



**The Malad
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Tax
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MCTC Bulletin

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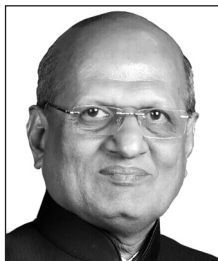
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Vol. 1, No. 6

For members & private circulation only

January, 2015



President's Communiqué

Dear Members,

We have entered in 2015 with all its glory. I convey my heartiest wishes to all members and families of our MCTC Members.

Maintaining our tradition as usual, we have submitted a Pre-Budget Memorandum to the Ministry of Finance for Union Budget 2015-16. The Memorandum has been prepared by our Past President and our editor Shri Kishorbhai Vanjara after incorporating valuable suggestions received from our members. I am thankful to Shri Kishorbhai Vanjara for extending his wholehearted support to MCTC at all the levels and

thank all the members who have sent us their valuable suggestions.

Further, the last date for filing of MVAT Audit Report is extended till 30th January, 2015. This has happened because of efforts and valuable time spent by President of STPAM & his team and others concerned. They certainly deserve a word of appreciation and congratulations from all the professionals. I, on behalf of MCTC, thank & congratulate President of STPAM Shri Sachin Gandhi & his Team and to all the concerned and I greatly appreciate Hon'ble Commissioner of Sales Tax and other concern departments who have responded to the request of our professional body.

By end of January, we will be done with our VAT audits and VAT returns, MCTC is back with following programmes

We are arranging a seminar under the auspices of Shri Rajubhai J. Chokshi Oration Fund on **Saturday, 21st February 2015**. The subject will be **"Taxation issues under Income-tax Act, 1961 relating to receipts from Developers in the process of Redevelopment of Immovable Property"**.

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

Thanking you & with heartwarming regards,

Kishor Hapani
President

Wishing you and your family a Happy 66th Republic Day of India.

Republic Day - The day the Constitution of India came into effect

On the celebration of our 66th Republic Day let us remember all our great leaders who have fought for independence of our country. It's because of them we are able to enjoy a free life today. Leaders have proved that we can win war without using guns and machines. By maintaining values and practising ethics, India has won a war over British. And let us also remember the martyrs and heroes who showed courage and bravery for country's sake without bothering about their own lives.

Let us salute them

~ 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.

JUDICIAL JUDGMENTS

Compiled by CA. Dharmen Shah

CIT vs. A. Suresh Rao (2014) 223 Taxman 228 (Karn.)(HC)

Period of holding for the purpose of calculating Capital Gains should be considered from the date of Original Site allotment

The sale deed was executed in favour of assessee on 27-2-2008 and he sold property on 29-5-2008. The assessee filed his return of income offering to tax Income from long term capital gains after claiming exemption under Sections 54EC and 54F. The Assessing Officer observed that the property was sold within four months from date of purchase and therefore considered the same as Short Term Capital Gains. Therefore, he disallowed the exemption claimed and raised the demand.

The CIT(A) upheld the order of the AO. On appeal, the Tribunal observed that the assessee acquired a right to hold the property when the allotment was made for first time on 25-8-1988. Due to some disputes, he could not be conveyed a site without encumbrance and with a clear title. As the sale had taken place beyond the three-year period, capital gains accrued on such transfer constituted a long term capital gain and therefore, the assessee was also entitled to exemption as claimed.

On an appeal by revenue, the HC held that the original site was allotted to the assessee prior to 36 months after payment of full value, merely because the said allotment was cancelled, and a new site was allotted, in law, would make no difference, admittedly when the original consideration paid was treated as a consideration for the subsequent allotment. Thus, capital gains arising on the sale of new property would be long-term, and assessee was entitled to the benefit of exemption under sections 54EC and 54F.

Dilip Annand Vazirani vs. ITO (Mum.)(Trib.); www.itatonline.org (ITA No. 3096/Mum/2012 dt. 14-11-2014.) (AY. 2001-2002)

Execution of a development agreement without transfer of complete control over property does not result in “transfer” of property.

The assessee had received advance amounts on the strength of MOU, much earlier to the execution of development agreement. The property was encumbered with tenancy rights and the release of tenancy right was completed in January, 2005. Also, the approval from Municipal Corporation also got delayed and the plans were revised subsequent to AY 2000-01. The surrounding circumstances show that the developer did not start the work of development in the year relevant to AY 2001-02. As per the terms of development agreement, the assessee has given only licence to enter into the property; thereby the possession was not given in the year relevant to AY 2001-02.

