



**The Malad  
Chamber of  
Tax  
Consultants**



**Price ₹ 5/-**

# MCTC Bulletin

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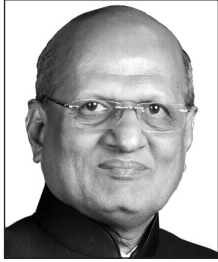
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## President's Communiqué

Dear Members,

Once again a new year is knocking at our doors. The year 2014 is going to end in a few days Let's welcome 2015 with New Resolutions.

In month of December, we held our Study Circle Meeting on "Issues in MVAT Audit" on 14th December, 2014. The Speaker CA MAYUR PAREKH had explained the "Intricate Issues arising out of Conducting MVAT Audit". The lecture was very interactive, information and clarification provided by our learned Speaker on subject matter was very much appreciated

by the participants and feedback was extremely positive.

I am very much thankful to our learned Speaker CA MAYUR PAREKH, who has accepted our invitation and provided his best to our members. I am sure that his lecture will help a lot to conduct our MVAT audit.

During 2014, our Chamber had conducted useful seminars and lectures and we promise to give the best in coming year 2015 too.

To begin with, in January, 2015 there will be Joint Workshop On "MVAT & Allied Laws" which will be organised jointly by professional bodies viz. STPAM, BCAS, CTC, AIFIP (WZ) & MCTC.

And during February, 2015 we are arranging a Seminar under the auspices of Shri Rajubhai J. Chokshi Oration Fund. The subject will be "Taxation issues in Redevelopment of Property—relating to Receipt of Consideration".

I request our members to participate in the events to make it memorable and successful.

Lastly I request all the members to please visit our website [www.mctc.in](http://www.mctc.in) and give their valuable suggestions for betterment and improvement of the same to any of the office bearers or can mail your suggestions to [maladchamber@gmail.com](mailto:maladchamber@gmail.com)

Thanking you & with heartwarming regards,

**Kishor Hapani**  
President

*Wishing you & your family – Merry Christmas & Best Wishes for the New Year.*

≈ TEAM MCTC ≈

For Query & submission of forms for Membership / Seminar please contact any of the following office bearers:

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## JUDICIAL JUDGMENTS

Compiled by CA. Dharmen Shah

### **CIT vs. Working Women's Forum (2014) 365 ITR 353 (Mad.) (HC)**

(A. Y. 2001-2002, 2002-2003, 2003-2004)

#### **Denial of exemption should be to the extent of the income violative of section 13(1)(d).**

The assessee-Trust provided employment to poor women, assisted weaker sections of society for personal development, maintained destitute homes and rehabilitated victims of national calamities.

The Trust had invested some amount in shares of a company. Section 13(1) (d) recognises investment only in specified assets; failure to invest would disentitle the assessee for exemption. Consequently, Assessing Officer denied the exemption under sections 11 & 12.

However, it was held that denial of exemption should be restricted to the extent of the income violative of section 13(1)(d).

### **DIT (E) vs. Gujarat State Council for Blood Transfusion (2014) 221 Taxman 126 (Guj.) (HC)**

#### **Grants received from State Government is not income.**

The assessee, an agency incorporated to regulate blood transfusion in the State of Gujarat. During the year, the assessee received grants from the State Government which was distributed by it to various blood banks in the State of Gujarat in the succeeding month of April, 2009.

During the course of the assessment proceeding, the A.O. noticed that assessee had claimed exemption under Explanation 2 to section 11(1) in return of income. The A.O. held that the assessee was not entitled to claim exemption as deemed application and added the amount of grants received to the assessee's income. The CIT(A) confirmed the action of the A.O.

ITAT allowed the appeal of the assessee. On appeal by the department, the High Court observed the fact that during the relevant year, the assessee received grant from the State Government on the last date of the relevant accounting year, i.e., 31-3-2009 and the grant was distributed to various blood banks in the State of Gujarat in the succeeding month of April, 2009 and the fact that the aforesaid amount was received by the assessee by way of grant from the State Government is not seriously disputed.

