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# MCTC Bulletin

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## President's Communique

Dear Members,

Are we Professional? To my mind, one do not become Professional just by attaining professional qualifications. At times, this question comes to mind.

"Professional" is beyond the way of earning one's livelihood. A professional is one who has ability to work unsupervised.

Integrity is a Pre-requisite requirement for any professional. But what integrity means?

Integrity in simple word can be defined as: • One who follows the rules • Where rules do not exist, one use fair judgement • When in doubt, one do not go ahead and do what suits him, instead, he seeks counsel. • Finally when in dilemma, one ask oneself: - Can my act stand public scrutiny without causing embarrassment to self & family?

Professionalism is a way of life.

A professional is a Self-Aware person. He understands what his strengths are; he knows exactly how much of his success is because of his inherent strengths and how much is situational.

A professional do not pretend to understand things when he can not. He admits his ignorance and then actively seek to bridge that gap if required.

A true professional do not indulge in false comparison of self with others, he does not suffer from illusions.

He thinks beyond himself. He believes in giving back something to his profession.

He listens – listens to his own inner voice, listens to feedback.

Professional is a one who has an ability to build a view of the future. He acknowledges the ground reality, where he stands and understands the gap between present and future. He works towards filling this gap. He does small things on a sustained basis. He does not worry about changing the world. He looks beyond money and believes in giving back to the profession.

He observes his own actions and reactions. He observes his own mind, thoughts, beliefs and actions. He is both, player and coach. He craves real feedback and act on it.

He is proactive. Being proactive, he thinks on behalf of others. At times, he thinks even ahead of others. He takes charge of the situation. He is generous and shows courtesy to his fellow beings. He truly believes, no pain, no gain.

Being a professional is a matter of personal choice and the values we opt to live by.

This I have made an humble attempt to draw the picture of Professional from a small book "The Professional" by Subroto Bagchi.

Members, on 11th November, Saturday we all met in our Diwali Gettogether programme with family. It was a wonderful event and snapshots of the same are also printed in this Newsletter. The event started with prayer to Maa Saraswati, then students – children of our members who came out with bright colours in academics were felicitated. After that Shri Atul Pandya and his team played the wonderful songs followed by garba and dinner. We missed all those who missed this wonderful get together.

Thanks,

**CA Vipul M. Somaiya**  
President

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

# DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- SECTION 194A OF THE INCOME-TAX ACT, 1961, READ WITH RULES 31-A AND 37BA, OF THE INCOME-TAX RULES, 1962 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES - TDS ON INTEREST ON DEPOSITS MADE UNDER CAPITAL GAINS ACCOUNTS SCHEME, 1988 WHERE DEPOSITOR HAS DECEASED**  
**NOTIFICATION NO. 8/2017, DATED 13-9-2017**

It has been brought to the notice of CBDT that in cases of deceased depositor who has made deposits under the Capital Gains Accounts Scheme, 1988; the banks are deducting TDS on the interest earned on such deposits in the hands of the deceased depositor and issuing TDS certificates in the name of the deceased depositor, which is not in accordance with the law. Ideally in such type of situations, the TDS certificate on the interest income for and up to the period of death of the depositor is required to be issued on the PAN of the deceased depositor and for the period after death of the depositor is required to be issued on the PAN of the legal heir. Under sub-rule (5) of Rule 31A of the Income Tax Rules, 1962, the Director General of Income-tax (Systems) is authorised to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified. In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub-rule (5) of Rule 31A of the Income Tax Rules, 1962, the Principal Director General of Income Tax (Systems) hereby specifies that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

- TDS on the interest income accrued for and up to the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and
- TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under sub-rule (2) of Rule 37BA of the Income Tax Rules, 1962 to that effect.

