The Malad Chamber of Tax Consultants

MNW/175/2015-17 **Total Pages 8** Price ₹ 5/-

39 Years

MCTC Bulletin

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

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

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

Vol. 1, No. 4 ***For members & private circulation only*** October, 2017

President's Communiqué

Dear Members,

Wish you Happy Diwali & Prosperous New Year!

Time to celebrate!! Time to spend with family!! Time to go on vacation!!!

At the same time, "Time to complete Audit as well"!!!

The scenario is changing. With the changing time we also need to learn balancing the life. Increasing work pressure of Income Tax and Goods and Services Tax deadlines are compelling us to sit at office and complete the work by deadline. There is a need to mature, streamline our work processes and mature our clients as well. One should not be afraid of saying "No" to client.

Let's have a positive attitude towards our work, towards our team, towards Government and towards clients. The data needed by Government is going to be asked by Government in the form of returns which creates professional opportunities to us. Addressing the pain area of client increase our value in the eyes of clients. Monetary rewards what we get is how we behave, act and react inbetween these two ends that is creating opportunity by Government and addressing pain areas of clients. As observed, we need to act like a doctor whereby we need to treat the pain of the patients and do not criticise the creator of pain or creator of legal requirements.

So, after completing these deadlines, let's all meet together and celebrate Diwali. We are organising Diwali Get-together and 12th Saraswati Sanman Samarambh on this 11th November, 2017. **Let's all meet with family on Saturday, 11th Nov, 2017 for Diwali Get-together.**

We also request the members to share the achievements of their children in S.S.C., H.S.C. and Professional examinations for felicitation in Saraswati Sanman Samarambh.

Thanks,

CA Vipul M. Somaiya
President

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

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

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

FORTHCOMING PROGRAMMES			
Date	**Particulars**	**Venue**	**Time**
11th Nov, 2017 Saturday	Diwali Get-together with family and Dr. Bharat D. Vasani 12th Saraswati Sanman Samarambh to be followed by dinner. **Aaee Diwali, aaj Aaee Diwali, Saare nacho, gaao, dhum machaao.** **Contribution :** Nil for kids up to the age of 6, ₹ 300/- for children in the age of 6 to 12 years and ₹ 400/- for others.	SNDT College, Malad (West)	5.30 pm onwards
Request members to confirm their participation as early as possible for better arrangements.			

DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **Filing of appeal or application for reference by Income Tax authority – Revision of monetary limits for filing of appeals by the department before Income Tax Appellate Tribunal, High Courts and Supreme Court – Amendment in Circular No. 21/2015 dated 10-12-2015 [248 Taxman (st.) 37]**

  Letter [F. No. 279/MISC-142/2007-ITJ-(PT)] dated 17-7-2017

  The board has received the references that in certain cases appellate authorities are dismissing appeals without going into the merits of the case by relying on the definition of 'tax effect' as defined in Circular No. 21/2015, which prescribes the monetary limit for filing appeals before various appellate authorities. In certain situations where income is computed under the provisions of section 115JB or section 115JC for the purposes of determination of 'tax effect', and the additions made under provisions other than sections 115JB or section 115JC do not impact book profit, the appellate authorities are not considering the said additions for the purpose of 'tax effect' as defined in para 4 of Circular No. 21/2015. The matter has been examined by the Board and the following para may be read as para 4.1 after the para 4 of the Circular No. 21/2015.

  "4.1 Where income is computed under the provisions of section 115JB or section 115JC for the purpose of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula –

  (A – B) + (C – D)

  Where,

  A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

  B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

  C = the total income assessed as per the provisions contained in section 115JB or Section 115JC;

  D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of disputed issues under the said provisions.

  However, where the amount of disputed issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D."

