 83 of Finance Act, 1994 to make Settlement Commission provisions given in sections 31, 32, 32A to 32P of the Central Excise Act, 1944, applicable to service tax cases. These sections of excise provide following provisions and same shall be applicable for settlement of case of service tax through settlement commission:	83	TRU New Delhi
01-Jun-12	310	**ANALYSIS OF NOTIFICATION NO. 17/2012-ST, DATED 29th May, 2012 [Service Tax (Compounding of Offences) Rules 2012,** Section 89 of Finance Act, 1994 laid down provision for prosecution in respect of specified offences. Section 9A of Central Excise Act, 1944 made applicable to service tax vide section 83 of Finance Act, 1994 laid down provision of making application for compounding of offences. Now NN 17/2012 -ST, DATED 29th May, 2012 made Service Tax (Compounding of Offences) Rules, 2012 and these rules provides manner of making application for compounding of offences and give power to compounding authority to grant immunity from prosecution. Brief analysis of above provisions are given below for over all understanding of these provisions and its benefit to the interested parties. Last year Finance Act, 2011 had reintroduced Prosecution Provision by inserting section 89. In same line section 9A of Central Excise Act, 1944 had also been made applicable for compounding of offences by amending section 83 of Finance Act, 1994. Section 89 provide whoever commits any of the specified	89 & 9A	

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
05-Jun-12	311	**Bestilo Packaging Pvt. Ltd. Vs. CCE, Final Order No. 713/2011-Issue:** The riders (statement) provided by Notification No. 34/2004-S.T., dated 3-12-2004 in the matter of levy of service tax relating to GTA service were in confusion. While one rider is that if the gross amount charged against consignments transported in a goods carrier does not exceed Rs. 1500/- there is liability under Finance Act, 1994, the other rider is, if gross amount charged on an individual consignment transported in a goods carrier does not exceed Rs. 750/- there shall be liability. The appellant was under a bona fide belief that individual consignment was basis for liability of the appellant. **Held:** Although the riders are independent in nature, but very difficult to understand by a common man. So also noticing no contumacious conduct of the appellant discovered by the department, the appellant cannot be asked to suffer penalty. All these observations require the appeal to be allowed. Therefore, dispensing with pre-deposit, appeal is also allowed. Accordingly, both stay application and appeal are allowed SM(BR)(PB), dated 30-9-2011 in Appeal No. ST/787/2011-SM(BR) (In Favour of Assessee)	Notification No. 34/2004-S.T	CESTAT, New Delhi
05-Jun-12	312	**Commissioner of Service Tax, Bangalore Vs. Master Kleen, C.E.A. No. 2 of 2010, decided on 8-9-2011,** where the assessee on being pointed out by the authorities for not paying the service tax, has paid the service tax with interest even before the issue of show cause notice, penalty is not leviable.	73 (3) of Finance Act	Karnataka HC
06-Jun-12	313	**M/s Blue Steel Engineers P. Ltd Vs. DCIT, ITA No. 6411/2010, Date of Pronouncement: 11/05/2012,** Once the foreign travelling has been accepted for the purpose of business then part of the amount cannot be disallowed on account of personal user unless it is established that there was personal and non business expenditure. Since no basis has been given nor anything adverse has been brought on record, the ad hoc addition cannot be disallowed.	32(2)	ITAT-Mumbai

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
06-Jun-12	314	**Acorus Unitech Wireless Pvt. Ltd. & Anr. Vs. DCIT, Writ Petition(Civil) No. 2155/2012, Date of Decision: 28/05/2012,** For issue a notice u/s 143(2), reasons to believe are not required to be recorded in writing and power of the Assessing Officer to take up the return for scrutiny is much wider and the jurisdictional pre-conditions stipulated u/s 147 are not required to be satisfied. The respondents have agreed to and will be bound by the statement to withdraw notice u/s 147/148, but will have liberty and right to issue fresh notice u/s 147/148, after recording reasons to believe. The said notice will not be barred because the respondents had not initiated proceedings by issue of notice under Section 143(2) of the Act or they had earlier issued notice under Sections 147/148. With the aforesaid findings and observations writ petition is disposed of.	147	High Court of Delhi
08-Jun-12	315	**Comptroller of Income Tax Vs AZP, Originating Summons No. 320/ 2012, Dated: 23/05/2012,** Information under article 28 of DTAA cannot be disclosed on the basis of un-signed transfer requests of Indian national to a Swiss Bank to transfer money to overseas bank accounts of two foreign companies. HELD dismissing the application: Article 28(1) of the Agreement as amended by the Second Protocol provides that "the Contracting States shall exchange such information as is forseeeably relevant for carrying out the provisions of [the Agreement] or to the administration or enforcement of the domestic laws concerning taxes... imposed on behalf of the Contracting States ..." [emphasis added]. Section 105J(1) of the ITA imposes two other conditions: The conditions referred to in [s 105J(2) of the ITA] are as follows: (a) the making of the order is justified in the circumstances of the case; and (b) it is not contrary to the public interest for a copy of the document to be produced or that access to the information be given. Those three conditions must be satisfied before the High Court will grant an order under s 105J(2) of the I	Article 28 of DTAA	High Court of Singapore
12-Jun-12	316	**M/s Purvanchal Construct ion Works (P) Ltd. Vs. ACIT, Range-14, New Delhi, ITA No. 3/D/2011, AY: 2007-08, Date of pronouncement: 08-06-2012,** Assessee need to prove that why payments could not be made by crossed cheques/demand draft or that these were made out of sheer necessity under section 40A(3) of the Income tax Act,1961.	40A(3)	ITAT – Delhi

