



**The Malad  
Chamber of  
Tax  
Consultants**

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# MCTC Bulletin

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

E-mail: [maladchamber@gmail.com](mailto:maladchamber@gmail.com)

Website : [www.mctc.in](http://www.mctc.in)

Regd. Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai 400 064  
Admn. Office : C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

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**July, 2015**



## President's Communiqué

Dear Members

"Shri Ganeshay Namah"

Thank you for posing confidence in me and allowing me to communicate my thoughts for the progress of MCTC.

*Nishan Chuk Maaf, Maaf Nahi Nichu Nishaan.* We must aim higher to achieve higher.

Reach of MCTC has to increase manifold.

Increase in our activities is a part of this thought process.

We need to reach out to tax practitioners, reach out to trade associations and reach out to students as well.

Moreover, one of our main objects is to increase networking among members. There is much need to increase the networking or as our formation documents states *"to increase fellow feeling"*.

With this thought I propose that in addition to present activities we organise lecture series on Direct & Indirect Tax Laws and we will conduct a separate session only on networking where all our members can come and introduce themselves and interact with fellow members. There will not be any speaker in the session.

Our website is carefully designed which contains very useful utilities. I request members to take advantage of the same.

Our membership has crossed 850. As the activities are for the benefit of members there is much needed initiative to increase membership of this pious institution.

I congratulate Shri Kishorbhai Hapani for successfully completing his tenure as President for 2014-15. I also congratulate Shri Sachinbhai Gandhi for successfully completing his tenure as President of STPAM.

I seek your blessings and support and I am confident that members' involvement in our various activities will increase.

**Kalam Ko Salaam**

"Thinking should become your capital asset, no matter whatever ups and downs you come across in your life." .. *Dr. A. P. J. Abdul Kalam*

Thank you.

**Jayprakash M. Tiwari**

*President*

*Wish you all "Happy Independence Day"*

With Regards

≈ TEAM MCTC ≈

For Query & Sbmision of Forms for Membership/Seminar please contact any of the following Office Bearers:

Name	Designation	Contact No.	E-mail
Jayprakash M. Tiwari	President	28835364 9820496297	jmt@jmtco.in
Adarsh S. Parekh	Vice President	28094049 9869105103	asparkhca@yahoo.co.in
Vipul M. Somaiya	Hon. Treasurer	28828844 9223418790	vipul@somaiyaco.com
Swapnil G. Modi	Hon. Secretary	28834273 9833884273	modiswapnil@hotmail.com
Amit D. Kothari	Hon. Secretary	28888001 9004880001	amit@adkothari.com

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	Office	Residence	Telefax		
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Jayprakash M. Tiwari	28835364	—	—	9820496297	jmt@jmtco.in
<b>Vice President</b>					
Adarsh S. Parekh	28705703	28635968	—	9869105103	asparkhca@yahoo.co.in
	20319269				
<b>Hon. Treasurer</b>					
Vipul M. Somaiya	28723888	—	—	9223418790	vipulsomaiya@gmail.com
	28775581	—	—		
<b>Hon. Joint Secretaries</b>					
Swapnil G. Modi	28834273	28829304	28021121	9833884273	modiswapnil@hotmail.com
	28829304				
Amit D Kothari	28888001	40100001	—	9004880001	amit@adkothari.com
<b>Imm. Past President</b>					
Kishor J. Hapani	28881568	—	28886336	9820438125	kishor_hapani@rediffmail.com
	28890845				
<b>Members</b>					
Bakul Bhatia	—	—	—	9004017351	bhatia.bakul@gmail.com
Dharmen R. Shah	28643917	2806611	—	9820348100	ca.dharmeen5@gmail.com
Ketan B. Soneji	42669989	28021530	—	9867216839	ketansoneji@gmail.com
Vaibhav Seth	—	—	—	9619721743	sethvaibhav@hotmail.com
Vandana Dodhia	—	—	—	9820029281	vandana.dodhia@gmail.com
Vilas V. Vichare	—	—	—	9821404093	vilasacct@rediffmail.com
Viresh Shah	—	—	—	9820780070	vireshshah9@gmail.com
Tejas V. Shah	28884422	28022219	—	9820963123	ca.tejasvshah@gmail.com
<b>CO-OPTED MEMBERS</b>					
Shri Janak D.Rawal	66311268	—	2863 1014	93243 39014	janakdrawal@gmail.com
			28010270		
Shri Yatin P. Rangwala	28883608	28813036	2888 3608	98201 50280	yrpco@vsnl.com
Shri Pravin R. Shah	26174845	26153729	2616 1440	98214 76817	shahraj87@yahoo.com
	26153729				
Shri Manish R. Chokshi	28759997	—	2862 3289	98202 68122	manishchokshi@hotmail.com
	28780065		2866 1130		
Shri Kishor D. Vanjara	22023370	28621883	2204 1858	98201 86480	kvanjara51@gmail.com
	22041858				
<b>SPECIAL INVITEES</b>					
Shri Ramesh Gandhi	23432306			9892527212	sachin23gandhi@yahoo.co.in
Shri Govind Goyal				9869000228	goyalgovind@rediffmail.com
Shri Atul P. Ruparelia	66990015	66990015	2806 0169	98201 32016	apruparelia@gmail.com
Shri Janak K. Vaghani	22044170	—	2868 0306	98690 81906	janakvaghani2004@yahoo.com
	22821978			93246 80306	janak.vaghani@gmail.com
Shri Hiten S. Shah	26743351		2882 2517	9867759489	hitenca@gmail.com
	26745374				
Shri Dilip V. Parekh	28280352	40142329		9324640352	dilipvparekh@yahoo.co.in
	28960018				
Shri Brijesh M. Cholera	28895161	28897849	28895161	9821405200	brijeshcholera@gmail.com
Shri Sachin R. Gandhi	23432306	28820640	23432306	9821482020	sachin23gandhi@yahoo.co.in

