The Malad Chamber of Tax Consultants

MNW/175/2015-17 **Total Pages 8** Price ₹ 5/-

38 Years

MCTC Bulletin

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Vol. 1, No. 2 ***For members & private circulation only*** August, 2017

President's Communiqué

Dear Members,

Sometimes, disruption is a key to success.

By introducing GST, the Government of India has created disruption in Indian tax structure, in the way of doing business in India.

It is time to welcome and initiate this disruption in our practice and professional life as well. Time has come to be a master of subject rather than being a jack of all. There are several opportunities in the form of GST, RERA, Banking Insolvency, IFRS, IND-AS, Companies Act, FEMA which are knocking the doors of professionals at the same time. We need to hear this knock, judge our appetite and pickup one or two areas for being a master of the same. The human nature is complex and so the creation of the humans in the form of these opportunities. These areas are complex and big enough for our small life.

I understand there is feeling of stress, feeling of worries about the future, about the uncertainty and the level of dynamism required in this changing world. But at the same time we need to be confident and have belief in ourselves to cope up and adopt to the changing scenario.

Let's stop complaining and start acting. Learn and adopt new things, new concepts, new way of working. And as a President of this Chamber, I can surely say that our members and persons in our profession are having that zeal to work, zeal to adopt new things, learn new concepts and unlearn old matters.

As a proof of above, when as a Chamber we announced one full day Joint Seminar (Jointly with GSTPAM) on 12th August 2017 on "Practical Aspects of GST", the seminar was full within 8 days of the announcement with record breaking attendance of more than 900 participants. Considering overwhelming response, we had booked an additional venue to accommodate such a large audience. In the same premises, we booked an additional venue whereby the speakers also thankfully agreed to repeat the same subject again on the same day.

I thank and congratulate all my committee members, speakers, participants and members to have such grand and wonderful historic event.

HAPPY SHREE KRISHNA JANMASHTAMI & HAPPY GANESH CHATURTHI!!
MICHHAMI DUKKADAM!!

With Warm Regards,

CA Vipul M. Somaiya
President

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **DEDUCTION OF TAX AT SOURCE – RENT U/S. 194-I – CBDT CLARIFICATION ON NON-APPLICABILITY OF PROVISIONS OF SECTION 194-I ON REMITTANCE OF PASSENGER SERVICE FEES (PSF) BY AN AIRLINE TO AN AIRPORT OPERATOR [248 TAXMAN (ST.) 4]**

  The CBDT Circular No. 21 / 2017 dated 12/6/2017 clarified on applicability of provision of section 194-I of the Act on payment of passenger Service Fees (PSF) by an airline to an airport operator. The Hon'ble High Court of Bombay in CIT v. Jet Airways (India) Ltd. declined to admit the ground relating to applicability of provisions of section 194I of the Act on PSF charges holding that no substantial question of law arises. While doing so it relied on the judgment of the Hon'ble Supreme Court dated 4-8-2015 in the case of Japan Airlines and Singapore Airlines where the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act.

  The board has clarified that the above view of the High Court of Bombay is now a settled position u/s. 194-I of the Act with regard to PSF. Accordingly the board has accepted the above view of the High Court of Bombay and instructed not to file appeal by the department on the above settled issue and those already filed may be withdrawn and not pressed upon.

- **SEARCH AND SEIZURE – SECTION 132B – RETAINED ASSETS, APPLICATION OF CBDT'S CLARIFICATION ON APPLICABILITY OF EXPLANATION 2 TO SECTION 132B OF SAID ACT WITH REGARD TO ADJUSTMENT OF SEIZED/REQUISITIONED CASH AGAINST ADVANCE TAX LIABILITY [248 TAXMAN (ST.) 5]**

  The CBDT *vide* Circular No. 20 / 2017 has issued the following clarification.

  Section 132B of the Income-tax Act provides for the adjustment of seized assets / requisitioned assets against the amount of any existing liability under the Income-tax Act, Wealth-tax Act, the Expenditure-tax Act, the Gift-tax Act and Interest-tax Act and the amount of liability determined on completion of the assessment under section 153A of the Act and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C of the Act.