- SECTION 90, READ WITH SECTIONS 90A AND 139, OF THE INCOME-TAX ACT, 1961 AND RULES 12 AND 128 OF THE INCOME TAX RULES, 1962 – DOUBLE TAXATION RELIEF – FOREIGN TAX CREDIT – PROCEDURE FOR FILING STATEMENT OF INCOME FROM A COUNTRY OR SPECIFIED TERRITORY OUTSIDE INDIA AND FOREIGN TAX CREDIT**  
**NOTIFICATION NO. 9 [DGIT(S)-ADG(S)-3/E-FILING NOTIFICATION/FORM 67/2017, DATED 19-9-2017**

*Foreign Tax Credit.* — An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in rule 128 of the Income Tax (18th Amendment) Rules, 2016. As per sub-rule (9) of rule 128 the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the due date specified for furnishing the return of income under sub-section (1) of section 139, in the manner specified for furnishing such return of income. In exercise of the powers delegated by Central Board of Direct Taxes ('Board') under rule 12(4) of the Income tax Rules, 1962, the Principal Director General of Income-tax (Systems) hereby lays down the following procedures:

#### Online filing of Form 67

- All assesseees who are required to file return of income electronically under section 139(1) as per rule 12(3) of the Income Tax Rules, 1962, are required to prepare and submit Form 67 online along with the return of income if credit for the amount of any foreign tax paid by the assessee in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

#### Preparation and Submission of Form 67

- Form 67 shall be available to all the assesseees login. The assessee is required to login into the e-filing portal using their valid credentials. A link for filing the Form has been provided under "e-File —> Prepare and Submit Online Forms (Other than ITR)". Select Form 67 and assessment year from the drop down. Instructions to fill the form are enclosed along with the form. The completed Form 67 can be submitted by clicking on "Submit" button. Digital Signature Certificate or Electronic Verification Code is mandatory to submit Form 67.
- Submission of Form 67 shall precede filing of return of income.

- MISCELLANEOUS – LODGING OF TAX ARREAR CLAIMS AND IMPEADING AS A PARTY BEFORE NCLTs**  
**LETTER [F.NO.ADDL.DIT(R)/BIFR/2017-18/8/733], DATED 20-9-2017**

Previously the sick companies used to move Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The BIFR had its benches only at Delhi. This Act has been repealed now w.e.f 1-12-2016. The cases of sick companies are now governed by Insolvency and Bankruptcy Code, 2016 (IBC-2016) adjudicated by National Company Law Tribunal (NCLT) having 11 Benches at New Delhi (two benches), Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The appeals against the orders of these benches can be filed before National Company Law Appellate Tribunal (NCLAT) at Delhi.

Recently, a case has come to the notice wherein the Hyderabad Bench of NCLT has passed an order under sections 30(6) and 31 of IBC-2016 allowing various reliefs under the Income-tax Act without even making the Department a party to the dispute. The steps to contest the same are being initiated separately.

Subsequently the website of Insolvency and Bankruptcy Board of India ([www.ibbi.gov.in](http://www.ibbi.gov.in)) has been accessed and it is found that public announcements with regard to initiation of Resolution Process, Voluntary Liquidation Process and Liquidation Process have been made in 287, 29 and 4 cases respectively as of now. Under the provisions of IBC 2016, the NCLT is required to make a public announcement for resolution/insolvency of the sick company (called corporate debtor under IBC-2016) for submission of claims under section 15 of IBC-2016. You are requested to direct the Assessing Officers having jurisdiction over these cases to notify the demands due from these sick companies to the Resolution Professionals/Insolvency Professionals (details of whom are also available on the website) immediately. Simultaneously a request to the NCLT should also be made for impleading the Department as a party to the case in case any other reliefs under the Income-tax Act are envisaged in the Resolution Plan.

A request to Ministry of Corporate Affairs/NCLT/IBBI for notifying the Department in every such case is being moved separately so that the need to identify such cases on one to one basis is obviated. As this is likely to take some time, the field officers may be directed to regularly access the site of [www.ibbi.gov.in](http://www.ibbi.gov.in) so as to prevent any delay in future.

# GOODS AND SERVICES TAX

Compiled by CA. Bhavin Mehta

## PLACE OF SUPPLY OF SERVICES

The article contains analysis of the provisions of section 12 of Integrated Goods and Services Tax (IGST) Act, 2017 pertaining to place of supply of services where location of both supplier and recipient is in India.