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			Office	Fax	Residence	Mobile	
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2	1980-1981	Shri R. J. Chokshi (Late)	—	—	—	—	—
3	1981-1982	Shri Vadilal C. Shah	—	—	28835224	9324892028	—
4	1982-1983	Shri S. S. Kelwadi	22871479 22833002	—	28821193	—	ssklaw@vsnl.com
5	1983-1984	Shri V. B. Goyal	66989870 66989871	28720924	28823190 28821819	9821029010	nv_goyal@vsnl.net
6	1984-1985	Shri J. D. Rawal	—	—	28631014 28010270	9324339014	janakdrawal@gmail.com
7	1985-1986	Shri P. M. Rangwala (Late)	—	—	—	—	—
8	1986-1987	Shri D. M. Jaithwar	—	—	—	9301051240	—
9	1987-1988	Shri Ramesh J. Gandhi	23432306	23432306	28820640	9892527212	sachin23gandhi@yahoo.co.in
10	1988-1989	Shri R. B. Patel	—	—	—	—	—
11	1989-1990	Shri R. S. Majethia (Late)	—	—	—	—	—
12	1990-1991	Shri Narendra J. Mehta	26840857	26840857	26840226 26840228	9869037228	narendramehta@hotmail.com
13	1991-1992	Shri Mahipat G. Shah	66310705 66310706	—	66919056	9820030806	mgshahca@hotmail.com
14	1992-1993	Shri Jitendra A. Salot (Late)	—	—	—	—	—
15	1993-1994	Shri R. C. Reshamwala	28835624	—	28770370	9323997396	ramesh_reshamwala @rediffmail.com
16	1994-1996	Shri Govind G. Goyal	22038413	22091673	28786518 28725698	9869000228	goyalgovind@rediffmail.com
17	1996-1997	Shri Dhanesh N. Parikh	28984268	28989020	28984268	9819728609	dnparikh@rediffmail.com
18	1997-1998	Shri Yatin P. Rangwala	28883608	28883608	28813036	9820150280	yprco@vsnl.com
19	1998-1999	Shri Atul Ruparelia	66990015 65789332	28060169	28060169	9820132016	apruparelia@gmail.com
20	1999-2000	Shri Chetan Y. Jatania (Canada)	—	—	001-416438476	—	jatanias@rediffmail.com
21	2000-2001	Shri G. R. Modi	28834273 28829304	28829304	28021121	9833884272	modiswapnil@mtnl.netin
22	2001-2002	Shri Pravin R. Shah	26174845 26153729	26153729	26161440	9821476817	shahpravindr@indiatimes.com
23	2002-2003	Shri Manish Chokshi	28759997	—	28661130	9820268122	manishchokshi@hotmail.com
24	2003-2004	Shri Ashvin A. Acharya	26368800	—	26334646	7208005055	ashvin_acharya@yahoo.com
25	2004-2005	Shri Rajesh J. Pathak	28899869	28814618	—	9892128521 9987283402	pathaksmita@hotmail.com
26	2005-2006	Shri Kishor Vanjara	22023370	22041858	28621883	9820186480	kvanjara51@gmail.com
27	2006-2007	Shri Janak Vaghani	22044170 22821978	—	28680306	9869081906 9324680306	janakvaghani2004@yahoo.com
28	2007-2008	Shri Hiten Shah	28803123 28806362	28803123	28822517	9867759489	hitenca@gmail.com
29	2008-2009	Dilip V. Parekh	28281485 28280352 28960018	—	40142329	9324640352	dilipvparekh@yahoo.co.in
30	2009-2010	Manilal Simaria	23868856	23866141	28981330	9833392155	mgsimariaco@gmail.com
31	2010-2011	Ashwin R. Tanna	28070258 28070259	28074902	—	9821123418	ashwintanna@yahoo.com
32	2011-2012	Brijesh Cholera	28895161	28897849	28895161	9821405200	brijeshcholera@gmail.com
33	2012-2013	Sachin Gandhi	23432306	23432306	28820640	9821482020	sachin23gandhi@yahoo.co.in
34	2013-2014	Vishal J. Shah	28982763 28993264	28991288	28995554	9869147065	vishalshahassociates @yahoo.com
35	2014-2015	Kishor J. Hapani	28881568 28890845	—	28886336	9820438125	kishor_hapani@rediffmail.com