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
12-Jun-12	317	**Rahuljee & Co. Pvt. Ltd. Vs. ITAT & Others, ITA No. 157 OF 2011, Date of Pronouncement: 01-06-2012,** If there is a foreign travel in connection with the business, merely because in the said foreign travel, no business could be transacted or the foreign travel did not result in bagging any contract is not the determinative factor. The relevant factor was as to whether he was sent by the assessee abroad in connection with the business of the assessee. Further, Issuance of show cause notice is not a condition precedent before charging interest under Section 217 of the Act.	217	Delhi High Court
14-Jun-12	318	**M/s G.B. Morrison Travels Vs. DCIT, ITA No. 1296/Del/2012, AY: 2006-07, 2007-08 & 2008-09, Date: 01.06.2012,** The bonus and commission paid to the Managing Director as services rendered as per terms of appointment as Executive/Managing Director of a company is allowable business expenditure.	36(1)(ii)	ITAT – Delhi
14-Jun-12	319	**DCIT Vs. Shri Surendra Mohan, ITA No. 4552/Del/2011, AY:2008-09, Date: 01.06.2012,** No application of section 194H in respect of discount received on purchase of plots. In other words, the purchasers received discount in the purchase price. There is nothing to suggest that the purchasers of flats rendered any service to the assessee in order to attract application of section 194H.	194H	ITAT - Delhi
16-Jun-12	320	**ITO Vs. M/s Agrani Convergence Ltd. ITA No. 2343/Del/11, AY: 2007-08, Dated: 08-06-2012,** (a) Withdrawal of claim by way of revised computation does not assumes a character of technical default. Hence penalty cannot be imposed u/s 271(1)(c). (b) When assessee filed all the primary particulars and was under bona fide belief that the amount is irrevocable, the same were allowable as bad debts on write off.	271(1)(c)	ITAT - New Delhi
16-Jun-12	321	**Shri B. M. Labroo, Vs. DCIT, ITA No. 2756/Del./2011, AY: 2006-07, Dated: 11-06-2012,** Investment of long term capital gain made in new residential house within the time limit prescribed u/s 139(4) is eligible for deduction u/s 54.	54	ITAT - New Delhi
19-Jun-12	322	**M/s Modipon Ltd. Vs. ACIT, W.P.(C) 1623/1990, Date of Decision: 15/05/2012,** Whether reassessment proceedings initiated u/s 147 to successor of business on account of omission and failure to disclose fully and truly all material facts necessary for determining the income chargeable to tax for these assessment years is valid?	147	High Court of Delhi

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
19-Jun-12	323	**M/s Spencer and Co. Ltd. Vs. ACIT, ITA No. 440/Mds/2011, Date of Pronouncement: 20/04/2012,** The Tribunal has correctly observed that general reserve being difference between paid up value of shares allotted on amalgamation and the net assets taken over from the transferor company is merely an accounting entry, and therefore, no real income arises. Since no actual benefit or perquisite arises from conduct of business carried on by the assessee, the surplus arising on amalgamation cannot be treated as taxable income.	28	ITAT-Chennai
21-Jun-12	324	**Analysis of Amendment in Service Tax (Determination of Value) Rules, 2006 by NN 24/2012ST Dated: 06.06.2012**		
21-Jun-12	325	**CCE Vs. Bharat Heavy Electricals Ltd., C.E.A. NO. 83 OF 2010, Date: 10.02.2011,** This appeal is preferred by the revenue challenging the interim order of stay in particular the order directing the appellant to pay 10% of the demand as security while entertaining the appeal. The learned counsel for the respondent submits that in view of the amendment to the CENVAT Credit Rules in 2010 providing for proportionate credit, the order which is challenged in appeal has been recalled by the authorities and therefore, the appeal itself has become infructuous. Held: When the order challenged in the appeal before the Tribunal itself is not in existence, this appeal filed against the interim order in that appeal certainly is not maintainable.		HC OF KARNATAKA
21-Jun-12	326	**CCE Vs. IFB Industries Ltd. , CEA NO. 113 OF 2010, Date: 08.04. 2011,** Assessee, a manufacturer, can avail Cenvat credit of service tax paid on outdoor catering service availed for its factory canteen	Rule 3 of the Cenvat Rules, 2004	HC KARNATAKA

