The Malad Chamber of Tax Consultants

MNW/175/2015-17 **Total Pages 6** Price ₹ 5/-

39 Years

MCTC Bulletin

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

E-mail: maladchamber@gmail.com **Website : www.mctc.in**

Regd. Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai 400 064. **Mobile : 7039006655**
Admn. Office : C/o. Brijesh Cholerra : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

Vol. 1, No. 6 ***For members & private circulation only*** December, 2017

President's Communiqué

Dear Members,

Last month we discussed about virtues of true professional. Today, let's talk about leadership.

Leader is one who is able to see what others cannot see. By this virtue, he is able to do what others cannot do. He can perceive things differently and finds ways which otherwise people cannot see.

Leader's sense of identity is beyond himself. He thinks beyond himself. He does what is required to be done. He does what is needed and does not do what he wishes to do. Leader tweaks competence and not desires.

It is well said that Management is doing things right whereas Leadership is doing the right things. Leadership is not about running an organisation. It is about building an organisation.

Leader works upon three qualities for himself before he expects others to work.

– Integrity

– Ability to inspire people to do the right things

– Insight

He works upon unlocking his potential. These are the qualities which are already residing within each of us. One needs to unlock this potential.

Leader does not become slave of the situation. He starts creating situations. Leader believes in personal power and not positional power. He can influence the people. He is willing to confront problems. Leadership is not about position but about harnessing everybody's aspiration and make it happen. Leader is able to connect organisation goal with personal goal of people.

Leader himself is willing to change and does not want others to change. He can bring this force of willingness in every one. Role of leader is not to create followers but to create leaders, to create leader of leaders. Leader does not create followers but people choose to follow him.

Leader changes the strategy to achieve the goal but does not change the goal. A leader knows the way, goes the way and shows the way. He knows his journey, he travels the journey and also shows the way to others. Leaders always stay focused. He strongly believes that problem cannot be solved at the same level of consciousness that created them.

Leaders speak responsibility, takes responsibility and make tough decisions.

Wish you all Happy Leadership and Prosperous 2018. Also request you to block your dates 03rd February, 2018 for Public Meeting on Union Budget, 2018 and 10th March, 2018 for Box Cricket Tournament with sister associations.

Thanks,

CA Vipul M. Somaiya
President

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

Name	Designation	Contact Nos.		E-mail
Vipul M. Somaiya	*President*	28828855	9223418790	vipul@somaiyaco.com
Vaibhav Seth	*Vice-President*	28829028	9619721743	sethvaibhav@hotmail.com
Viresh B. Shah	*Hon. Treasurer*	28018520	9820780070	vireshbshah9@gmail.com
Darshan Shah	*Hon. Jt. Secretary*	28646766	9821868254	darshanshahfca@gmail.com
Nimish Mehta	*Hon. Jt. Secretary*	66621393	9769039399	nimish.mehta@nmco.in

Life Membership Fees ₹ 2,500 • Ordinary Membership Fees ₹ 1,000 p.a.

FORTHCOMING PROGRAMMES		
03rd February, 2018, Saturday Evening	Public Meeting on Union Budget Jointly with Goregaon Sports Club	Speakers : CA Vimal Punmiya CA Manish Chokshi Adv. Bharat Raichandani
10th March, 2018, Saturday	Box Cricket Tournament with Sister Associations	—

DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

❑ **Section 143 of the Income-tax Act, 1961 – Assessment – *Prima facie* adjustments – Processing of returns in Form ITR-1 under section 143(1) – Applicability of Section 143(1)(a)(vi) [250 Taxman (st) 17]**

The CBDT *vide* instruction No. 9/2017 dated 11/10/2017 clarifies as under.

The section 143(1)(a)(vi) of the Income-tax Act w.e.f. 1-4/2017 prescribes that while processing the return of income, the total income or loss shall be computed after making adjustment of addition of income appearing in Form 26AS or Form 16A or Form 16 (the three forms) which has not been included in computing the total income in the return.

