



**The Malad
Chamber of
Tax
Consultants**

MNW/175/2018-20

Total Pages 6

Price ₹ 5/-



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. 7

For members & private circulation only

January, 2018



President's Communique

Dear Members,

Perseverance is a key to success. Perseverance means to continue doing something in a determined way, despite of having problems. To my mind, all virtues on one side and perseverance is on other side. The weight of perseverance will increase. Having knowledge is one thing and applying knowledge on consistent basis is another thing.

With perseverance one can develop other virtues in life. Else, everything is just thoughts and temporary actions which die without getting converted into success. In Gujarati, there is a proverb, "Tipe tipe sarovar bhary" to say the same thing in English, "Rome was not built in a day". With perseverance, one can develop habit. Habits get converted into culture and culture into tradition. We all know how difficult it is to break the tradition. Perseverance in a correct direction surely leads to success.

At the same time, time bound results are must in today's world. Else the achieved results lose its value. Today, the world is of fast movers and not, first movers. Government has also realised the importance of speed today. As can be observed there will be hardly any organisation which is working at a pace or speed at which Government is working today.

Let's all also change ourselves rapidly. Learn new things. Apply the same into our practice in a rapid manner. That's the only way to success. If you are slow in application, do not get surprised if the things what you have learnt itself changes.

E-Way bill is introduced with effect from 1st February, 2018. We are going to have our fourth Study Circle on e-Way bill on 20th Jan, 2018.

Union Budget, 2018 is to be announced on 1st February, 2018. Your Chamber following its tradition is going to come out with a publication on Union Budget 2018 within 48 hours of budget announcement. Please book you Budget publication bulk copies in advance. We are also planning to have a Public Meeting on Union Budget, 2018. This year will be consecutively 27th year of Public Meeting and 20th year of our flagship publication on Union Budget.

We have also arranged/participated in Joint Workshop on GST Law, which got started from 17th January, spread over nine Wednesdays at GSTPAM Library in association with Goods and Services Tax Practitioners Association of Maharashtra, Chamber of Tax Consultants, Western India Region Council of ICAI, Bombay Chartered Accountants Society and All India Federation of Tax Practitioners (West Zone).

We are also planning the similar series of sessions on GST very soon in western suburbs of Mumbai. So, those who missed the bus in the above joint workshop can surely participate in this event.

Further, we are also organising Triangle Indoor Box Cricket Tournament on 10th March, 2018 where two teams from each association, MCTC, GSTPAM and CTC will be participating.

Also note that your Chamber had sent representation to Government of Maharashtra for extension of VAT Audit which was duly considered by Government and date got extended up to 15th Feb., 2018.

Happy Learning * Happy GST Return Filing * Happy VAT Auditing

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		
20th January, 2018, Saturday Evening	Forth Study Circle on E-Way Bill	Speakers CA Sheel Bhanushali
3rd February, 2018, Saturday Evening	Public Meeting on Union Budget Jointly with Goregaon Sports Club	Speakers CA Vimal Punamiya CA Manish Chokshi CA Bharat Raichandani
10th March, 2018, Saturday	Triangle Box Cricket Tournament with CTC and GSTPAM	Contribution ₹ 750/- per participant For Registration Contact Ravindra Sud - 7039006655

DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **SECTION 40A(3) OF THE INCOME-TAX ACT, 1961, READ WITH RULE 6DD OF THE INCOME-TAX RULES, 1962 - BUSINESS DISALLOWANCE - CASH PAYMENT EXCEEDING PRESCRIBED LIMITS - CLARIFICATION ON CASH SALE OF AGRICULTURAL PRODUCE BY CULTIVATORS/AGRICULTURISTS**

CIRCULAR NO. 27/2017 DATED 3-11-2017

The Central Board of Direct Taxes (CBDT) has received representations from the stakeholders regarding applicability of provisions of Income-tax Act, 1961 ('the Act') to cash sale of agricultural produce by the cultivators/agriculturists.

