The Malad Chamber of Tax Consultants

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39 Years

MCTC Bulletin

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President's Communiqué

Dear Members,

Anything excessive is poisonous. To have in abundance or not to have is two extreme situations, real though situation is to balance life with whatever limited one has.

India is such a country where people become biased very soon. The memory of the masses is very short. The thinking of masses and crowd opts for short term benefits. Persons individually understand the situations and good or bad results in the long term but when it comes to collective decisions to be taken, the people at large close with a short term view.

Perhaps that is the reason why today we do not have any Indian brand in top 500 brands of the world. Perhaps that is the reason why our education system produces more of employees and hardly any industrialists. Perhaps that is the reason why till now even top Indian Companies did not spend much on research & development.

It seems, we criticise more than we value. Persons understanding the true value choose to be a silent spectator in the crowd where criticism is announced loudly. It is truly said that, the damage is always more because of good people not coming together rather than because of actions of bad people. It is inaction of good people that is more responsible for the damage.

However, since last few years India is changing. India is the most young country in the entire world and upcoming largest economy worldwide. The Government has started taking action considering the youth of the country.

Upbringing Professional knowledge and increasing harmony is a core activity of your Chamber.

Your Chamber had organised a seminar under auspicious of Late Shri Rajubhai Chokshi Oration Fund with a topic on "Leveraging Information Technology by Professionals" and one other topic on "Works contract under GST along with Pradhan Mantri Avas Yojana" by speakers CA Abhishek Barari & CA Umang Talati.

The Chamber had also recently organised Indoor Box Cricket Tournament along with teams of Chamber of Tax Consultants & Goods and Services Tax Practitioners Association of Maharashtra. The sports activity has increased the harmony among members and sister associations as well.

We are now also coming up with our long awaited Residential Refresher Course at Mirasol Resort, Daman on 1st, 2nd and 3rd June, 2018 (Two nights, Three days Programme). Kindly block your calendar for the same. We will also be coming up with various other Study Circles and programmes prior to that.

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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BLOCK YOUR CALENDAR

15th RESIDENTIAL REFRESHER COURSE	
Date	From Friday 1st June, 2018 to Sunday 3rd June, 2018
Vanue	Mirasol Resort, Daman
Subject and Speakers details will be announced soon	
Participation Cost	₹ 8,900/- Per head for double sharing **for Members**
	₹ 9,400/- Per head for double sharing **for Non-Members**

DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

❑ **Assessment u/s. 143 – General – Processing of Income-tax returns which were filed in Form ITR-1 to 6 and applicability of section 143(1)(a)(vi)**

Circular No. 1/2018 [F. No. 225/333/2017-ITA.II], dated 10/1/2018

The CBDT earlier issued Instruction Nos. 9/2017 dated 11/10/2017 & 10/2017 dated 15/11/2017 for identification of instances in which Section 143(1)(a)(vi) of the Act may be invoked by CPC-ITR, Bengaluru on the basis of information contained in the ITR 1 to 6. This is with regard to provision of Section 143(1)(a)(vi) of Income-tax Act effective from 01/04/2017 which prescribed that while processing the return of income, income or a loss shall be computed after making adjustment for addition of income appearing in Form 26AS or Form 16A or Form 16 (the three forms) which have not been included in computing the total income.

In this regard, the CBDT has intimated *vide* Circular No. 1/2018 [F. No. 225/333/2017-ITA.II], dated 10/01/2018, the process to be followed by the taxpayers for filing the response in reply to the intimations proposing adjustments in identified returns which is issued by CPC–ITR Bengaluru. The CBDT, *vide* this Circular No. 1/2018, has suggested the manner for furnishing response by the taxpayer under the various scenario as specified in Para 2.3 of the aforesaid circular (one may refer to the circular for further details).

The CBDT has clarified that based upon the response of the taxpayers as indicated in para 2.3 of the circular, the returns will be taken up for processing by CPC – ITR as per the provisions of Sections 143(1), 143(1)(a)(vi) read with Instruction No. 9 & 10/2017 of CBDT.

