



**The Malad
Chamber of
Tax
Consultants**

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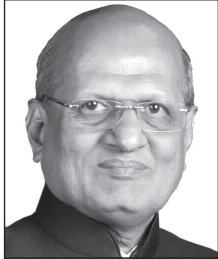
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President's Communiqué

Dear Members,

As you all are aware that first full-fledged budget of the new Government which has a clear mandate was presented by our Hon. Finance Minister on 28th February 2015. Accordingly the hopes were high. But it has received mixed bag of reaction from different sections of the society.

The amendments which the Finance Bill makes to the tax laws every year are far reaching and it is a must for any tax professional to study the amendments and its impact in a thorough manner.

With a view to have analysis of the Direct & Indirect Tax provisions of the Finance Bill, 2015, on 2nd March we had arranged a Public Meeting on Tax Proposals on Direct Tax and Indirect Tax in Union Budget, 2015.

This was our 24th consecutive Public Meeting presided by **Chief Guest Shri Anil Singh - Advocate**, Hon. Additional Solicitor General of India (Western Region) and learned speakers were **CA. Harish Motiwalla, CA. Manish Chokshi and Shri Bharat Raichandani - Advocate**.

I am very thankful to Chief Guest and all the Speakers of Budget Meeting for accepting our invitation and sharing their valuable views on Proposals of Union Budget, 2015.

Keeping the tradition of our Chamber, this year also we had come out with our Publication on Union Budget titled "Direct and Indirect Tax Proposals – An Analytical Study" being our 17th Year of Publication that too in a very short time.

My compliments and thanks to untiring efforts of all Editors, Compilers, Chairman, Convenors, Members of Budget Publications and Public Meeting Committee, Managing Committee Members and all the well wishers, advertisers and printer for helping us to bring out this publication.

My special thanks to all past presidents of our Chamber for their valuable guidance in conducting the Budget Meeting and helping us in making it a grand success.

During the month of February 2015, we had a seminar under the Auspices of Shri Rajubhai J. Chokshi Oration Fund. The learned speakers **Shri Vipul Joshi, Advocate and CA Sunil Gabhawalla** have provided their best to our members on the subject "Taxation issues under Direct Tax & Service Tax relating to receipts from developers in redevelopment process of Immovable Property". The seminar was very interactive. I am very much thankful to both the speakers who have accepted our invitation and for sharing their expertise and insight knowledge of subject matter with us.

We are on verge of completion of Financial Year 2014-15. New Financial Year is around the corner and it is coming with new challenges for us and I hope that all Members are ready and equipped to cope with the changes.

With warm regards,

Kishor Hapani
President

Wish you all Happy Gudi Padwa & Happy Financial Year ending.

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

❑ **INCOME-TAX (FIRST AMENDMENT) RULES, 2015 – INSERTION OF RULE 12CA AND FORM NOS. 64A AND 64B NOTIFICATION NO. 3/2015 [F.NO. 142/10/2014-TPL]/SO 180(E), DATED 19-1-2015**

In exercise of the powers conferred by section 295 read with sub-section (4) of section 115 UA of the Income-tax Act, 1961, CBDT has inserted Rule 12CA as “**Statement under sub-section (4) of section 115UA**” The Rule provides that the statement of income distributed by a business trust to its unit holder shall be furnished to the Principal Commissioner or the Commissioner of Income-tax within whose jurisdiction the principal office of the business trust is situated, by the 30th November of the financial year following the previous year during which such income is distributed, provided that the statement of income distributed shall also be furnished to the unit holder by the 30th June of the financial year following the previous year during which the income is distributed. The statement of income distributed shall be furnished under sub-section (4) of section 115UA by the business trust to:-

- (i) The Principal Commissioner or the Commissioner of Income-tax referred to in sub-rule (1), in Form No. 64A, duly verified by an accountant in the manner indicated therein and shall be furnished electronically under digital signature.
- (ii) The unit holder in Form No. 64B, duly verified by the person distributing the income on behalf of the business trust in the manner indicated therein.

The Director General of Income-tax (Systems) shall specify the procedure for filing of Form No. 64A and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements so furnished.

