The Malad Chamber of Tax Consultants

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MCTC Bulletin

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Vol. 1, No. 7 ***For members & private circulation only*** **January, 2017**

President's Communiqué

Dear Members,

The year 2017 is going to be the most eventful year for the members in our profession. We will be transforming ourself from the VAT era to GST. We have to work extremely hard with the Government and the taxpayers to sail through the transition.

Post demonetisation, IDS 2016 & PMGKY, there is lot of expectation from the Government for making India free from corruption and black money. Government is trying hard to bring the change and we all professionals and also the citizens of India should support the honest efforts of the Government for our future generation.

The Government has already hinted towards a favourable budget for the taxpayers, which will reduce the taxes as well as the compliance burden on the taxpayers. The flagship event of the Chamber, Public Meeting for Union Budget will be held on Saturday, 4th February, 2017. Details of the same are given under the head "Forthcoming events". We are also having our 5th Study Circle Meeting on Sunday, 29th January, 2017 on the topic "RERA and Benami Transactions". We hope the members attend the events and benefit from the deep knowledge of our beloved speakers.

We have also arranged a half day seminar under the auspices of Shri Rajubhai J. Chokshi Oration Fund on Saturday, 18th February, 2017. The topic selected would be very relevant in the current scenario post demonetisation. Members can enroll for the same at the earliest.

WISH YOU HAPPY REPUBLIC DAY

Best regards,

Adarsh S. Parekh
President

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

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **INCOME-TAX (THIRTIETH AMENDMENT) RULES, 2016 – AMENDMENT IN RULES 114B & 114E**

  NOTIFICATION NO. GSR 1068(E) [NO.104/2016 (F. NO. 370142/32/2016-TPL)], DATED 15-11-2016

  With a view to monitor cash deposits in banks, etc. in the wake of demonetisation decision of the Government, the CBDT has amended Rule 114B making quoting of PAN mandatory for cash deposits exceeding ₹ 50,000 in one day or exceeding Rs. 2.5 Lacs during 9 Nov. 2016 to 30 Dec. 2016. Also CBDT has amended Rule 114E requiring Banks/ Co-op. Banks to submit information in AIR about aggregate cash deposits of more than ₹ 12.5 lakhs in Current A/c or ₹ 2.5 Lakhs in SB A/c during 9 Nov. 2016 to 30 Dec. 2016.

- **SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - SIGNING OF JOINT DECLARATION BY INDIA AND SWITZERLAND FOR IMPLEMENTATION OF AUTOMATIC EXCHANGE OF INFORMATION (AEOI) BETWEEN TWO COUNTRIES**

  PRESS RELEASE, DATED 22-11-2016

  Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for this Government. To further this goal, Mr. Sushil Chandra, Chairman, CBDT on behalf of India and Mr. Gilles Roduit, Deputy Chief of Mission of Swiss Embassy in India, on behalf of Switzerland, signed the 'Joint Declaration' for the implementation of Automatic Exchange of Information (AEOI) between India and Switzerland. As a result, it will now be possible for India to receive from September, 2019 onwards, the financial information of accounts held by Indian residents in Switzerland for 2018 and subsequent years, on an automatic basis.

- **SECTION 37(1) O F THE INCOME-TAX ACT, 1961 - BUSINESS EXPENDITURE - ALLOWABILITY OF - ADMISSIBILITY OF EXPENDITURE INCURRED BY A FIRM ON KEYMAN INSURANCE POLICY IN CASE OF A PARTNER**

  CIRCULAR NO.38/2016 [F.NO.279/MISC./140/2015-ITJ], DATED 22-11-2016

  CBDT Circular No. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure. However, in case of such expenditure incurred on a partner of a firm, the general approach of the Assessing Officers was to treat the expenditure as not incurred for the purpose of business and disallow the same. The High Court of Punjab and Haryana in the case of M/s. Ramesh Steels, ITA No. 437 of 2015, *vide* judgment dated 2-2-2016 [2016] 75 taxmann 257, held that, "the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure". The above view has been accepted by CBDT and the judgment has not been further contested. In view of this, it is a settled position that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

