



**The Malad  
Chamber of  
Tax  
Consultants**

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# MCTC Bulletin

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June, 2018



## President's Communique

Dear Members,

**Sarveshaam Swastir Bhavatu | Sarveshaam Shantir Bhavatu  
Sarveshaam Poornam Bhavatu | Sarveshaam Mangalam Bhavatu  
Sarve Bhavantu Sukhinah | Sarve Santu Niraamayah  
Sarve Bhadrani Pasyantu | Maa Kaschit Duhkha bhaag bhavet  
Om shanti shanti shanti!!**

**At the end of my tenure, let me wish,**

*May there be Well-Being in All, May there be Peace in All, May there be Fulfilment in All, May there be Auspiciousness in All, May All become Happy, May All be free from illness, May all see what is Auspicious, May no one suffer, Om shantih shantih shantih!!*

*This Shanti mantra talks about peace in the body, mind and soul, about peace in the past, present and future, Peace for self-immediate family, friends and world at large.*

I take this opportunity to thank all my predecessors – past presidents of this esteemed Chamber, my seniors in the profession who have guided me throughout the year. I also thank all the speakers of the events, authors in this bulletin to enlighten us on various academic topics.

I also thank all the institutions specifically SNDT, DSIMS, Aspee Auditorium, and GSC to offer us the best of venue for smooth conducting of the events.

I also thank the editor of this bulletin, Shri Kishorbhai Vanjara, printer of the bulletin, the postal department as well without whose support communication with all of you was not possible.

Let me confess, I have received a lot more from this Chamber as compared to what I have given to this Chamber, the best of professional connects and best of friends which I am going to cherish throughout my life.

The Chamber has made my belief more strong to accept each and every person in life as he is and embrace his contribution in our life. I learned a lot to be more polite and to convince others of our view point.

There are many more whom I should be thankful. However for limitation of space I may not be able to mention here.

Residential Refresher Course organised by the Chamber from 1st June, 2018 to 3rd June, 2018 at Mirasol Resort, Daman has been a wonderful success. The Chamber has also organised its Sixth Study Circle on Practical Issues, Law and Solution in e-Way Bill on 16th June, 2018

Eager to meet you all in our Annual General Meeting on 1st July, 2018.

Thanks,

**CA Vipul M. Somaiya**  
President

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

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

<b>FORTHCOMING PROGRAMMES</b>	
Sunday, 1st July, 2018 at 10.45 a.m. at SNDT Mahila College, Liberty Garden Road, Malad (West), Mumbai – 400 064	<b>39th Annual General Meeting</b>

## **DIRECT TAXES – LAW UPDATE**

*Compiled by CA Haresh P. Kenia*

### ❑ **Fugitive Economic Offenders Ordinance, 2018 (254 Taxman,(st) 103)**

The Fugitive Economic Offenders Bill 2018 was introduced on March 12th, 2018 in the house of the people. The said Bill could not be taken up for consideration and passing in the House of the People. The Parliament is not in session and the President is satisfied that circumstance exist which render it necessary for him to take immediate action. Therefore, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance.

An ordinance to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian Courts, to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto.

This ordinance extends to the whole of India. It came into force at once. The provisions of this ordinance will apply to any individual who is, or becomes, a Fugitive Economic offender on or after the date of coming into force of this ordinance. It defines "Fugitive Economic offenders" means any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any Court in India, who has left India so as to avoid criminal prosecution or being abroad, refuses to return in India to face criminal prosecution. The ordinance provides for SCHEDULE of offences. The list covers the specified offences under various Acts as under:

- Offences under the Indian Penal Code (45 of 1860)
- Offence under the Negotiable Instruments Act, 1881 (26 of 1881)
- Offence under the Reserve Bank of India Act, 1934 (2 of 1934)
- Offences under the Central Excise Act, 1944 (1 of 1944)
- Offences under the Customs Act, 1962 (52 of 1962)
- Offences under the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988)
- Offences under the Prevention of Corruption Act, 1988 (49 of 1988)
- Offences under the Securities and Exchange Board of India Act, 1992 (15 of 1992)
- Offences under the Prevention of Money Laundering Act, 2002 (15 of 2003)
- Offences under the Limited Liability Partnership Act, 2008 (6 of 2009)
- Offences under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)
- Offences under the Companies Act, 2013 (18 of 2013)
- Offences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015)
- Offences under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
- Offences under the Central Goods and Services Tax Act, 2017 (12 of 2017)