IGST shall be levied on all inter-State supplies of goods or services or both except alcoholic liquor for human consumption and petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.

Before analysing the provision contained in section 12, it is important to refer to some of the relevant provisions of IGST Act pertaining to supply of services.

**Section 7(3):** Subject to the provision of section 12, supply of services, where the location of the supplier and the place of supply are in

- (a) Two different States;
- (b) Two different Union Territories; or
- (c) A State and a Union Territory,

shall be treated as a supply of services in the course of *inter-State* trade or commerce.

**Section 7(4):** Supply of services imported into the territory of India, shall be treated to be a supply of services in the course of *inter-State* trade or commerce.

**Section 7(5):** Supply of goods or services or both, -

- (a) When the supplier is located in India and the place of supply is outside India;
- (b) To or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) In the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of *inter-State* trade or commerce.

**Section 8(2):-** Subject to the provision of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State of same Union Territory shall be treated as *intra-State* supply.

**Provided** that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

**Explanation 1** – For the purposes of this Act, where a person has,

- (i) An establishment on India and any other establishment outside India;
- (ii) An establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) An establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,

then such establishment shall be treated as establishment of distinct persons.

**Explanation 2** – A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

## SECTION 12: PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.
- (2) The place of supply of services, except the services specified in sub-sections (3) to (14), -
  - (a) Made to a registered person shall be location of such person;
  - (b) Made to any person other than a registered person shall be,–
    - (i) The location of the recipient where the address on record exists; and
    - (ii) The location of the supplier of services in other cases.

**Analysis:** Sub-section (2) is default provision, whereby if provision of services does not fall under any of the sub-sections (3) to (14), such services shall be covered under sub-section (2). The place of supply of services under sub-section (2) shall be location of the recipient of service. However, where such recipient is unregistered and also address of the recipient is not recorded then the place of supply of service shall be location of the provider of services.

**(3) The place of supply of services, –**

- (a) **Directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any services provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or**
- (b) **By way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or**
- (c) **By way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or**
- (d) **Any services ancillary to the services referred to in clauses (a), (b) and (c),**

**shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located;**

**Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.**

**Explanation – Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective State or Union territories, in proportion to the value of 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.**

**Analysis:** Services provided in relation to immovable property would generally be covered under above sub-section (3), wherein the place of supply of services shall be the location of immovable property. Some of the issues in relation to immovable property are discussed below in the form of issue and reply:

**Issue 1:** M/s Fast Track Logistics are engaged in the business of storage and warehousing services. They provide storage services to importer of chemical, wherein chemicals are unloaded in storage tanks, which are embedded to the earth (removal of storage tank from earth would cause substantial damage). The issue here is whether place of supply shall be location of storage tanks?

**Reply:** Storage tank is embedded to earth and if removed from earth would cause substantial damage. This factor would lead classification of storage tanks as immovable property. In the above issue, service is not provided on storage tank but same has been used for storing chemicals. In the present facts of the issue, storage tanks are not given on rental. As storage services does not fall under any of the sub-sections (4) to (14), same would be covered under default provision i.e. sub-section (2). The place of supply of storage service shall be location of recipient and if such recipient is unregistered and address not available on record, the place of supply of storage service shall be location of the provider of service.

**Issue 2:** Tax Association located in Mumbai organises three days Residential Refresher Course at Goa and collects participation fees along with GST. Hotel in Goa in terms of clause (c) of sub-section (3) of section 12 would charge SGST and CGST on its billing to Tax Association as the place of supply of accommodation and incidental service, is in Goa. It would be difficult for Tax Association to claim the input tax credit of GST collected by Hotel. Is there any way so that Tax Association can claim the credit!

**Reply:** Tax Association outsources the RRC event to an Event Management Company located in Goa. In terms of clause (a) of sub-section (7) of section 12, the place of supply of organising an educational event shall be the location of recipient of service. Accordingly, Event Management Company will bill Tax Association with IGST (place of supplier and place of supply in different State). Hotel will bill to Event Management Company with local GST, which would entitle to input tax credit.