- **SECTION 80-IB, READ WITH SECTION 80-IC, OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS - NOTIFIED SCHEME FOR PURPOSES OF SECTION 80-IB(10)**

  CIRCULAR NO.39/2016 [F.NO. 279/MISC./140/2015/ITJ], DATED 29-11-2016

  The issue whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/ eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers. The Hon'ble Supreme Court in its judgment dated 9-3-2016 in the case of Meghalaya Steels Ltd in CA No. 7622 of 2014 reported in [2016] 67 taxmann 158 has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profits and gains of the industrial undertaking/business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under sections 80-1B/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking. In view of the above, it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A of the Act.

- **INCOME-TAX (THIRTY FOURTH AMENDMENT) RULES, 2016 - AMENDMENT IN RULE 8AA**

  NOTIFICATION NO. GSR 1100(E) [NO. 108/2016 [F.NO. 142/01/2016-TPL], DATED 29-11-2016

  The amended provisions lay down that - In the case of a capital asset, declared under the Income Declaration Scheme, 2016,—being an immovable property, the period for which such property is held shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government; and in any other case, the period for which such asset is held shall be reckoned from the 1st day of June, 2016.".

❑ **SECTION 132 OF THE INCOME-TAX ACT, 1961 - SEARCH & SEIZURE - GENERAL - CLARIFICATIONS WITH RESPECT TO GOLD JEWELLERY UNDER INCOME TAX LAW**

PRESS RELEASE, DATED 1-12-2016

In order to remove any doubt about the current position of Income Tax Law with respect to gold jewellery, the following points are categorically clarified:

1. There is no limit on holding of gold jewellery or ornaments by anybody provided it is acquired from explained sources of income including inheritance.
2. *Vide* circular dated 11-5-1994, instructions have been issued in the matter of search and seizure of gold jewellery:- Jewellery and ornaments to the extent of 500 gms for married lady, 250 gms. for unmarried lady and 100 gm for male member will not be seized, even if *prima facie*, it does not seem to be matching with the income record of the assesse.
3. Officer conducting search has discretion not to seize even higher quantity of gold jewellery based on factors including family customs and traditions.

❑ **SECTION 147, READ WITH SECTION 119, OF THE INCOME-TAX ACT, 1961 - INCOME ESCAPING ASSESSMENT - GENERAL - DIRECTIONS UNDER SECTION 119**

CIRCULAR NO. 40/2016 (F.NO. 225/326/2016/ITA.II), DATED 9-12-2016

Recent initiatives of the Government to curb the black economy in the country has encouraged people to shift towards digital mode of payment while making financial transactions. By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of account. Under the circumstances, an apprehension has been raised that increased turnover in the current year may lead to reopening of earlier years' cases involving lower turnover u/s. 147 of the Income-tax Act, 1961 ('Act') by the Assessing Officer causing undue harassment to taxpayers. It is hereby clarified that reopening of cases u/s. 147 of the Act is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers are advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

❑ **SECTION 139(5) OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - REVISED RETURN - FILING OF REVISED INCOME TAX RETURNS BY TAX PAYERS POST DEMONETISATION OF CURRENCY**

PRESS RELEASE, DATED 14-12-2016

Under the existing provisions of section 139(5) of the Income-tax Act, 1961 ('Act'), Revised Return can only be filed if any person, who has filed a return under section 139(1) of the Act or in response to notice u/s 142(1), discovers any omission or any wrong statement therein. Post demonetisation of the currency on 8th November, 2016, some taxpayers may misuse this provision to revise the return-of-income filed by them for the earlier assessment year, for manipulating the figures of income, cash-in-hand, profits etc. with an intention to show the current year's Undisclosed income (including the unaccounted income held in the form of 'demonetised currency in current year) in the earlier return.

