



**The Malad  
Chamber of  
Tax  
Consultants**



**Price ₹ 5/-**

# MCTC Bulletin

**Duty • Determination • Dedication.....leads to Success**

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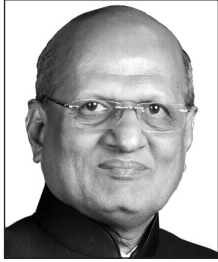
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**February, 2015**



## President's Communiqué

Dear Members,

Friends, I request everybody to block the diary for our Chamber jointly with Goregaon Sports Club has arranged a Public Meeting on Union Budget on 2nd March 2015, Monday evening at Goregaon Sports Club. The details of Public Meeting are already circulated in this Bulletin.

In the month of February everybody is very anxious about the Budget, as Union Budget always carries a lot of hype and expectations for every section of society. The Union Budget this time carries a lot of expectations from every section of society. The Union Budget is to be presented on 28th February, 2015

and keeping with the tradition of our Chamber, this year too within 48 to 72 hours of its presentation, we will be coming out with our **17th Edition of Publication of "Analytical Study of Direct & Indirect Tax Proposals" of Union Budget.**

On behalf of myself and our Chamber, let me thank our joint organiser of Public Meetings on Union Budget i.e. Goregaon Sports Club, its office bearers and management for extending whole hearted support to MCTC.

And let me inform you that workshop "**On MVAT & Allied Laws**" for the year 2014-15 Jointly with BCAS, CTC, STPAM & WIRC of ICAI which was postponed, is being scheduled to begin in the month of March, 2015. The details of Programme will be circulated in due course.

After completion of VAT Audit we as consultants were expecting some relaxed moments. But same is not possible in our case. Now we have to run for completing the income tax scrutiny, vat assessments, time barring returns and also to follow up other work that is to be completed on or before 31st March 2015. Though, the pressures of all these works are felt by us but those who succeed in long term have a willingness to never stop learning. Professionals who succeed in long term invest their time in the professional development. Realising this, to make your job easier, your Chamber is arranging the various Study Circles, Seminars and Other Programmes. Accordingly, all of you are requested to take advantage of same.

I request our members to participate in the events organised by your Chamber to make it memorable and successful.

Thanking you & with heartwarming regards,

**Kishor Hapani**

*President*

**"Learn to listen, opportunity sometimes knocks very softly."**

≈ TEAM MCTC ≈

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

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**Life Membership Fees ₹ 2,500 • Ordinary Membership Fees ₹ 1,000 p.a.**

## DIRECT TAXES – LAW UPDATE

*Compiled by CA. Haresh P. Kenia*

- **Percentage of Government grant for considering university, hospital etc., as financed by Government for the purpose of section 10(23C) [370 ITR (ST.) 1].**

The CBDT *vide* Notification No. SO3168(E) dated 12/12/2014 gives Income-Tax (13th Amendment) Rules, 2014. It amends Income-Tax Rules, 1962 and inserts Rule 2BBB. Rule 2BBB gives the percentage of Government grant for considering university, hospital etc. as substantially financed by the government for the purpose of section 10(23C) of the Income-Tax Act for the purpose of sub-clause (iiiab) and (iiiac). It provides that if the Government grant to such university and other educational institution, hospital and other institution exceeds 50% of the total receipts including any voluntary contribution of such institution during the relevant previous year, then it will be treated as financed by the Government.

- **Guidelines for notification of a semi-conductor water fabrication manufacturing unit as specified business u/s. 35AD [370 ITR (ST.) 2].**

The CBDT *vide* Notification No. SO3169(E) dated 12/12/2014 gives Income-Tax (14th Amendment) Rules, 2014. It amends Income-Tax Rules and inserts new rule 11-OB. The Rule 11-OB prescribed the guidelines for notification of a semi conductor water fabrication manufacturing unit as specified business u/s. 35AD. It provides for new Form 3CS being application for notification of a semi conductor water fabrication manufacturing unit as specified business u/s. 35AD.

- **CBDT Circular – u/s. 192 of the Income-tax Act [369 ITR (ST.) 9]**

The CBDT *vide* Circular No. 17 of 2014 dated 10/12/2014 deals with guidelines for the Income-Tax deduction from salaries u/s. 192 of the Income-Tax Act and contains the rate of deduction of Income-Tax from the payment of income chargeable under the head “Salaries” during the F.Y. 2014-15 and explains certain related provisions of the Act and Income-Tax Rules, 1962. One may refer to the above magazine for full text of the circular.