Form No 64A has been inserted as Statement of income distributed by a business trust to be furnished under section 115UA and Form No. 64B has been inserted as Statement of income distributed by a business trust to be provided to the unit holder under section 115UA.

❑ **SECTION 92C OF THE INCOME-TAX ACT, 1961 – TRANSFER PRICING – COMPUTATION OF ARM’S LENGTH PRICE – ACCEPTANCE OF ORDER OF HIGH COURT OF BOMBAY IN CASE OF VODAFONE INDIA SERVICES PVT. LTD. [2014] 50 TAXMANN.COM 300 (BOMBAY)**

INSTRUCTION NO. 2/2015 [F.NO.500/15/2014-APA-I], DATED 29-1-2015

In reference to the above cited subject, the Honourable High Court of Bombay in the case of Vodafone India Services Pvt. Ltd. for A.Y. 2009-10 (WP No. 871/2014), has held, *inter alia*, that the premium on share issue was on account of a capital account transaction and does not give rise to income and, hence, not liable to transfer pricing adjustment. It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that the *ratio decidendi* of the judgment must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPs and CsIT (Appeals).

❑ **SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT – AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES – SOUTH AFRICA – AMENDMENT IN NOTIFICATION NO. GSR 198(E), DATED 21-4-1998**

NOTIFICATION NO.10/2015-FT&TR-II [F.NO.500/144/2005-FTD-II], DATED 2-2-2015

The Protocol amending the Agreement between the Government of the Republic of India and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in Pretoria on the 26th day of July, 2013. The date of entry into force of the said protocol is the 26th day of November 2014, being thirty days after the date of receipt of later of notifications of completion of the procedures required by the respective laws for bringing the Protocol into force, in accordance with Article II of the said Protocol. Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax, Act 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Protocol shall be given effect to in the Union of India with effect from the 26th day of November 2014.

❑ **INCOME-TAX (SECOND AMENDMENT) RULES, 2015 – AMENDMENT IN RULES 10D, 10TA AND INSERTION OF RULES 10TH, 10THA, 10THB, 10THC, 10THD AND FORM 3CEFB**

NOTIFICATION NO. 11/2015 [F.NO.142/7/2014-TPL]/SO 350(E), DATED 4-2-2015

The CBDT has by aforesaid amendments inserted the Safe Harbour Rules for Specified Domestic Transactions. Form No 3CEFB has been inserted as prescribed form for making “Application for Opting for Safe Harbour in respect of Specified Domestic Transactions”.

❑ **SECTION 234A OF THE INCOME-TAX ACT, 1961 – INTEREST, CHARGEABLE AS - CHARGEABILITY OF INTEREST UNDER SECTION 264A ON SELF-ASSESSMENT TAX PAID BEFORE DUE DATE OF FILING OF RETURN OF INCOME**

CIRCULAR NO. 2/2015 [F.NO.385/03/2015-IT(B)], DATED 10-2-2015

It has been held by the Hon'ble Supreme Court in the case of *CIT vs. Prannoy Roy, 309 ITR 231 (2009)* that the interest under section 234A of the Act on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the income-tax return for the relevant assessment year. Accordingly, the present practice of charging interest under section 234A of the Act on self-assessment tax paid before the due date of filing return was reviewed by CBDT. The Board has decided that no interest under section 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing of return of income.

- **SECTION 40(a)(i) OF THE INCOME-TAX ACT, 1961 – BUSINESS DISALLOWANCE - INTEREST, ETC., PAID TO A NON-RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE - CLARIFICATION ON AMOUNTS NOT DEDUCTIBLE UNDER SECTION 40(a)(i)**

CIRCULAR NO. 3/2015 [F.NO.225/201/2014-ITA.II], DATED 12-2-2015

The CBDT has clarified that for the purpose of making disallowance of 'other sum chargeable' under section 40(a)(i) of the Act, the appropriate portion of the sum which is chargeable to tax under the Act shall form the basis of such disallowance and shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of sub-section (1) of section 195 of the Act as per Instruction No. 2/2014, dated 26-2-2014 of CBDT. Further, where determination of 'other sum chargeable' has been made under sub-sections (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i) of the Act.

