Issue – 03 | March 2009

SNK Newsletter

DIRECT TAXES

Judicial Pronouncements

ACIT v. Indexport Ltd (ITAT Mumbai) (ITA No. 1941/ Mum/2004)

S. 14A disallowance under Rule 8D cannot exceed original disallowance

Where the AO made a disallowance u/s 14A by estimating 10% of the expenses as being attributable to the tax free receipts and in the appeal before the Tribunal the department argued that in view of the judgement of the Special Bench of the ITAT in Daga Capital (26 SOT 603) the matter had to be remanded to the AO for applicability of Rule 8D and the judgement in Assam Travels [199 ITR 1 (SC)] was relied on to contend that the remand could result in a larger disallowance than had been calculated by the AO, HELD that:

(i) While the matter had to be remitted to the AO to recalculate the disallowance under Rule 8D as held by the Special Bench, the assessee could not be worse off than it would have been if it had not filed an appeal against the assessment order. Accordingly, the AO was directed to restrict the disallowance to the original figure.

(ii) The ratio of Assam Travels was not applicable to the facts of the case.

CIT vs. Reliance Utilities (Bombay High Court) (ITA No.1398 OF 2008)

Advances to sister concerns must be presumed to have come out of own funds and not borrowed funds.

Where the assessee had its own funds as well as borrowed funds and it advanced funds to its sister concerns for allegedly non-business purposes and the question arose whether the AO was justified in disallowing the interest on the borrowed funds on the ground that they had been used for non-business purposes, it was held that where an assessee has his own funds as well as borrowed funds, a presumption can

be made that the advances for non-business purposes have been made out of the own funds and that the borrowed funds have not been used for this purpose. Accordingly, the disallowance of the interest on the borrowed funds is not justified.

ACIT v. Ashima Syntex Ltd. (2009) 120 TTJ (Ahd)(SB) 721

Business expenditure - Capital or revenue expenditure - Deferred revenue expenditure

Deferred revenue expenditure denotes expenditure for which a payment has been made or a liability incurred which is essentially revenue in nature but is written off over a period of time for various reasons like quantum and expected future benefit. Assessees amortise the same over the time period over which the benefits are likely to accrue therefrom. Decision to treat the same as deferred revenue expenditure only represents a management decision in view of the magnitude of the expenditure involved. For the purpose of allowability of any expenditure under the Act, what is material is the classification between capital and revenue. IT Act does not recognize any concept of deferred revenue expenditure. Entries in the books of account do not clinch the issue either way and are not determinative of the allowability or otherwise of the expenditure.

Expenditure relating to corporate advertisement, exhibition, public relation/ cultural programme," quota and sales promotion expenses are in the revenue field. There is nothing to suggest that any asset, tangible or intangible, has been created with this expenditure. Also, there is no evidence on record regarding accrual of any specific revenue over a defined period by incurring of said expenditure. Same rightly allowed as revenue expenditure.

Growth Techno Projects Ltd. v. CIT (ITA No. 563/Del/2005 – Delhi ITAT)

Determination of Profit of Developer

The developer's profit is referable to that part of the development of the project which has been completed; it is not necessary that all the flats should be first sold and then the project can be said to have been completed; each and every flat or unit is to be treated as an independent project and the profit on that part which has been completed by handing over the possession to the buyer cannot be postponed beyond the date on which the possession was handed over by the developer to the buyer.

Saffron Investment Ltd. v. ACIT (2009) 28 SOT 76 (DELHI)

Section 28(i) - Business loss/ deductions - Allow-able as

Assessee-company had purchased shares of 'R' Ltd. which were held as investment by it. It incurred loss on sale of said investment and claimed same as its business loss. Assessing Officer disal-lowed said claim on ground that same was a long-term capital loss. Commis-sioner (Appeals) was justified in holding that since shares-in-question were held by assessee as investment and not as stock-in-trade, loss on transfer of those shares was capital loss.