- **Form of application for obtaining an advance ruling [369 ITR (ST.) 2]**

The CBDT *vide* Notification No. SO3015(E) dated 20/11/2014 gives Income-Tax (12th Amendment) Rules, 2014. It amends Rule 44E of Income-Tax Rules which provides for form of application for obtaining an advance ruling. The newly amended rule provides for payment of prescribed fees for an application u/s. 245N(b) of the Income-Tax Act. It inserts new Form 34DA being form of application by resident applicant referred to section 245N(b)(iia) seeking advance ruling u/s. 245Q(1) of the Income Tax Act, 1961 in relation to a transaction undertaken or proposed to be undertaken by him.

- **Resident undertaking transaction of ₹ 100 Crore can apply before AAR to determine his tax liability [369 ITR (ST.) 7]**

The Central Government *vide* Notification No. SO3014(E) dated 20/11/2014 and in exercise of the power conferred u/s. 245N(b)(iia) of the Income-Tax Act, 1961, hereby specifies a resident, in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total which has been undertaken or proposed to be undertaken, being such class of person, as applicable for the purpose chapter XIX-B of the said Act.

- **Income-Tax Settlement Commission (ITSC) – CBDT clarification on Circular No. 3 of 2008 dated 12/03/2008 [369 ITR (ST.) 1]**

Chapter XIX-A of the Income-Tax Act, 1961, contains provisions relating to settlement of cases by the Income Tax Settlement Commission (ITSC). The provisions contained in the said Chapter were amended by the Finance Act, 2007 and a Revised Settlement Scheme was put in place. Explanatory Circular No. 3 of 2008,

dated 12th March, 2008 issued by the CBDT, *vide* Para 61 (comprising sub-paras 61.1 to 61.17) deals with the Revised Settlement Scheme.

**Para 61.2 of Circular No. 3 of 2008 reads**

“61.2 Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any income-tax authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant.”

It has been inadvertently stated in para 61.2 of Circular No. 3 of 2008 that the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant. This statement is not in consonance with the provisions contained in the Explanation to clause (b) of section 245A of the Income-Tax Act which, *inter alia*, provides that a proceeding for the assessment of any assessment year shall be deemed to have concluded on the date on which the assessment is made.

In view of the above, para 61.2 of Circular No. 3 of 2008 is replaced with the following with effect from the 1st day of June, 2007:

“61.2 Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any income-tax authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed on the date on which the assessment order is passed.”

## RECENT JUDGMENTS UNDER SERVICE TAX

*Compiled by CA Sunny Kachalia*

### 1. Whether credit can be claimed for the period prior to registration

**Facts in brief**

The Company availed CENVAT credit towards the invoices received prior to their service tax registration. Revenue contended that the Credit pertaining to the invoices received prior to service tax registration should be ineligible and hence, issued a show cause notice to demand the same along with interest from the Company.

With respect to the said allegation, the Company contended that the CENVAT Credit cannot be denied for the invoices received prior to service tax registration by relying on the ratio as laid down in the Karnataka High Court of MPortal India Wireless Solutions Pvt. Ltd. which has been followed in other cases.

A Tribunal judgment was cited by the Department which stated that the credit cannot be claimed for the period prior to registration.

**Held:**

There is no condition which stipulates obtaining registration for claiming credit. Further the issue is squarely covered by the High Court judgment of MPortal India Wireless Solutions Pvt. Ltd. and the same would prevail over the decision given by Tribunal.

Accordingly it is held that credit can be claimed for the period prior to registration.

*(M/s. J. P. Kenny Ltd. vs. CCE & CST, Delhi)*

## JUDICIAL JUDGMENTS

Compiled by CA. Dharmen Shah

**Mr. Rashmikant Kundalia vs. Union of India (Bombay High Court) Writ Petition No. 771 of 2014**

**Levy under Sec. 234E is constitutionally valid since it is a fee for regularizing the late filing of TDS Returns.**

The late submission of TDS Statements results in extra work burdened up on department which is otherwise not required if the TDS statements are furnished within prescribed due date. This is nothing but a privilege and a special service to the deductor for allowing him to file the TDS statements beyond the prescribed due date.

Thus, the fee u/s. 234E is levied for regularising the statements filed beyond prescribed due date and not a collection in the guise of tax.