The ordinance provide for the followings:

- Application for declaration of fugitive economic offender and procedure thereof
- Attachment of property
- Power of Director and other officers
- Power of survey
- Search and seizure
- Search of persons
- Notice
- Procedure for hearing application

- Declaration of fugitive economic offender
- Supplementary application
- Power to disallow civil claims
- Management of properties confiscated under the Ordinance
- Rules of evidence
- Appeal
- Bar of jurisdiction
- Protection of action taken in good faith
- Power of Central Government of amend Schedule
- Overriding effect
- Application of other laws no barred
- Power to make rules
- Laying of rules before Parliament
- Power to remove difficulties

❑ **Miscellaneous-Filing of references for restoration of struck-off/d-registered companies under the Companies Act, 2013 (254 Taxman,(st) 118)**

**NOTIFICATION F. NO. 225/423/2017, DATED 18-04-2018**

The Central Board of Direct Taxes (CBDT) has directed all Principal Chief Commissioners/ Principal Directors-General of Income tax to complete the exercise of filing references, including instances of pendency of outstanding tax – liability in cases of struck-off/de-registered companies by 31-05-2018.

Finance Act, 2018 (254 Taxman,(st) 1)

An Act, to give effect to the Financial proposals of the Central Government for the F.Y. 2018-19 as assented by the President of India, on 29-03-2018 is available at above Citation. The Act may be called as the Finance Act 2018. It came into force on 01-04-2018.

❑ **Section 139AA, read with sections 139A & 139, of the Income-tax Act, 1961 – Aadhaar Number – Quoting of – Further extension of date for linking PAN with Aadhaar (254 Taxman,(st) 55)**

The CBDT *vide* order (F. No. 225/ 270/2017/ITA.II), DATED 27-03-2018, has extended the last date for linking of Aadhaar with PAN from March 31, 2018 to June 2018. This is the 3rd time, CBDT has extended the due date for linking Aadhaar number with PAN.

❑ **Section 143 of the Income-tax Act, 1961 – Assessment – General – Processing of Returns under Section 143(1) which are pushed to Assessing Officers by the CPC (254 Taxman,(st) 56)**

The CBDT *vide* LETTER (F.NO. 225/53/2018/ITA.II), DATED 28-03-2018 clarifies as under:-

The CBDT has launched software for processing of returns on Income-tax Business Application (ITBA) which has been functioning since 31st October, 2017. The returns pushed to the Assessing Officer for processing by the CPC are required to be processed electronically on the ITBA. Income tax Business Application (ITBA) software of Income tax department processes the Income tax returns (ITRs) under Section 143 (1). It simply validated ITR records filed by taxpayer and corrects the mistake apparent from records by comparing it with Form 26AS. This is preliminary procedure to process ITR & to issue tax refunds and demand tax payable from assessee (if any).

Till now Assessing Officer has no role in processing ITRs under Section 143(1) as all ITRs were required to be processed by ITBA only. Any technical glitches in the ITBA leads to delay in processing of ITRS. Now, CBDT has authorised Assessing Officers to process the ITRs manually in case returns cannot be processed because of technical difficulties in functioning of ITBA.

❑ **Double taxation agreement-Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries – Tajikistan – protocol (254 Taxman, (st) 57)**

The Central Government *vide* notification No. SO 1328 (E) dated 23-03-2018 notifies the PROTOCOL, amending the agreement between the Government of Republic of India and the Government of Republic of Tajikistan for

the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed on 20-11-2008, was signed on 17-12-2016. It substitutes para 2 of Articles 26 (Exchange of Information) of the agreement.