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## JUDICIAL JUDGMENTS

Compiled by CA. Dharmen Shah

### CIT vs. DLF Commercial Project Corp. (Delhi High Court), 15th July, 2015

#### **TDS deductible only on amounts assessable as income and not on reimbursement of expenses**

##### **Facts of the case**

The assessee had deducted TDS service charges paid to a group company M/s. DLF Land Ltd. TDS was not deducted on amounts paid as reimbursement of expenses.

*High Court held in the favour of the assessee observing that*

The payee therein (under reimbursement of expenses) had already deducted tax on the various payments made by it to third parties (such as towards transport charges, professional fees and other charges). Since the payments made by the assessee were only for the reimbursement of expenses incurred by the payee on behalf of the assessee, the Court held that no TDS was required to be deducted by the assessee.

In arriving at the aforesaid conclusion, the Court took support from the Gujarat High Court's decision in *Commissioner of Income Tax-III vs. Gujarat Narmada Valley Fertilizers Co. Ltd.* (in Tax Appeal No. 315 of 2013, decided on 25-6-2013), where the facts were similar to those in the present case.

As per the text of Section 194C (TDS for "work") and Section 194J (TDS of income from "professional services" – the latter expression defined expansively by Section 194J(3) Explanation (a)). Neither provision obliges the person making the payment to deduct anything from contractual payments such as those made for reimbursement of expenses, other than what is defined as "income".

The law thus obliges only amounts which fulfil the character of "income" to be subject to TDS in such cases. For other payments towards expenses, the deduction to those entitled (to be made by the payee) the obligation to carry out TDS is upon the recipient or payee of the amounts.

### KLR Industries Ltd. vs. CCIT (ITAT Hyderabad), 15 July 2015

#### **If the assessee has furnished the details of the creditors with their PAN, the onus is on the AO to examine their credit worthiness and source of payment to assessee**

##### **Facts of the case:**

It is a well-known principle of law that for establishing a credit appearing in the books of account the initial onus is on the assessee to prove such credit is genuine.

In the present case the assessee has produced confirmation letters in respect of all the creditors and also furnished their income tax particulars including PAN. Therefore, the identity of the creditor remains established.

The second ingredient which requires fulfilment is the genuineness of the transaction. Since, the entire transaction is done through proper banking channel.

For the third ingredient regarding the creditworthiness of the creditors, creditors have confirmed of having advanced the money to the assessee and have also stated that it is out of their own sources.

*The Tribunal allowing the appeal held in favour of the assessee as below:*

The assessee has discharged the primary onus cast upon it by establishing the identity of the creditors, the genuineness of the transaction and the source from which the credit has come, but the department has miserably failed to prove the fact that the creditors do not have the creditworthiness or the transaction is not genuine.