**ANS Law Associates vs. Assistant Commissioner of Income-Tax. (ITAT Mumbai 'A' Bench) ITA No. 5181/M/2012**

**Additions made solely on basis of AIR Information are not sustainable**

The assessee, a partnership firm of advocates and solicitors was asked to reconcile professional fees shown as received as per information of AIR. The firm reconciled a major portion but was unable to reconcile fees received from one party clarifying that it had never received such fees. However, A.O. did not agree and made the addition for unreconciled amounts. In CIT(A), the assessee submitted bank statements, confirmed part amount being received along with confirmation from the said party in this respect. CIT(A) upheld the order of the A.O.

Tribunal held that assessee had received part amount for which no reference was there in AIR Information. Relying on decisions in case of *DCIT vs. Shree G. Selva Kumar* (ITA No. 868/Bang/2009 decided on 22.10.10) and *Aarti Ramn vs. DCIT* (ITA No. 245/Bang/2012 decided on 5.10.12) it held that additions made solely on the basis of AIR information are not sustainable in the eyes of law. If assessee has denied any receipt of income from a particular source, it is for A.O. to prove that assessee has received income. Accordingly, matter was restored to A.O.

## FORTHCOMING EVENTS

### BUDGET MEETING

*Organised By*  
**THE MALAD CHAMBER OF TAX CONSULTANTS**

*Jointly With*  
**GOREGAON SPORTS CLUB**

**ON 2nd MARCH, 2015, MONDAY - 6.00 PM TO 8.45 PM**

*Chief Guest*  
**Shri Anil Singh, Advocate**  
*Hon. Additional Solicitor General of India-Western Region*

SUBJECT	SPEAKERS
Budget Proposals on Direct Taxes	CA. Harish N. Motiwalla
Impact of Budget on Capital Market	CA. Manish R. Chokshi
Budget Proposals on Service Tax	Shri Bharat Raichandani, Advocate

**VENUE :** Goregaon Sports Club, Link Road, Malad (West), Mumbai-400064.

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

≈ TEAM MCTC ≈

# WALKING.....

Compiled by Ashwin Tanna

It is also known as ambulation, the main gait of locomotion. The word walk is derived from the old English 'wealcan', means to roll.

Walking is considered by far as the best aerobic exercise world over.

The average human walking speed is about 5 km / hr. It ranges from 4.5 km / hr till 20 km / hr. An average human child achieves an independent walking ability by 11 to 12 months of age.

Regular brisk walking (speed of 1 km per 10 mnts.) has several health benefits like:

1. Improvement in CONFIDENCE
2. Improvement in STAMINA and ENERGY
3. STRESS reduction
4. Decrease in the risk of CORONARY HEART DISEASE, STROKE, DIABETES MELLITUS, HYPERTENSION, BOWEL CANCER and OSTEOPOROSIS.
5. WEIGHT reduction and CONTROL.
6. Improving MEMORY SKILL, LEARNING ability, CONCENTRATION and abstract REASONING.
7. It improves life EXPECTANCY
8. Besides being good for the body, WALKING helps at psychological level. It reduces feeling of DEPRESSION and ANXIETY.

Sustained walking for a minimum period of 30 to 60 minutes FIVE DAYS a week with the correct posture is a universal EXERCISE recommended for all.

The U.S. research has postulated that walking decreases the overall mortality from all CAUSES by 39% BRISK walking for an hour utilises approx. 350 to 500 calories.

Brisk walking longer than 30 to 35 minutes Body fat is used more than CARBOHYDRATES for deriving energy, so helps in losing WEIGHT.

There are a variety of different kinds of walking—BRISK WALKING, RACE WALKING, HILL WALKING, TEAKKING and HIKING. Some people prefer to walk indoors on a treadmill and others may use a pedometer to count the number of steps. (usually 10,000 to 14,000 steps daily).

### When NOT TO WALK:

People suffering from fever, getting chest pain or breathlessness after walking should avoid walking till recovery.

### TALK TEST FOR WALKING

While walking speed should be moderately fast. Try talk test. If you can sing or talk with ease, then you are very slow. If you couldn't talk at all, then you are fast and if you can talk with difficulty, then your speed is desirable. While stopping also you should gradually decrease the speed and then stop. DO NOT STOP abruptly.



**STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT****Form IV (See Rule 8)****MCTC Bulletin**

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I, Kishor Vanjara hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date : 19th February 2015  
Place : Mumbai

**Kishor Vanjara**  
*Signature of the Publisher*

**Disclaimer :** Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily of the Chamber. For full details the readers are advised to refer to the relevant act, rule and relevant statutes.

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