❑ **SECTION 285BA of the Income-tax Act, 1961 – Statement of Financial Transaction or Reportable Account - obligation to furnish – reporting of U.S. Tax identification numbers (TINs) for pre-existing accounts by financial institutions**

CBDT Press Release, dated 15-1-2018

India and USA have signed the Inter-Governmental Agreement (IGA) under FATCA in 2015. To enhance the effectiveness of information exchange and transparency, both the sides committed to establish, by January 1, 2017, rules requiring their Reporting Financial Institutions (RFIs) to obtain the Tax Identity Number (TIN) of each reportable person having a reportable account as of June 30, 2014 (pre-existing account).The Income-tax Rules, accordingly, provide for reporting of U. S. TIN from the year 2017 onwards in respect of any pre-existing account.

The US-IRS has issued guidelines through Notice 2017-46 dated 25.09.2017 providing relaxation to Foreign Financial Institutions (FFIs) with respect to reporting of U. S. TIN for calendar years 2017, 2018 and 2019. Now the competent authority of USA will not determine significant non-compliance with the obligations under the IGA solely because of a failure of a reporting FFI to obtain and report each required U. S. TIN, provided that the reporting FFI:

(i) Obtains and reports the date of birth of each account holder and controlling person whose U. S. TIN is not reported;

(ii) Requests annually from each account holder any missing required U. S. TIN; and

(iii) Before reporting information that relates to calendar year 2017 to the partner jurisdiction, searches electronically searchable data maintained by the reporting FFI for any missing required U. S. TINs.

The Indian RFIs reporting pre-existing accounts should, therefore, ensure that the U. S. TIN is reported in respect of pre-existing accounts for the year 2017 onwards. However, in case the U. S. TIN is not available, to avoid determination by the USA competent authority of significant non-compliance to the obligations of the IGA, the RFIs are advised to insert nine capital letters e.g. (i.e. AAAAAAAA) in the TIN field (for the Account Holder or Controlling Person, as the case may be), for such accounts in their reports in Form 61B, provided that all the three conditions listed above are met.

- **Tax return preparer (Amendment) Scheme, 2018 – Amendment in Paragraphs 4 & 9 and substitution of paragraph 3**

  Notification No. GSR 44(E) [Nos. 4/2018 [F. No. 142/16/2010 (SO) – TPL (Part)], dated 19/01/2018

  The CBDT *vide* notification No. GSR 44(E) dated 19/01/2018 in excercise of the power u/s. 139B(1) of the Income-tax Act, amends the Tax Return Preparer Scheme, 2006. It substitutes para 3 as regard eligibility for becoming a Tax Return Preparer), para 4 with regard to application procedure and age-limit, para 9 with regard to fee to be disbursed to TRP in First/second/Third year along with cap limit, etc.

- **SECTION 45, read with section 10(38), of the Income-Tax Act, 1961 - Capital Gains - chargeable as - Frequently Asked Questions (FAQs) on Taxation of Long Term Capital Gains proposed in Finance Bill, 2018**

  Circular [F. No. 370149/20/2018 - TPL], Dated 4-2-2018

  The Finance Bill, 2018 proposed to withdraw the exemption u/s. 10(38) *vide* Clause No. 31 of the Bill. It also proposed to introduce new Section 112A in the Income-tax Act so as to provide that long term capital gains arising from transfer of such long term capital asset exceeding One Lakh rupees will be taxed at concessional rate of 10%. Several queries and issues have been raised relating to the proposed new tax regime for taxation of long term capital gains. The CBDT *vide* above circular responded to these queries. The CBDT has answered 24 FAQs.

- **SECTION 143, read with Sections 142 & 2(23c), of the Income-tax Act, 1961 - assessment - conduct of assessment proceedings in scrutiny cases electronically**

  Instruction No.1/2018 [F. No. 225/157/2017-ITA.II], Dated 12-2-2018

  - Section 2(23C) of the Income-tax Act, applicable from 01/06/2016, provides that "*hearing*" *includes communication of data and documents through electronic mode.* Accordingly to facilitate conduct of assessment proceedings electronically, *vide* letter dated 23-6-2017, in file of even number, Board had issued a revised format of notice(s) under Section 143(2) of the Act. Para 3 of these notice(s) provided that assessment proceedings in cases selected for scrutiny would be conducted electronically in 'e-Proceeding' facility through assessee's account in e-filing website of Income-tax Department.
  - The CBDT hereby directed that except for search related assessments, proceedings in other pending scrutiny assessment cases shall be conducted only through the 'e-Proceeding' functionality in ITBA/e-filing. However, in cases where the concerned assessee objects to conduct of assessment proceedings electronically through the 'e-Proceeding' facility, such cases, for the time-being, may be kept on hold.
  - The CBDT, considering the situation that some of the stations have limited bandwidth, being VSAT stations and stations with limited capacity where bandwidth is in the process of being upgraded, it has been directed that till 31-3-2018, such stations, in accordance with target stipulated in Central Action Plan for financial year 2017-18, may undertake and complete only ten per cent scrutiny cases (which are getting barred by limitation on 31-12-2018) having the potential to effect recovery during the current year itself. The list of such stations shall be specified by the Pr. DGIT (Systems). Accordingly, at these stations, till 31-3-2018, the assessment proceedings in cases to be completed as per Central Action Plan target, may be conducted manually if e-assessment is not possible. It is reiterated that at other stations covered under para 2 above, subject to exceptions mentioned therein, the assessments would be conducted electronically only.
  - Some of the important procedural aspects while conducting assessment proceedings through 'e-Proceeding' are as under:

- **Enquiry before assessment in electronic mode :** For enquiries before assessment in terms of Section 142(1)(ii) of the Act, notice shall be issued electronically and delivered upon the assessee in his 'e-filing' account. While filing the response electronically in compliance with notice under Section 142(1)(ii) of the Act, the concerned assessee shall verify it in the manner prescribed under Rule 14 of Income-tax Rules, 1962.

- **Use of digital signature by Assessing Officer :** All departmental orders/communications/notices being issued to the assessee through the 'e-Proceeding' facility are to be signed digitally by the Assessing Officer.

- **Time for compliance :** Online submissions may be filed till the office hours on the date stipulated for compliance.

- **Availability of facility for electronic submission of documents in time barring situation or where case has been finally heard by the Assessing Officer:** The facility for electronic submission of documents through 'E Proceeding' shall be automatically closed seven days before the time barring date. In other situations, upon completion of proceedings, before passing the final order, concerned Assessing Officer, on his volition, shall close the e-submission

facility after mentioning in electronic order sheet that 'hearing has been concluded'. However, if required, in exceptional circumstances, the concerned Assessing Officer may enable further filing of submissions electronically under intimation to the Range Head in ITBA.

- **In assessment proceedings being carried out through the 'e-Proceeding' facility, a particular proceeding may take place manually in following situation(s):**

  i. Where manual books of account or original documents have to be examined;

  ii. Where Assessing Officer invokes provisions of section 131 of the Act or a notice is issued for carrying out third party enquiries/investigations

  iii. Where examination of witness is required to be made by the concerned assessee or the Department

  iv. Where a show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests for personal hearing to explain the matter

- **Maintenance of 'Record' in the context of 'e-Proceeding':** In cases being assessed through 'e-Proceeding', from now on, as far as possible, case-records as well as note sheet of proceedings shall be maintained electronically.

- Section 56(2)(viib) of the income-tax Act, 1961, read with Rule 11UA(2) of the income-Tax Rules, 1962 - Income from other sources - chargeable as - determination of fair market value of unquoted equity shares of 'start-up' companies under Section 56(2)(viib) of the Income-tax Act read with Rule 11 UA(2) of the income Tax Rules.

CBDT Letter [F. NO. 173/14/2018-ITA.I], Dated 6-2-2018

The CBDT observed that Section 56(2)(viib) of the Act is being invoked in case of 'Start Up' companies by the Assessing Officers which has otherwise raised a genuine investment on the basis of their 'idea'. It was submitted that in tax-assessments, 'Start Up' companies invariably submit a valuation report from a merchant banker or an accountant based on Discounted Free Cash Flow Method as prescribed in Rule HUA(2)(b) of Income-tax Rules, 1962. However, in assessments, such reports are not being accepted and rejected/modified by the Assessing Officers by treating them as based upon abnormal valuations resulting in additions being made u/s. 56(2)(viib) of the Act in cases of 'Start Up' companies.

Section 56(2)(viib) of the Income-tax Act, 1961 (Act) provides that where a closely held company issues its shares at a price which is more than its fair market value, the amount received in excess of fair market value will be charged to tax in the hands of the company as income from other sources. Explanation to section 56(2)(viib) of the Act prescribes various methods for valuation of fair market value of shares of the closely held company. Among the various options for valuation of fair market value, one of the methods prescribed is based on fair market value of the unquoted equity shares as determined by a merchant banker or an accountant as per the Discounted Free Cash Flow Method.