Section 73 - Losses - In speculation business

Explanation to section 73 would cover cases not only where part of business of a company consists of purchase and sale of shares but also where entire business of company is of purchase and sale of shares. In view of facts stated under heading 'Business loss/deductions - Allowable as' even if loss-in-question was to be treated as a business loss, same would be treated as a loss from speculative business as per Explanation to section 73 and could not be allowed to be set-off against other income, other than speculative profit.

Shree Laxmi Marketing Pvt. Ltd. v. ACIT (ITA No. 1657/PN/2004)

Increase in turnover cannot be a solitary criteria for steep increase in remuneration payable to director

An employer, in fixing the remuneration of his employees, would consider the extent of his business, the nature of the duties to be performed, and the special attitude of the employee, future prospectus of extent of the business and host of other related circumstances; it is erroneous to think that increase in the remuneration payable to the director is justified merely on the basis of corresponding increase in the turnover of the business.

Hindustan Foods Ltd. v. DCIT (ITA No. 15/2006 – Bombay HC)

Treatment to be given to unclaimed debenture amount when same is used by assessee-company for its business

When the assessee has already utilized the money from time to time for its business purpose and having been taken benefit of utilizing the money for its business, now cannot say that the debt, in question, has not become time-barred and, therefore, the said unclaimed amount should not have been treated as income of the assessee by way of trade receipt.

Jagdamba Rollers Flour Mills Ltd. v. ACIT (ITA No. 93/Nag/2007 – ITAT Nagpur)

Enquiry to be made by AO under section 40A(2)(a) of IT Act in case payment of remuneration to director is excessive or unreasonable

The scope of enquiry under the provision of section 40A(2)(a) is with reference to the fair market value of the services rendered by the director concerned; in the absence of enquiry as contemplated by said section, no disallowance can be made or sustained on the ground that the payment is excessive or unreasonable.

Inderlok Hotels vs. ITO (ITAT Mumbai) (ITA No. 4376/Mum/2008)

S. 50C not applicable to dealers in land and building

Though s. 50C has been introduced by the Legislature to check the modus operandi of understating the sale consideration in the activity of civil construction and provides that the value

determined or assessed by the stamp duty authorities shall be deemed to be the "full value of consideration", its scope is confined to property held as a "capital asset". **It has no application to property held as "stock-in-trade".** Accordingly, additions on account of s. 50C cannot be made in the case of dealers in real estate.

Dev Kumar Jain v. ITO (2009 - TMI - 32471 - Delhi HC)

Computation of capital gains – sale of assets – actual sale consideration

There is nothing on record to show that the assessee received consideration for the sale in excess of that which was shown in the agreement to sell, therefore, tribunal was not correct in holding that the actual sale consideration recorded in the agreement to sell of the asset and received by the assessee could be substituted by the value as adopted by the District Valuation Officer.

Gopal Purohit v. JCIT (ITA NO. 4854/MUM/2008 – Mumbai ITAT)

Treatment to be given to income from delivery based share transactions

The delivery based transaction should be treated as of the nature of investment transactions and profit therefrom should be treated as short-term capital gain or long term capital gain depending upon the period of holding; employment of an infrastructure so as to keep a track of the developments in the share market cannot turn an investment activity into a business activity.

East West Hotels Ltd. v. DCIT (2009 - TMI - 32457 - Karnataka HC)

Hotel business activities

Hotel has been given to the Indian Hotels Company on lease under an agreement for an initial period of 33 years and giving option to renew the same for a further period of 33 years. Since assessee has no intention to resume its business of hotel in the premises, amount received by the assessee from such company has to be treated as income from other sources and not a business income.

CIT v. Samir Bio-Tech(P) Ltd. (IT Appeal No. 415/2008)

Sec. 68 - Cash Credit : Share Application Money

Where identity of the subscribers are not in doubt ,transactions have also undertaken through banking channels and credit worthiness has also been established, then addition of share application money is not warranted under section 68.