❑ **The Payment of Gratuity (Amendment) Act, 2018**

The Central Government *vide* Notification No. SO 1419(E) dated 29-03-2018 notified the payment of Gratuity (Amendment) Act, 2018 with effect from 29-03-2018. The key amendments included increase in the tax-fee ceiling of the gratuity amount from ₹ 10 Lakhs to ₹ 20 lakhs. Also, the provisions have been relaxed relating to calculation of continuous period of service for purpose of gratuity in case of female employees who are on maternity leave.

❑ **Double taxation Agreement – Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries – Kazakhstan – protocol (254 Taxman,(st) 90)**

The Central Government *vide* Notification No. SO 1589 (E) dated 12-04-2018 notifies the PROTOCOL, Amending the agreement between the Government of Republic of India and the Government of Republic of Kazakhstan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed on 09-12-1996, was signed on 06-01-2017.

❑ **Procedures for submission of Form Nos. 60 and 61, statement of Reportable Accounts & SFT (254 Taxman, st. 60)**

The CBDT *vide* Notification No. 1 to 4 of 2018 dated 05-04-2018 has prescribed for registration and submission of statement of Reportable Account and Statement of Financial Transaction as per Section 285BA. It has also specified the procedures which are to be followed by the persons, required to submit Form Nos. 60 and 61. An individual or a person (not being a company or firm) who does not have a permanent account number and who enters into any transaction specified in Rule 114B of the Income-tax Rules, 1962, shall either submit Form No. 60 physically in paper form as per the existing procedure or electronically using electronic verification.

❑ **Income-tax (Fourth Amendment) Rules, 2018 – Amendment in Form No. 49A & Form No. 49AA**

The CBDT *vide* Notification No. GSR 352 (E) dated 09-04-2018 has amended Form No. 49A and 49AA for application for allotment of Permanent Account Number (PAN). CBDT has incorporated 'Transgender' in the column related to Gender in case of individual applicant.

❑ **CBDT issues draft notification proposing amendment to rule 44E in line with BEPS Action 5**

Notification No. (F. No. 370142/34/2016-TPL (PART)) dated 10-04-2018

Under Base Erosion and Profit Shifting (BEPS) Action 5, Exchange of Permanent Establishment (PE) ruling (by Authority for Advance Rulings) are required to be done not only with the countries of residence of all related parties with whom taxpayer enters into transaction but also with the country of residence of the immediate parent company and the ultimate parent company. Therefore, in order to implement the recommendations made under Action 5 of BEPS Action Plan to bring greater transparency in cross-National transactions, Forms 34C and 34D (Forms for Advance Rulings) are required to be modified so that details such as name, address and country of the residence of non-resident's immediate parent company or ultimate parent company are captured at application stage itself. The Central Board of Direct Taxes (CBDT) has issued draft notification proposing an amendment to Rule 44E of the Income-tax Rules, 1962 and Forms 34C, 34D, 34DA as per Base Erosion and Profit Shifting (BEPS) Action 5. The stakeholders are requested to send their comments/suggestions on the draft notification by 25-04-2018 at [ts.mapwal@nic.in](mailto:ts.mapwal@nic.in).



## ANALYSIS OF PENALTY PROVISION UNDER SECTIONS 73 AND 74 OF CGST ACT

*Compiled by CA Bhavin Mehta*

In this month's article we will study the penalty provision prescribed in sections 73 and 74 of the CGST Act, 2017.

**Section 73:** The section pertains the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason *other than fraud or any wilful misstatement or suppression of fact*.

- (i) The person chargeable with tax before service of show cause notice pays the amount of tax along with interest and informs the jurisdictional officer in writing of such payment then no notice shall be issued and in turn no penalty shall be imposed on such person.
- (ii) Even if such person makes the payment of tax along with interest within 30 days of issue of show cause then no penalty shall be payable and all proceedings in respect of such show cause notice shall be deemed to be concluded.
- (iii) Where such person does not make the payment as mentioned in clause (ii) above, the adjudicating officer after considering the representation, if any made by such person, determine the tax, interest and impose penalty equal to 10% of the tax so determined or ₹ 10,000, whichever is more.
- (iv) Notwithstanding above provisions, in case where registered person has self-assessed tax or tax collected separately has not paid such tax within a period of 30 days from due date, mandatory penalty equal to 10% of such tax amount or ₹ 10,000, whichever is more shall be imposed.