It is hereby clarified that the provision to file a revised return of income u/s. 139(5) of the Act has been stipulated for revising any omission or wrong statement made in the original return of income and not for resorting to make changes in the income initially declared so as to drastically alter the form, substance and quantum of the earlier disclosed income.

It is brought to the notice of taxpayers that any instance coming to the notice of Income-tax Department which reflects manipulation in the amount of income, cash-in-hand, profits etc. and fudging of accounts may necessitate scrutiny of such cases so as to ascertain the correct income of the year and may also attract penalty/prosecution in appropriate cases as per provision of law.

■■■

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

***CIT vs. Punjab Infrastructure Dev. Board (High Court of Punjab and Haryana, [2016] 76 taxmann.com 365 (Punjab & Haryana*), 20th December, 2016**

Furnishing CA certificate in Form No. 26A shall only relieve a person liable to deduct TDS from payment of TDS amount in respect of failure to deduct TDS but not in respect of liability for interest under section 201(1A).

Facts of the case:

The assessee entered into contracts with several parties. During assessment the assessee claimed that the contract payments were not liable to for TDS. Alternatively, even if it was liable to deduct tax at sources under Section 194C, it is not liable to pay interest under Section 201(1A) as the payee of the amounts in respect of which the tax was allegedly to be deducted at source had filed their returns declaring a nil income and on account of which no tax was in fact paid or payable by them.

The AO held that the assessee was liable to deduct tax at source and having failed to do so levied interest under Section 201(1A). CIT(Appeals) held that the assessee was not liable to deduct tax at source at all in the given transaction. The Tribunal dismissed the appeal.

The High Court observed that:

Whether the contracts were liable for deduction of tax at source or not ought to have been decided by the Tribunal. If however, the contracts were liable for deduction of TDS, the assessee is in default for two aspects one for tax and second for interest liability.

As per the provisions of Section 201(1) an assessee will not be considered as assessee in default, if he produces a certificate in Form 26A from a Chartered Accountant to the effect that the payee has furnished his return of income u/s. 139, has taken into account such sum for computing income and has paid the tax due on the income declared by him.

However an assessee who fails to deduct the tax but is not deemed to be an assessee in default under section 201(1), will still be liable to pay the interest under clause (i) of Section 201(1A) from the date on which such tax was deductible to the date of furnishing of return of income by the payee.

Gopal And Sons (HUF) vs. CIT, Supreme Court of India, [2017] 77 taxmann.com 71 (SC), 4th January 2017

Advances/loans received by HUF from a closely held company is taxable as deemed dividend u/s. 2(22)(e) if Karta, who is shareholder in lending company has substantial interest in the HUF even if HUF is not a shareholder in the Company

Facts of the case:

During assessment proceeding AO added sum received by the HUF from a closely held company as deemed dividend on the grounds that the Karta of the HUF had substantial interest in the HUF and the Karta owned 37.10% of the shareholding of the Company. Hence provisions of Section 2(22)(e) were attracted and accordingly additions were made to the total income of the HUF.

The assessee had argued that being a HUF, it was neither the beneficial shareholder nor the registered shareholder. It was further argued that the Company had issued shares in the name of Shri Gopal Kumar Sanei, Karta of the HUF, and not in the name of the assessee/HUF as shares could not be directly allotted to a HUF. On that basis, it was submitted that provisions of Section 2(22)(e) of the Act cannot be attracted.

The additions were affirmed by CIT(A). Howver, as per the ITAT, since HUF, in law, cannot be a registered shareholder or a beneficial shareholder, provisions of Section 2(22)(e) would not be attracted. The High Court reversed the judgment of ITAT.

On further appeal Supreme Court held that,

Section 2(22)(e) prescribes that loans and advances can be brought to tax as dividends in the hands of the shareholders if the following 3 conditions are satisfied:

(a) Payment is to be made by way of advance or loan to any concern in which such shareholder is a member or a partner

(b) In the said concern, such shareholder has a substantial interest

(c) Such advance or loan should have been made after the 31st day of May, 1987

Explanation 3(a) defines "concern" to mean HUF or a firm or an association of persons or a body of individuals or a company. As per Explanation 3(b), a person shall be deemed to have a substantial interest in a HUF if he is, at any time during the previous year, beneficially entitled to not less than 20% of the income of such HUF.