- **Amendment in Form No. 3CEFA – Application for opting for Safe Harbour [248 Taxman (st) 39]**

  The Central Government *vide* notification No. GSR 891(E) [No. 62/2017 (F. No. 370142/2017 – TPL)] dated 18-7-2017 gives Income tax – (Twenty First Amendment) Rules 2017. It came into force and deemed to have come into force from the first day of April 2017. It amends Form No. 3CEFA under the heading eligible International Transaction and inserts the item no. 10 with regard to International Transaction in respect of receipt of low value adding intra group services as referred to in Item (x) of Rule 10TC.

  It also amends Sr. No. 3 of the Form with regard to international transaction in respect of the provision of knowledge process outsourcing services referred to in item (iii) of Rule 10TC. It inserts item (e) being "Employee cost in relation to operating expenses declared".

  It also amends Sr. No. 4 of the Form with regard to advanced intra-group loans as refer to in Item (iv) of Rule 10TC. It inserts Item (e), being "Currency of denomination of the amount of loan for each loan transaction". It also inserts Item No. (f), being "whether credit rating of AE has been done? If yes, the credit rating rank and the name of the credit rating agency".

- **Section 115JB – Minimum Alternative Tax – Clarification on computation of book profit for purposes of levy of Minimum Alternate Tax (MAT) under section 115JB for Indian Accounting Standards (Ind AS) compliant companies [249 Taxman (St.) 7]**

  The Finance Act has amended the provision of Section 115JB of the Income-tax Act for Ind AS compliant companies w.e.f. 1-4-2017 (A.Y. 2017-18). The CBDT has received representations from various stakeholders seeking clarification on certain issues arising therefrom. The matter was referred to an expert committee.

  The CBDT *vide* Circular No. 24 / 2017 dated 25-7-2017 issued the clarification by way of FAQs on various issues. There are about 14 FAQs and its answers are issued. One may refer above citation for complete text of the circular.

- **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) [249 Taxman (St.) 22]**

  The Central Government, in pursuance of section 138(1)(a)(ii) of Income-tax Act, hereby specifies Joint Secretary, Ministry of Corporate Affairs, Government of India, for the purpose of said clause. This Notification has to be read with order under section 138(1)(a) of Income-tax Act, 1961 dated 26-7-2017 in file of even number, issued by the Central Board of Direct Taxes, notifying Principal Director General of Income Tax (Systems) as the 'designated authority' for furnishing the 'bulk information' on certain identified parameters to the above authority, being notified.

- **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 – Specified Authority for furnishing bulk information to notified authority under section 138(1)(a)(ii) [249 Taxman (St.) 22]**

  The Central Board of Direct Taxes, in exercise of power conferred u/s. 138 (1)(a) of the Income-tax Act, hereby directs that Principal General of Income Tax (Systems), New Delhi (Pr. DGIT (systems)) shall be specified authority for furnishing the 'bulk information' to Joint Secretary, Ministry of Corporate Affairs (MCA), Government of India, as notified *vide* Notification No. 74/2017, dated 26-7-2017 under sub-clause (ii) of clause (a) of sub section (1) of section 138 of the act.

  Following "bulk information' shall be furnished:

  i. Pan data in respect of corporates;

  ii. Income Tax Return (ITRs) of corporates (specific relevant fields to be decided in consultation between Pr. DGIT (systems) & MCA);

  iii. Audit reports under section 44AB of the Income-tax Act, 1961 in case of corporates (specific relevant fields to be decided in consultation between Pr. DGIT (systems) & MCA);

  iv. SFT information relating to corporates;

  v. Identified PAN CIN Associations;

  vi. Identified PAN DIN Associations; and

  vii. Any further information considered necessary for identifying 'dormant companies' (to be decided on basis of mutual consultation between Pr. DGIT (systems) & MCA)

- **Section 54EC – Capital Gain not to be charged on investment in certain bonds – Notified bonds issued by the Indian Railway Finance Corporation Ltd. as long term specified asset for purposes of said section [249 Taxman (St.) 30]**

  The Central Government *vide* Notification No. SO 2529(E) dated 8-8-2017, in exercise of the power u/s. 54EC explanation clause (ba), hereby notifies that any bond redeemable after three years and issued by the Indian Railway Finance Corporation Limited, a company formed and registered under the Companies Act, 1956, on or after the date of publication of this notification in the Official Gazette, as 'long term specified asset' for the purpose of the said section.