- **UNION BUDGET 2015**

Honourable Finance Minister, Shri Arun Jaitley, presented the Union Budget 2015 on 28th February, 2015. The complete details are available at the website: indiabudget.nic.in/budget.asp



RECENT JUDGMENTS UNDER SERVICE TAX

Compiled by CA Sunny Kachalia

1. Whether credit of outdoor catering services admissible

Facts in brief

Assessee availed CENVAT credit on outdoor catering services provided in the factory premises to its employees and the same was objected by the Department stating that outdoor catering services do not fall within the ambit of definition 'input service', specified under Rule 2(l) of CENVAT Credit Rules, 2004. The Department was of the view that catering/canteen services were neither used in nor in relation to the manufacture or clearance of neither final product nor it could be said to be an activity relating to business and accordingly was disallowed. The Adjudicating Authority supported the view of the Department and disallowed the CENVAT credit on outdoor catering services.

Aggrieved by the Order, assessee pursued the matter before Commissioner (Appeals), who disallowed all the benefits of CENVAT credit, but allowed the benefit of CENVAT credit in respect of outdoor catering service only. As against the said order of Commissioner (Appeals), the Department appealed before CESTAT.

CESTAT relied on the decision of *Commissioner of Central Excise, Mumbai vs. GTC Industries Ltd.* reported in 2008 (12) STR 468 (Tri.-LB) and stated that CENVAT credit is admissible on 'outdoor catering service' as the same is used in relation to business.

Being aggrieved by the order of CESTAT, Department filed appeal with the High Court.

Held

High Court relied on the decisions of *CCE vs. Ultratech Cement Ltd.* reported in 2010 -TIOL - 745 - HC- MUM – ST and *CCE vs. GTC Industries Ltd. 2008 (12) STR 468* and stating the issue in the present matter is covered under those cases. The definition of input service is exhaustive and the term 'activities relating to business' is wide enough to cover any activity relating to business as input service. As assessee is carrying on the business of manufacturing cement by employing more than 250 workers is mandatorily required under the provisions of the Factories Act, 1948 to provide canteen facilities to the workers. Failure to do so entails penal consequences under the Factories Act, 1948. To comply with the above statutory provision, the assessee had engaged the services of an outdoor caterer. Accordingly use of the services of an outdoor caterer has nexus or integral connection with the business of manufacturing the final product. It was further held that in order to allow the claim of credit, the cost should be paid by the manufacturer and not the workers.

Hence the Order of Tribunal was upheld stating the CENVAT credit on outdoor catering services is admissible.

(Commissioner of Central Excise vs. M/s. Amrutjan Ltd. 2015 (3) TMI 348 - MADRAS HIGH COURT)

JUDICIAL JUDGMENTS

Compiled by CA. Dharmen Shah

Fardeen Khan vs. Assistant Commissioner of Income Tax

ITAT Mumbai 'F' Bench - ITA No. 1588/MUM/2013 and 1589/MUM/2013 dated 25-2-2015 – Assessment Year 2008-09

□ **Facts**

The assessee had entered into property development agreement with M/s. Godrej Properties Ltd. (GPL) in April 2007 and entered into irrevocable power of attorney giving all powers of obtaining permissions, commencement of construction, construction of all infrastructure, levelling of property to construct and sell villas. The A.O. stated that assessee had not offered capital gains on above transfer of land to GPL and was further asked to explain why above transaction should not be treated as transfer u/s. 2(47).

The assessee made written submission stating that amount received on entering into development agreement represents deposit amount. GPL has provided no assurance as to entitlement to full amount nor provided any definite time of payment of money. Further there is no legal right of recovery if this project does not take off. Further, property was treated as stock-in-trade from April 2007 by the assessee with an intention to develop the property. The agreement entered was in nature of MOU and was void *ab initio* neither was it registered u/s. 17(1A) of Indian Registration Act, 1908. Thus there was no transfer of any immovable property for purpose of Sec. 53A of Transfer of Property Act, 1882. Further, it was stated that Sec. 2(47) applies for determination of capital gains whereas in the present case transaction was in nature of stock-in-trade and hence provisions are not applicable.