On appeal, the tribunal held that the transfer of property did not take place on the date of execution of development agreement and accordingly the tax authorities are not justified in assessing the capital gain in AY 2001-02. The capital gain was rightly assessed in the assessment year 2004-05.

DIRECT TAXES – Law Update

Compiled by CA. Haresh P. Kenia

- **Section 10A, Read With Section 10AA of the Income-Tax Act, 1961 – Free Trade Zone – Clarification on Allowability of Deduction under Sections 10A/10AA on Transfer of Technical Manpower in Case of Software Industry**

CIRCULAR NO. 14/2014 [F.NO.178/84/2012-ITA.I], DATED 8-10-2014

CBDT had issued Circular No. 12/2014 dated 18th July, 2014 to clarify that mere transfer or redeployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20 per cent of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

Representations have been received stating that the aforesaid limit of 20 per cent is inadequate and restrictive since it impacts the competitiveness of Indian Software Industry in global market in terms of quality of product and delivery timelines. Global competitiveness can be ensured only when highly skilled and experienced manpower is deployed for software development. Requests have, therefore, been made seeking enhancement

of the limit of 20% in line with the recommendation of Rangachary Committee, which was set up to review the taxation of IT Sector and Development Centres.

The matter has been re-examined by the Board. In supersession of the Circular No. 12/2014 dated 18th July, 2014, it has now been decided that the transfer or redeployment of technical manpower from existing unit(s) to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year does not exceed 50 per cent of the total technical manpower actually engaged in development of software or IT enabled products in the new unit.

Further, in the alternative, if the assessee (enterprise) is able to demonstrate that the net addition of the new technical manpower in all units of the assessee (enterprise) is at least equal to the number that represents 50 per cent of the total technical manpower of the new SEZ unit during such previous year, deduction under sections 10A/10AA would not be denied provided the other prescribed conditions are also satisfied.

For the sake of clarity, it is stated that the assessee will have a choice of complying with any one of the two alternatives given above. It is also clarified that this Circular shall be applicable only in the case of assessees engaged in the development of software or in providing IT Enabled Services in SEZ units eligible for deduction u/s. 10A or u/s. 10AA of the Act.

This Circular shall not apply to the assessments which have already been completed. Further, no appeal shall be filed by the Department in cases where the issue is decided by an appellate authority in consonance with this Circular.

• **Income-Tax (Twelfth Amendment) Rules, 2014 – Amendment in Rule 44E And Insertion of Form No.34DA**

NOTIFICATION 74/2014 [F.NO.142/6/2014-TPL]/SO 3015(E), dated 28-11-2014

In exercise of the powers conferred by section 245Q read with section 295 of the Income-tax Act, 1961 (43 of 1961), the CBDT hereby makes the following rules further to amend the Income-tax Rules 1962, namely:—

1. (1) These rules may be called the Income-tax (12th Amendment) Rules, 2014.
- (2) They shall come into force on the date of its publication in the Official Gazette.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), in rule 44E,—
 - (A) in the marginal heading, for the words "Form of application for obtaining an advance ruling" the words "Application for obtaining an advance ruling" shall be substituted;
 - (B) for sub-rule (1), the following sub-rule shall be substituted, namely:—

"(1) An application for obtaining an advance ruling under sub-section (1) of section 245Q shall be made in quadruplicate,—

 - (a) in Form No. 34C in respect of a non-resident applicant referred to in sub-clause (i) of clause (a) of section 245N;
 - (b) in Form No. 34D in respect of a resident applicant referred to in sub-clause (ii) of clause (a) of section 245N seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident; and
 - (c) in Form No. 34DA in respect of a resident applicant referred to in sub-clause (iia) of clause (a) of section 245N falling within any such class or category of person as notified by the Central Government in exercise of the powers conferred by sub-clause (iia) of clause (b) of that section;
 - (d) in Form No. 34E in respect of a resident falling within any such class or category of person as notified by the Central Government in exercise of the powers conferred by sub-clause (iii) of clause (b) of section 245N; and
 - (e) in Form No. 34EA, in respect of an applicant referred to in sub-clause (iia) of clause (b) of section 245N of the Act,

and shall be verified in the manner indicated therein."
 - (C) after sub-rule (2), the following sub-rules shall be inserted, namely:
 - "3. Every application in the Form as applicable shall be accompanied by the proof of payment of fees as specified in sub-rule (4).
 4. The fees payable along with application for advance ruling shall be in accordance with the following table:

Table

Category of applicant	Category of case	Fee
(1)	(2)	(3)
An applicant referred to in sub-clauses (i) or (ii) or (iia) of clause (b) of section 245N	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed ₹ 100 crore.	₹ 2 lakhs
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds ₹ 100 crore but does not exceed ₹ 300 crore.	₹ 5 lacs
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds ₹ 300 crore.	₹ 10 lacs
Any other applicant	In all cases	₹ 10000

3. In the said rules, in Appendix-II, after FORM 34D, the following FORM 34DA shall be inserted, namely:—

FORM NO. 34DA
[See rule 44E]

Form of application by a resident applicant referred to in section 245N(b)(iia) seeking advance ruling under section 245Q(1) of the Income-tax Act, 1961 in relation to a transaction undertaken or proposed to be undertaken by him

- **Section 92CC of the Income-Tax Act, 1961 – Advance Pricing Agreement (APA) – Signing of First Bilateral APA by CBDT**

PRESS RELEASE, DATED 19-12-2014

On 19-12-2014, Central Board of Direct Taxes has signed a bilateral Advance Pricing Agreement (APA) with Japanese Company. This is India's first bilateral APA. The APA is for a period of five years. The APA has been finalized in a period of about one and a half years, which is shorter than time normally taken in finalizing APAs internationally.

The APA scheme has been introduced to bring about certainty and uniformity in transfer pricing matters of multi-national companies and reducing litigation. APAs will improve investment climate in the country. In the context of growing economic ties between Japan and India, especially after Hon'ble Prime Minister's visit to Japan, this APA is expected to generate positive sentiments among Japanese investors in India.

Recent Judgments under Service Tax

Compiled by CA Sunny Kachalia

1. Whether services provided by club to its members liable to Service Tax

Facts: Petitioner is a society registered under the Gujarat Co-operative Societies Act and is engaged in the activity of maintaining a common effluent treatment plant at Vatva Industrial Estate, Ahmedabad. Petitioner provides the facility of common effluent treatment to its members through the medium of cooperative society. Such society was created solely with a purpose of providing effluent treatment facility commonly to its members who were the industrial establishments located at Vatva. Any service provided by them, therefore, could not be made taxable since it was merely a service provided by the members to themselves. There was no element of any commercial service provided by the service provider to its consumers. Accordingly constitutional validity of section 65(25a) of Finance Act, 1994 which defines 'club or association service' was challenged. Show Cause notice was issued for demand of service tax on services rendered by petitioner and this basis the Commissioner confirmed the demand of service tax.

Petitioner submitted that provision of Section 65(25a) of Finance Act, 1994, insofar as it pertains to the service provided by a society to its members, came to be declared as unconstitutional by a Division Bench of this Court in the case of *Sports Club of Gujarat Ltd. v. Union of India and Others* reported in [2013] 64 VST 191.

Held: Basis the submissions made by the Petitioner, Court held that levy of service tax *vide* section 65(105)(zzze) and Section 66 of the Finance Act, 1994 as amended is *ultra vires* the provisions insofar they levy service tax on services provided by petitioner club to its members.

(Green Environment Services Cooperative Society Ltd. & 1 vs. Union of India & 1 2014 (12) TMI 1097 - Gujarat High Court)

Due date under some Direct and Indirect Tax falling in the month of February & March, 2015