**(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.**

**(5) The place of supply of services in relation to training and performance appraisal to, –**

**(a) A registered person, shall be the location of such person;**

**(b) A person other than a registered person, shall be the location where the services are actually performed.**

**Analysis:** Sub-sections (4) and (5) pertains to performance based services, wherein place of supply of service shall be where service is actually performed.

**Issue 1:** In case of online training and performance appraisal services, what would be the place of performance of service?

**Reply:** 'Perform' means to carry out, accomplish, or fulfil an action, task or function (Oxford English Dictionary). The successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability shall be known as performance (Black Law Dictionary).

Keeping the above principle in mind now let us examine the issue. Say a contract provides for live training services to the recipient and on completion of such live training it would result into discharge of contractual obligation of trainer. Referring to above dictionary meaning, 'perform' means accomplishment of a task or action. In the present case, connection by the recipient online and receiving online training would be considered as accomplishment of the task. Unless receiver connects online, it would be difficult to provide the service. Therefore, in my opinion, online activation by the recipient being commencement of service is trigger point to classify provision of service. In other words, services would be deemed to have taken place, the location from where receiver has connected online. The place of supply of service in such case would be the location from where service receiver connects with provider.

**(6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.**

**Analysis:** The services covered under this sub-section would be services provided by way of admission to specified events or amusement park and not those services provided in relation to organising an event.

**Issue 1:** Magical amusement park charges admission fees of Rs.100 per person per day. In addition to admission, park also charges for access to amusement facilities, wherein for each ride ₹ 50 is collected. In such event whether ride charges would be considered as ancillary to the admission fees or demand separate treatment?

**Reply:** The carrying on of an amusement park is an activity carried out for another; the admittance to which park is regulated by fees. The essential nature and character of the transaction being one service though bifurcated into admission and access to amusement facilities; since it is only a measure, it would not determine the object of taxation. Thus in my opinion access facilities would be considered as part and parcel of admission process and accordingly, the place of supply for access facilities would be location of the park. On the subject, Government of India has *vide* FAQ through press release dated 29-8-2017 has clarified as under:

Q.2 *Vide* Notification No. 11/2017-Central Tax (rate) dated the 28th June, 2017 Entry 34, GST on the service of admission into casino under Heading 9996 (recreational, cultural and sporting services) has been levied @ 28%. Since the value of supply rule has not specified the method of determining taxable amount in casino, casino operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.

Ans. Relevant part of Entry 34 of the said CGST notification reads as under:

"Heading 9996 (recreational, cultural and sporting services)—...

(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, casinos, race-course, ballet, any sporting event such as Indian Premier League and the like. 14%

(iv) \*\* \*\* \*

(v) Gambling. 14%"

As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to Betting Tax on full bet value.

{emphasis supplied}

- (7) **The place of supply of services provided by way of, —**
- (a) **Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or**
  - (b) **Services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, —**
    - (i) **To a registered person, shall be the location of such person;**
    - (ii) **To a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.**

**Explanation – Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective State or Union territories 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.**

**Analysis:** On reading clause (a) above, it can be seen that in addition to organisation of specified events, supply of services in relation to conference, fair, exhibition, etc., are covered. The word 'in relation' would generally include organisation. However, clause (b) in addition to services ancillary to organization of events includes services ancillary to services referred to in clause (a). This would mean "services referred to in clause (a)" would not include organization of conference, fair, exhibition, etc. Therefore, it can be derived that sub-section (7) would not cover under it ambit organization of conference, fair, exhibition, celebration or similar events. Such organization of conference, fair, exhibition, etc., would be covered under default provision, namely, sub-section (2).