  There was an issue with regard to the adjustment of such seized/requisitioned cash against advance tax liability etc. The Courts have held that the seized money is to be adjusted against the advance tax liability of the assessee.

  Subsequently, Explanation 2 to section 132B of the Act was inserted by the Finance Act, 2013 w.e.f. 1-6-2013, clarifying that "existing liability" does not include advance tax payable in accordance with the provision of Part C of Chapter XVII of the Act. However, the dispute continued on the issue as to whether the amendment was clarificatory in nature having retrospective applicability or it has only prospective applicability.

  Several Courts have held that the insertion of Explanation 2 to section 132B of the Act, is prospective in nature and not applicable to cases prior to 1-6-2013. The SLPs filed by the Department against the judgment of the Hon'ble Punjab and Haryana High Court in the case of Cosmos Builders & Promoters Ltd. and the Hon'ble Allahabad High Court in the case of Sunil Chandra Gupta, have been dismissed. Subsequently, the CBDT has also accepted the judgment of the Hon'ble Punjab Haryana High Court in the case of Spaze Towers Pvt. Ltd. dated 17/11/2016, wherein it was held that the Explanation 2 to section 132B of the Act is prospective in nature.

  The CBDT now accepted and clarified that insertion of Explanation 2 to section 132B of the Act is prospective and the appeal may not be filed by the department on this issue for the cases prior to 1-6-2013 and those already filed may be withdrawn or not pressed upon.

- **DEEMED DIVIDEND U/S. 2(22) – CBDT'S CLARIFICATION ON SETTLED VIEW OF SECTION 2(22)(e) OF THE SAID ACT ON TRADE ADVANCES / COMMERCIAL TRANSACTIONS [248 TAXMAN (ST.) 6]**

  The CBDT *vide* Circular No. 19/2017 dated 12/06/2017 clarified that the trade advances which are in the nature of commercial transactions would not fall within the ambit of the word "advance" in section 2(22)(e) of the Act and accordingly CBDT has directed not to file appeal on this grounds by officers of the department and those already filed may be withdrawn or not pressed upon.

  The board has observed that some courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) of the Act. Such views have attained finality.

  Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22)(e) of the Act. *(CIT vs. Creative Dyeing & Printing Pvt Ltd. Delhi High Court).*

  Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) of the Act. *(CIT v. Amrik Singh, P&H High Court).*

  A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) of the Act. *(CIT, Agra vs. Atul Engineering Udyog, Allahabad High Court).*

- **SECTION 139AA OF THE INCOME-TAX ACT – QUOTING OF AADHAAR NUMBER – SUPREME COURT JUDGMENT ON AADHAAR-PAN LINKAGE [248 Taxman (st.) 7]**

  The press release dated 10/06/2017 states about the effect of Supreme Court judgment on Aadhaar PAN linkage.

The summarized feature on effect on the judgment is as follows.

i. From July 1, 2017 onwards every person eligible to obtain Aadhaar must quote their Aadhaar number or their Aadhaar Enrolment ID number for filing of Income Tax returns as well as for applications for PAN;

ii. Everyone who has been allotted permanent account number as on the 1st day of July, 2017 and who has Aadhaar number or is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to income tax authorities for the purpose of linking with Aadhaar;

iii. However, for non-compliance of the above point No.(ii), only a partial relief by the court has been given to those who do not have Aadhaar and who do not wish to obtain Aadhaar for the time being, that their PAN will not be cancelled so that other consequences under the Income-tax Act for failing to quote PAN may not arise.

One may refer to the above citation for the further details.

- **AMENDMENT IN RULE 114B OF THE INCOME-TAX RULES [247 TAXMAN (ST.) 43]**

  The CBDT *vide* Notification No. GSR 569 (E) (NO. 51/2017(F. No. 370142/13/2017 - TPL)) dated 9-6-2017 gives income tax (14th Amendment) Rules 2017. It came into effect from the date of its publication. It amends the Rule 114B.

  The second proviso to Rule 114B provides for making of a declaration in Form No. 60 where any person who does not have a permanent account number and who enters in to any transaction specified in Rule 114B. it now amends that such declaration should be either in paper form or electronically under the Electronic verification code in accordance with the procedures, data structures and standards specified by the Principal Director General of Income Tax (Systems) or Director General of Income Tax (Systems).