■■■

GOODS AND SERVICES TAX

Compiled by CA. Bhavin Mehta

PLACE OF SUPPLY OF GOODS

In this article I have tried to analyse the provisions of section 10 of IGST with issues. Section 10 determines the place of supply of goods along with section 7, section 8 and section 9 of IGST Act.

Section 7 (Inter-State supply)

(1) Subject to the provisions of section 10, supply of goods, 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 goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(3) 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 (Intra-State supply)

(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply;

Provided that the following supply of goods shall not be treated as intra-State supply, namely;-

(i) Supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) Goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) Supplies made to a tourist referred to in section 15.

Section 9 (Supplies in territorial waters)

(a) Where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) Where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union Territory where the nearest point of the appropriate baseline is located.

Section 2(5) - Export of Goods with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Section 2(10) – Import of Goods with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Section 10 – Place of supply of goods other than supply of goods imported into, or exported from India

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, -

(a) Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Issue 1: Superior Paints Ltd. sold paints ex-works from its Mumbai factory to its distributors/stockists (dealers). Under the contract with the registered dealers, each dealer was assigned an exclusive territory outside Maharashtra and was obliged to take the paints outside Maharashtra, where they were sold. The dealers were required to submit monthly stock of sales and a market report of Superior Paints Ltd. Whether the sales of goods to the dealers are intra-State or inter-State?

Analysis: In the case of ***Union of India vs. K. G. Khosla & Co. Pvt. Ltd. [1979] 2 SCC 242*** in which it has been held that if a contract contains a stipulation for movement of goods then the sale would be an inter-State sale. It has been further held that such a transaction could also be an inter-State sale even if the contract did not expressly provide for the movement of goods but in fact such movement took place consequent upon a covenant in the contractor as an incident of that contract. The determinative test to be applied in this case is: whether the purchasing dealers were obliged contractually to remove the goods from Maharashtra, in which they were bought, to the assigned territories and whether in fact the goods stood actually removed. It is this test that would decide the question as to whether the sales in question were "inter-State sales" or "local sales". In the present facts of the case, each dealer is required to move the goods to assigned territory, which is outside Maharashtra. Accordingly, the sale of goods to dealers though ex-factory would be considered as inter-State liable to IGST.

The above issue is framed from Supreme Court decision in the case of ***DCM Ltd. vs. Commissioner, (2009) 21 VST 417 (SC).***

Issue 2: Mr. Mankar of Maharashtra received an order of goods from Mr. Kadri of Karnataka to deliver the goods in the State of Karnataka. Both Mankar and Kadri are registered in their respective States under GST. Due to breakdown of vehicle

at Karnataka border (falls under Maharashtra jurisdiction), Mankar could not deliver the goods to Kadri's place in Karnataka. On request Kadri took the delivery where vehicle got breakdown. In such case whether it is inter-State sale?

Analysis: Applying the above principles laid down by Supreme Court in DCM Ltd. (supra), in the present facts of the case, seller Mr. Mankar is contractually obliged to deliver the goods. The fact such movement took place consequent upon a covenant in the contractor as an incident (breakdown of vehicle) delivery by Kardi, who takes to Karnataka. The effective delivery of goods terminate at Karnataka and hence transaction would be considered as inter-State sale.

Issue 3: Quick Ready Mix Concrete Ltd. (Quick) are having RMC plants in Maharashtra. Quick collects GST on supply of RMC including transport value charged separately in the invoice. Many times they pump the RMC at higher floor at the site of the customer and bill it separately. In such case (where pumping activity is undertaken) when will RMC get delivered i.e., at the time when the transit mixer reaches the site or when RMC is pumped?

