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Chamber of
Tax
Consultants**

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President's Communique

Dear Members,

As I Start Communicating with you as my first communication through this august chamber's newsletter, it gives me a sense of happiness as well as a sense of responsibility. Sense of happiness is for getting an opportunity to lead this esteemed chamber and a sense of responsibility is to do better than the best in this changing era and specially when high expectation level raised by my predecessors.

We are now in "GST-Era". This is time to equip ourselves for present as well as future changing scenarios. Only those can survive who is able to adopt to and adjust best to the changing environment.

As a President of this Chamber, I can say that our chamber will surely make efforts to equip members with this changing environment. There will be many seminars and study circle on GST, and other changing laws. We are planning with One or Two full days seminar on Practical issues in GST in August, 2017.

We professionals have only weapon with us and that is our Pen. It is truly said,

The Pen is mightier than the Sword.

- Edward Bulwer-Lytton.

Hence, this year we- have formed one additional Publication Committee whereby we are planning to come out with small publication for use of members at large.

To cater to the members in a better way, we have initiated the process of compiling Member's basic data in a traditional way of giving personal call to each member and ask for the information. I personally request you to honor such call from committee member.

On 16th July, 2017 we had organized our Dr. Bharat Vasani Inaugural Study Circle on Goods & Service Tax – Place of Supply and Transition Provisions. The study circle was attended by about 140 participants.

Looking forward to meet you all in August Seminar on Practical issues in GST. The details of the program will be mailed soon.

With Warm Regards,

CA Vipul M. Somaiya
President

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- ❑ **SECTION 200 OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - DUTY OF PERSON DEDUCTING TAX - TDS AND FILING OF ITR IN CASE BOTH THE PARENTS ARE DEAD OF MINOR**

NOTIFICATION NO.5/2017 [F.NO.DGIT(S)/CPC(TDS)/NOTIFICATION/2017-18, DATED 29-5-2017

It has been brought to the notice of CBDT that in cases of minors whose both the parents have deceased, TDS deductors/Banks are clubbing the interest income accrued to the minor in the hands of grandparents and issuing TDS certificates to the grandparents, which is not in accordance with the law as the Income-tax Act envisages clubbing of minor's income with that of the parents only and not any other relative. Ideally in such type of situations, the income should be assessed in the hands of the minor and the income-tax returns be filed by the minor through his/her guardian. Under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized 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 minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under sub-rule(2) of Rule 37BA of the IT Rules, 1962 to that effect.

- ❑ **SECTION 285BA OF THE INCOME-TAX ACT, 1961 - STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT, OBLIGATION TO FURNISH - CBDT EXTENDS DUE DATE FOR FURNISHING STATEMENT OF FINANCIAL TRANSACTION (SFT)**

PRESS RELEASE, DATED 31-05-2017

The Statement of Financial Transactions under Rule 114E (5) of the Income-tax Rules, 1962, (the Rules) read with sub-section (1) of section 285BA of the Income-tax Act, 1961, (the Act) is 31st May, immediately following the Financial Year in which the transaction is registered or recorded, i.e for Assessment Year 2017-18 the last date for furnishing the said statement was 31st May, 2017. Representations were received in the Board requesting for extension of the date of filing of the said statement of financial transactions on account of the teething problems arising and the volume of data to be compiled. In view of the said representations and in order to remove inconvenience and to facilitate ease of compliance, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Act, has extended the date of furnishing of the statement of financial transactions under Rule 114E(5) of the Rules, read with sub-section (1) of section 285BA of the Act for Assessment Year 2017-18 from 31st May, 2017 to 30th June, 2017 in case of persons throughout India who are liable to furnish the said statement.

- ❑ **INCOME-TAX (TENTH AMENDMENT) RULES, 2017 - AMENDMENT IN RULE 31**

NOTIFICATION NO. GSR 546(E) [NO.42/2017 (F.NO.370142/17/2017-TPL), DATED 2-6-2017

The Central Board of Direct Taxes has extended due date of furnishing form 16 from 31st May to 15th June of the financial year immediately following the financial year in which the income was paid and tax was deducted.