□ **Held**

The land ceased to be a capital asset from the date when assessee filed application before the Bangalore Development Authority for conversion of land from 'agriculture' to non-agriculture. The intent of the assessee to hold the land as 'stock-in-trade' is further established by the fact that in the records of Revenue Department land was registered as 'N.A. Land' without which no residential project could be carried thereon. The approval of plans to construct residential villas by BDA further proves the intention of the appellants to treat the land as commercial asset. Thus various steps taken by the assessee are very much part of business activities involved in real estate development.

Amendment made in section 53A in 2001 is also relevant wherein an additional condition for registration of the written agreement was introduced as a result of which if the agreement between transferor and transferee is not registered, the transferor can dispossess the transferee from the property. Simultaneously, a consequential amendment was also made in The Registration Act, 1908 to provide that unless the documents containing contracts to transfer any immovable property for the purpose of section 53A of the TOPA is registered, it shall not have effect for the purposes of section 53A of the TOPA. A perusal of the section reveals that registration of document is must for applicability of section 53A of TOPA which entitles the transferee to remain in possession of the property.

In the present case, Development Agreement was executed on stamp paper of ₹ 100/- and the same was not registered, hence, provisions of section 2(47)(v) of the Act are not applicable since the conditions stipulated in section 53A of TOPA are not fulfilled.

**MCTC REGULAR FEATURES FOR DUE DATE UNDER SOME DIRECT AND INDIRECT TAXES FALLING
IN THE MONTH OF APRIL, MAY & JUNE, 2015.**

COMPILED BY CA MANILAL G. SIMARIA

DUE DATE IN			Contents/ Nature of Compliances
APRIL	MAY	JUNE	
—	05	05	Service Tax monthly payment (other than sole prop. and partnership firm) by companies for the month ending April, May-2015 respectively.
—	05	05	All Central Excise Monthly payment for April & May, 2015 respectively.
07	07	07	Payment of TDS / TCS submission of Form No. 15H, Form no. 15G with Income Tax Department for the month of March, April, May 2015 respectively.
10	10	10	Central Excise Monthly Return Uploading for the month of March, April & May 2015 respectively.
—	10	—	VAT & CST uploading of half yearly return for half year ending on 31st March, 2015.
10	—	—	Central Excise quarterly return for (Small Scale Industries and items covered by Notification No. 1/2011 C.E. dated 01/03/2011) for January to March,2015.
15	15	15	E. P. F. payment for March, April, May, 2015 respectively.
—	—	15	Advance Tax for A. Y. 2016-17. For Companies first installment.
15	—	—	Filing of annual LBT Returns in Form E II for year ending on 31.3.2015.
15	—	—	Central Excise quarterly return (for 1st stage and 2nd stage dealers) only for January to March, 2015.
—	15	—	TDS/TCS Statement in Form 24Q, 26Q, 27EQ, 27Q for quarter ending on 31st March, 2015.
20	20	20	Payment of LBT for the month of March, April & May, 2015 respectively.
21	21	21	ESIC payment for March, April & May, 2015 respectively.
21	21	21	VAT, CST & TDS monthly E-payment for the month ending on March, April & May, 2015 respectively. If paid in time 10 days allow for uploading.
21	—	—	MVAT/CST quarterly payment for Jan to March, 2015.
25	—	—	Service tax return for half year ending March,2015 for all Assessee.
—	—	30	VAT & CST uploading of monthly/quarterly/half yearly return for month/quarter/ /half year ending on march alongwith Regular Return Annexure and Consolidated Annual Annexure for those who are not liable for Vat Audit for financial year 2014-15 and those who are covered under composition scheme other than works contract composition scheme.
30	—	—	Uploading VAT/TDS return for the year 2014-15.
—	—	30	PT Enrolment Payment by all enrolment holders (Corporate - Non Corporate holders) for Financial year 2015-16.
—	—	30	Filling of various CST declarations in Form C/H/E-I/E-II for the quarter ending March, 2015
—	—	30	VAT and TDS yearly return uploading in Form 424 for financial year 2013-14.
30	—	—	TDS payment for the month of March, 2015.
30	—	—	VAT & CST Half yearly E-payment for 31st March ending.
30	—	—	Central Excise annual return (ER 5 and ER 7) for financial year 2014-2015.
—	30	—	Issue of TDS Certificate (Non Salary)/TCS Certificate for the quarter ending on 31st march,2015.
30	31	30	E-Filing of MVAT & CST monthly return (along with regular annexure) for the month ending on March, April, May-2015.(To be uploaded within 10 days of its payment if paid in time.)
30	31	30	Professional Tax Employees monthly return for March, April & May, 2015 respectively. 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.
30	31	30	Filing of Luxury Tax monthly Returns for period ending on March, April & May, 2015 respectively.
30	31	30	Submission of CST declarations in Form F for the month of Jan. Feb & March, 2014.
30	31	30	Professional Tax (employees) payment for salary paid in April, May & June, 2015 respectively.
30	31	30	VAT & CST uploading of montly return for month ending March, April & May alongwith Regular Return Annexures.
—	31	—	Limited Liability Partnership (LLP) to file Form No. 11, annual return with ROC for Financial Year 2014-15.
—	31	—	Issue of salary certificate in Form No. 16 for financial year 2014-15.