Analysis: The issue arises is whether seller (Quick) provides pumping services as matter of convenience and on behalf of buyer and it is independent of the cost element of the goods in question for the seller, then will it not form part of the sale price.

Karnataka High Court in the case of ***ACC Ltd. vs. State of Karnataka 2012 NTN (Vol. 49)-244*** held "All expenses incurred till the delivery constitutes sale price. In order to deliver the RMC at the specified place, if the assessee uses the pump, then the charges collected by the assessee from the customer as pumping charges from part of the sale price. If the RMC is not delivered through pumping, then the charges are not collected from the customer and it will not form part of the sale price. Therefore, the sale transaction of the RMC gets completed only when it is delivered at the point where it is finally put to use. All expenses incurred till such stage, if such delivery includes the service of pumping then the pumping charges are also included in the pre-sale expenses and hence, form part of the taxable turnover".

However, in case if seller is able to prove that he has played dual role one as seller and other as service provider then one can say that movement of goods end before pumping. In this regard reference is invited to Supreme Court decision in the case of ***State of Karnataka vs. Bangalore Soft Drinks Pvt. Ltd. reported in (2000) 117 STC 413 (SC)***. Bangalore Soft Drinks (respondent), a manufacturer of aerated waters, collected freight charges independently under an agreement, clause 4 of which provided that the price of the products was on ex-factory basis and that the respondent would provide at the option of the purchaser transportation of the products. The freight charges were collected separately from the buyers under debit notes issued for the purpose. The respondent also collected octroi charges paid by it. The respondent claimed deduction of the freight charges and octroi charges from its turnover. Though it found that the price of the goods was at ex-factory rate in accordance with clause 4 of the agreement, the Tribunal held that the delivery of the goods at the factory was only on paper. The High Court held that the goods passed to the buyers at the site of the factory and the subsequent transportation of the goods was done in its capacity as transporter of the goods and, therefore, the freight charges collected separately and the octroi charges did not form part of the turnover of the respondent, in view of rule 6(4)(f) of the Karnataka Sales Tax Rules, 1957. The department preferred an appeal to the Supreme Court raising only a question of law relating to freight charges in its petition for special leave to appeal. The Supreme Court agreed with the decision of the High Court observing that the facts as stated in the order of the Tribunal did not warrant the conclusion that the agreement between the respondent and the buyers was a sham in so far as it related to the option regarding transportation of the respondent's goods.

(b) Where the goods are delivered by the supplier to a **recipient** or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Comments: Reading the above provision it may be logically derived that third person who places the order on seller to supply the goods to the recipient. However, when we refer to the meaning of "recipient" provided u/s. 2(93) of CGST Act, it will create confusion. Recipient of supply of goods or services or both means where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration is called as recipient. It would be impractical to apply the provision contained in clause (b) to the factual transactions occurring in day to day practice. In my view logically third person should be considered as buyer of goods and in his behalf goods are shipped by seller to recipient.

Issue 4: XYZ & Co is a manufacturer of goods and registered in the State of Maharashtra. Mr. A, reseller is registered in Maharashtra as well as in Gujarat. Mr. A places order with XYZ & Co. for purchase of 10 boxes which is to be delivered to his branch in Gujarat.

Analysis: In the instant case, for the purpose of GST, Mr. A of Maharashtra and of Gujarat would be considered as distinct entity. Accordingly, third person would be Mr. A of Maharashtra. XYZ & Co. would raise the invoice with SGST and CGST on Mr. A of Maharashtra. In turn Mr. A of Maharashtra would raise the invoice on its Gujarat branch with IGST.

Issue 5: Foreign company (located outside India) places order on Company A of Maharashtra for supply of goods to be delivered to its subsidiary in Maharashtra. Whether transaction would attract levy of GST?