- (8) **The place of supply of services by way of transportation of goods, including by mail or courier to, -**
- (a) **A registered person, shall be the location of such person;**
  - (b) **A person other than a registered person, shall be the location at which such goods are handed over for their transportation.**

**Analysis:** The place of supply would be relevant where service is taxable. Services by way of transportation of goods by road (except the Services of GTA and courier agency) and inland waterways is exempted from levy of GST {refer Notification No. 12/2017-Central Tax (Rate)}. Similarly, transportation of goods by rail or by GTA of specified goods is exempted from levy of GST. Thus the determination of place of supply would be required in case of (i) transportation of goods by road by GTA or courier agency, (ii) transportation of goods by Air and (iii) transportation of goods by waterways (other than inland waterways). Unlike POPS Rules, 2012 under the service tax era, where place of provision of service was destination of goods, under IGST, the place of supply shall be location of the recipient of service. Therefore, under GST, even though destination of goods may be outside India, it would still be liable to levy of GST.

It may however be noted that transportation of goods by an aircraft from a place outside India up to customs station of clearance in India is exempted from levy of GST.

On issue of the inter-State movement of goods like movement of various modes of conveyance like trains, buses, trucks, tankers, trailers, vessels, containers, aircraft, between distinct persons, it has been clarified *vide* circular No. 1/1/2017-IGST dated 7-7-2017, that same may not be treated as supply and consequently IGST will not be payable on such supply.

Similarly, on the issue regarding taxability of satellite launch services provided by Antrix Corporation Ltd., wholly owned Government of India Company to both international and domestic customers, Government of India has issued Circular No. 2/1/2017-IGST dated 27-9-2017. The circular clarifies that where such satellite launch services is provided to international customers, the place of supply shall be destination of goods (outside India - space) in terms of section 13(9) of the IGST Act and when such launching services is provided to domestic customers, the place of supply shall be the location of the receiver of service, provided recipient is registered and if not registered shall be location where satellite is handed over to Antrix Corporation for launching it in space.

- (9) **The place of supply of passenger transportation service to, -**
- (a) **A registered person, shall be the location of such person;**
  - (b) **A person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:**

**Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).**

**Explanation – For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.**

**Analysis:** The proviso and explanation would stand alone be applicable to clause (b). The supply of passenger transportation service to a registered person shall be the location of such person, irrespective from where the passenger embarks on the conveyance.

Clause (b) and proviso and explanation thereto would be applicable in cases where such service is provided to unregistered person.

- (10) **The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.**

**Analysis:** In respect of goods the place of supply shall be the location at which such goods are taken on board. However, in respect of services, the place of supply shall be the location of the first scheduled point of departure of that conveyance for the journey.

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

In the case of stop over journey, the place of supply of services shall continue to be first scheduled point of departure of conveyance because stop over is of passenger and not of conveyance.

- (11) **The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, -**
- (a) **In case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;**
  - (b) **In case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;**

- (c) In cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,-
- (i) Through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
- (ii) by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;
- (d) In other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services.

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

**Explanation – Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States of Union territory 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.**

**Analysis:** The provision is self explanatory as it covers various situations that would be covered under the scope of supply of telecommunication services. Clause (a) covers fixed lines, wherein place of supply of service shall be the location where such fixed line is installed. Installed means installation at subscribers premises.

- (12) **The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.**

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

**Analysis:** Under core banking solution a customer can operate his account from any of the branch of the bank pan India. Example given below is about determination of place of supply of supplier.

Mr. A customer of SBI, Fort, Mumbai visit Bangalore branch of SBI for demand draft. SBI Bangalore collects bank charges and debits the customer account. The issue is who has provided the service to Mr. A, i.e. SBI, Mumbai or SBI Bengaluru. If we say SBI, Mumbai has provided the service to Mr. A then, SBI Bengaluru have to bill to SBI Mumbai. It is understood that nationalized banks are considering DD issuing bank as providing service to customer. Transfer of money from one branch to other is not considered as supply.

Another issue arises where Bank has more than one address of the account holder. In my opinion, it would be advisable for Bank to send letter to each of his account holder to confirm the present address available on the record and accordingly place of supply could be determined.