Only because, the credits have been shown as share application money in the books of account of the assessee, it will not automatically lead to the conclusion that the amount received is as unexplained credit as the assessee has failed to establish its claim that the money advanced is towards share application money.

Regardless, whether the advances were towards share application, as claimed by the assessee, or investment as stated by the creditors in the confirmation letters and affidavits, fact remains that the assessee has proved the source from which such credit has come and it cannot be added to his income.

## DIRECT TAXES – LAW UPDATE

*Compiled by CA. Haresh P. Kenia*

- **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 – DENMARK – AMENDMENT IN NOTIFICATION NO. GSR 853(E), dated 25-9-1989**

**NOTIFICATION NO. 45/2015 [F. NO. 503/02/1998-FTD-I]/SO 1371(E), DATED 22-5-2015**

A Protocol amending the Convention between the Republic of India and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital was entered into between the Government of the Republic of India and the Government of the Kingdom of Denmark and was signed on the 10th day of October, 2013. The Central Government hereby directs that all the provisions of the said Protocol between the Government of the Republic of India and the Government of the Kingdom of Denmark shall be given effect to in the Union of India with effect from the first day of February, 2015.

- **SECTION 139 OF THE INCOME-TAX ACT, 1961 – RETURN OF INCOME – INCOME-TAX RETURN FORMS ITR 1, 2 AND 4S SIMPLIFIED FOR CONVENIENCE OF TAX PAYERS AND INTRODUCTION OF A NEW FORM ITR-2A**

**PRESS RELEASE, DATED 31-5-2015**

Forms ITR 1, 2 and 4S for Assessment Year 2015-16 were notified on 15th April, 2015 (15-4-2015). In view of various representations, it was announced that these ITR forms will be reviewed. Having considered the responses received from various stakeholders, these forms are proposed to be simplified in the following manner for the convenience of the taxpayers:—

- (1) Individuals having exempt income without any ceiling (other than agricultural income exceeding ₹ 5,000) can now file Form ITR 1 (Sahaj). Similar simplification is also proposed for individuals/HUF in respect of Form ITR 4S (Sugam).
- (2) At present individuals/HUFs having income from more than one house property and capital gains are required to file Form ITR-2. It is, however, noticed that majority of individuals/HUFs who file Form ITR-2 do not have capital gains. With a view to provide for a simplified form for these individuals/HUFs, a new Form ITR 2A is proposed which can be filed by an individual or HUF who does not have capital gains, income from business/profession or foreign asset/foreign income.
- (3) In lieu of foreign travel details, it is now proposed that only Passport Number, if available, would be required to be given in Forms ITR-2 and ITR-2A. Details of foreign trips or expenditure thereon are not required to be furnished.
- (4) As regards bank account details in all these forms, only the IFS code, account number of all the current/savings account which are held at any time during the previous year will be required to be filled-up. The balance in accounts will not be required to be furnished. Details of dormant accounts which are not operational during the last three years are not required to be furnished.
- (5) An individual who is not an Indian citizen and is in India on a business, employment or student visa (expatriate), would not mandatorily be required to report the foreign assets acquired by him during the previous years in which he was non-resident if no income is derived from such assets during the relevant previous year.
- (6) As a measure of simplification, it has been endeavoured to ensure that in Form ITR-2 and the new Form ITR-2A, the main form will not contain more than 3 pages, and other information will be captured in the Schedules which will be required to be filled only if applicable.

As the software for these forms is under preparation, they are likely to be available for e-filing by 3rd week of June, 2015. Accordingly, the time limit for filing these returns is also proposed to be extended up to 31st August, 2015 (31-8-2015). A separate notification will be issued in this regard.

- **SECTION 199 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE – CREDIT FOR TAX DEDUCTED – NON-DEPOSIT OF TAX DEDUCTED AT SOURCE**

**INSTRUCTION NO. 275/29/2014-IT-(B), DATED 1-6-2015**

Grievances have been received by the Board from many taxpayers that in their cases the deductor has deducted tax at source from payments made to them in accordance with the provisions of Chapter-XVII of the Income-tax Act, 1961 (hereafter 'the Act') but has failed to deposit the same into the Government account leading to denial of credit of such deduction of tax to these taxpayers and consequent raising of demand.