- **TRANSFER PRICING – ADVANCE PRICING AGREEMENT – SECTION 92C OF THE INCOME TAX ACT – NOTIFIED TRANSFER PRICING TOLERANCE LIMIT FOR A.Y. 2017-18 AND 2018-19 [247 TAXMAN (ST.) 43]**

  The Central Government *vide* Notification No. SO 1866 (E) dated 9-6-2017 notifies that where the variation between the arm's length price determined under section 92C of the Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent of the latter in respect of wholesale trading and three per cent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2017-18 and Assessment Year 2018-19.

  For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:

  Purchase cost of finished goods is eighty per cent or more of the total cost pertaining to such trading activities; and

  Average monthly closing inventory of such goods is ten per cent or less of sales pertaining to such trading activities.

- **AMENDMENT IN RULES 10TA, 10TB, 10TC, 10TD & 10TE RELATING TO SAFE HARBOUR RULES FOR INTERNATIONAL TRANSACTIONS [247 TAXMAN (ST.) 44]**

  The CBDT *vide* Notification No. GSR 557 (E) dated 7-6-2017 gives Income Tax (12th Amendment) Rules 2017. It came into force from 1st April 2017. It amends Rules 10TA, 10TB, 10TC, 10TD & 10TE relating to Safe Harbour Rules for international transactions. It inserts definition for "Accountant", "Employee Cost", "Low Value Adding Intra group services" etc.

  One may refer to the above citation for detailed information.

- **SECTION 54EC OF THE INCOME TAX ACT – NOTIFIED BONDS ISSUED BY THE POWER FINANCE CORPORATION LTD. [247 TAXMAN (ST.) 52]**

  The Central Government *vide* Notification No. SO 1818 (E) dated 8-6-2017 notifies that any bond redeemable after three years and issued on or after 15th day of June 2017 by the Power Finance Corporation Ltd. a company firmed and registered under the Companies Act 1956 as "Long Term Specified Asset" for the purpose of the said section.

- AMENDMENT IN RULES 30, 31 & 31A AND INSERTION OF FORM NO. 16C & FORM 26QC IN RELATION TO PAYMENT OF RENT BY CERTAIN INDIVIDUALS OR HUF'S [247 TAXMAN (ST.) 52]

  CBDT *vide* Notification No. GSR 561 (E) dated 8-6-2017 gives income tax (13th Amendment) Rules 2017. It amends Rules 30, 31 & 31A. It inserts Form No. 16C being certification u/s. 203 of the Income-tax Act for tax deducted at source and Form No. 26QC being challan-cum-statement of deduction of tax u/s. 194IB.

- **AMENDMENT IN RULE 31A AND FORM 26B [247 TAXMAN (ST) 56]**

  The CBDT *vide* Notification No. GSR 554 (E) dated 5-6-2017 gives Income Tax (11th Amendment) Rules 2017. It came in to effect on the date of its publication. It amends rule 31A (3A) of Income Tax rules relating to claim for refund for sum paid to the credit of the Central Government under Chapter XVII-B.

  The Rule 31A (3A) provides for furnishing of Form 26B electronically under digital signature. It now amends to provide for furnishing of Form 26B electronically under digital signature or verified through an electronic process.

  It also amends Form 26B. It inserts the following.

  "Notes : In case of refund related to tax deducted under section 194-IA of the Act for which Form No. 26QB has been filed by the deductor, -

  Permanent Account Number may be furnished in place of tax deduction and collection amount number.

  In column II, in sub-column (5) relating to the 'period', may be left blank.

  In column II, in sub-column (7) relating to the 'Receipt number of relevant statement', furnish acknowledgment number of Form No. 26QB."

- SECTION 48 OF THE INCOME-TAX ACT – NOTIFIED COST INFLATION INDEX UNDER SECTION 48, EXPLANATION (V) – FINANCIAL YEAR 2017-18 [248 TAXMAN (st) 56]

  The Central Government *vide* notification No. SO 1790 (E) specifies the cost inflation index for the F.Y. 2017-18 as "272" and it shall come into force from 1-4-2018 and will apply to Assessment Year 2018-19 and subsequent years.