In this regard, the doubts have arisen while processing income tax return filed in ITR-1 regarding the nature, extent and scope of comparison of information as contained in return of income with the three forms which might lead to issuance of intimation proposing adjustment to the returned income.

The CBDT clarified as under.

- In returns filed in ITR -1 Form, information about a particular head/item of income is only on net basis and thus, complete data/information may not be available therein which may enables comparison with the data/information as contained in the three forms in a meaningful manner. Therefore, in exercise of its powers under section 119 of the Act, the Board hereby directs that provision of section 143(1)(a)(vi) of the Act would not be invoked to issue intimation proposing adjustment to the income/loss so filed in ITR-1 form in such situations.
- Where any head/item of income has been altogether omitted to be included in the return of income filed in ITR-1 while the three forms contain specific detail in this regard pertaining to that item/head of income, section 143(1)(a)(vi) of the Act shall continue to apply. Further, for purpose of section 143(1)(a)(vi) of the Act, only the three forms specified therein would be taken into consideration.
- The pending intimations proposing adjustments under section 143(1)(a)(vi) wherein the taxpayer has tendered an explanation without revising the return or has not tendered any response till now shall be dealt with in accordance with the above direction. However, in cases where on receiving the intimation u/s. 143(1)(a)(vi) of the Act, the concerned assessee has already filed a revised return, such returns shall be treated as valid and handled accordingly.

❑ **New Rule 39A and insertion of Form No. 28AA in Income Tax Rules, 1962 – Comments and suggestions. Draft notification dated 19/09/2017. (250 Taxman (st.) 4)]**

In exercise of the powers conferred by section 295 of the Income-tax Act, an amendment to the Income Tax Rules is proposed for insertion of new rule 39A and Form No. 28AA in the Rules. It is proposed to create a mechanism for self-reporting of estimates of current income, tax payments and advance tax liability by certain taxpayers viz., companies and tax audit cases, on voluntary compliance basis.

The draft proposal – Rule 39A

- An assessee being a company and a person (other than a company), to whom the provision of Section 44AB are applicable shall furnish an intimation of estimated income and payment of taxes as on 30th September of the previous year, on or before 15th November of the previous year.
- If the income estimated as on 30th September of the previous year is less than the income of the corresponding period of the immediately preceding previous year by an amount of ₹ 5 Lakh or 10 per cent, whichever is higher, then the assessee shall be required to furnish an intimation of estimated income and payment of taxes as on 31st December of the previous year, on or before 31st January of the previous year.

New Form 28AA.

- A new Form 28AA is prescribed being intimation of estimated income, tax liability and payment of taxes for the previous year.

The comments and suggestions of stakeholders and general public on the above draft notification were invited. The comments and suggestions may be sent electronically by September, 2017 at the email address, dirtpl4@nic.in.

❑ **Section 143 of the Income-tax Act, 1961 – Assessment – Scrutiny assessment – Conduct of assessment proceedings electronically in time-barring scrutiny cases [Taxman 250 (st) 11]**

CBDT *vide* instruction No. 8/2017 dated 29/09/2017 clarifies as under.

As a part of Government's initiative towards e-governance, Income Tax Department has brought digital transformation of its business processes to a significant extent through the Income Tax Business Application (ITBA) project which provides an integrated platform to conduct various tax proceedings electronically through the 'e-proceedings' facility available on it. As a digital platform for conduct of scrutiny assessment proceedings in an end-to-end manner is now available, CBDT has decided to utilise it in a widespread manner for conduct of proceedings in scrutiny cases. This order covers various aspects of conducting scrutiny assessments electronically in cases which are getting barred by limitation during the financial year 2017-18.

It also specifies that the assessment proceedings in the specified time bearing scrutiny cases, pending as on 1-10-2017 where hearings have not been completed, would be carried out through the e-proceeding facility on ITBA.