ACIT v Ravi Agricultural Industries (ITA NO. 145/AGR/2006)

Unexplained Investment – Paper found during Survey

Where the paper that was taken as a material for making the addition did not conclusively establish that it pertained to the business transaction of the assessee-firm, the addition, in sum and substance, made by the department was clearly not supported by any material, which could point out to unexplained investment outside the books of the assessee.

Snowcem vs. DCIT (Bombay High Court) (ITA No. 238 OF 2006)

S. 115JA assessment is not liable for advance tax interest u/ss 234B and 234C.

(i) Where an assessment is made u/s 115JA of the Act, an assessee is not liable to pay interest for non-payment/ shortfall of advance tax u/ss 234B and 234C of the Act. CIT v. Kwality Biscuits Ltd. 284 ITR 434 (SC) followed;

(ii) There is a difference between dismissal of a Special Leave Petition and dismissal of an Appeal. While the dismissal of a SLP does not result in merger of the judgment of the High Court with that of the Supreme Court and there is no affirmation, the dismissal of an Appeal results in an affirmation and merger of the order of the High Court into that of the Supreme Court.

ACIT v. Epsom Shipping (I) (P) Ltd. (2009) 19 DTR (Mumbai)(Tri) 202

Option to be taxed under tonnage scheme - Delay in submission of tonnage certificate

Assessee, a qualifying company, was eligible to exercise option to be taxed as per tonnage scheme under s. 115VP where it had filed the tonnage certificate before the CIT(A) and the delay in filing the certificate was for reasons beyond its control.

Assessee had applied for tonnage certificate before the competent authority within time but because of certain formalities demanded and queries raised by the said competent authority, there was delay in issue of the tonnage certificate and the same had been filed before the tax authorities. Assessee had also filed an application for condonation of delay in enclosing the said certificate along with the appeal papers. Once the certificate is filed, it will relate back to the date of application.

Vinod Solanki vs. UOI (Supreme Court) (Civil Appeal No. 7407 OF 2008)

Effect of retraction of statement of confession.

Where during FERA search proceedings the accused-appellant allegedly confessed to violations of the law and later filed an affidavit retracting his confession and the Tribunal and the High Court rejected the retraction on the basis that the onus was on the accused to show that the confession was obtained from him by threat, coercion or force, HELD reversing the lower authorities that:

(i) It is trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon;

(ii) The initial burden to prove that the confession was voluntary in nature would be on the Department. The special or peculiar knowledge of the person proceeded against would not relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It may only alleviate that burden to discharge and very slight evidence may suffice;

(iii) A person accused of commission of an offence is not expected to prove to the hilt that confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction.

(iv) With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.

Mudit Verma v. ACIT (ITA NO. 445/LUC/06 – Lucknow ITAT)

Condition precedent for raising presumption under section 132(4A) r.w.s. 292C of IT Act against a person searched

Where a search is carried out against a person and documents, money, bullion, jewellery, valuable articles or things are found in possession / control of another person during the course of the search then such presumption as contained in sections 132 (4A)/292C can be raised only against such "another person" in whose control and possession the valuable assets/documents are found even though no warrant for search has been issued against him.

CIT v. Laxmi Engineering Industries (2009) 308 ITR 279 (Raj)

Difference between value shown in accounts and value disclosed to bank

There can be circumstances, where there may be difference in the quantity of stock, as appearing in the balance-sheet, and as appearing in the hypothe-cation made to the bank, and if there is any explanation coming forward for the discrepancy, then the addition need not be made. The sufficiency or liability of the explanation, offered by the assessee, is a question of fact.

The Assessing Officer found that in the balance-sheet the assessee had shown the closing stock of the goods at a particular amount in different assessment years, while in the statement submitted by the assessee to the bank for the purpose of obtaining financial assistance a higher valuation of stock was given. The Assessing Officer, after making certain calculation, added the difference in the amounts, as income of the assessee from undis-closed sources.