The payment in question is made to the assessee which is a HUF. Shares are held by Gopal Kumar Sanei, who is Karta of this HUF. He also has substantial interest in the assessee/HUF, being its Karta. In view of the aforesaid position, provisions of Section 2(22)(e) of the Act get attracted and it is not even necessary to determine as to whether HUF can, in law, be beneficial shareholder or registered shareholder in a Company.

■■■

UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. Amendment in Notification No. 25/2012–ST w.e.f 8.12.2016. [Notification No. 52/2016 - Service Tax, dated 8th December, 2016]

Entry 64 has been inserted in mega exemption Notification No. 25/2012-ST by virtue of which for a single transaction transacted through debit card, credit card, charge card or other payment card for an amount upto ₹ 2,000, payment made to merchants (any person who accepts such card), would be exempted from levy of service tax.

Entry 64 is reproduced below:

"64.Services by an acquiring bank, to any person in relation to settlement of an amount up to two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation:– For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card."

2. Amendment to Rule 4C of Service Tax Rules, 1994 w.e.f. 19.12.2016 [Notification No. 53/2016–ST, dated 19th December, 2016]

In case of online information and database access or retrieval services provided by a person located in non-taxable

territory, it will not be mandatory to authenticate online invoices by digital signature for a period up to 31.1.2017. A proviso in sub-rule (1) of Rule 4C of STR, 1994 is inserted w.e.f. 19.12.2016.

3. F. No. 137/155/2012 – Service Tax (Part – I), dated 9th December, 2016

Following instruction is issued:

"Recent initiatives of the Government to curb black economy in the country encourage people to shift towards digital mode of payment while making financial transactions. By adopting a digital mode of payment, no financial transaction would remain undisclosed and consequently an enhanced turnover might get reflected in the books of account. Under the circumstances an apprehension has been raised that increased turnover on account of use of digital means of payment may lead to demands for earlier period. It is hereby clarified that in indirect taxes, past assessments will not be reopened for this reason alone.

4. Step By Step Guide for GST Enrolment for existing Central Excise/Service Tax Assessees

All existing Central Excise and Service Tax assessees will be migrated to GST starting 7th January, 2017. To migrate to GST, assessees would be provided a Provisional ID and Password by CBEC.

Provisional IDs would be issued to only those assessees who have a valid PAN associated with their registration. An assessee may not be provided a Provisional ID in the following cases:

a. The PAN associated with the registration is not valid

b. The PAN is registered with State Tax authority and Provisional ID has been supplied by the said State Tax authority.

c. There are multiple CE/ST registrations on the same PAN in a State. In this case only 1 Provisional ID would be issued for the 1st registration in the alphabetical order provided any of the above 2 conditions are not met.

Steps to be followed by each assessee to migrate to GST

Step 1: Logon to ACES portal using the existing ACES User ID and Password

Step 2: Either follow the link to obtain the Provisional ID and Password OR navigate using the Menu

Step 3: Make a note of the Provisional ID and password that is provided.

Step 4: The assessees need to use this Provisional ID and Password to logon to the GST Common Portal (https://www.gst.gov.in) where they would be required to fill and submit the Form 20 along with necessary supporting documents.