Accordingly, following its own decision in the case of CIT vs. Gujarat State Disaster Management Authority ITA No. 80 of 2010 it held that the amount received by the assessee by way of grant from the Government of Gujarat could not be said to be an income and dismissed the appeal of the department.

## DIRECT TAXES – Law Update

Compiled by CA Haresh P. Kenia

- **Assessment – Framing of scrutiny assessment in case of fish farmers involved in running Inland fresh water fish tanks. [Taxman 227 (ST.) 1]**

The CBDT *vide* Instruction No. 8/2014 dated 27-10-2014 issued the guidelines applicable to cases of fish farmers running Inland fresh water fish tanks and who are not maintaining books of account in the regular course of business as per the requirement of section 44AA(2) of the Income-tax Act. The CBDT has further clarified that the guidance is applicable to cases under scrutiny in the current financial year and subsequent years.

There is an issue as regards the quantification of income from activity of fish farming while conducting scrutiny assessment in the case of fish farmers carrying out business of running inland fresh water fish tanks and who do not maintain books of account.

Assessing Officer is required to assess the income from activity of fish farming on estimated basis in view of non-availability of books of account. The tax-payers are estimating their income on the basis of benchmarks prescribed in earlier circular of the board in F. No. 225/222/93/ITA. II dated 19-10-1993 which for the A.Y. 1993-94, on "per acre waterspread area" basis, prescribed a rate of ₹ 4,000/- as income from activity of fish culture in Andhra Pradesh. On the basis of this limit, the taxpayers claimed that their Income is computable after due consideration of the price index for the relevant year.

The CBDT observed that the approach in estimating the income on the basis parameter determined way back in the year 1993 by merely accounting for the inflation as suggested by the farmer association may not represent the current situation and business reality. In addition to this there are wide disparities in the figure of income so estimated as non-uniform yardsticks/benchmarks are being adopted by the different Assessing Officers resulting in the conflicting views of Assessing Officers leading to framing of subjective and high pitched assessments causing harassment and grievance to the taxpayers.

In view of this & other genuine difficulties faced by the taxpayer, the board is of the view that uniform and appropriate norms may be applied while computing income from fish culture on the basis of "per acre of water spread area". To ensure consistency in approach, a committee comprising of two Commissioners and two representatives of the fish farmers or fish farmers association may be constituted by the Pr. Chief Commissioner to determine reasonably the income that may be estimated for the financial year, in making such a determination, due consideration of various local factors and inputs from the concerned agency of the State Government may also be obtained. A suitable standard benchmark may also be adopted for estimating waterspread area as a percentage of total land area. While passing scrutiny assessments in case of fish farmers, Assessing Officers may apply the benchmarks as prescribed by the committee, to cases falling under their respective jurisdiction. In the scrutiny assessments, no further deduction under sections 30 to 38 of the Act shall be allowed to the taxpayer concerned as the income from activity of fish farming is being estimated on net basis after due consideration of allowable business expenses in such an estimation.

Further, section 133A of the Act may not be invoked indiscriminately for purpose of mere estimation of the income of fish farmers and may only be undertaken in those cases where the department has credible and verifiable information above taxes being evaded by the person engaged in business or profession of running inland fresh water fish tanks.

• **226 (ST) 51 – deduction of tax at source u/s. 194 LC – Income by way of interest from Indian company – long term bonds and rate of interest.**

The CBDT *vide* Instruction No. 15/2014 dated 17-10-2014 conveys the approval of the Central Government for the purpose of section 194LC in respect of the issue of long term bond including long term infrastructure bond by Indian companies which satisfies the following conditions.

- a. The bond issue is at any time on or after 1st day of October, 2014 but before the 1st day of July, 2017.
- b. The bond issue by the Indian company should comply with clause (d) of sub section (3) of section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. FEMA 3/2000-RB *viz.* Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, dated May 03, 2000, as amended from time to time, (hereafter referred to as "ECB regulations"), either under the automatic route or under the approval route.
- c. The bond issue should have a loan registration number issued by the Reserve Bank of India (RBI).
- d. The term "long term" means that the bond to be issued should have original maturity term of three years or more.