- (13) **The place of supply of insurance services shall, –**

- (a) **To a registered person, be the location of such person;**
- (b) **To a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.**

**Analysis:** The levy of based on the location of the recipient of services. Take an example of insurance of immovable property, which is located outside India but because provider as well as recipient is located in India, the place of supply of insurance service shall be location of the recipient of service.

- (14) **The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each such States or Union territories and the value of such supplies specific to each State or Union territories shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be 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.**

**Analysis:** In case where contract or agreement does not provide bifurcation of value of services provided in respect of each State or Union territory then value may be arrived on the basis of number advertisement disseminated in respective State or Union territory. However, where advertisement services is provided to Central Government which is say relayed on television, the proportionate value of services to each State or Union territory may be arrived based on the population of each State or Union territory.

In next month newsletter analysis of section 13 of IGST Act would be dealt upon – place of supply of service, where either provider or receiver is located outside India.

## ■■■ JUDICIAL JUDGMENTS

*Compiled by CA Rupal Shah*

**M/s. Bokaro Power Supply Co. Ltd. vs. DCIT (Delhi), ITAT Delhi, ITA No. 3405/Del/2014, 31st October, 2017**

**Penalty for late filing VAT return held non compensatory and disallowed u/s. 37**

*Facts of the case:* The Assessee company was a joint-venture of two Public Sector Undertakings and was engaged in generation of power. During the assessment year in question, the assessee paid sales tax dues of ₹ 35 lakhs and interest and late filing penalty thereon of ₹ 86.72 lakhs for FY 2006-07. The AO disallowed the whole amount terming it as prior period expenditure.

On appeal, the CIT-(A), allowed the payment of tax amounting to ₹ 35,45,033/- on paid basis in terms of section 43B of the Act, however, upheld the finding of the Assessing Officer in respect of the amount of ₹ 86,72,759/- as penalty for infraction of law.

Aggrieved with the finding of the CIT-(A), both the Assessee and the Revenue were in appeal before the Tribunal.

*The Tribunal observed as below:*

The payment of sales tax dues to the tune of ₹ 35.45 Lakhs were correctly allowed taking reference of Section 43B of the Act. Also late filing fees of ₹ 5,000 was allowed as the same was not compensatory in nature. The other payments were disallowed as they were compensatory in nature. ITAT placed reliance on *Swadeshi Cotton Mills Ltd. vs. CIT, (1967) ITR 57 (SC)*.

## Diwali Family Get together and 12th Dr. Bharat Vasani Saraswati Sanman Samarambh



Shri Janak Rawal (Past President – MCTC) Lighting the Lamp.



Left to Right : CA Viresh Shah, Shri Janak Rawal (Past President – MCTC) & CA Vipul Somaiya (President - MCTC)



Shri Bharat Vasani & Family with CA Vipul Somaiya (President - MCTC) and Shri Janak Rawal (Past President – MCTC)



Shri Janak Rawal (Past President – MCTC) presenting memento to the Student



Shri Kishor Vanjara (Past President – MCTC) presenting memento to the Student



Shri Sachin Gandhi (Chairman of Seminar Committee & Past President – MCTC) presenting memento to the Student



CA Jayprakash Tiwari (Past President-MCTC) presenting memento to the Student



CA Adarsh Parekh (Past President-MCTC) presenting memento to the Student

## Diwali Family Get together and 12th Dr. Bharat Vasani Saraswati Sanman Samarambh



Shri Atul Pandya presenting memento to the Student,  
CA Akshat Sanjay Mehta



Left to Right : CA Brijesh Cholera (Past President-MCTC), CA Vipul Somaiya (President - MCTC), CA Hareesh Kenya, Adv. Ajay Singh (President - CTC), CA Pranav Kapadia (President - GSTPAM) – along with spouse and Shri Sachin Gandhi (Past President-MCTC)



"Ye Shaam Mastani" lead by Shri Atul Pandya & Team.



Youngest Tabla Player Truptraj Pandya Performing his excellence at Ye sham Mastani.



MCTC Members & their family enjoying Ye Shaam Mastani



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