Judicial pronouncements

The Tribunal found that the assessee had shown inflated figures of valuation of the stock to the bank for availing of better financial assistance and that the Assessing Officer had not been able to point out any discrepancy in the quantity of stock hypothecated to the bank and the quantity of stock as per the books of account. It deleted the additions.

On appeal, the High Court dismissing the appeal held that in view of the finding of the Tribunal even if there was some difference in the valuation of the said quantity of the stock in the balance-sheet, as against the valuation shown to the bank, it could not be said to result in any income from undisclosed sources, coming to the assessee, capable of being added in its income.

ACIT v. Rani Shankar Mishra (ITA Nos. 4169 & 2993/Del/2005 & 2007 & C.O. No. 303 & 304/Del/2007)

Prerequisite for issue of notice under section 148 of IT Act

At the time of issue of notice the Assessing Officer is not required to conclusively establish that there is escapement of income, mere bona fide reason to believe that there is escapement of income is sufficient for issue of notice under section 148.

CIT v. Pranoy Roy Anr Another & India Meters Ltd. (2009 - TMI - 32469 - SC)

Levy of interest u/s 234A

HC held that interest would be payable in a case, where tax has not been deposited prior to the due date of filing of the income-tax return. High Court is justified in holding that that interest is not a penalty and that the interest is levied to compensate the revenue. Since the tax due had already been paid which was not less than the tax payable on the returned income which was accepted, the question of levy of interest does not arise.

Microsoft Operations Pvt. Ltd., In re (AAR No. 781 of 2008)

AAR on admissibility of an application when same is hit by embargoes laid down by section 245R of IT Act

Once the conclusion is reached that the application for advance ruling filed under section 245Q is hit by one or all of the embargoes laid down in the proviso to section 245R(2), the Authority has no option but to reject the application in limine; it is not open to the Authority to ignore the legal bar created by the proviso notwithstanding the discretion conferred on the Authority in apparently wide terms under the main provision i.e., sub-section (2).

ACIT vs. Supreme Industries Limited (ITAT Mumbai) (ITA No. 7080/Mum/2005)

To levy penalty, AO has not to prove willful attempt by assessee but onus is on assessee to prove bona fides

Where the assessee, being the amalgamated company, claimed that the period of 8 years available u/s 72A for set off of the unabsorbed investment allowance of the amalgamating company had to be counted from the date of amalgamation but the Tribunal rejected that stand and held that the period of 8 years had to be counted from the year of incurring the loss and in the penalty proceedings u/s 271(1)(c) the CIT (A) held that notwithstanding the view on merits, penalty could not be imposed because the claim was bona fide and there was nothing to suggest gross or willful negligence or fraud by the assessee, HELD, reversing the order of the CIT (A) that:

(i) The claim of the assessee was patently wrong and such claim could not avoid penalty;

(ii) The judgment of the Supreme Court in UOI vs. Dharmendra Textile Processors 174 TM 571 fortifies the interpretation that where the assessee offers an explanation, the onus is on the assessee to substantiate the explanation or prove the bona fides and show that there is full disclosure of all the facts relating to the explanation. The AO is not obliged to prove that there was a willful attempt by the assessee or that the explanation of the assessee is not bona fide;

(iii) 271(1)(c) has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability.

Motwane Manufacturing Co. Pvt. Ltd. v. CWT (2009 - TMI - 32465 – Bombay HC)

Chargeability of Wealth Tax

It was held that the Tribunal was right in holding that land used for internal roads of the factory and play ground for workers of the factory is taxable as wealth of the company, when the factory building has not been charged for wealth-tax.