This clarification is issued by the CBDT with the approval of the Central Government in order to mitigate the compliance burden and hardships which may be faced after the amendment made u/s. 194LC by the Finance (No. 2) Act, 2014. w.e.f. 01-10-2014. Consequent to the amendment, the concessional rate of withholding tax has been extended to borrowing by way of any long term bonds not limited to a long term infrastructure bond, if the borrowing is made on or after 1st day of October, 2014. Further, the concluding date of the period of borrowings eligible for concession under section 194LC which was earlier 01-07-2015 has been extended to borrowings made before the 1st day of July, 2017.

The approval of the Central Government is further required in respect of long term bond issue and the rate of interest to be paid on such borrowings.

Considering this, the CBDT is of the view that there would be large number of bond issues to be undertaken by Indian companies providing a mechanism involving approval in each and every specific case would entail avoidable compliance burden on the borrower/issuer of the bond.

Further, the Central Government has also approved the interest rate for the purpose of section 194LC in respect of borrowing by way of issue of long term bond including long term infrastructure bond as any rate of interest which is within the all in cost ceilings specified by the RBI under ECB regulations as is applicable to the borrowings through a long term bond issue having regard to the tenure thereof.

In view of the above, any bond issue, which satisfies the above conditions, would be treated as approved by the Central Government for the purposes of section 194LC.

It is also clarified that consequent to the amendment to section 194 LC the approval of the Central Government contained in Circular No. 7/2012 in so far as they apply to borrowings by way of loan agreement, shall be valid for the borrowings made on or before 30/06/2017 instead of 30-06-2015 as mentioned in said circular.

- **Power to call for information by prescribed income tax authority (226 Taxman (ST) 14)**

The Central Board of Direct Taxes *vide* Notification No. 48/2014 dated 30-09-2014 gives Income-tax (Tenth Amendment) Rules 2014. It amends and inserts rule 12D and prescribes the authority being prescribed authority for the purpose of section 133C of the Income-tax Act.

- **Certificate of deduction at NIL rate or at lower rates from income other than dividends — amendment in 28AA and substitution of Form 13 – 226 Taxman (ST) 15**

The CBDT *vide* notification No. 46/2014 dated 24-09-2014 gives Income-tax (Ninth amendment) Rules, 2014. It amends Rule 28AA and substitutes the Form 13. It substitutes sub Rule No. (4) and sub-rule (5) providing that the certificate for no deduction of tax shall be valid only with regard to the person responsible for deducting the tax and named therein and such certificate is required to be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificates.

The certificate for deduction of tax at lower rates shall be issued to the person who made an application for issue of such certificates authorising him to receive income or sum after deduction of tax at lower rate.

It substitutes Form 13 being application by person for a certification u/s. 197 and / or 206C (9) of the Income-tax Act, 1961 for no deduction/collection of tax or deduction/collection of tax at a lower rate.

## Recent Judgments under Service Tax

*Compiled by CA Sunny Kachalia*

### 1. **Whether secondment of employees from overseas entity to its Indian entity would be liable to Service Tax under reverse charge**

**Facts:** Appellants had its employees deputed from overseas entity and there was a demand of Service-tax from the Service-tax authorities under the category of “Manpower Recruitment and Supply Agency service”. The counsel of the appellants referred the case of *M/s. Volkswagen India (Pvt.) Ltd.: 2014 (34) STR 135 (Tri.-Mum.)* while considering a similar contract between the two parties, one abroad and one in India, and it held that the liability of Service Tax is not attracted in the case of the receiver.

Authorities referred the Advance Ruling given in the case of Target Corporation India (P.) Ltd. [2012 (8) TMI 466 - Authority for Advance Rulings] wherein it was held that a sure test to find out whether there exists the relationship of employer and employee is to see whether the applicant has the right to terminate the employment of the seconded employees. The right to terminate the secondment is not the right to terminate the employment.

**Held:** In case of Advance Ruling, the employees of the principals seconded to the applicant continued to have their payroll processed by the principals but, the applicant was to reimburse the principals for those amounts and also pay the principal a service charged at 15 US \$ per employee per payroll per cycle for processing the payroll of the seconded employee. This shows that the appellant in that case was not paying salaries to the employees but the money was paid to the principal who seconded the employees, who processed the payroll and paid amount to the employees.