In case of any doubt/queries you can contact CBEC Helpdesk having contact no. 1800-1200-232 or you can send mail at cbecmitra.helpdesk@icegate.gov.in

GIST OF JUDGMENTS FOR THE MONTH OF DECEMBER, 2016

Compiled by CA Bhavin S. Mehta

1. Where two assessees, namely, 'GSFC' and 'GACL' received acid through common pipeline from Reliance Industries and said acid came first to premises of 'GSFC', where handling facilities were installed, and from there it was shared between 'GSFC' and 'GACL' in ratio of 60:40 respectively. Further by an agreement handling facilities expenditure was shared equally by both parties. Payment of handling expenditure which was made by 'GACL' to 'GSFC' was share of 'GACL' and it could not be treated as service provided by 'GFSC' to 'GACL' in order to levy service tax upon 'GSFC' [2016] 76 taxmann.com 357(SC)

The adjudicating authority issued show cause notice to assessee's namely 'GSFC' and 'GACL' alleging that ' GSFC' was collecting' incineration charges' from 'GACL' and was thus providing 'storage and warehousing services' falling under clause (zza) of sub-section (105) of section 65.

It was argued by 'GSFC' that collection of incineration charges did not amount to providing of any service. Further, an agreement was arrived between 'GSFC' and 'GACL' to equally share such handling facilities expenditure of incineration process. No service was provided by one to another. The Adjudicating Authority did not accept the assessee's contention. Both the First Appellate Authority and the Tribunal upheld the order of the Adjudicating Authority.

The Hon'ble Supreme Court looking to the facts and circumstances of the case observed that In order to attract service tax, there has to be an element of service provided by one person to the other for which charges for providing such services are collected. There is no dispute to the facts that handling facilities expenditure of Common pipeline and incineration expenses were incurred at the premises of "GSFC' are shared equally by both GSFC and GACL. Once these facts are accepted, the Hon'ble Apex Court finds that handling portion and maintenance including incineration facilities is in the nature of joint venture between two of them and the parties have simply agreed to share the

expenditure. The payment which is made by 'GACL' to 'GSFC' is the share of 'GACL' which is payable to 'GSFC'. By no stretch of imagination, it can be treated as common 'service' provided by 'GSFC' to 'GACL' for which it is charging 'GACL'.

For the aforesaid reasons, the Hon'ble Apex Court set aside the demand of service tax upon 'GFSC' by quashing the Adjudicating Authority's order as well as the order of the CESTAT.

2. If the principal manufacturer is availing benefit of exemption Notification No. 12/2012-C.E., dated 17-3-2012 (S. No. 251) on the manufacture of "Jute Loom Machine" on job work by the applicant, benefit of mega exemption Notification No. 25/2012-S.T., dated 20-6-2012, as amended, cannot be extended to the job worker. Authority of Advance Ruling, New Delhi in the case of Sarkar & Sen Company [2016 (45) S.T.R. 479 (A.A.R.)]

M/s. Sarkar & Sen Company, a labour contractor, proposes to undertake job work for M/s. Nipha Exports (P) Ltd. – a manufacturer, on contract basis at the rate of ₹ 2,000/- per "Jute Loom Machine Assembly" at the premises of said M/s. Nipha Exports.

Following question was raised by the M/s Sarkar & Sen for Advance Ruling:

"Whether applicant is eligible for exemption from payment of Service Tax on job work undertaken inside the factory of the manufacturer as per Notification No. 25/2012-S.T., dated 20-6-2012, as amended?

Notification No. 25/2012-S.T., dated 20-6-2012, as amended *vide* Notification No. 6/2015, dated 1-3-2015 *inter alia* exempts following taxable service from the whole of the service tax leviable thereunder Section 66B of the Finance Act, 1994.

"30. Carrying out an intermediate production process as job work in relation to –

(c) Any goods excluding alcoholic liquors for human consumption on which appropriate duty is payable by the principal manufacturer;"

As the 'principal manufacturer', i.e., M/s. Nipha Exports (P) Ltd. is availing benefit of exemption Notification No. 12/2012-C.E., dated 17-3-2012 (S. No. 251) on the manufacture of "Jute Loom Machine" on job work by the applicant, benefit of exemption Notification No. 25/2012-S.T., dated 20-6-2012, as amended, cannot be extended to the M/s Sarkar & Sen.