Lucent Technologies International Inc. v. DCIT (2009) 18 DTR (Del) (Trib) 249

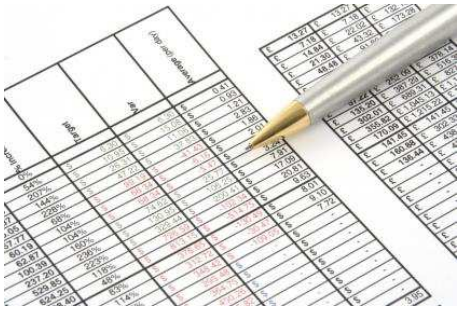
Double Taxation Avoidance Agreement between India and USA

Assessee company, a tax resident of USA, had its subsidiary it India, ATTIPL, now known as LTIL. Assessee entered into agreement with one E for supply of hardware and software for turnkey project of GSM network in India. At the same time, E also entered into contract with LTIL for commissioning, installation and operation of the said turnkey project. E made both assessee and LTIL responsible for the turnkey completion of the GSM project, individually and severally in the sense that if either one breaks its terms and conditions of contract with E, the other would be responsible for its completion, whether supply of hardware and software or commissioning, installation and operation, thus creating a consortium or partnership between assessee and LTIL. LTIL, as an extraordinary measure, also extended warranty for the hardware/software supplied by the assessee. LTIL, fox purposes of executing its own contract with E, took assistance of expatriates who were employees of affiliates of assessee. Such employees of affiliates constituted 'other personal' as per the inclusive term in art. 5(2)(1) of the DTAA as the assessee had control over them and having remained in India for more than 90 days within the relevant financial year, assessee had a service PE in India in the form of its subsidiary LTIL.

DDIT (IT) v. Pipeline Engineering GmbH (ITA Nos. 8199 and 8200/MUM./2004) (MUM. - ITAT)

Scheme of taxation of royalties or fees for technical services received by a tax resident of Germany having its PE in India

Any amount received by a non-resident in pursuance of an agreement made before 1-4-2003 is to be governed by the provisions of section 44D; the words 'according to the domestic law of the contracting State in which the PE is situated' appearing in article 7(3) of DTAA between India and Germany are the words of significance which, would only mean that the expenditure incurred by the non-resident assessee for the purpose of business of the PE in India would be allowable in accordance with the provisions of domestic law i.e., Income-tax Act, 1961; consequently, no deduction is to be allowed against the receipts by way of royalties or fees for technical services in case of non-resident company, even if the business profits in respect of such income are to be computed under article 7 of the DTAA.



DDIT (International Taxation) v. Sun Chemicals B.V. (2009) 19 DTR (Mumbai)(Trib) 33

Applicability of DTAA vis-a-vis default under s. 92C - DTAA between India and Netherlands, arts. 3(d) & 13; Income-tax Act, 1961, ss. 90 & 92C

Provisions of ss. 92 to 92F do not relate to any amount payable by the assessee either by way of tax or interest or penalty. Default or omission under s. 92C not being covered under art. 3 (d) of the DTAA between India and Netherlands, tax resident of Netherlands could not be denied the benefits of DTAA for such defaults. AO was not justified in computing capital gains after set off of long-term capital loss. Capital gain computed by the AO would be exempt and not taxable in India in view of specific provisions of DTAA between India and Netherlands prescribed by art. 13(5).

Ansaldo Energia Spa v. ITAT & Ors. (2009) 19 DTR (Mad) 25

Income deemed to accrue or arise in India—Business connection—Execution of project in India with Indian subsidiary

Assessee, a foreign company set up a company in India namely, ASPL. NLC, an Indian public enterprise floated a single-bid tender in 1997 for setting up two thermal plants in India. Assessee applied for the bid and was awarded the contract on a single bidder basis. However, the assessee divided the single-bid Contract Into four contracts, viz., Contract I dealing with off-shore supply of equipments, along with designing and engineering worth DM 22.4 million, Contract II for off-shore services of supervision of erection, testing and commissioning worth DM 198 thousand, Contract III for onshore supply of equipments executed by ASPL worth Rs. 27,008 lacs and Contract IV for civil construction, erection, testing and commissioning worth Rs. 27,753 lacs. While Contracts III and IV were loss making contracts, income from Contract II was offered to tax at 20 per cent. As regards Contract I, income from designing and engineering was offered to tax at 20 per cent.