Compiled by CA. Manilal G. Simaria

Feb	Mar	Contents/ Nature of Compliances
—	3	E-Filing of MVAT & CST monthly return (along with annexures of J1 & J2) for the month ending on January 2015.
05	05	Service Tax monthly payment (other than sole prop. and partnership firm) For the month ending Jan. & Feb., 2015 respectively.
05	05	Central Excise monthly payment for Jan. & Feb., 2015 respectively.
—	31	For March, 2015 Central Excise monthly payment is to be made.
07	07	Payment of TDS / TCS submission of Form No. 15H, Form No. 15G with Income Tax Department for the month of Jan. & Feb., 2015 respectively.
10	10	Central Excise monthly Return uploading for the months of Jan. & Feb., 2015 respectively.
15	15	E. P. F. payment for Jan. & Feb., 2015 respectively.
15	—	VAT Revised Return for F.Y. 2013-14 to upload, to comply with remark of VAT Auditor in Form 704. (AS within 30 days from the date of filling VAT Audit Form. However, in view of extended due date for filling VAT Audit Form; one has to verify with the Department for last date of filling Revised Return.)
—	15	Advance Tax for A. Y. 2015-16. Companies 4th instalment & others 3rd installment.
10	—	Physical Submission of MVAT Audit Report to Department (Uploading of VAT Audit Report in Form No. 704 for Financial Year 2013-14 is extended up to 30-1-2015)
20	20	Payment of LBT for the month of Jan & Feb, 2015 respectively.
21	21	ESIC payment for Jan. & Feb., 2015 respectively.
21	21	E-Payment of VAT/WCT/ TDS under MVAT Act, 2002 for the month of Jan. & Feb., 2015 respectively.
21	21	VAT & CST monthly e-payment for the month ending on Jan. & Feb., 2015 respectively. If paid in time 10 days allow for uploading.
28	31	Filing of Luxury Tax monthly Returns for period ending on Jan. & Feb., 2015 respectively.
28	31	Issue of WCT/ TDS Certificate (Form no. 402 under MVAT Act, 2002) to the Deductee.
—	31	E-filing MVAT & CST monthly return (along with J1 & J2 for the month of Feb. 2015).
28	31	Submission of CST declarations in form F for the month of Nov. and Dec. 2014.
28	31	Professional Tax Employees monthly return for Feb. & Mar., 2015 respectively. Monthly return to be filed 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. Professional Tax (employees) payment for salary paid in Feb. 2015 is due on 28-2-2015.
—	31	Professional Tax (employees) payment for salary paid in March, 2015.
28	—	Filing of budget for F.Y. 2015-16 for Charitable Trust with Charity Commissioner.
—	31	Advance Tax final payment as regard to shortfall for A.Y. 2015-16.
—	31	Last Date for Filing belated Income Tax / Wealth Tax Return for A.Y. 2013-14.
—	31	Filing of various CST declarations in Form C/H/E-I/E-II for the quarter ending Dec., 2014
—	31	PT (Employees) yearly payment & Return by employer for salary paid from April 2014 to March 2015 for those whose yearly tax liability is less than ₹ 50,000/-
—	31	All service tax monthly and Quarterly payment for month/ quarter ending on March, 2015.
—	31	All Central Excise monthly payment for March 2015.
—	31	Filing of late Return of Income-tax for A.Y. 2014-15 to avoid penalty u/s 271 F.

FORTHCOMING EVENTS

1	On 21st February, 2015 we have arranged a Seminar under the auspices of Shri Rajubhai J. Chokshi Oration Fund. The subject will be “Taxation issues under Income-Tax Act, 1961 relating to receipts from Developer in Redevelopment Process of Immovable Property” . Please refer Enrolment Form printed in this Bulletin.
2	Let me inform you that due to some unavoidable circumstances Joint Work shop “On MVAT & Allied Laws” scheduled in January '15 is postponed and tentatively same will be organized in February, 2015.

Detailed Programme will be mailed in due course and will be available on our website.

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 ≈

ENROLMENT FORM	
HALF DAY SEMINAR UNDER THE AUSPICES OF SHRI RAJUBHAI J. CHOKSHI ORATION FUND	
HON. CHIEF GUEST : SHRI V. H. PATIL, ADVOCATE	
SUBJECT	“Taxation issues under Income-tax Act, 1961 relating to receipts from Developer in Redevelopment Process of Immovable Property”.
SPEAKER	SHRI VIPUL JOSHI, ADVOCATE
Day & Date	Saturday, 21st February, 2015
Time	09.00 A.M. to 01.30 P.M.
Venue	Conference Hall, Gate No. 5, N. L. High School, S. V. Road, Malad (West), Mumbai 400064.
Enrollment	₹ 300/- (Incl. Study Material & Refreshments)
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MEMBERS CAN ALSO DOWNLOAD FORM FROM: www.mctc.in

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.

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Tel. No. 022-2880 3123.

• **Editor : Shri Kishor Vanjara**

Posted at Malad ND (W) Post Office, Mumbai 400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st January, 2015

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