**Issue:** In the absence of *mens rea* whether mandatory penalty of 10% can be imposed under Section 73.

**Comments:** Imposition of penalty meaning fastening of *mens rea* on assessee by rendering a deemed finding of concealment of particulars of tax payable. In ***Hindustan Steel Limited vs. State of Orissa, 1978(2) E.L.T J 159***, the Supreme Court has made the following observation to the effect that penalty is not leviable when the assessee was under *bona fide* belief that the transaction does not attract the taxing provision:

“Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute”.

In the case of *Padmini Products vs. CCE 1989 (43) E.L.T. 195 (S.C.)*, the Hon’ble Supreme Court observed as under:

“8. .... As mentioned hereinbefore, mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act. In the facts and circumstances of this case, there were materials, as indicated to suggest that there was scope for confusion and the appellants believing that the goods came within the purview of the concept of handicrafts and as such were exempt. If there was scope for such a belief or opinion, then failure either to take out a licence or to pay duty on that belief, when there was no contrary evidence that the producer or the manufacturer knew that these were excisable or required to be licensed, would not attract the penal provisions of Section 11-A of the Act. For the reasons indicated above, the tribunal was in error in applying the provisions of Section 11-A of the Act. There were no materials from which it could be inferred or established that the duty of excise had not been levied or paid or short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made thereunder.”

From the above observations of the Supreme Court, in my opinion penalty there should be deliberate attempt to contravene then only penalty would be imposable. Penalty under Section 73 cannot be levied unless there is finding that the escaped tax was the result of deception by the assessee.

**Section 74:** The section pertains to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized **by reason of fraud or any wilful misstatement or suppression of fact.**

- (i) The person chargeable with tax before service of show cause notice pays the amount of tax along with interest and a penalty equivalent to 15% of such tax and informs the jurisdictional officer in writing of such payment then no notice shall be issued.
- (ii) Where the person chargeable with tax pays tax, interest and a penalty of 25% of such tax within a period of 30 days of issue of notice, all proceedings in respect of such show cause notice shall be deemed to be concluded.
- (iii) Where such person does not make the payment as mentioned in clause (ii) above, the adjudicating officer after considering the representation, if any made by such person, determine the tax, interest and penalty in the order. If such person pays the tax along with interest and a penalty equal to 50% of the tax within 30 days of receipt of adjudication order, all proceedings in respect of said show cause notice shall be deemed to be concluded.

All the proceedings in respect of show cause notice issued under Section 73 and 74 shall not include the proceeding under Section 132 against such person. (Section 132 would be dealt separately in subsequent months article).

**Issues:**

1. Whether adjudicating officer has discretion to reduce the penalty?
2. In case where notice is issued under Section 74 but department is unable to prove the charge of fraud or wilful misstatement or suppression during adjudication, whether adjudication order can levy penalty @ 10% penalty prescribed under Section 73.
3. Whether periodical show cause notice/statement can allege suppression charge under Section 74?

**Comments**

1. Once the levy of penalty is found to be warranted having regard to the requirements of statute, the quantum of penalty is not at the discretion of authority and the same has to be as prescribed in the statute. Supreme Court in *UOI vs. Dharamendra Textile Processors 2008 (231) E.L.T. 3 (S.C.)* observed that it is a well-settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The Hon'ble Apex Court further went on to state that Rules of interpretation do not permit the courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. The Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.
2. The show cause notice is the foundation of the adjudication proceedings and it must give rise to the specific statutory charge and the same should be articulated in a crystal clear manner in the show cause notice. It is mandatory on the part of the Central Excise officer/adjudicating authority to specify the appropriate taxable category of service under which assessee would be liable to pay service tax. Thus if the show cause notice does not create charge under Section 73, the adjudicating officer is not permitted to invoke Section 73 and levy penalty under that section. In other words adjudication cannot travel beyond show cause notice.
3. While issuing first show cause notice all relevant facts are in knowledge of the authorities. Therefore while issuing subsequent notice/s with same facts, authorities cannot allege suppression of facts on part of assessee as these facts already in knowledge of authorities. The Hon'ble Supreme Court in the case of *Nizam Sugar Factory vs. CCE, A.P. 2006 (197) E.L.T. 465 (S.C.)* held "Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant". Because of the above principle, sub-section (4) of Section 74 states that periodical notices/statement will be deemed to have been issued under Section 73 (1) of the Act. In other words, such notices/statements would be issued without suppression or fraud charge.