Analysis: Three parties are involved in the given case, namely, seller – Company A, recipient of goods – Subsidiary of foreign customer and buyer (third person) – foreign company. In terms of section 10(1)(b), place of supply of goods shall

be place of third person i.e. location of foreign company, which is outside India. Though place of supply is outside India, it would still not qualify as exports because goods are not taken outside India. Clause (a) of section 7(5) provides when the supplier is located in India and place of supply is outside India shall be treated to be supply of goods in the course of inter-State trade or commerce.

Thus Company A will charge IGST to Foreign Company towards supply made on their behalf to its subsidiary company in Maharashtra. Till the time notification is not issued withdrawing the RCM on supplies received from unregistered person, subsidiary company have to pay IGST, being considered as purchases from unregistered person located outside India.

Issue 6: Mr. A of Ahmedabad places order with Mr. B of Bangaluru to deliver the goods to Mr. C of California. Mr. B in turn places an order on Mr. D of Dubai to deliver the goods to Mr. C.

Analysis: CGST and IGST Acts apply to whole of India. As per section 2(56) of CGST Act, "India means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 176 (80 of 1976), and the air space above its territory and territorial waters". The coverage of exclusive economic zone is up to 200 nautical miles in the sea and beyond it is the International Waters. India does not have right to levy tax on goods sold beyond its territorial jurisdiction.

The provision of section 10 is not applicable to the given facts of the case because supply is not made from the territory of India. Similarly, section 11 is not applicable because goods is neither imported into India nor have goods been exported out of India. When the movement of goods is out and out i.e. beyond the territorial jurisdiction, India does not have power to levy the tax. Clause (a) of section 7(5) of IGST Act cannot be applied *de hors* the coverage of Act. Further the analysis of high sea sale discussed below can be applied to the given facts of the case. When the goods sold before it is imported into the territory of India is not taxable then the question of taxing goods sold in foreign territory would not arise. In view of above discussion, I am of the opinion that such out and out sale would not be liable to levy of GST.

High Seas sale: Section 7(2) of IGST Act states "Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be supply of goods in the course of inter-State trade or commerce".

Comments: The taxable event would trigger only when the goods are imported into the territory of India. In other words, if the goods are sold before it enters into India, same would not be covered under the section 7(2). As discussed in analysis to issue No. 6 above, territory of India would be up to 200 nautical miles in the sea. Hence, where goods are sold high seas beyond 200 nautical miles it would not be liable to levy of IGST.

If goods are sold high seas within 200 nautical miles same would attract levy of IGST. However, CBEC *vide* its circular No. 33/2017-Cus dated 1-8-2017 has clarified that "The council has decided that IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed". The above circular went on to clarify in terms of section 3(12) of Custom Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, cessess etc is collected at the time of importation i.e. when the import declarations are filed before the customs authorities for customs clearance purposes.

Customs duty is paid at the clearance of goods from Customs, whereas in terms of section 7(2) of IGST Act, IGST is leviable when goods are sold high seas in territory of India but before clearance. It can be seen that both the Acts are having different taxable events, one duty is payable at the time of clearance and other tax is payable before clearance. Therefore both the events are not comparable. In my view it appears Circular No. 33/2017-Cus is not in consonance with the provisions of IGST Act. However, circular issued by Board in my view would still be binding upon the revenue till the time it is struck down by the judiciary. In other words, the circular would become invalid from the date it is struck down by the Court and not from retrospective date. Supreme Court in the case of ***CCE, Bolpur vs. Ratan Melting & Wires Industries [2008 (231) E.L.T. 22 (S.C)]*** observed as under:

"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law".

(c) Where the supply does not involve movement of goods whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

Analysis: Mr. A of Bangaluru purchases mobile from a shop during his Mumbai visit. He provides his Bangaluru Address. In such case movement of goods from Mumbai to Bangaluru is subsequent to delivery of mobile in Mumbai. Address does not determine the place of supply. Transaction falling under section 10(1)(c) would always be intra-State.

(d) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

Analysis: The place of installation or assembly would be place of supply. For example wind turbine parts are moved from Andhra Pradesh to the site located in Karnataka under a contract. Parts are assembled and installed at site, place of supply shall be Karnataka and accordingly IGST would be levied by the supplier located in Andhra Pradesh.