- ❑ **SECTION 10(38) OF THE INCOME-TAX ACT, 1961 - INCOME ARISING BY WAY OF A TRANSFER OF LONG TERM CAPITAL ASSET, EXEMPTION TO - NOTIFIED TRANSACTIONS OF ACQUISITION OF EQUITY SHARES ENTERED INTO ON OR AFTER 1-10-2004**

NOTIFICATION NO. SO 1789(E) [NO.43/2017 (F.NO.370142/09/2017-TPL)], DATED 5-6-2017

The Central Board of Direct Taxes (CBDT) released the final Notification on section 10(38) of the Income Tax Act which exempts specified deals from long-term Capital Gains Tax in cases where STT was not paid as provided in the Finance Act, 2017. In a major move to curb tax evasion through “sham transactions” in stock market and protect genuine ones, the Finance Act, 2017 had amended the provisions of section 10 (38) of the Act to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to STT. However, to protect the exemption for genuine cases where the STT could not have been paid like acquisition of share in IPO, FPO, bonus or rights issue by a listed company acquisition by non-resident in accordance with FDI policy of the Government etc, it was also provided that the Central Government shall notify the acquisition for which the condition of chargeability to STT shall not apply.

SECTION 48 OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - COMPUTATION OF - NOTIFIED COST INFLATION INDEX UNDER SECTION 48, EXPLANATION (V) - FINANCIAL YEAR 2017-18

NOTIFICATION NO. SO 1790(E)[NO. 44/2017 (F. NO. 370142/11/2017-TPL)], DATED 5-6-2017

Cost Inflation Index with base year as 2001-02 has been notified.

TABLE

Sl. No.	Financial Year	Cost Inflation Index			
		(3)	(1)	(2)	(3)
1	2001-02	100	10	2010-11	167
2	2002-03	105	11	2011-12	184
3	2003-04	109	12	2012-13	200
4	2004-05	113	13	2013-14	220
5	2005-06	117	14	2014-15	240
6	2006-07	122	15	2015-16	254
7	2007-08	129	16	2016-17	264
8	2008-09	137	17	2017-18	272
9	2009-10	148			

This notification shall come into force with effect from 1st day of April, 2018 and shall accordingly apply to the assessment year 2018-19 and subsequent years.

SECTION 194-I OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - RENT - CBDT'S CLARIFICATION ON NON-APPLICABILITY OF PROVISIONS OF SECTION 194-I ON REMITTANCE OF PASSENGER SERVICE FEES (PSF) BY AN AIRLINE TO AN AIRPORT OPERATOR

CIRCULAR NO.21/2017 [F.NO.279/MISC./140/2015/ITJ], DATED 12-6-2017

Under the existing provisions contained in section 194-I of the Income-tax Act, 1961 ('the Act'), tax is required to be deducted at source on payment of rent. The term "rent" is defined in the Explanation to the said section to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any (a) land; or (b) building (including factory building); or (c) land appurtenant to a building (including factory building); or (d) machinery; or (e) plant; or (f) equipment; or (g) furniture; or (h) fittings, whether or not any or all of the above are owned by the payee. A dispute arose on applicability of the provisions of section 194-I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport

Operator. The Hon'ble High Court of Bombay in CIT v. Jet Airways (India) Ltd declined to admit the ground relating to applicability of provisions of section 194-I of the Act on PSF charges holding that no substantial question of law arises. While doing so it relied on the judgment of the Hon'ble Supreme Court dated 4-8-2015 in the case of Japan Airlines and Singapore Airlines where the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act. The Board has accepted the above view of the High Court of Bombay. Accordingly, it is now a settled position that section 194-I of the Act, will not apply on PSF. In view of the above, henceforth, appeals may not be filed by the Department on the above settled issue, and those already filed may be withdrawn/not pressed upon.