In this regard, the CBDT hereby directed that in case of 'Start Up' companies which fall within the definition given in Notification of DIPP, Ministry of Commerce & Industry, in G.S.R. 501(E) dated 23-5-2017, if additions have been made by the Assessing Officer under Section 56(2)(viib) of the Act after modifying/rejecting the valuation so furnished under Rule 11UA(2), no coercive measure to recover the outstanding demand would be taken. Further, in all such cases which are pending with the Commissioner (Appeals), necessary administrative steps should be taken for expeditious disposal of appeals, preferably by 31st March, 2018.

- **MISCELLANEOUS - proposed merger of Government Savings Certificates Act, 1959 and Public Provident Fund Act, 1968 with Government Savings Banks Act, 1873 under proposed Government Savings Promotion Act**

  PIB Press Release, Dated 13-2-2018

  Government of India, in order to remove existing ambiguities due to multiple Acts and rules for Small Saving Schemes and further strengthen the objective of "Minimum Government, Maximum Governance", has proposed merger of Government Savings Certificates Act, 1959 and Public Provident Fund Act, 1968 with the Government Savings Banks Act, 1873. With a single Act, relevant provisions of the Government Savings Certificates (NSC) Act, 1959 and the Public Provident Fund Act, 1968 would stand subsumed in the new amended Act without compromising on any of the functional provision of the existing Act. The main objective in proposing a common Act is to make implementation easier for the depositors as they need not go through different Rules and Acts for understanding the provision of various small saving schemes, and also to introduce certain flexibilities for the investors.

The concerns have been raised from different corners and also by print and social media that the Government aims to bring down the protection against the attachment of Public Provident Fund Account under any decree or order of any court in respect of any debt or liability incurred by the depositors. The government has made clear that there is no proposal to withdraw the said provision and the existing and future depositors will continue to enjoy protection from the attachment under the amended umbrella Act as well. All existing protections have been retained while consolidating PPF Act under the **proposed Government Savings Promotion Act.** No existing benefits to depositors are proposed to be taken away through this process.

Apart from ensuring existing benefits, certain new benefits to the depositors have been proposed under the bill. These are:

- As per PPF Act, the PPF account can't be closed prematurely before completion of five financial years. If depositor wants to close PPF account before five years in exigencies, he can't close the account. To make provisions for premature closure easier in respect of all schemes, provisions could now be made through specific scheme notification. The benefits of premature closure of Small Savings Schemes may now be introduced to deal with medical emergencies, higher education needs, etc.
- Investment in Small Savings Schemes can be made by Guardian on behalf of minor(s) under the provisions made in the proposed bill Guardian may also be given associated rights and responsibilities.
- There was no clear provision earlier regarding deposit by minors in the existing Acts. The provision has been made now to promote culture of savings among children.
- There were no clear provisions in all the three Acts for the operation of accounts in the name of physically infirm and differently abled persons. Provisions in this regard have now been made.
- As per existing provisions of the Acts, if depositor dies and nomination exists, the outstanding balances will be paid to nominee(s). Whereas, Hon'ble Supreme Court in its judgment stated that nominee(s) is merely empowered to collect the amounts as Trustee for the benefit of legal heirs. It was creating disputes between the provisions of the Acts and verdict of Supreme Court. Hence, right of nominees have now been more clearly defined.
- In the existing Acts, there is no provision for nomination with regard to account opened in the name of minor. Further, existing Acts say that if account holder dies and there is no nomination and amount is more than prescribed limit, the amount shall be paid to legal heirs. In this case, the guardian has to obtain succession certificate. To remove this inconvenience, provisions for nomination with regard to account opened in the name of minors have been incorporated. Further the provision has been made that if the minor dies and there is no nomination, the balances shall be paid to guardian.
- The existing Acts are silent about grievance redressal. The amended Act allows the Government to put in place mechanism for redressal of grievances and for amicable and expeditious settlement of disputes relating to Small Savings.
- The above provisions which are proposed to be incorporated in the amended Act will add to the flexibility in operation of the Account under Small Savings Schemes.