AO, CIT(A) and Tribunal inter alia justified in holding that the Contract In question was a composite contract and was split up only for tax purposes, that there existed a business connection with ASPL which was assessee's PE in India and profits were ultimately estimated on the entire project taking into consideration losses of Contracts III and IV and profits attributable to PE.

DIT v. Sheraton International Inc. (ITA Nos. 921, 922 & 924 ETC of 2007 – Delhi HC)

Income tax - Indo-USA tax treaty – Payment of Royalty

Non-resident assessee enters into commercial service agreement with Indian hotels for advertising, publicity and promotion of their sales worldwide and also allows use of their trade name, trademark and stylised 'S'. in return, it receives 3% of room sales turnover. AO treats such payment as royalty under Section 9(1)(vi) read with explanation 2 and fee for technical services under Section 9(1)(vii) read with explanation 2 or under Article 12 of the DTAA. Tribunal disagrees with the Revenue and takes the view that providing commercial information and marketing advisory cannot be treated as technical services which are strictly meant for transfer of technological know-how or other types of included services. payments made for marketing related services and use of trademark etc incidental to the main objective cannot be categorised as royalty or fees for technical services either under the Sec 9(1) or the DTAA. Such payments are business income but since the assessee has no PE under Article 7 of the DTAA, it cannot be taxed in India.

Held that there is no fault with the findings of the Tribunal and moreover, these are findings of fact which could be gone into only if the Revenue alleges perversity in the Tribunal's order which is not the case in the instant order.

Circulars / Notifications

Instruction No. 01/2009 dated 12-2-2009

Utilization of information in the Annual Information Returns (AIRs) relating to F.Y. 2007-08 (A.Y. 2008-09) and subsequent years - reg

INDIRECT TAXES

Judicial Pronouncements

CCE v. Sarvesh Polyester (P) Ltd. 2009 (233) E.L.T. 391 (Tri. - Ahmd.)

Clandestine removal - Evidence

Two kachcha slips recovered during search by Department. Respondent explained details reflected in chit vis-a-vis calculations produced on record by them. Moreover, statement recorded un-der threat and duress, retracted by filing an affidavit and also by reporting to Commissioner about high-handedness of officers. Apart from said chit and statement, no evidence on record to corroborate clandestine removal. Benefit of doubt rightly extended to respondent - Sections 11A and 11AC of Central Excise Act, 1944 - Rule 4 of Central Excise Rules, 2002.

Circulars / Notifications

Notification No. 9 /2009, - Service Tax, Dated 03-03-2009

Drastic changes in procedure of Service Tax for SEZ developers and units in SEZ in supersession of Notification No. 04/ 2004, providing exemption to services consumed within the SEZ from the payment of service tax

Gist of the Notification:

1. Developer/Unit shall be required to get the list of services, as are required in relation to the authorised operations in the SEZ, approved from the Approval Committee (hereinafter referred to as the specified services).
2. Developer/Unit of SEZ shall utilise the specified services for authorised operations in the SEZ.
3. The exemption claimed by Developer/Unit shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the SEZ.
4. Service tax on the specified services must have been paid by the developer/ unit.
5. No CENVAT Credit has been availed nor is available.
6. Provider of service shall be liable to pay the service tax.

Developer/Unit shall claim the exemption by filing a claim for refund of service tax paid on specified services accompanied with prescribed documents.

Circulars / Notifications

Notification No. 8 /2009, - Service Tax, Dated 24-02-2009

Section 93 of The Finance Act, 1994 – Reduction of Rate of Service Tax on Taxable Services as Specified in Section 65(105)

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts all the taxable services specified in sub-section 105 of section 65 of the Finance Act from so much of service tax leviable there on under section 66 of the Finance Act, as is in excess of the rate of ten per cent of the value of taxable services.