In the present case, the salary fixed for the employee is to be paid in both — India as well as in home country of the employee. What has to be paid in the home country of the employee is paid by the appellant to their principal who takes the responsibility of making such payments to the employee in his home country. There is no finding forthcoming anywhere from the records or from the findings that any fee or extra amount has been paid to the principal who has seconded the employee at all. Accordingly the principal laid in the case of Volkswagen India and Deloitte Support Services would apply and Service-tax is not applicable, and stay is granted for 80 days.

(*M/s. Intel Technology India Pvt. Ltd. Versus Commissioner Of Central Excise, Customs And Service Tax Bangalore-LTU 2014 (12) TMI 288 - CESTAT BANGALORE*)

**MCTC Regular features for due date under some Direct and Indirect Taxes falling in the month of January 2015**  
**Compiled by CA Manilal G. Simaria**

Due Date	Contents/ Nature of Compliances.
January 5	Service Tax monthly payment by companies, payment of Excise duty for December 2014 (other than sole prop. and partnership firm) Service Tax Quarterly payments (for Sole Prop & Partnership Firm) for Quarter ending December 2014)
January 5	Central Excise monthly payment for Dec. 2014. Central Excise Quarterly payment (For SSI) from October to December, 2014.
January 7	Payment of TDS/TCS submission of Form No. 15H, Form No. 15G with Income Tax Department for the month of December. 2014
January 10	Central Excise monthly Return Uploading for the month of December. 2014
January 10	Central Excise Quarterly Return for Small Scale Industries and items covered by notification No. 1/2011 Central Excise dated 01-03-2011 (for October to December 14)
January 15	TDS/TCS statements in form 24Q, 26Q, 27EQ, 27Q for Quarter ending December. 2014
January 15	E. P. F. payment for December. 2014
January 15	Central Excise Quarterly return for first & second stage dealers only for October to December 2014
January 15	Uploading of VAT Audit Report in Form No. 704 for Financial Year 2013-14
January 20	Payment of LBT for the month of December, 2014
January 21	ESIC payment for December, 2014
January 21	E-Payment of WTC/ TDS under MVAT act, 2002 for the month of December, 2014.
January 21	VAT & CST monthly/quarterly e-payment for the month/quarter ending on December, 2014. If paid in time 10 days allow for uploading. Newly registered Dealer has to make E-payment.(who are newly Registered during October to December 2014.)
January 25	Statement of Submission of VAT Audit Report to Department for F.Y. 2013-14.
January 30	Issue of TDS Certificate for Non salary/ TCS certificate for the Quarter ending on December 2014.
January 31	Filing of Luxury Tax monthly / quarterly returns for period ending on December,2014.
January 31	Issue of WTC TDS Certificate (Form no. 402 under MVAT Act, 2002) to the Deductee.
January 31	E-Filing of MVAT & CST monthly/ Quarterly return ( along with annexure of J1& J2) for the month/ quarter ending on December 2014 and also along with J1 and J2 annexure for Dealers who is newly register during October to December 2014.
January 31	Submission of CST declarations in form F for the month of October 2014.
January 31	Professional Tax Employees monthly return for Jan. 2014, Monthly return to be filled on or before the last day of the month to which the returns relates. Tax to be paid off on salary covered for immediately preceding the month to which the return relates.
January 31	Uploading of VAT Revised Returns for Financial year 2013-2014.

## FORTHCOMING EVENTS

1	Tentatively by mid January, there will be Joint Workshop “On MVAT & Allied Laws” which will be organized jointly by professional bodies Viz. STPAM, BCAS, CTC, AIFTP(West Zone) & MCTC.
2	Tentatively during 1st week of February 14, we are arranging a Seminar under the Auspicious of Shri Rajubhai J. Chokshi Oration Fund. The subject will be “Taxation issues in Redevelopment of Property–relating to Receipt of consideration”.

**Detailed Programme will be mailed in due course and will be available on our web site.**

*We request all members to take active part in various activities of our Chamber and help us to make every event very successful.*

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## Snaps of 2nd Study Circle



Speaker CA MAYUR SHAH,  
Addressing the Participants



Attentive Participants

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