(e) Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Analysis: In case of supply of meals to Indian Railway, the place of supply shall be the place where such meals are boarded on the train.

■■■

JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Vodafone Mobile Services Ltd. vs. DCIT-15(2), ITAT Hyderabad, [2017] 86 taxmann.com 115, 29th September 2017

Where assessee offered pre-paid mobile kits, SIM cards and recharge vouchers to its distributors at discount, such discount takes colour of commission and liable for deduction of TDS u/s. 194H

Facts of the case

Assessee is engaged in the business of providing cellular mobile services to its customers. The assessee offered pre-paid mobile services through distributors by providing them starter kits, starter packs, SIM cards, recharge vouchers on cash discount and distributors could sell those products to subscribers at any price below MRP. Distributors do not have discretion to refund the products, which were already supplied by assessee-company, and distributors may make use of the vouchers, starter kits etc., either for its own consumption or it can sell to the ultimate consumers which can at best be considered as a cash discount in the assessee's books of account. Hence, according to assessee provisions of TDS would not apply on such discounts.

Assessing Officer observed that as per the distribution agreement, distributors are appointed for distributing the products of the assessee in a defined geographical area. Distributor can purchase products at discounted rate fixed by the assessee and the assessee can also offer other incentives based on sales performance. Distributor cannot sell the products at a profit beyond the MRP. Distributors have to adhere to certain brand image guidelines and inform stock movement and permit authorised agent of the assessee to inspect the stock, which clearly shows that distributors are acting as agents of assessee-company.

The assessee preferred an appeal before CIT(A) and also ITAT.

On further appeal, it was held that

ITAT upheld the contentions of the AO and observed that distributor is merely a link between assessee and ultimate consumer/subscriber and distributor can at best enforce obligation on the part of assessee to provide connection/talk-time to subscriber which would not change the characteristic of transaction from 'principal to agent' to 'principal to principal'. Hence the appeals of the assessee were dismissed.

Dish TV India Ltd. vs. ACIT-11(1), ITAT Mumbai, [2017] 86 taxmann.com 177, 10th October, 2017

Section 40(a)(i)(a) enforceable only on non-deduction of TDS and not in case of short deduction

Facts of the case

During assessment, the AO noted that the assessee has deducted TDS in respect of certain expenditure under section 194C by applying a rate of 2% whereas it should have deducted tax under section 194J @10%. The AO, therefore, disallowed the said expenses under section 40(a)(ia).

Assessee went in appeal before the CIT(A). The CIT(A) took the view that it is not a case of non-deduction of TDS but at most it can be a case of short deduction of TDS and, therefore, he deleted the disallowance made under section 40(a)(ia).

On further appeal to the ITAT held that

There is no infirmity or illegality in the order of the CIT(A) in holding that provisions of section 40(a)(ia) will not be applicable in the case of the assessee as there is nothing in the section to treat the assessee as defaulter where there is shortfall in deduction of TDS. We, therefore, affirm the CIT(A) and dismiss the grounds taken by the Revenue in both the appeals.

■■■

Second Study Circle Meeting held on 24th September, 2017

Left to Right: CA Jaimin Trivedi, CA Abhitan Mehta (Speaker) & CA Vipul Somaiya (President - MCTC)

Shri Darshan Shah (Joint Secretary-MCTC) introducing Speaker

CA Abhitan Mehta (Speaker), CA Vipul Somaiya (President-MCTC) & Shri Sachin Gandhi (Chairman of Seminar Committee) presenting memento to the speaker

CA Abhitan Mehta (Speaker) addressing the audience

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Adm. Off. Tel. 022-2889 5161

• **Editor : Shri Kishor Vanjara**

Posted at Malad ND (W) Post Office, Mumbai-400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st October, 2017

If undelivered, please return to :

The Malad Chamber of Tax Consultants,
B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064.

To