In next month's article we will study the provision of Section's 122 to 128



## **GST NOTIFICATION AND CIRCULARS**

Compiled by Brijesh M. Cholera

**NOTIFICATION****25/2018 – Central Tax dt. 31-5-2018**

The Commissioner hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 for the months of July, 2017 to June, 2018, till the 31st day of July, 2018.

**24/2018 – Central Tax dt. 28-5-2018**

The National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India is notified as the authority to conduct the examination for person enrolled as a Goods and Services Tax Practitioner.



**23/2018 – Central Tax dt. 18-5-2018:**

Last date for filing of return in FORM GSTR-3B for the month of April-2018 was 20-05-2018 as notified in Notification No. 16/2018-Central Tax, which has been substituted to 22-5-2018.

**22/2018 – Central Tax dt. 14-5-2018:**

The Central Govt. waives the late fee payable under section 47 of the said Act for failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018 for the class of registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on the common portal on or before the 27-12-2017. Provided that such registered persons have filed the declaration in FORM GST TRAN-1 on or before the 10-05-2018 and the return in FORM GSTR-3B for each of such months, on or before the 31-5-2018.

**11/2018 – Central Tax (Rate), 12/2018-Integrated Tax (Rate), 11/2018-Union Territory Tax (Rate) dt. 28-5-2018:**

New entry has been Inserted in the list of goods on which GST is payable under reverse charge basis in respect of the intra-State or inter-State supply of Priority Sector Lending Certificate (PSLC) falling under any chapter, Supplied by any registered person to recipient of goods being registered person.

**7, 8, 9, 10.11/2018 – Union Territory Tax dt. 21-5-2018:**

w.e.f. 25-5-2018 Central Govt. rescinds the Notification dated 31-3-2018 regarding e-Way bill that irrespective of the value of the consignment, no e-way bill shall be required to be generated where the movement of goods commences and terminates within the Union Territory of Andaman and Nicobar Islands or Chandigarh or Dadra and Nagar Haveli or Daman and Diu or Lakshadweep.

**Circular****Circular No. 44/18/2018-CGST dt. 2-5-2018. Issue related to taxability of 'tenancy rights' under GST**

Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. Renting of residential dwelling for use as a residence is exempt. Grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

**Circular No. 45/19/2018-GST dt. 30-5-2018: Clarifications on refund related issues:**

Circular issued in order to clarify certain issues regarding claim of refund.

- It is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer *and* a non-resident taxable person, the filing of the details in **FORM GSTR-1** and the return in **FORM GSTR-3B** is not mandatory. Instead, the return in **FORM GSTR-4** filed by a composition taxpayer, the details in **FORM GSTR-6** filed by an ISD and the return in **FORM GSTR-5** filed by a non-resident taxable person shall be sufficient for claiming the said refund.
- It is clarified that while filing return in FORM GSTR-3B if registered person has committed an error by showing the zero rated supplies in column 3.1(a) instead of 3.1(b) then such registered person shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal.
- It is clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.
- It is clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. The exporter would be eligible for refund of unutilized input tax credit of Central Tax, State tax, Union Territory tax, integrated tax and compensation cess in such cases
- Restrictions are imposed under sub-rule (10) of rule 96 of the CGST Rules to prevent an exporter receiving the goods from the suppliers who is availing the benefits under specified notifications, under which they supply goods without payment of tax or at reduced rate of tax.