[F. No. 354/210/2008-TRU(part)]

Circular No. 110/4/2009-ST.

F. No. 345/ 17 /2008-TRU dtd. 23rd February, 2009

Subject: Reference from Commissioner Nashik seeking clarification in respect of levy of service tax on Repair/ renovation/ widening of roads – Regarding.

Representations have been received by the Board pointing out divergent practices being followed by field formations with regard to levy of service tax on maintenance and repair of roads.

2. Commercial or industrial construction service [section 65(105) (zzq)] specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105) (zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion that while construction of road is not a taxable service, management, maintenance or repair of roads are in the nature of taxable services, attracting service tax.

3. The next issue requiring resolution is the types of activities that can be called as 'construction of road' as against the activities which should fall under the category of maintenance or repair of roads. In this regard the technical literature on the subject indicate that the activities can be categorized as follows,-

(A) Maintenance or repair activities:

I. Resurfacing

II. Renovation

III. Strengthening

IV. Relaying

V. Filling of potholes

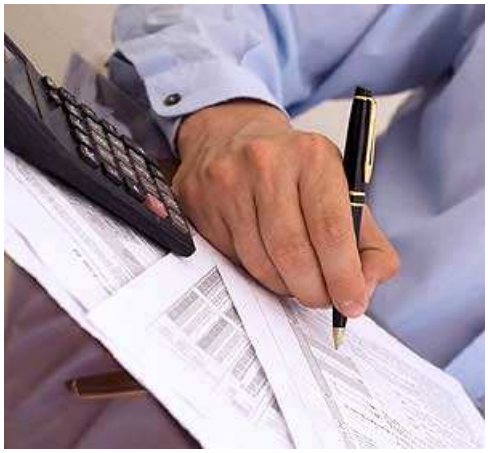
(B) Construction Activities:

I. Laying of a new road

II. Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)

III. Changing road surface (graveled road to metalled road/ metalled road to blacktopped/ blacktopped to concrete etc)

4. The cases may be decided/ revenue should be protected based on the above classification. Suitable Trade and Public notices may be issued for information of the trade and field formations.



OTHER LAWS

Judicial Pronouncements

Central Bank of India v. State of Kerala (Civil Appeal No. 95 of 2005) (SC)

Question of primacy of two Central Legislations i.e. DRT Act & Securitiesation Act over State Legislations i.e. Bombay Sales Tax Act & Kerala General Sales Tax Act

The DRT Act and Securitisation Act do not create first charge in favour of banks, financial institutions and other secured creditors and the provisions contained in section 38C of the Bombay Act and section 26B of the Kerala Act are not inconsistent with the provisions of the DRT Act & Securitisation Act so as to attract non obstante clauses contained in section 34(1) of the DRT Act or section 35 of the Securitisation Act.

In recovering debts or enforcing security interests, the State's right to sales tax dues, etc will have priority over claims of banks, financial institutions and secured creditors.

However, it clarified that the judgment would not preclude the banks from realising their dues by taking recourse to other proceedings as permitted under law.

FEMA

Notification No. FEMA.180/RB-2008, dtd. March 2, 2009

Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2008

Due Dates of key compliances pertaining to the month of March 2009:

5th Mar.	*Payment of Service Tax & Excise duty for February*
6th Mar.	*Payment of Excise duty paid electronically through internet banking*
7th Mar.	*TDS/TCS Payment for February*
10th Mar.	*Excise Return ER1 / ER2 /ER6*
15th Mar,	*PF Contribution for payment by SSI*
21st Mar.	*ESIC Payment for February*
31st Mar.	*Service Tax payment for Individual/HUF for the period Jan to March* *Excise/Service Tax payment for March* *Filing of belated pending returns*