CBDT has clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ₹ 2 lakh will not:

- (a) Result in any disallowance of expenditure under section 40A(3) of the Act in the case of trader;
- (b) Attract prohibition under section 269ST of the Act in the case of the cultivator; and
- (c) Require the cultivator to quote his PAN/or furnish Form No. 60.

- **SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA - CLARIFICATION ON INDIRECT TRANSFER PROVISIONS IN CASE OF REDEMPTION OF SHARE OR INTEREST OUTSIDE INDIA**

CIRCULAR NO. 28/2017 [F.NO.500/10/2017-FT&TR-IV], DATED 7-11-2017

Under the provisions contained in section 9(1)(i) of the Income-tax Act, 1961 ('Act'), all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India or through the transfer of a capital asset situate in India, shall be deemed to accrue or arise in India. Explanations 5, 6 and 7 of section 9(1)(i) further define the scope of said provision. Concerns have been expressed by investment funds, including private equity funds and venture capital funds, that on account of the extant indirect transfer provisions in the Act, non-resident investment funds investing in India, which are set up as multi-tier investment structures, suffer multiple taxation of the same income at the time of subsequent redemption or buyback. Such taxability arises firstly at the level of the fund in India on its short term capital gain/business income and then at every upper level of investment in the fund chain on subsequent redemption or buyback. The Board has received representations to exclude investors above the level of the direct investor, who is already chargeable to tax in India on such income, from the ambit of indirect transfer provisions of the Act. Addressing such concerns in his Budget speech on 1st February, 2017, the Finance Minister had stated that Category I and Category II Foreign Portfolio Investors (FPI) will be exempted from indirect transfer provisions. It was also stated that a clarification will be issued that indirect transfer provisions shall not apply in case of redemption of shares or interests outside India as a result of or arising out of redemption or sale of investment in India which is chargeable to tax in India. *Vide* Finance Act, 2017, Category I and Category II FPIs have already been exempted from indirect transfer provisions of the Act through insertion of proviso to *Explanation 5* to section 9(1)(i) of the Act, with effect from 1-4-2015.

There could be situations in multi-tiered investment structures, where interest or share held indirectly by a non-resident in an Investment Fund or a Venture Capital Company or a Venture Capital Fund (hereinafter referred to as 'specified funds'), is redeemed in an upstream entity outside India in consequence of transfer of shares or securities held in India by the specified funds, the income of which have been subject to tax in India. In such cases, application of indirect transfer provisions on redemption of share or interest in the upstream entity may lead to multiple taxation of the same income. In respect of Category I and Category II FPIs though, such multiple taxation will not take place on account of the insertion of proviso to *Explanation 5* to section 9(1)(i) of the Act, *vide* Finance Act, 2017.

The matter has been examined by the Board and it has been decided that the provisions of section 9(1)(i) of the Act read with *Explanation 5* thereof shall not apply in respect of income accruing or arising to a non-resident on account of redemption or buyback of its share or interest held indirectly (i.e., through upstream entities registered or incorporated outside India) in the specified funds if such income accrues or arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India. However, the above benefit shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share

of the non-resident in the total consideration realised by the specified funds from the said transfer of shares or securities in India. It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

For the purposes of this Circular,

- (i) "Investment fund" shall have the meaning assigned to it in clause (a) of *Explanation 1* to section 115UB of the Act.
- (ii) "Venture Capital Company" and "Venture Capital Fund" shall have the meanings respectively assigned to them in *Explanation* to clause (23FB) of section 10 of the Act.