One may refer to above citation for detailed instructions.

■■■

GOODS AND SERVICES TAX

Compiled by CA. Bhavin Mehta

Write-up on levy of GST on registered person towards supply made by unregistered person under RCM. If applicable effective date from which Notification No. 13/2017–Central Tax (Rate) (suspending such levy up to 31-3-2018) would become applicable.

Section 9(1) of CGST Act is charging section, wherein there shall be levied a tax called the Central Goods and Service-tax on all intra-State supplies of goods or services or both.

Section 22 prescribes person liable for registration. Every supplier shall be liable to be registered if he makes aggregate taxable supply of goods or services or both exceeding ₹ 20 lakh.

Reading in conjunction section 9(1) and section 22, it becomes clear that levy triggers only if the aggregate taxable supply of goods or services or both exceeds ₹ 20 lakh.

Now coming to section 9(4) of the CGST, it prescribes supply of taxable goods or services or both by supplier, who is not registered to a registered person, tax shall be paid by the registered person under reverse charge basis.

Comparing the section 9(1) read with section 22 and section 9(4) it can be derived that section 9(1) provides for levy of tax, wherein section 9(4) provides for collection of tax. There should be no dispute that collection would be possible only if levy if provided under the Statute. In other words levy comes prior to collection and in the absence of levy collection would not arise. Thus where an unregistered person is not liable to levy, tax cannot be collected on such transaction either under forward charge or reverse charge.

Without prejudice to above, Notification No. 8/2017 – Central Tax (Rate) dated 28-6-2017 (w.e.f. 1-7-2017), exempts intra-State supplies of goods or services or both by an unregistered person to a registered person.

However the proviso contained in the said notification limits the exemption to aggregate supply of ₹ 5,000 per day.

The proviso restricting the exemption to ₹ 5,000 is removed *vide* Notification No. 38/2017 – Central Tax (Rate) dated 13-10-2017. The issue which arises is whether the omission of said proviso is retrospectively omitted or would be prospective from 13-10-2017.

The Notification No. 38/2017 – Central Tax (Rate) states ***"In the said notification, the proviso under Paragraph 1 shall omitted"***

The notification does not states from which date the said proviso would be omitted from the said notification. The amendment appears to be clarificatory in nature because collection of tax from registered person can be considered as procedure matter rather than substantive provision and would have retrospective effect. If the new amendment affects matters of procedure only then, *prima facie*, it applies to all actions pending as well as future. It can be said that the amendment is made especially to cure an acknowledged evil for the benefit of the people at large.

Thus non-mentioning of the effective date would imply the Proviso has been deleted from the inception i.e. from 1-7-2017.

In respect of above discussion some of the relevant observations of Supreme Court are reproduced below:

1. Supreme Court in the case of ***Punjab Traders vs. State of Punjab, AIR 1990 SC 2300*** observed that an amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law.

2. Statutes dealing with procedure are presumed to be retrospective unless such a construction is textually inadmissible. **{*Hitendra Vishnu Thakur vs. State of Maharahstra, AIR 1994 SC 2623, p. 2641 (para 25(i))*}.** If the new Act affects matters of procedure only then, *prima facie*, it applies to all actions pending as well as future. In stating the principle that "a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective", the Supreme Court has quoted with approval the reason of the rule as expressed in Maxwell.

3. It is well-settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. **{*Channan Singh vs. Jai Kuar (Smt.) AIR 1970 SC 349*}.**

4. It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole **{*Mithlesh Kumari vs. Prem Bihari Khare, AIR 1989 SC 1247*}.**

5. The rule against retrospective construction is not applicable to a statute merely "because a part of the requisites for its action is drawn from a time antecedent to its passing" **{*R. vs. St. Mary White Chapel (Inhabitants) (1848) 12 QB 120 P. 127*}.** If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and the rule may well result in virtual nullification of most of the statutes. An amending Act, is therefore, not retrospective merely because it applies also to those to whom pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior dates. **{*Bishun Narain Misra vs. State of U.P., AIR 1965 SC 1567*}.**

Conclusion: Based on the above discussion and applying the above hypothesis of the observation made by Apex Court, in my opinion, registered person is not require to make payment of GST on procurement of supplies from unregistered person effective from 1-7-2017.