BUDGET MEETING



CA Yatin Rangwala – Chairman of Budget Committee addressing at Meeting. Seating L /R – Speaker CA Manish Chokshi, Speaker CA Harish Motiwalla, President Kishor Hapani, Chief Guest Adv. Anil Singh – Hon. Additional Solicitor General of India – Western Region, Speaker Adv. Bharat Raichandani & Convener CA Swapanil Modi.



Our Past President CA. Kishor Vanjara offering Memento & flower bouquet to Chief Guest Shri Anil Singh, Advocate (Hon. Additional Solicitor General of India Western Region)



Chief Guest Shri. Anil Singh, Advocate (Hon. Additional Solicitor General of India Western Region) addressing the participants. Sitting L/R Chairman CA. Yatin Rangwala, Speaker CA. Manish Chokshi, Speaker CA. Harish Motiwalla, President Kishor Hapani, Speaker Bharat Raichandani & Convener CA. Swapanil Modi.



President of MCTC offering flower bouquet to Speaker CA. Harish Motiwalla



Speaker CA. Harish Motiwalla addressing the participants



Speaker CA. Manish Chokshi addressing the participants



Speaker Bharat Raichandani addressing the participants

BUDGET MEETING



Speakers, Past Presidents, Committee Members & Compilers at Budget Meeting.



From L to R – S/s. Swapanil Modi – Convener, Manish Chokshi – Speaker, Yatin Rangwala – Chairman, Harish Motiwala – Speaker, Hon. Anil Singh – Chief Guest, Bharat Raichandani – Speaker & Kishor Hapani – President at Budget Meeting.



Our Past President Shri Janakbhai Rawal felicitating Shri Sachin Gandhi – President of STPAM.



Attentive participants



Attentive participants

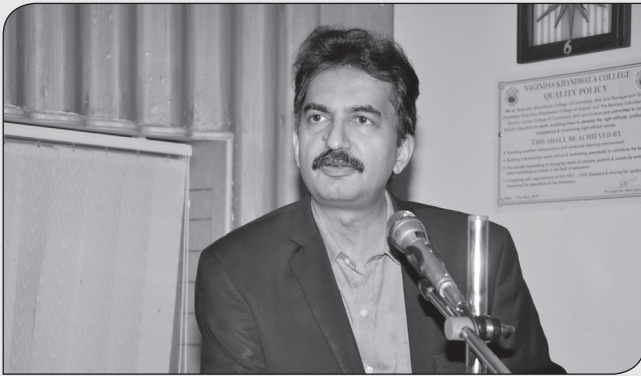
SHRI R. J. CHOKSHI SEMINAR



CA. Manish Chokshi offering Memento & bouquet to Speaker Shri Vipul Joshi Advocate



CA. Yatin Rangwala offering Memento & bouquet to Speaker CA. Sunil Gabhawalla



Speaker Shri. Vipul Joshi Advocate addressing the participants



Speaker CA. Sunil Gabhawalla addressing the participants.

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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