□ **SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL - INSTRUCTIONS FOR UNAUTHORIZED EXPANSION OF SCOPE OF LIMITED SCRUTINY**

LETTER [F.NO.DGIT(VIG.)/HQ/SI/2017-18], DATED 30-11-2017

CBDT has issued detailed guidelines/directions for completion of cases of limited scrutiny selected through CASS module. These guidelines postulate that an Assessing Officer, in limited scrutiny cases, cannot travel beyond the issues for which the case was selected. The idea behind such stipulations was to enforce checks and balances upon powers of an AO to do fishing and roving inquiries in cases selected for limited scrutiny. Further, the guidelines for proper maintenance of order sheets have been given in the Manual of Office Procedure issued by the Directorate of Organisation and Management Services. The Manual clearly lays down:

- A. The minutes of the hearing must be entered with date, in the order-sheet.
- B. Make proper order-sheet entries for each posting, hearing and seeking and granting of adjournments.
- C. If nobody attends a hearing or the request for adjournment comes after the hearing date, enter the facts in the order-sheet.

Maintenance of a cursory and cryptic order sheet shows irresponsible, *ad hoc* and undisciplined working of any officer.

Instances have come to notice of CDBT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited Scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CDBT Instructions dated 26-9-2014, 29-12-2015 and 14-7-2016. These instances have been viewed very seriously by the CDBT and in one case the Central Inspection Team of the CDBT was tasked with examination of assessment records on receipt of allegations of several irregularities. Amongst other irregularities, it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of *mala fide* intentions. The Officer concerned has been placed under suspension.

In view of discussion in the preceding paragraphs it is once again reiterated that the Assessing Officers should abide by the instructions of CDBT while completing limited scrutiny assessments and should be scrupulous about maintenance of note sheets in assessment folders.



GOODS AND SERVICES TAX

Compiled by CA. Bhavin Mehta

Place of supply of Services where location of supplier or location of recipient is outside India – Section 13 of CGST Act

In the month of Nov., 2017 newsletter I had made an attempt to analyse the provision of section 12 of CGST Act which is applicable when both service provider and recipient of service is located in India.

This article contains analysis of the provision of section 13 of CGST Act.

Section 13

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

Comments: Either supplier of services or recipient of services is located outside India. The provision determines export and import of services. Section 2(6) of IGST Act, determines export of services, wherein one of the conditions is the place of supply of services is outside India. For import of services, the place of supply of services is in India.

- (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

Comments: This is default provision. Except services covered under sub section (3) to sub-section (13), all services would be covered under this default provision, wherein the place of supply of services shall be location of the recipient of services. However, where location of the recipient of service is not available, the place of supply of services shall be location of the supplier of services.

- (3) The place of supply of the following services shall be the location where the services are actually performed, namely:
- (a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services.
- Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.
- Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, then that which is required for such repairs;
- (b) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

Comments: Performance based services are covered under sub-section (3).

- Services supplied on goods made physically available by recipient of service would be covered under clause (a) above, such as cargo handling, storage, repairs and maintenance.
 - In case of service is supplied from remote location, the place of supply of service shall be the location where goods are situated at the time of supply of services.
 - Goods temporarily imported into India for repairs and exported after repairs would be not be covered under above provision, but default provision would be applicable i.e., location of recipient of service.
 - With respect to clause (b) physical presence of person is essential such as beauty treatment. The place of supply of service shall be location of the performance.
- (4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

Comments: Services 'directly in relation to' immovable property will be the location of such property. In other words, place of supply shall be the location of immovable property. It may be noted that services supplied with use of immovable property would not be covered unless specified. For example storage of chemical in tanks (which is say immovable) would not be covered under this provision.

- (5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

Comments: It would cover supply of admission to an event as well as organisation of event and services ancillary. Services of admission to a venue will be the location of the venue. The above services under cross-border supply would be location of the event but in case of domestic supply the location of event is relevant for the services of admission to an event and not to organization of event.

- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union Territory, the place of supply of such services shall be taken as being in each of the respective States or Union Territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Comments: If the services mentioned above in sub-sections (3), (4) & (5), i.e., goods & individual related, immovable property related and event related, is supplied -

- At more than one taxable location, its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided.
- In more than one State, its place of supply shall be each such State in proportion to the value of services so provided in each State.