■■■

{emphasis supplied}

JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Vodafone Digilink Ltd. vs. CIT – TDS (Chandigarh), ITAT Delhi, [2017] 87 taxmann.com 315 (Delhi-Trib.) November 7, 2017

Assessee, engaged in providing telecommunication services, not required to deduct tax at source while paying roaming charges to other telecom operators.

Facts of the case

Assessee Company provides telecommunication services. During relevant period, assessee made payments of roaming charges to other telecom operators without deducting tax at source. Assessee claimed that roaming charges were paid to other telecom operators for allowing use of their network to assessee's subscribers. This was a standard facility and did not involve human intervention. Therefore such services could not be classified as fee for technical services liable for deduction of tax at source.

AO allowed assessee's claim, however the CIT passed a revisional order holding that assessee should have deducted tax at source while making payment of roaming charges.

The Tribunal observed as below

The view taken by AO during assessment was one of the possible views and hence cannot be held as incorrect. Also other telecom operators, to whom roaming charges were paid, would have offered income arising from roaming charges received from assessee to tax and hence there was no loss of revenue to the department. On the basis of above, it was concluded that the assessment order passed by AO was neither 'erroneous' nor 'prejudicial' to interest of revenue and, thus, revisionary powers u/s. 263 could not be invoked by the CIT and the order was to be set aside.

Raj Kumar Mittal vs. DCIT (Agra), ITAT Agra, [2017] 87 taxmann.com 344 (Agra – Trib.) September 29, 2017

Assessing officer cannot make addition to assessee's income merely based upon DVO's report in absence of any corroborative material to point out under valuation of property in question.

Facts of the case

During search proceedings AO found that Assessee had purchased a residential house. In response to notice issued u/s. 142A, the assessee submitted purchase deed with value of property as of ₹ 62.32 lakhs.

The AO referred the property to the DVO (Departmental Valuation Officer), who estimated the investment at ₹ 1.57 crore as against ₹ 62.32 lakhs shown by the assessee. The AO, accordingly, added the difference assessee's income. The CIT(A) confirmed said addition (first appeal).

On second appeal, it was held

AO contended that Assessee had submitted registered deed of the property, but he did not furnish the required bills, vouchers and valuation report. Therefore, AO relied on the valuation report of DVO u/s. 142A to ascertain unexplained investment of the assessee in the said property.

A ready-made building was purchased by the assessee and no evidence was found during course of assessment proceedings and in DVO enquiry of any further construction or investment in the Property after the property was purchased. Hence AO had no corroborative evidence of alleged undisclosed investment in the property.

The tribunal also made reference to the case of '*CIT v. Nishi Mehra*' *[2015] 56 taxmann.com 89/232 Taxman 111 (Delhi)* where it was held that no addition can be made merely only on the basis of DVO's Report in the absence of any corroborative evidence.

In the light of above the order of CIT(A) was reversed and the additions were deleted.

■■■

Third Study Circle Meeting held on 2nd December, 2017

Left to Right : Shri Darshan Shah (Hon. Jt. Secretary), CA Anand Paurana (Speaker), CA Vaibhav Seth (Vice-President) & CA Jaimin Trivedi.

Attentive audience at the seminar in Hall at SNDT Mahila College, Malad (West)

Shri Dilip Parekh (Past President) Presenting Memento to CA Ashit Shah (Speaker)

CA Anand Paurana (Speaker) addressing the audience

CA Ashit Shah (Speaker) addressing the audience

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 December, 2017

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.

To