3. Advertising Agency Services pertaining to Outdoor campaign consisting of Media costs incurred in respect of bill boards, hoardings and conveyance outside India not liable to levy of service tax. *Grey Worldwide (India) Pvt. Ltd. vs. Commissioner of S.T., Mumbai [2015 (40) S.T.R. 1104 (Tri.- Mumbai)]*

Grey Worldwide (India) Pvt. Ltd (Appellant) carried out advertisement campaign for Ministry of Tourism, Govt. of India for campaign "India as tourist destination" in print and electronic media and outdoor hoardings in London, New York and Paris. Appellant discharged the service tax liability on the amount of agency commission received from Govt. of India.

The Revenue's case is that the amount received by the appellant from the Ministry of Tourism, Govt. of India, towards the media costs and the advertisement published in print and electronic media were abroad i.e. London, New York and Paris is required to be considered as gross value for services rendered by the appellant hence the said amount needs to be included into the gross value of the services rendered.

The Hon'ble Tribunal observed that the advertisement campaign has to be looked into as to who is the service recipient and service provider. Further, the Hon'ble Tribunal relying on the decision of Cox and Kings 2014 (35) S.T.R. 817 (Tribunal) observed as under:

"In the case in hand it is not in dispute that the media costs were incurred by the appellant beyond the territorial waters of India and the ratio of judgment of Cox and Kings (supra) would be directly applicable. We find that this decision of this Tribunal in the case of Cox and Kings (supra) was considering the issue wherein the appellant therein was conducting international tours, Revenue authorities wanted to tax entire amounts/considerations received under the service tax liability, Tribunal held that for the services rendered by the appellant beyond the territorial waters of India, service tax would not be charged even if the tour emanates from India and ended in India and even if tourists being Indians".

Applying the ratio of above decision, the Hon'ble Tribunal held that media costs incurred by the appellant were in respect of bill boards, hoardings and conveyance abroad and therefore would not be liable to levy of service tax.

Note: Supreme Court has admitted the appeal filed by revenue against the Tribunal order *[Commissioner vs. Grey Worldwide (India) Pvt. Ltd. - 2016 (45) S.T.R. J139 (S.C.)]*

4. Service Tax on Commission on sale of recharge coupons/vouchers of Telephone service highly contested issue and pending before higher judicial forum, Tribunal has not committed any illegality in invoking section 80 for waiver of penalty.

CCE, Nagpur-II vs. Roshan R. Jaiswal [2016 (45) S.T.R. 497 (Bom.)]

Revenue challenged the order of CESTAT discharging the Assessee of its liability to pay penalty.

Assessee was dealing in sale of recharge coupons/vouchers of BSNL on which it received commission. Assessee challenged the levy, wherein First Appellate Authority held that recharge vouchers was not liable to service tax. Against the revenue appeal, the Hon'ble Tribunal partly allowed the department appeal and confirmed the demand of service tax on recharge vouchers. However, invoking the provisions of section 80, held that though assessee was liable to service tax levy, assessee would not be required to pay penalty.

The Tribunal order against the imposition of penalty, revenue challenged the order before Bombay High Court. Hon'ble High Court observed that "A clear finding of fact has been recorded by the Tribunal that the sale of recharge coupons/ vouchers purchased from the telephone service provider was seriously contested issue before Higher Judicial Forum at the relevant time and hence, there was reason to believe that the respondent-assessee bonafidely believed that the same was not payable. The Hon'ble Court held that the Tribunal has not committed any illegality in invoking the provision of section 80 of the Act.

5. Service Tax payment under wrong assessee code being a clerical error, petitioner permitted to amend GAR-7 and payment made against this challan be treated as payment made by petitioner.

Singh Enterprises vs. UOI [2016 (45) S.T.R. 508 (Jhar.)]

The writ petition was preferred by assessee for amending Form GAR-7 which is a Service Tax payment challan. Error committed by the petitioner is that Assessee Code Number is wrongly written as ASWPSO233PST002 instead of ALBPS4133JST001. There is also an error in the address of this petitioner.

It was argued that error is apparent because accounting code given to this petitioner is correctly mentioned at Form G.A.R.-7.