As per Section 199 of the Act credit of Tax Deducted at Source is given to the person only if it is paid to the Central Government Account. However, as per section 205 of the Act the assessee shall not be called upon to pay the tax to the extent tax has been deducted from his income where the tax is deductible at source under the provisions of Chapter-XVII. Thus the Act puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch cannot be enforced coercively.

This may be brought to the notice of all the Assessing Officers in your region so that if the facts of the case so justify, the assessee is not put at any inconvenience on account of default of deposit of tax into the Government account by the deductor.

- **SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – CONDONATION OF DELAY IN FILING REFUND CLAIM AND CLAIM OF CARRY FORWARD LOSSES UNDER SECTION 119(2)(b)**

**CIRCULAR 9/2015 [F. NO. 312/22/2015-OT], DATED 9-6-2015**

In supersession of all earlier Instructions/Circulars/Guidelines issued by the Central Board of Direct Taxes (the Board) from time to time to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof under section 119(2)(b) of the Income-tax Act, (the Act) the present Circular is being issued containing comprehensive guidelines on the conditions for condonation and the procedure to be followed for deciding such matters.

The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than ₹ 10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr. CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds ₹ 10 lakhs but is not more than ₹ 50 lakhs for any one assessment year. The applications/claims for amount exceeding ₹ 50 lakhs shall be considered by the Board.

No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.

The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to following conditions:

- i. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.
- ii. The Pr.CCsIT/CCsIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional Assessing Officer to make necessary inquiries or scrutinise the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

- i. The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
- ii. No interest will be admissible on belated claim of refunds.
- iii. The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

This circular will cover all such applications/claims for condonation of delay under section 119(2)(b) which are pending as on the date of issue of the Circular.

The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board.

□ **SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – EXTENSION OF DUE DATE OF FILING RETURN OF INCOME FOR ASSESSMENT YEAR 2015-16**

**ORDER [F. NO. 225/154/2015/ITA.II], DATED 10-6-2015**

The Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-tax Act, 1961, hereby extends the 'due-date' for filing Returns of Income, in terms of clause (c) of Explanation 2 to sub-section (1) of section 139 of the Income-tax Act, 1961, for Assessment Year 2015-16 from 31st July, 2015 to 31st August, 2015 in respect of income tax assessee concerned.

□ **SECTION 10 OF THE WEALTH-TAX ACT, 1957 – WEALTH-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – CLARIFICATIONS ON AMENDMENT BROUGHT OUT BY FINANCE ACT, 2013, W.R.E.F. 1-4-1993 IN WEALTH-TAX ACT FOR PURPOSE OF CLAIMING REFUND OF WEALTH-TAX PAID ON AGRICULTURAL LAND AS PER PROVISIONS OF SAID ACT PRIOR TO FINANCE ACT, 2013**

**CIRCULAR NO. 11/2015 [F. NO. 325/02/2014-WT], DATED 11-6-2015**

Prior to amendment by Finance Act, 2013, sub-clause (b) of Explanation 1 to clause (ea) of section 2 of the Wealth-tax Act 1957 (Act) provided that an urban land shall be chargeable to wealth-tax. This *inter alia* included land situated in any area which is comprised within the jurisdiction of a municipality or a cantonment board and which has population of not less than ten thousand according to the last preceding census; or land situated in any area within such distance not being more than eight kilometres from the local limits of any municipality or cantonment board as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations specify in this behalf by notification in the Official Gazette. Subsequently, by Finance Act,

2013 the said sub-clause (b) of Explanation 1 to clause (ea) was amended to provide that the term "urban land" would not include land classified as agricultural land in the records of the Government and used for agricultural purposes. Accordingly, such land stands exempt from wealth-tax. This amendment was done with retrospective effect from 1-4-1993.

Various representations in this regard have been received in the Central Board of Direct Taxes (the Board) that assesseees had paid wealth-tax on such agricultural land as per the provisions of the Act as they existed prior to Finance Act, 2013. In view of the amendment brought by the Finance Act, 2013 w.r.e.f. 1-4-1993, the wealth-tax paid in respect of such land is required to be refunded. However, the time-limit for filing revised return or application for rectification for the purpose of claiming refund has expired in several cases.

With a view to avoid genuine hardship and in exercise of the powers conferred under section 10(2)(b) of the Wealth-tax Act, the Board hereby authorises Principal Commissioners/Commissioners of Wealth-tax to admit application for revision under section 25 of the Act from assesseees seeking refund arising due to the aforesaid amendment, after the expiry of the period specified under the said section and to deal with it on merits as per law.