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
25-Jun-12	329	**M/s. Agni Briquette Pvt. Ltd. Vs. ACIT, MA Nos. 73/Ahd/2012, Date of Pronouncement : 15/06/2012,** An appeal is to be decided by the Tribunal within a period of four years by the end of the Financial Year in which such appeal is filed u/s.253(1) of the I.T.Act. Thereafter, another four years has further been granted for filing a petition u/s.254 (2) by the Statute. If within the said long period of "eight years" an appellant is not vigilant about the fate of its appeal, then such an appellant cannot be termed as a serious litigant interested in getting an appeal finalized within a reasonable period. In the present case, the appeal in respect of the ITA No.497/Ahd/2003 was filed on 6/2/2003. Likewise, the appeal in respect of ITA No.498/Ahd/2003 was filed on 6/2/2003. Both these appeals remained pending uptill February-2007 and then on 23/02/2007 these appeals were decided ex-parte by the impugned orders by the Respected Co-ordinate Bench. Meaning thereby the appellant has never enquired in the said four years between 2003 to 2007 about the fate of his appeals although those were filed in the year 2003. After the lapse of 8 years, undisputedly	254(2)	ITAT-AHMEDABAD
25-Jun-12	327	**Smt. A Kowsalya Bai Vs. Union of India, W.P. No. 12780 - 12782/2010, Date of order: 05/06/2012,** PAN not required if income of persons below the taxable limit. Section 206AA is read down as being inapplicable to persons whose income is less than the taxable limit.	2069AA	High court of Karnataka
25-Jun-12	328	**DIT Vs. MARUTI CENTER FOR EXCELLENCE, ITA No. 1335/2010, Date of Decision: 21/05/2012,** Held that CIT (Appeal), has not recorded any independent findings but merely recorded that the issue was decided by the tribunal in the earlier assessment year and he was bound by the said decision. In view of the aforesaid position, the tribunal will examine the factual matrix and position in the light of legal position mentioned above. Before applying the ratio/law, they shall first examine and record finding on facts relevant and which are to be examined.	13(1)(c)(ii) read with 13(3)	High court of Delhi
26-Jun-12	331	**KPMG India Pvt. Ltd. Vs. DCIT, ITA No. 8824/Mum/2004, Date of pronouncement: 08/06/2012,** The professional service rendered does not fall in the definition of "royalty" in Article 12 of the DTAA. It was purely a professional service for consultancy which were rendered outside India and not for supply of scientific, technical, industrial or commercial knowledge or information. Thus, there was no liability to deduct TDS and consequently no disallowance u/s 40(ia) can be made.	40(ia)	ITAT-Mumbai

Summary of News of Professional Interest on Voice of Chartered Accountants for the month of April to June 2012				
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26-Jun-12	330	**CIT Vs. M/s. Triumph International Finance (I) Ltd., ITA No. 5746 OF 2010, Judgment Pronounced on: 12/06/2012,** that repayment of loan / deposit through journal entries did not violate the provisions of Section 269T of the Act. However, in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan / deposit was not a bonafide transaction and was made with a view to evade tax, we hold that the cause shown by the assessee was a reasonable cause and, therefore, in view of Section 273B of the Act, no penalty under Section 271E could be imposed for contravening the provisions of Section 269T of the Act.	269T & 271E	High court of Bombay
28-Jun-12	332	**CIT Vs. CARGIL GLOBAL TRADING I. P. LTD., Special Leave to Appeal (Civil)..../ 2012 (CC 19572/ 2011), Date of order: 10/05/2012,** discount charges are not contemplated with interest referred in section 194A and accordingly no TDS is deducted on discount charges.	194A	Supreme Court of India
28-Jun-12	333	**ITO Vs. M/s Planet Herbs Life Science, ITA No. 522/Del/2011, Date of pronouncement: 25/05/2012,** the payments made on account of reimbursement of expenses was in no way income chargeable to tax in India in the hands of the payee and hence did not require any tax deduction at source and therefore addition made u/s 40a(ia) of the Act was not warranted.	195 & 40(ia)	ITAT- Delhi