The Hon'ble High Court of Jharkhand looking to the facts and circumstances of the case, observed as under:

"it appears that an error has been committed by the Accountant of this petitioner in inserting the Service Tax Code (Registration Number) as well as address of this petitioner in G.A.R.-7 for, which is at Annexure 3 series to this petition. Error is also apparent on the face of the record looking to the accounting code given to this petitioner which is correctly mentioned in G.A.R.-7 form. This error has been committed by the Accountant of this petitioner who is common for this petitioner as well as for respondent No. 3. The clerical error, we hereby, direct respondent Nos. 1 and 2 to treat Form G.A.R.-7 which is at Annexure 3 series as of this petition having Service Code Number as ALBPS4133JST001. Service Code mentioned in G.A.R.-7 Form is wrongly mentioned and instead of the same, the aforesaid service code shall be inserted"

Similarly error committed in the mentioning the address in GAR-7 form was allowed to be corrected. Thus the writ petition of petitioner was allowed.

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FORTHCOMING EVENTS

5TH STUDY CIRCLE MEETING			
Venue	**SNDT College, Liberty Garden, Malad West, Mumbai-400 064**		
Date	**Time**	**Subject**	**Speaker**
Sunday, 29th January, 2017	10.00 am to 1.30 pm.	Real Estate (Regulation and Development) Act, 2016	CA. Rajesh Sanghvi
		Benami Transactions Act	
Note: Members Free, Non Members ₹ 200/-			

PUBLIC MEETING ON UNION BUDGET 2017			
Venue	**Goregoan Sports Club, Malad West, Mumbai**		
Dates- Tentative	**Time**	**Subject**	**Speaker**
Saturday, 4th February, 2017	5.30 pm to 8.30 pm	Budget Proposals on Direct Taxes	CA. Vimal Punmiya
		Impact of Budget on Capital Market	CA. Manish Chokshi
		Budget Proposals on Service Tax / GST Proposals	Adv. Bharat Raichandani
Note: It is a Public Meeting and is free for all public.			

HALF DAY SEMINAR UNDER THE AUSPICES OF SHRI RAJUBHAI J. CHOKSHI			
Venue	**Conference Hall, N. L.College, S. V. Road, Malad West, Mumbai-400 064**		
Dates- Tentative	**Time**	**Subject**	**Speaker**
Saturday, 18th February, 2017	4.00 pm to 8.30 pm	Provisions relating Survey & role of Tax Practitioner	Eminent Speaker
		Implication of Survey on assessment post IDS 2016 and demonetisation.	Eminent Speaker
Note: Members Fee ₹ 300/- and Non-Members ₹ 500/-			

The Malad Chamber of Tax Consultants

FORMAT OF ENROLLMENT FORM	
Date, Day & Time	Saturday, 18th February, 2017 from 4.00 pm to 8.30 pm
EVENT	HALF DAY SEMINAR under the Auspices of Shri Rajubhai J. Chokshi Oration Fund
SUBJECT	1. Provisions relating Survey & role of Tax Practitioner
	2. Implication of Survey on assessment post IDS 2016 and demonetisation.
SPEAKER	Eminent Speakers
Venue	Conference Hall, N.L.College, Malad West Mumbai- 400 064
Fees	Rs.300/- per person for members.
	Rs.500/- per person for non-members.
Name -Mr / Ms.	
Address	
Telephone	
Email ID	
Payment Detail	
Bank & Branch	
Cheque No.:	**Date :** **for Rs.**
In Favour of	**"The Malad Chamber of Tax Consultants"**
Signature :-	

---------- cut here ----------

THE MALAD CHAMBER OF TAX CONSULTANTS

Admn. Off. : C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064.

Mobile No. 7039006655 E-mail: maladchamber@gmail.com website : www.mctc.in

Date :_____

Received with thanks FROM :_____

RS. :_____

Towards ENROLLMENT FEES for Half day Seminar under the Auspices of Shri Rajubhai J. Chokshi Oration Fund.

Secretary / Treasurer_____

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