The Principal Commissioner/Commissioner of Wealth-tax shall dispose of such applications within one year from the end of the financial year in which the application is received. However, the Principal Commissioner/Commissioner shall not set aside any order. While disposing the application, the Principal Commissioner/Commissioner may for deciding the matter call for a report from the assessing officer and seek relevant information from the assessee. In case such order results in refund, the assessee shall be entitled to interest on such refund at the rate specified in the Act in this behalf.

The application for such claim shall be made by the assessee within one year from the date of issue of this order. After expiry of the said period, no such claim shall be admitted.

□ **SECTION 251 OF THE INCOME-TAX ACT, 1961 – COMMISSIONER (APPEALS) – POWERS OF – ISSUE OF APPELLATE ORDER WITHIN 15 DAYS OF LAST HEARING – STRICT COMPLIANCE THEREOF**

**INSTRUCTION [F.NO. 279/MISC/53/2003-ITJ], DATED 19-6-2015**

CBDT has lately noticed that terms of Instruction No. 20/2013, dated 23-12-2003 on the subject mentioned above are not being adhered to. The operative part of the Instruction is reproduced below for ready reference:

"The Board desires that appellate orders by Commissioner of Income Tax (Appeals) should be issued within 15 days of the last hearing. Any lapse on this account shall be viewed adversely.

This shall be applicable to orders passed by the CIT (Administration)/CCIT as regards matters within their purview under varied Section of Income-tax Act such as Sections 80G, 264, 263 or Orders under Rule 86 of Second Schedule and under other allied direct taxes."

□ **INCOME TAX EIGHTH AMENDMENT RULES 2015 – AMENDMENT IN RULE 12 SUBSTITUTION FORMS SAHAJ ITR-1, ITR-2, AND SUGAM ITR-4S AND INSERTION OF FORM ITR-2A**

**NOTIFICATION NO 49/2015 [F.NO 142/1/2015-TPL] DATED 22-6-2015**

The above forms have been notified as per above citation.

## FORTHCOMING EVENT

1. **Dr. BHARAT D. VASANI Inaugural Study Circle meeting:**

**CHIEF GUEST** : Eminent Personality  
**DAY & DATE** : Sunday, 9th August, 2015  
**TIME** : 10.15 a.m.  
**TOPIC** : "Amendment in Income Tax Return and over view of Black Money Act"  
**SPEAKER** : CA. Sanjeev Lalan  
**VENUE** : SNTD College, Liberty Garden, Malad (w), Mumbai-400 064.

2. **13th RRC on 2-3-4 October, 2015 at "Treat Resort, Silvassa" for 2 Nights 3 Days**

Participation Cost per head double sharing

Members : ₹ 5,750/-  
 Non-Members : ₹ 6,250/-  
 Children from  
 5 to 12 years : ₹ 3,300/-  
 Above 12 years : ₹ 4,400/-

DETAILED CIRCULAR WILL BE MAILED TO MEMBERS/WILL BE AVAILABLE ON MCTC WEBSITE.

Kindly mark the above dates and we request all members to attend in large numbers and make it grand success.

With Regards

≈ TEAM MCTC ≈



PHOTOGRAPHS OF 36TH AGM



Welcome of Incoming President  
Shri Jayprakash Tiwari



Appreciation Award as Best Managing Committee member  
to Shri Vilas Vichare



Election officer Shri Janakbhai Rawal Declaring name of  
Shri Jayprakash Tiwari as President of MCTC  
for the year 2015-16 also seen Shri Rameshbhai Gandhi,  
Jt. Election Officer



Felicitation of outgoing President Shri Kishor Hapani by  
incoming President Shri Jayprakash Tiwari with  
Committee members Shri Utpal Patel & Shri Adarsh Parekh



Members at 36th Annual General Meeting held on 19th July, 2015

**MANAGING COMMITTEE 2015-16**



Seating from L to R – S/shri Vipul Somaiya, Adarsh Parekh, Jayprakash Tiwari, Kishor Hapani, Swapnil Modi, Amit Kothari. Standing L to R – S/Shri Vaibhav Seth, Ketan Soneji, Tejas Shah, Dharmen Shah, Vilas Vichare, Viren Shah, Ms. Vandana Dodhia.

**TEAM MCTC**



**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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