❑ **Section 138 of The Income-tax Act, 1961 - Disclosure of information respecting assessees to specified officer, authority or body performing functions under any other law - notified authority under Section 138(1)(a)(ii)**

Order (F. NO. 225/61/2018-ITA.II), DATED 12-2-2018

- The Central Government, in pursuance of section 138(1)(a)(ii) of the Income-tax Act, *vide* Notification No. 6/2018 dated 12/02/2018 specifies that **Principal Director General of Income-tax (Systems), New-Delhi** (Pr. DGIT (Systems) shall be the specified authority for furnishing the information to the Chief Executive Officer, Government e-Marketplace (GeM)
- Following information regarding entities seeking registration with GeM as sellers shall be furnished:
  - i. PAN data in respect of seller
  - ii. Latest available three years' Balance Sheet of the sellers;
  - iii. Key Director's details related to the sellers; and

iv. Any further information considered necessary for verification of antecedents of the sellers (to be decided on basis of mutual consultation between Pr. DGIT (Systems) & GeM)

On the basis of mutual consultations between the two authorities, the information being provided by income-tax department on any of the above parameters can also be in form of online verification by GeM portal for which necessary system enablement would be provided by Pr. DGIT (Systems). However, information being shared under Section 138 of the Act by the Income-tax Department with GeM shall be used only for its internal purposes & not shared/passed on to other institution/agency.

- To facilitate the process of furnishing information, Pr. DGIT (Systems) would enter into a Memorandum of Understanding (MoU) with GeM which *inter alia*, would include the mode of transfer of data, maintenance of confidentiality, mechanism for safe preservation of data, weeding it out after usage etc. The frequency and time line for furnishing information shall be decided by Pr. DGIT (Systems) in consultation with GeM and included in the said MoU.

❑ **Finance Act, 2017 - Explanatory notes to provisions of Finance Act, 2017**

Circular No. 2/2018 [F.NO.370142/15/2017-TPL], Dated 15-2-2018

The Finance Act, 2017 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 31st day of March, 2017 and has been enacted as Act No. 7 of 2017. This circular explains the substance of the provisions of the Act relating to direct taxes. (One may refer to the above circular for further details)

❑ **Section 192 of the Income-tax Act, 1961 – Deduction of tax at source – Salaries – Instructions for deduction of tax at source from salaries during Financial Year 2017-18 – [252 Taxman (st.) 5]**

Circular No. 29/2017 [F.No. 275/192/2017-IT(B)], dated 05/12/2017

The Central Board of Direct Taxes (CBDT) has issued circular for deduction of tax at source from salaries. CBDT has explained the obligation of employers with regard to deduction of tax at source from salaries under Section 192 of the Income-tax Act, 1961 for the Financial Year 2017-18 in a comprehensive manner. The present circular contains the rates of deduction of income tax from the payment of income chargeable under the head “Salaries” during the Financial Year 2017-18 and explains certain related provisions of the Act and Income Tax Rules, 1962.

❑ **Finance Bill 2018 – [252 Taxman (st.) 85]**

The relevant extracts of speech of Shri Arun Jaitley, Minister of Finance, Finance Bill 2018 and Memorandum explaining the provisions relating to direct taxes are available at above citation.

■■■

GOODS AND SERVICES TAX

Compiled by CA. Bhavin Mehta

VALUATION OF TAXABLE SUPPLY – SECTION 15 OF CGST ACT, 2017

This month article I have summarised valuation of taxable supply provisions contained in Section 15 of CGST Act and in Rule 27 to Rule 35 of CGST Rules, 2017 as under:

1. The value of taxable supply shall include following:

(a) Any taxes, duties, cesses, fees and charges levied under any law, other than tax charged separately by supplier under CGST Act, SGST Act, UGST Act and Goods and Services Tax (Compensation to States) Act; In case where supply is inclusive of IGST, CGST, SGST or UGST, as the case be, the tax amount shall be determined as under:

Tax amount = Value inclusive of tax x tax rate / 100 + tax rate/s.

(b) Any amount that the supplier is liable to pay in relation to such supply but which is incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply, and

(e) Subsidies directly linked to the price shall be included in the value of supply of the supplier who receives subsidy excluding subsidies provided by the Central Government and State Governments.

2. The value of taxable supply shall not include any discount which is given

(a) Before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply, and

(b) After the supply has been effected, if-

(i) Such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices, and

(ii) Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

3. Supplier and Recipient are not related party

a) **Price is the sole consideration for supply:** The value of a supply shall be the transaction value. In other words the price actually paid or payable for such supply.

b) **Where the consideration is not wholly in money:**

(i) Open market value of such supply

(ii) If the open market value is not available - the consideration in money plus amount in money as is equivalent to the consideration not in money;

(iii) If the value of supply is not determinable under above two clauses - the value of supply of goods or services or both of like kind and quality

(iv) If the value is not determinable under above three clauses - the consideration in money plus 110% of the cost of such supply. In case 110% of the cost is not determinable than shall be determined using reasonable means consistent with the principles and provision of Section 15.