JUDGMENTS UNDER SERVICE TAX

Compiled by CA. Bhavin Mehta

1. Where assessee rented its vehicle to a party for transportation of his employees and collected service tax from him but did not deposit same into treasury on plea that when a cab was rented under a scheme, receipt therefrom could not be taxed, since vehicle was under exclusive control and possession of user thereof, contract between parties made assessee an operator of renting vehicle and liable to service tax. *[Chetak Travelling Agency vs. Commissioner of Central Excise, Jp-II [(2017) 83 taxmann.com 300 (New Delhi - CESTAT)].*

FACTS

1. The assessee was engaged in providing services of rent-a-cab service under the "Scheme of renting of motor cabs". During the period from July, 2004 to March, 2009, the assessee rented its vehicle to a party for transportation of his employees from one place to another. The vehicle rented was under control and possession of the user thereof for his exclusive use under a contract. No user other than the recipient of service was allowed to use the vehicle so rented during tenure of the contract.
2. The assessee collected service tax from the party but it did not deposit the collected service tax to Government Treasury on the plea that in view of the judgment of the Uttarakhand High Court in the case of *Commissioner of Customs & Central Excise vs. Sachin Malhotra*, when a cab was rented under a scheme, the receipt therefrom could not be taxed.

ISSUE

1. The assessee is in appeal against the service tax demand by the adjudicating authority for the period from 18-4-2006 to 31-5-2007.
2. The revenue is in appeal against the abatement granted by adjudicating authority to assessee against service tax demand for the period from June 2007 to March 2009.
3. The revenue is in appeal against the decision of adjudicating authority on dropping the demand for the period from July 2004 to 17-4-2006.

HELD

1. Services provided or to be provided by a rent-a-cab scheme operator in relation to the renting of cab is liable to service tax. The words "in relation to" have the effect of expanding the scope of taxation. "Rent-a-cab scheme operator" has been defined under section 65(91) of the Finance Act, 1994 as a person, who is engaged in the renting of cabs. So, to become service taxable it should be the business of renting of cab.
2. The assessee claims that when a cab is rented under a scheme, the receipt therefrom cannot be taxed following the judgment of the Hon'ble High Court of Uttarakhand in the case of *Commissioner of Customs & Central Excise vs. Sachin Malhotra [2014] 48 GST 738/51 taxmann.com 392*. That judgment brings out rent-a-cab scheme of 1989 which is governed by Motor Vehicle Act, 1988.
3. Taking the rent-a-cab scheme into consideration, the hirer is endowed with the freedom to take the vehicle, wherever he wishes, and he is only obliged to keep the holder of the licence informed of his movements from time-to-time. Though both, rent and hire, may, in a different context, have the same connotation; in the context of rent-a-cab scheme and hiring, they signify two different transactions.
4. In the case of "hiring", the owner of the vehicle retains control and possession; he either drives the vehicle himself or employs somebody else to drive the vehicle and the customer merely makes use of the vehicle by travelling in the vehicle on the basis of a contract that he will pay the requisite hire charges for the period he uses the vehicle. In the case of a rent-a-cab scheme, as is clear from the very fundamental principle underlying the scheme, it is to give the hirer the freedom to use the vehicle as he pleases, which, undoubtedly, implies that he must have possession and control over the vehicle. Therefore, the contract between the parties made the assessee an operator of renting the vehicle and liable to service tax under renting of cab.
5. Adjudicating authority has granted abatement without examining facts and circumstances of the case. Therefore, impugned order on that account should be reversed.
6. So far as the applicability of the time bar is concerned, considering that there was confusion between the assessee and Revenue due to varied judgment of different High Courts, the levy of penalty is considerable under the section 80 of the Finance Act, 1944.