**Circular No. 3/1/2018-IGST dt. 25-5-2018:- Applicability of IGST (integrated tax) on goods supplied while being deposited in a customs bonded warehouse:**

It is clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond Bill of Entry and the value addition accruing at each

stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

<b>LIST OF NOTIFICATIONS IN THE MONTH OF MAY 2018</b>		
<b>NOTIFICATION NO. &amp; DATE OF ISSUE</b>		<b>SUBJECT</b>
25/2018-Central Tax, dt. 31-05-2018	CGST	Seeks to extend the due date for filing of FORM GSTR-6 for the months from July, 2017 till June, 2018
24/2018-Central Tax, dt. 28-05-2018	CGST	Seeks to notify NACIN as the authority for conducting the examination for GST Practitioners under Rule 83(3) of the CGST Rules, 2017
23/2018-Central Tax, dt. 18-05-2018	CGST	Seeks to extend the due date for filing of FORM GSTR-3B for the month of April, 2018
22/2018-Central Tax, dt. 14-05-2018	CGST	Seeks to waive the late fee for FORM GSTR-3B
11/2018-Central Tax (Rate), dt. 28-05-2018	CGST RATE	Seeks to amend notification No. 04/2017- Central Tax (Rate) dated 28-06-2017 so as to notify levy of Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM)
12/2018-Integrated Tax (Rate), dt. 28-05-2018	CGST RATE	Seeks to amend notification No. 04/2017- Integrated Tax (Rate) dated 28-06-2017 so as to notify levy of Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM).
11/2018-Union Territory Tax, dt. 21-05-2018	UGST	Notifications regarding e-Way bill in Union Territories (without legislature)
10/2018-Union Territory Tax dt. 21-05-2018	UGST	Notifications regarding e-Way bill in Union Territories (without legislature)
09/2018-Union Territory Tax, dt. 18-05-2018	UGST	Notifications regarding e-Way bill in Union Territories (without legislature)
08/2018-Union Territory Tax, dt. 18-05-2018	UGST	Notifications regarding e-Way bill in Union Territories (without legislature)
07/2018-Union Territory Tax, dt. 18-05-2018	UGST	Notifications regarding e-Way bill in Union Territories (without legislature)
11/2018-Union Territory tax (rate), dt. 28-05-2018	UGST RATE	Seeks to amend notification No. 04/2017- Union Territory Tax (Rate) dated 28-06-2017 so as to notify levy of Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM)

<b>LIST OF CIRCULARS IN THE MONTH OF MAY-2018</b>		
<b>CIRCULAR NO.</b>	<b>DATE OF ISSUE</b>	<b>SUBJECT</b>
45/2018	30/05/18	Clarification on refund related issues
44/2018	02/05/18	Issue related to taxability of 'tenancy rights' under GST-Regarding
3/1/2018-IGST	25/05/2018	Applicability of IGST (integrated tax) on goods supplied while being deposited in a customs bonded warehouse



# JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

**Surendra S. Gupta vs. ACIT 24(3), ITAT Mumbai, ITA No. 5791/Mum/2014, 9 May 2018**

**TDS amount on accrued fees taken as income and then TDS credit taken on entire amount**

*Facts of the case*

The assessee followed cash system of accounting in terms of Section 145 and offered the income on actual receipt basis. Therefore assessee did not offer consultancy income of ₹ 83,70,287/- to tax since the same was not received during the year. However, it offered corresponding TDS against the same amounting to ₹ 8,41,240/- to tax and claimed the equivalent credit thereof in the computation of income.

AO applied Rule 37BA(3)(i) and restricted the TDS Credit to ₹ 84,547/-, being proportionate TDS against ₹ 8,41,240/- offered to tax by assessee and disallowed the balance credit of ₹ 7,56,693/-.

CIT(A) also upheld the view of the AO.

**ITAT observed as under**

Section 198 of the Income-tax Act, 1961 stipulates that the amount of tax deducted at source shall be deemed to be the income received. Also in terms of Section 199(1), the amount of tax deducted at source is to be treated as a payment of tax on behalf of the person from whose income the deduction was made. However Rule 37BA states that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

ITAT observed that there are two school of thought on this issue – one which favours grant of full TDS credit in the year of deduction itself and the other which, following strict interpretation, allows TDS credit in AY in which the income has actually been assessed/offered to tax. One can find past decisions favouring both school of thought.