4. Supplier and Recipient are related or distinct persons

(a) Open market value of such supply

(b) If the open market value is not available – the value of supply of goods or services or services of like kind and quality

(c) If the value is not determinable under above two clauses - 110% of the cost of such supply. In case 110% of the cost is not determinable than shall be determined using reasonable means consistent with the principles and provision of Section 15.

Where the **Goods** are intended for further supply by recipient, the value at the option of supplier 90% of the price charged for supply of like kind and quality by the recipient to his customer (where customer being not related person).

Where the recipient is eligible to full input tax credit, the value declared in the invoice shall be deemed to be open market value of the **goods or services**.

5. Value of taxable supply of goods made or received through an agent

(a) Open market value of the goods supplied or at the option of supplier 90% of the price charged for supply of like kind and quality by the recipient to his customer (where customer being not related person)

(b) Where the value of a supply is not determinable under above clause – 110% of the cost of such supply. In case 110% of the cost is not determinable then shall be determined using reasonable means consistent with the principles and provision of Section 15.

However where expenditure or costs incurred by a supplier as pure agent of the recipient of supply shall be excluded from the value of supply.

Related Person

a. Such persons are officers or directors of one another's businesses

b. Such persons are legally recognised partners in business

c. Such persons are employer and employee

d. Any person directly or indirectly owns, controls or holds 25% or more of the issued and subscribed voting stock or shares or both of them

e. One of them directly or indirectly controls the other

f. Both of them are directly or indirectly controlled by a third person

g. Together they directly or indirectly control a third person, or

h. They are members of the same family

i. Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

6. The value of supply of services between distinct persons where input tax credit is available

Shall be deemed to be NIL:

Distinct Person

a. A person who has obtained or is required to obtain more than one registration, whether in one State or Union Territory or more then one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

b. Where a person who has obtained or is required to obtain registration in a State or Union Territory in respect of an establishment, has an establishment in another State or Union Territory, then such establishment shall be treated as establishments of distinct persons for the purposes of this Act.

7. The value of supply in case of lottery, betting, gambling and horse racing: (Rule 31A inserted by Notification No. 3/2018-CT dated 23.01.2018)

(a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket (supply value would amount to 89.286% of the face value of ticket) or of the price as notified in the Official Gazette by the organising State, whichever is higher.

(b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket (supply value would amount to 78.125% of the face value of ticket) or of the price as notified in the Official Gazette by the organising State, whichever is higher.

(i) "Lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organising State

(ii) "Lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also, and

(c) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

8. The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner:

(a) For a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and Such option shall not be withdrawn during the remaining part of that financial year.

(b) At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be

(i) One per cent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees.

(ii) One thousand rupees and half of a per cent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees, and

(iii) Five thousand and five hundred rupees and one tenth of a per cent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.

9. The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent

(a) 5% of basic fare in the case of domestic bookings

(b) 10% of the basic fare in the case of international bookings

"Basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

10. The value of supply of services in relation to life insurance business shall be

(a) Gross premium less amount allocated for investment/ savings

(b) Single premium annuity policies other than (a) – 10% of single premium charged or

(c) In all other cases – 25% of the premium charged in the first year

- 12.5% of the premium charged from the policy holder in subsequent years

(d) Entire premium is towards risk cover in life insurance – 100%

11. The value of supply provided by a person dealing in buying and selling of second hand goods– Shall be difference between the selling price and the purchase price, if such difference is negative shall be ignored. No input tax credit is allowed.

12. The value of supply in case of goods repossessed from defaulting unregistered borrower for the purpose of recovery of loan or debt –

Shall be the purchase price of such goods by defaulting borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal.

13. The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both –

Shall be equal to money value of goods or services or both redeemable against such token, voucher, coupon, or stamp.

14. The Rate of Exchange of currency (other than INR) for determination of the value

(a) Of taxable goods shall be applicable rate of exchange as notified by the Board under Section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of Section 12 of the Act.

(b) Of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of Section 13 of the Act.

In next months article, I will touch upon issues arising under valuation.