JUDGMENTS UNDER SERVICE TAX

Compiled by CA. Bhavin Mehta

1. Where assessee provided training for repairing of air conditioner, agri-tourism, aquarium making, dairy milk, milk products making, electric motor rewinding chalk and candle making to trainees on behalf of Central/State Government, said service would fall under category of business auxiliary service. **[Commissioner of Central Excise, Pune-III v/s Mitcon Consultancy & Engg. Services Ltd. [[2017] 82 taxmann.com 196 (Mumbai - CESTAT)].**

FACTS:

1. The assessee is a programme implementing agency and working at the behest of Government of Maharashtra through MSFC, MSSIDC with a view to encourage entrepreneurship. They are working under centrally sponsored schemes through various ministries and department and government of India and State. They have provided training for repairing of air conditioner, agri-tourism, aquarium making, dairy milk, milk products making, electric motor rewinding, chalk and candle making to the trainees on behalf of the Central/State Government under centrally sponsored schemes. The Commissioner (Appeals) allowed the claim of the assessee with respect to classification of service under Business Auxiliary Service and exemption under Notification No.14/2004-ST, dated 10-9-2004.
2. However, on appeal to Tribunal, the revenue contended that the service provided by the assessee would fall under the category of commercial training & coaching services and not under business auxiliary service and exemption under Notification No.14/2004-ST, dated 10-9-2004 shall not be applicable to the assessee.

HELD:

1. The assessee relied on the letter of Joint Secretary (TRU-III) to Joint Secretary (Rural Department) that the services in the field of education training provided by programme implementing agency on behalf of Central/State Government would be classified under business auxiliary service.
2. Assessee is not providing service to the trainee but they are providing training to the trainees on behalf of the central/state government. Thus, they are not engaged in the providing of service of Commercial Training & Coaching services but they are providing training/coaching to the trainees on behalf of central/state government.
3. Notification No.14/2004-ST dated 10.09.2004 provides for exemption for activity undertaken in relation to agriculture, printing, textile processing or education. Revenue has argued that the activity undertaken by the appellants is not in the field of education, but in the field of vocational training.
4. The learned counsel for revenue has reproduced definition of Education as per Compact Oxford Reference Dictionary, wherein "Education" is defined as 1. The process of teaching or learning. 2. The

theory and practice of teaching 3. Training in a particular subject." It is seen that the definition itself include training as a component of education.

5. Thus, assessee services shall be classifiable under business auxiliary services and the benefit of Notification No. 14/2004-ST, dated 10-9-2004 cannot be denied to the assessee.
2. Expression 'three months' under section 85(3) cannot be considered to be 'ninety days' and it must be construed as three calendar months. [**Todays Petrotech Ltd. v/s Joint Commissioner [2017] 82 taxmann.com 130 (High Court of Gujarat)**].

FACTS:

1. The order-in-original was received by the assessee on 5-2-2015. Therefore, the normal period of filing the appeal under section 85(3) with the Commissioner (Appeals) expires on 4-4-2015. Considering section 85(3A) of the Finance Act, 1994, Commissioner (Appeals) is empowered to condone the delay of only one month from the said date of 4-4-2015, which means he can condone the delay for sufficient reasons up to 4-5-2015.
2. In the present case, appeal was filed only on 6-5-2015, i.e., beyond the condonable period of one additional month after the allowed two months of filing the appeal, and therefore, the Commissioner (Appeals) rejected the said appeal by observing that considering section 85(3A) he has no jurisdiction to condone the delay beyond the condonable period of one month.
3. Further, The Tribunal having rejected the assessee's plea, assessee filed an appeal with the High court.