2. Where assessee manufacturing goods, which though exempt from duty was otherwise exported, could avail CENVAT Credit of duty paid on input services used in manufacture of such exempted goods. *[Commissioner of Central Excise vs. Same Duetz Fahr India (P.) Ltd. [2017] 83 taxmann.com 216 (Madras) High Court of Madras].*

FACTS

1. The assessee is engaged in the business of manufacturing tractors, tractor engines and parts thereof. The aforementioned goods manufactured by the assessee were exempt from excise duty by virtue of Notification No. 6/2006/CE dated 1-3-2006. The said goods were cleared for export without payment of excise duty upon execution of bond.
2. The assessee paid service tax under reverse charge basis on services rendered by non-resident service provider to the assessee and availed CENVAT Credit of such service tax.
3. The adjudicating authority disallowed the CENVAT Credit claimed by the assessee on the ground that input services has been availed against exempted goods.

HELD

1. Sub-rule (1) of Rule 6 of CENVAT Credit Rules, 2004 prohibits CENVAT Credit of input services used in the manufacture of exempted goods or for provision of exempted services.
2. However, sub–rule (6) of Rule 6 of CENVAT Credit Rules, 2004 specifies that provisions of sub-rule (1) shall not be applicable in case the excisable goods are removed without payment of duty are cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.
3. Thus, CENVAT Credit cannot be denied if the goods are exported even though such goods are exempt from excise duty.

4. Accordingly, the appeal of the revenue has been dismissed and CENVAT Credit has been allowed to the assessee.

3. Where overseas branch offices of assessee entered into contracts with overseas customers to provide technological services on behalf of assessee, remittance received by assessee from customers through such branches would not be liable to be taxed under section 66A. *[KPIT Technologies Ltd. vs. Commissioner of Central Excise, Pune-1 [2017] 83 taxmann.com 342 (Mumbai - CESTAT)].*

FACTS

1. The assessee is the provider of business auxiliary service, business support service, consulting engineers service, commercial training and coaching service, information technology software service and others. Assessee has various branch offices as well as permanent establishments at number of locations outside the country to cater to the overseas customers. The branch offices enter into contracts with overseas customers and receive payments for services rendered and also consume services offered by providers located in respective countries.
2. The assesse had been discharging tax liability under Section 66A of Finance Act, 1994 on consideration paid for services obtained from overseas providers but not for services that were availed by overseas branches/permanent establishments; the expenses so incurred were reflected in the financial statements of the appellant.
3. The show cause notices was issued to the assessee demanding service tax on value of services rendered by the branches to the overseas customer on behalf of the assessee and on account of remittance made in foreign currency towards expenditure incurred by the establishments abroad.

HELD

1. The impugned demand was for two periods and governed by two distinct statutory instruments relating to services received from outside India. The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 pertaining to the period prior to 30th June 2012 which was substituted by Place of Provision of Service Rules, 2012. The parent statutory provisions for the two periods were section 66A and section 66B respectively.
2. Prior to 30th June 2012, the charging section for levy of service tax is section 66. However, a special provision was carved out in the section 66A(1) for the specific purpose of levying tax on services provided or agreed to be provided by a person who has established a business, or has a fixed establishment from which the services provided or agreed to be provided or has a permanent address or usual place of residence, in a country other than India and received by a person with its place of business, fixed establishment, permanent address or usual place of residence in India.
3. Further, section 66A(2) has been legislated to ensure that mutualisation inherent in the branch-headquarters relationship does not offer an avenue to evade tax that is otherwise leviable. The adjudicating authority has failed to read section 66A(2) in conjunction with section 66A(1) of Finance Act, 1994.
4. In the present case, the adjudicating authority appears to be taken contradictory views. On the one hand, the adjudicating authority holds that the branch provides a service to the assessee, i.e., provision of service on behalf of the assessee whereas that which is sought to be taxed are the remittances made by the overseas branches to the assessee which is the consideration for the 'software development' service and 'information technology software service' rendered to the overseas customer. The legal fiction of recipient being the provider has been enacted in section 66A but the fiction of the payment received by the recipient of the service is not covered in that provision. Thus, the remittances by branches to the assessee are not liable to be taxed under section 66A of Finance Act, 1994.
5. In the erstwhile regime, the definitions of the services themselves indicated the scope of the transaction that was to be taxed whereas with effect from 1st July, 2012 the scope is determined within the charging section itself as 'provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.' The critical element here is the provision of service in the taxable territory. If the recipient of the service is in the taxable territory and the activity is transacted for a consideration, tax would be leviable in accordance with section 68 of the Finance Act, 1994. There is, therefore, no substantial difference in relation to the determination of taxability in the two periods. In the absence of an activity between the branch and the headquarters for an identified consideration, the remittance received from overseas customers through the branch to the appellant would not be liable to tax.
6. Accordingly, the appeals have been disposed and the matter has been remanded back to the original authority.