ITAT followed the principle of higher Judicial Authority and placed reliance on the decision of Kerala High Court in the case of *CIT vs. Smt. Pushpa Vijoy* [19 *Taxmann.com* 157]. High Court held that sub-sections (1) and (3) of Section 199 read with Rule 37BA of the Rules specifically authorise the assessee to retain TDS certificates and to produce it and claim credit in the year in which income on which recovery of tax made is returned for assessment.

ITAT thus dismissed the appeal and upheld the view of CIT(A).

**Amar Kanayalal Nagpal vs. ITO 19(2)(3), Mumbai, ITAT MUMBAI BENCH 'A', [2018] 94 taxmann.com 51 (Mumbai - Trib.), 30th May 2018**

**Availability of exemption u/s. 54EC to assets transferred to continuing partner on dissolution of firm due to death of partner**

*Facts of the case*

Assessee was a partner in the firm which had two partners. Due to death of one of the partners, the firm had to be dissolved due to operation of law. The firm owned an Industrial Unit in Mumbai which due to dissolution was transferred to the surviving partner along with all the assets and liabilities of the Partnership Firm.

Within one year of the dissolution of the firm, the continuing partner sold the industrial unit. The assessee considered the date of acquisition from the date when the property was purchased by the predecessor firm and claimed the profit/gain as LTCG. Against LTCG he claimed deduction under Sec. 54EC by investing in REC Bonds.

AO while passing order w.r.t. Section 263, disallowed the LTCG Exemption and regarded the sale as short term capital gain as the period of holding was one year two months from the date the partnership firm was dissolved.

*On appeal ITAT observed that*

In the absence of specific provisions that the period of holding of an asset acquired by a continuing partner on the dissolution of the firm occasioned by the death of a partner, is to be reckoned from the date of acquisition of the said asset by the firm, the claim of the assessee to claim the asset as a long term capital asset is disallowed. Accordingly as the gain from sale of property is short term as per the provisions of law, the exemption on account of investing the gain in accordance with Sec. 54EC can also not be allowed.

Sec. 45(4) of the Income-tax Act states that distribution of assets on dissolution of a firm is to be construed as a 'transfer' in the hands of the dissolving firm. Thus the cost of acquisition for the continuing partner shall be FMV as on date of dissolution and short term capital gain shall be calculated accordingly.

## 15th Residential Refresher Course [RRC] from 1st June, 2018 to 3rd June, 2018 (Mirasol Resort – Daman)



**Left to Right :** CA. Viresh Shah (Treasurer – MCTC), CA. Adarsh Parekh (Past President – MCTC), CA. Vipul M. Somaiya (President – MCTC), CA. Tejas Shah (Convenor – RRC & Picnic) & CA. Jayprakash Tiwari (Past President)

**Left to Right :** CA. Utpal Patel (Member – MCTC), CA. Ketan Soneji (Co-Convenor – RRC & Picnic), CA. Vipul M. Somaiya (President – MCTC) & CA. Tejas Shah (Convenor – RRC & Picnic)



Shri Sachin Gandhi (Chairman – Seminar Committee) Presenting Memento to CA. Adarsh Parekh (Speaker)  
**Topic:** Inbound Investments

Shri. Shantilal Chandlia presenting memento to CA. Jayprakash Tiwari (Speaker)  
**Topic:** FEMA – Basic Concepts Procedures



### RRC Participants



## Sixth Study Circle on "Practical Issues, Law and Solutions in e-Way Bill" on 16th June, 2018



**CA Vipul M. Somaiya**  
(President - MCTC)  
Welcome Speech



**CA. Jainam Trivedi**  
(Member - MCTC)  
Introducing Speaker



**CA. Aditya Surte**  
(Speaker)  
addressing the audience



**CA. Harsh Shah**  
(Member - MCTC)  
Vote of Thanks



Shri Manibhai Simaria presenting memento to CA. Aditya Surte (Speaker) with CA Vipul M. Somaiya (President-MCTC)



Attentive Audience at the 6th Study Circle at SNTD Mahila College, Malad (West)

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