HELD:

1. It is the case of the assessee that the word 'month' is to be read and/or considered as '30 days'. Meaning thereby the word 'three months' mentioned in section 85(3A) shall be read as 'ninety days' and not as per the 'British Calender month' as per section 3(35) of the General Clauses Act, as the appeal was preferred on the 90th day (may be beyond the period of three months) the Commissioner (Appeals) was authorised to condone the delay on sufficient cause being shown.
2. Commissioner (Appeals) rejected the appeal preferred by the assessee against the order-in-original on the ground that the appeal so preferred was time barred and beyond the condonable period of one additional month after the period of filing the appeal as per section 85(3A) of the Finance Act, 1994.
3. The High Court held that the expression 'three months' under section 85(3) cannot be considered to be 'ninety days' and it must be construed as three calendar months.
4. The High court held that the Commissioner (Appeals) has not committed any error in rejecting the appeal on the ground of limitation by observing that beyond the condonable period of one month after the prescribed period of two months to prefer the appeal, he has no jurisdiction to condone the delay beyond the condonable period.

Accordingly, the present appeal has been dismissed.

3. a) Where appellant who was allotted land by Govt. for 99 years, further allotted land, appellant was liable to pay service tax on lump sum consideration received in respect of lease of land for a period less than 30 years and on transfer charges relating to lease under tax category of 'Renting of immovable property services'
- b) Where appellants further allotted land allotted to it by Govt. of Rajasthan, appellant not being a govt. authority was liable to service tax under management, maintenance and repair services in respect of maintenance charges collected from allottees

[RIICO Ltd. v/s Commissioner of central Excise, Jaipur – II, [2017] 82 taxmann.com 304 (New Delhi – CESTAT)]

FACTS:

1. The appellants are a company incorporated by the Government of Rajasthan under Companies Act, 1956 and the appellant is registered with Service tax department under the category of 'Management, maintenance and Repair services' and 'Renting of Immovable property service'.
2. The appellant has been allotted vacant land by the Government of Rajasthan for 99 year long term lease for development of industrial areas, export promotion parks, growth centres, SEZ etc.
3. The appellant further allotted such land to various allottees against payment of 'Development Charges/Allotment Rate/Cost of Land (Premium)' on lump sum basis or by auction and lease rental (economic rent) on long term basis for a period not exceeding 99 years.
4. Appellant also collected other charges like like service charges, fire charges, retention charges, restoration charges, unauthorized construction regularization charges, transfer charges and pre-payment charges.
5. The Original Authority held that appellant was liable to service tax on all these charges.

HELD:

1. The appellants are liable to service tax on the activity of grant of long term lease of industrial plot, for use in the furtherance of commerce or business, from 1-7-2010. However, where considerations received as lump-sum upfront payment in respect of lease of land for a period of 30 years and above shall not be liable to tax.
2. The appellants are liable to pay service tax on retention charges, restoration charges, unauthorized construction charges/regularization charges and transfer charges relating to lease land under the tax category of renting of immovable property services for the period 01/07/2010 onwards. These charges are closely linked to facilitate continued enjoyment of lease by the allottee and have direct nexus to the renting of immovable property. These charges are liable to service tax.
1. The appellants are liable to service tax under management, maintenance and repair services in respect of charges collected from allottees with reference to provision of various services other than management, maintenance of roads. The appellants are liable to service tax for such management, maintenance and repair services for the period prior to 01.04.2014 as the appellant was not falling within the definition of Governmental Authority. However, with effect from 01.04.2014, definition of Governmental Authority has been substituted which exempts such services provided by the appellant after 01.04.2014.



JUDICIAL JUDGEMENTS

Compiled by CA Rupal Shah

B. A. Mohota Textiles Traders (P) Ltd. Vs. DCIT(Maharashtra), [2017] 82 taxmann.com 397 (Bombay), 12 June 2017

Transfer of shares by a private limited company under a family settlement, where the company was under control of the family members is transfer u/s. 2(47) and as such assessable as capital gains

Facts of the case:

The appellant is a Private Limited Company. Over 80 % of its share capital is held by the family members of three brothers of the Mohota family referred to as Groups 'A', 'B' and 'C' respectively. The Mohota family, also had joint interest in various other Limited Companies, Partnership Firms and immovable property.