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JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

ITO vs. Venkatesh Premises Co-operative Society Ltd, Supreme Court of India [2018] 91 taxmann.com 137 (SC), 12 March 2018

Taxability of Non-Occupancy Charges and Transfer charges received by assessee-co-operative societies from its members

Facts of the case

During assessment, the AO held that receipt of non-occupancy charges by the society from its members, to the extent that it was beyond 10% of the service charges/maintenance charges permissible under the notification dated 09.08.2001, stands excluded from the principle of mutuality and was taxable.

The order was upheld by CIT(A). However, ITAT held that the notification dated 09.08.2001 was applicable to co-operative housing societies only and did not apply to a premises society. It further held that the transfer fee paid by the transferee member was chargeable to tax as the transferee did not have the status of a member at the time of such payment and, therefore, the principles of mutuality did not apply.

The High Court set aside the finding that payment by the transferee member was taxable while upholding taxability of the receipt beyond that specified in the Government notification.

Based on the above facts, Supreme Court observed that:

The principle of mutuality relates to the notion that a person cannot make a profit from himself. Thus, placing reliance on *CIT, Bihar vs. M/s. Bankipur Club Ltd., (1997) 226 ITR 97 (SC)*, non-occupancy charges received by assessee-co-operative societies from its members which were used for mutual benefits towards maintenance of premises, repairs, infrastructure and provision of common amenities, would be governed by doctrine of mutuality.

With regards to the receipt of transfer fee before induction to membership, Supreme Court held that even if the receipt was from a non-member, the money was returned in the event that the person was not admitted to membership. Also the appropriation of the funds by the society took place only after admission to membership. Once a person was admitted to membership, the members forming a class, and the identity of the individual member being irrelevant, the principle of mutuality was automatically attracted.

In view of the above the appeals of the Revenue were dismissed and both receipts were held to be exempt from tax.

CIT vs. M/s. VihsalTransformers and Swithgears Pvt. Ltd., Bombay High Court, ITA No.-224 of 2012, 9th March 2018

Addition u/s 41(1) made on the ground of untraceable creditors deleted as there was not cessation of liability

Facts of the case

The Revenue was aggrieved by the order of ITAT with regard to deletion of an addition made by Assessing Officer of ₹ 1,63,53,539/- u/s. 41(1) of Income-tax Act, 1961 for untraceable creditors.

The AO pleaded that the assessee has not produced any evidence before him with relation to actual existence of liabilities. Accordingly, Section 41(1) shall be invoked and assessee should be made liable to pay tax on cessation of trading liability.

High Court observed in the favour of Assessee and against Revenue that:

There is nothing on record to show that the assessee has taken benefit in respect of cessation of trading liability. It also added that necessary ingredients to invoke provision of Section 41(1) are two folds: a) there should have been cessation of trading liability and, b) Assessee should have taken benefit of such trading liability.

It also observed that out of total amount about 86% of amount was still unrecoverable as the creditors were untraceable. In any event, it could not be said that liability has ceased or advantage has been taken by the assessee.

Reference was also made to the judgment of Karnataka High Court in case of *CIT vs. Alvares & Thomas (Karnataka)*, to conclude that merely that the creditor could not be traced, is not the ground to conclude that there is cessation of liability, therefore the provision of Section 41(1) could not be invoked on this ground.

■■■

Half Day Seminar Under the Auspices of Shri. Rajubhai J. Chokshi Oration Fund

CA. Vipul M. Somaiya (President – MCTC) Lighting the Lamp

CA. Manish Chokshi (Past President) Lighting the Lamp

Left to Right : Shri Darshan Shah (Joint Secretary – MCTC), CA. Abhishek Barari (speaker) & CA. Manish Chokshi (Past President)

Left to Right : CA. Vipul M. Somaiya (President – MCTC), CA. Harnish Mehta (Member), CA. Umang Talati (speaker) & CA. Vaibhav Seth (Vice President – MCTC)

CA. Vipul M. Somaiya (President–MCTC), Welcome Speech

CA. Manish Chokshi (Past President) addressing the audience

CA. Harnish Mehta (Member) Introducing Speaker

CA. Umang Talati (Speaker) addressing the audience

Shri Darshan Shah (Joint Secretary – MCTC) Vote of Thanks

Triangular Box Cricket Tournament 2018

Presidents of Three Associations (Left to Right)
CA. Vipul M. Somaiya (President – MCTC),
Adv. Ajay Singh (President – CTC) &
CA Pranav Kapadia (President - GSTPAM)

MCTC Team

GSTPAM, Winner Team

CTC, Runner up Team

MCTC Team Members

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