4. a) Royalty paid on receiving technical know-how (i.e., Intellectual Property Rights - IPR) is not leviable to service tax when IPR is not recognised under any law for the time being force in India.

b) Services provided prior to levy introduced w.e.f. 10-09-2004 shall not be leviable to service tax notwithstanding that payments for such services received in piecemeal manner over a period of time after the introduction of levy.

c) Extended period of limitation cannot be invoked against the assessee on the ground of intention to evade payment of duty where service tax is not paid under reverse charge which would be available as CENVAT credit.

[Reliance Industries Ltd. vs. Commissioner of Central Excise & Service Tax, LTU, Mumbai [2016 (44) S.T.R. 82 (Tri. - Mumbai)].

FACTS

1. The assessee was receiving Intellectual Property Rights services from overseas entities towards the right to use/enjoy confidential/ technical know-how and patents held by such overseas entities.
2. Assessee has been granted right to use/enjoy confidential/technical know-how and patent *vide* six different agreements. However, only the patent in respect of one entity, namely Investa technologies is registered in India under Patents Act, 1970. In respect of the remaining agreements, there is no patent, which is registered under the Patents Act, 1970.
3. The adjudicating authority has classified the intellectual property rights received by the assessee under the Intellectual Property Rights service and invoked extended period of limitation against the assessee.

HELD:

1. Paris Convention and Patent Co-operation Treaty were signed by member countries for the protection of Industrial Properties. India is one of the signatory to such treaties. The said treaty spells out a detailed mechanism for the filing of international applications

by an inventor and provides that once such an application is made and registered in the member country, then the IPR would be protected in that member country. Thus, there appears to be a codified law providing for recognition and protection under the Indian laws even in respect of Patents registered overseas.

2. Under the service tax law, when the legislature has specifically provided that an Intellectual Property Rights, that could be taxed as an IPR service is a right to an intangible property, which is recognised under any law for the time being in force, obviously the law being referred to here has to be an Indian law and not the recognition of the intangible property right under the law of a third country.

3. If an intangible property right was referred to a right which is recognised by any country, then the legislature would not have used the expression "under any law for the time being in force". If any inventor does not seek protection of its intellectual property under the Indian laws, the same cannot be regarded as an Intellectual Property Right for the purpose of taxing the grant of right to use such a right.

4. Thus, there can be no liability to tax under the head of Intellectual Property Rights services in respect of an Intellectual Property Rights that is not recognised by the law in India.

5. Taxability of transaction shall be with reference to the date when the service was rendered and not with reference to the date on which payment is made. As the service in the case of *Investa Technologies S.A.R.L*, was rendered prior to 10-9-2004, the date when the taxing entry was brought to the statute the mere subsequent payment in respect of services that are already being rendered cannot be brought to tax with respect to the rate applicable on the date on which the payment was effected.

6. The effect would be revenue neutral in a case where service tax paid under reverse charge would be available as CENVAT credit to an assessee. Thus, in such cases, it cannot be said that there is any intention to evade payment of duty which is a prerequisite for invoking the extended period of limitation.

Accordingly, the impugned order passed against the assessee is set aside.

■■■

JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Purnima Advertising Agency (P.) Ltd. vs. DCIT (TDS Circle), [2017] 83 taxmann.com 205 (Gujarat), 10th July, 2017

Department can't deny PAN correction in TDS return for more than 4 characters

Facts of the case

The assessee, an advertising agency, made payments to various parties and deducted tax at source as per the provisions of the Income-tax Act, 1961. The authority, found that the PAN indicated by the assessee for one of the companies in the declaration did not match with the actual PAN of said company.