It may be noted that where a person supplies the services to a recipient of service in both taxable and as well as in non-taxable territory, the location of entire value of service would be considered as in taxable territory.

- (8) The place of supply of the following services shall be the location of the supplier of services, namely: (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) Intermediary services.

- (c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation. — For the purposes of this sub-section, the expression, —

- (a) “Account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (b) “Banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);
- (c) “Financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (d) “Non-banking financial company” means, —
- (i) A financial institution which is a company;
 - (ii) A non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) Such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

Comments: The principle of destination based consumption is deviated in respect of services mentioned above, wherein place of supply shall be location of the supplier.

- Services provided by Banking Company, financial institutions, NBFC, to account holder would be covered. In other words where services is supplied by Banking Company, financial institutions, NBFC to other than account holder would be covered under default provision and not under this provision.
 - Before classifying the service under intermediary service as defined in section 2(13) of IGST Act, it is important to examine broad set of activities which may be carried out by the service provider. If the role of service provider is more than facilitator then he may not qualify as intermediary.
 - Hiring of conveyance including yachts for a period up to one month shall be covered under this provision except hiring of aircraft and vessel.
- (9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

Comments: Services of transportation of goods, other than by mail or courier, shall be the place of destination of goods.

- (10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

Comments

- (11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

Comments: Passenger transportation shall be place where passenger embarks.

- (12) The place of supply of online information and database access or retrieval (ODAIR) services shall be the location of the recipient of services.

Explanation. — For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —

- (a) The location of address presented by the recipient of services through internet is in the taxable territory;
- (b) The credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
- (c) The billing address of the recipient of services is in the taxable territory;
- (d) The internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) The bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) The country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) The location of the fixed landline through which the service is received by the recipient is in the taxable territory.

Comments: The place of ODIAR services is deemed to be located in taxable territory, if any two of the non-contradictory conditions mentioned under clauses (a) to (g) is satisfied. In other words, such recipient would be considered as situated in a taxable territory if they meet any two of the above conditions.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Comments: Cases where services attract either double taxation or non-taxation, the Central Government may notify the place of supply of effective use and enjoyment of a service.



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Pr. CIT (Rohtak vs. Smt. Kavita, Punjab and Hariyana High Court, ITA No. 154 of 2017(O&M), 11th December 2017

Reimbursement of expenses not income though TDS was deducted on such payments u/s. 194C or 194H as contract/commission payments

Facts of the case:

Normally, the payments made by the deductor are income in the hands of the receiver and on this analogy only the Income Tax Department (ITD) insists matching the amount of income and TDS as claimed by the assessee with online Form 26AS. Recently, ITD had issued asked taxpayers to ensure that income/receipts match with Form 16A.

Assessee was the main distributors of Vodafone for the district. During assessment AO made an addition of the amount reflected in Form 26AS on which TDS had also been deducted under sections 194C and 194H but not appearing in the P&L Account.

Aggrieved by the order, the assessee filed an appeal before the CIT(A) who deleted the whole addition with the observation that receipts were on account of reimbursement of salary reimbursement of discount paid to Assistant Distributors. Also, it was noticed that incentive paid directly to retailer, by Vodafone and not routed through the account of the assessee, the question of adding the same as suppressed receipt did not arise and, therefore, was deleted. ITAT also held the view of CIT(A).

On further appeal, High Court held in the favour of the assessee that:

The Court observed that incentive paid by Vodafone had been made directly to the retailers. Since the said amount was neither due nor received by the assessee, the question of adding the same as suppressed receipts did not arise and, therefore, the same was deleted. As the amount did not form part of the receipts of the assessee, credit for corresponding TDS could not be given to the assessee and the AO was directed not to give credit for this TDS amount.

Also it was observed that the addition on account of receipt of discount was deleted by holding it to be on account of reimbursement of amount paid to Assistant Distributors.

Thus the appeal by the revenue was dismissed.



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 those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

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 January, 2018**

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.