Consequent to family disputes and in terms of the settlement award, the assessee Company transferred 25,650 shares held by it in M/s. Rekhchand Mohta Spinning and Weaving Mills Ltd. and 1,22,000 shares held by it in M/s. Vaibhav Textiles Pvt. Ltd. to the members of the family of Group 'A' and Group 'C'.

During the Assessment proceedings for relevant AY, the assessee Company contended that no Capital gains would be attracted on the above-mentioned transfer as there was no transfer as per Section 2(47) of the IT Act as it was working out of family settlement/arrangement.

The AO held that the Company being a separate legal entity distinct from its shareholders, cannot be a part of family settlement/arrangement. Thus, transfer of shares done by independent entity such as the assessee would not be covered by the 'Family Settlement' and consequently, brought the transfer of shares to Capital Gains Tax.

On further appeal by the Assessee, CIT(A) and thereafter ITAT bench, also upheld the view of the AO.

High court upheld the view of the Revenue observing that:

A family arrangement/settlement would not amount to a transfer. Hence, any transfer inter se between the members of the Mohota family would not result into a transfer and hence not attract capital gain tax. However, in the present case, the transfer of shares is done by the Company incorporated under the Companies Act having separate/independent corporate existence, perpetual succession and common seal. This Company is independent and distinct from its members.

Hence, the Company is liable to offer the capital gains to tax as per the relevant provisions of the IT Act.

ACIT vs. Vireet Investment (P) Ltd., ITAT Delhi, [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB), 16 June 2017

Computation of book profit for MAT purposes u/s. 115JB(2) is to be made without applying computation u/s. 14A r.w. Rule 8D

Facts of the case:

The Assessee company was carrying on the business as finance and investment company, making investment in shares and securities and advancing moneys and borrowing moneys to/from industrial enterprises. The assessee had filed its return of income and the tax was paid u/s 115JB.

Assessee had offered disallowance u/s 14A as per Rule 8D, which, as per assessee, was worked out @ 0.5% of average value of its investment on the basis of their value as at opening and closing of the relevant financial year.

The AO contended that the main source of assessee's income was from dividend and other tax-free incomes. Therefore, AO computed the disallowance on a proportionate basis.

In response to this, the assessee submitted that as per clause (f) of Explanation 1 to section 115JB(2) only expenditure relating to income other than income assessable under section 10(38) was to be added while calculating book profit under section 115JB. On further appeal, CIT(A) also upheld the order of the AO.

The ITAT bench held in the favour of assessee observing that

After various contentions submitted by the Revenue and the assessee, the ITAT held that Computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated under section 14A read with Rule 8D.



38th Annual General Meeting



Welcoming of Incoming President
CA Vipul Somaiya

Felicitation of Outgoing President
Shri Adarsh Parekh by
Incoming President
Shri Vipul Somaiya



Appreciation Award as
Best Convener to Shri Tejas Shah

Appreciation award as
Best Managing Committee Member to
Shri Darshan Shah



Managing Committee 2017-18

OFFICE BEARERS



Left to Right : Darshan Shah, Viresh Shah, Vipul Somaiya, Vaibhav Seth, Nimish Mehta



Standing Position (Left to Right) : Harsh Shah, Hemang Patelia, Abhishek Katre, Avesh Patel, Ketan Soneji, Tejas Shah, Utpal Patel, Jaimin Trivedi.

Sitting Position (Left to Right) : Nimish Mehta, Darshan Shah, Viresh Shah, Kishor Vanjara, Vipul Somaiya, Vaibhav Seth, Adarsh Parekh, Yatin Rangwala, Manish Chokshi, Brijesh Cholera

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