The authority proceeded on the basis that the PAN provided to the deductor did not belong to the deductee and, therefore, in terms of sub-section (6) of section 206AA it would have the effect as if the deductee had not furnished the PAN to the deductor and the effect of provisions of sub-section (1) of section 206AA would follow. Therefore the authority proceeded on the footing that the assessee who was required to deduct tax at the rate of 20 per cent had deducted the same at the rate of 2 per cent and after adjusting such tax deducted, raised demand of remaining tax. After being served with communication, the assessee realised the error leading to such high demand and tried to correct its PAN declaration.

The on-line system of the department permits the correction only for two character and two digits. In the present case the entire PAN was wrong. The assessee was not able to change the PAN through online system and thus if had filed the petition before HC.

Held in the favour of the assessee that:

The department recognises the possibility of errors and has also made provisions for making corrections. It is not possible for us to envisage different situations under which such errors could crop up and it need not necessarily be confined to only two alphabets or two numeric digits of PAN. Therefore, decision of department in not permitting the petitioner to correct PAN of the deductee in the statement of tax deducted at source is impermissible.

Maneklal Agarwal vs. Deputy Commissioner of Income-tax, [2017] 84 taxmann.com 116 (SC), 14th July, 2017

Where assessee had leased out his property to his own family members, who in turn had sub-leased it to outsiders on higher rentals, income in fact belonged to assessee

Facts of the case

The assessee had leased out his property to his wife, son and daughter-in-law, who in turn had sub-leased it to outsiders on much higher rentals. During the assessment, AO added the rental income of the family members as assessee's own rental income. On appeal, the Commissioner (Appeals) upheld the assessment order. On further appeal, the Tribunal and the High Court held the view that nature of leases executed by the assessee was bogus and structures raised for tax evasion. Hence, the net rental value should be included in the income of the assessee.

On further appeal Supreme Court held that

Based on the earlier proceedings, a clear fact is arrived at by the authorities that a device was made by the appellant to show lesser income at his hand. Once it is established that the income in fact belongs to the appellant he was the right person for taxing the said income. It was permissible for the Income Tax Authorities to tax the said income at the hands of the assessee.

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SEMINAR ON PRACTICAL ASPECTS OF GST

Held on 12th August, 2017

Organised by MCTC Jointly with GSTPAM

(Thanks to Speakers, Committee Members, Members and more than 900 Participants)

Left to Right : Shri Darshan Shah,Shri Sachin Gandhi, CA Vipul Somaiya (President, MCTC), CA Ankit Chande (Speaker), CA Pranav Kapadia (President, GSTPAM), CA Deepak Thakkar & Shri Vinod Mhaske

Chairman of Seminar Committee, Shri Sachin Gandhi lighting the lamp

CA Vipul Somaiya (President - MCTC) addressing the audience

CA Pranav Kapadia (President - GSTPAM) addressing the audience

Shri Sachin Gandhi, Chairman of the Seminar Committee

CA Deepak Thakkar addressing the audience

CA Ankit Chande (Speaker) addressing the audience

CA Tejas Shah addressing the audience

CA Mitesh Katria (Speaker) addressing the audience

Attentive Audience at the seminar at Aspee Auditorium

SEMINAR ON PRACTICAL ASPECTS OF GST

Left to Right : CS Nimish Mehta, CA Vaibhav Seth, Shri Dinesh Tambde, CA Mitesh Katria & Shri Bhaven Mehta

CA Vaibhav Seth, Vice-President, MCTC

CS Nimish Mehta, Joint Secretary, MCTC

Shri Darshan Shah (Joint Secretary-MCTC) introducing CloudZen GST – Speaker

Left to Right: CA Vipul M. Somaiya (MCTC, President) & CA Pranav Kapadia (GSTPAM, President)

CA Jayesh Gogari (Speaker) addressing the audience

CA Shailesh Sethia

CA Utpal Patel addressing the audience

Attentive Audience at the seminar in Banquet Hall at Aspee Auditorium

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. Adm. Off. Tel. 022-2889 5161

• **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 August, 2017

To

If undelivered, please return to :

The Malad Chamber of Tax Consultants,
B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064.