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"Never Stop Learning, Never Stop Growing"

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• *We Wish all our Members and Readers a Merry Christmas and Happy New Year!* •

President's Communique



Dear Members,

Acquiring knowledge is not an end in itself but only a means to an end. Knowledge without purpose is of no use and achieves nothing. We should use our knowledge not only for our own betterment but also for all the stakeholders. As States after States, the World over are competing with each other for bringing their bureaucracies and hierarchies to function efficiently, India is also not lagging behind and we as a nation have jumped over 65 ranks in 4 years to be ranked 77 amongst 190 countries in ease of doing business. Among the 10 parameters as per The World Bank guidelines deciding the above ranking, parameters like time to start business, time to obtain construction permit, to register property, to pay taxes, to enforce contract, to resolve insolvency, to obtain bank loans, etc., all require specialised knowledge and skills, which who better than us Professionals can provide it to the business in particular and the society at large. A great responsibility is cast on us and we should shoulder it with due care and diligence.

We just concluded the 13th Dr. Bharat D. Vasani Saraswati Sanman Samarambh and Diwali get-together and talent show by our Members on 18th November 2018. 11 students of diverse qualification like SSC, HSC, B.Com., CA, CS, MS, etc. were felicitated. On this occasion Dr. Bharat D. Vasani in his address inspired and motivated the students and the members. He reiterated the fact as more and more graduates are going into industry, there was tremendous scope in practice and consultancy. He encouraged them to look for further avenues in profession with out of the box thinking.

The participation in the Diwali-get-together and talent show was also a great success as there were over 20 performances by the Members consisting of songs, solo as well as duet, shairis, jokes, hoopla dance, etc. The talent show highlighted that our Members are not only proficient in their profession but they are also passionate for other creative activities as well.

We are very grateful to Dr. Bharat D. Vasani for announcing donation of ₹ 51,000/- for enhancing the Dr. Bharat D. Vasani Saraswati Sanman Fund. We are thankful to our Past President, Shri Ashwin Acharya for the donation of ₹ 3,000/-, to our Members, Shri Ujwal Thakrar for his donation of ₹ 5,000/- and Shri Mahesh Madkholkar for his donation of ₹ 1,000/- towards Diwali-get-together and talent show. We are also grateful to our sponsors and well-wishers for their support and contribution for the Diwali-get-together and talent show. Details of the sponsors are given inside the bulletin.

As per our regular practice we will be organising a Joint Workshop with other Associations from 14-01-2019 to 14-03-2019, details and enrollment form we will send by mail.

As we are nearing the end of the year 2018, we look forward that the New Year 2019 will bring in new hopes and aspirations. Wishing everyone a promising and a Happy New Year 2019.

With Warm Regards

CA Vaibhav D. Seth
President

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

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DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

Section 80D of the Income-tax Act,1961 – Deductions – Medical Insurance premium – Notified scheme u/s. 80D(2)(a)

The Central Government *vide* Notification No. SO 4982[E] [NO.55/2018 (F.NO.178/15/2018-ITA-I)] dated 26-09-2018 notifies the ex-servicemen contributory health scheme of the department of ex-servicemen welfare, Ministry of Defence, for the purpose of the section 80D(2)(a) of the Income-tax Act for the Assessment Year 2019-20 and subsequent assessment years.

1. Form of Appeal and Memorandum of cross-objection to Appellate Tribunal – amendment in Rule 47 and substitution of Form 36 and Form 36A

The Central Board of Direct Taxes *vide* Notification No. GSR 1054(E) [NO. 72/2018 (F. NO. 370142/8/2018-TPL)] dated 23-10-2018 gives the Income Tax (10th Amendment) Rules, 2018. It amends Rule 47 and substitutes the Form No. 36 and Form No. 36A. Form 36 is form of Appeal to the Appellate Tribunal. Form 36A is form of memorandum of cross-objection to the Appellate Tribunal. The amendment came into force on the date of its publication in the official Gazette.

2. Application for certificate for deduction of tax at lower rate u/s. 197/certificate for collection of tax at lower rate u/s. 206C - Substitution of Rule 28 and 37G – substitution of Form 13 – amendment in rules 28AA, 28AB and 37H.

The Central Board of Direct Taxes *vide* Notification No. GSR 1068(E) [NO.74/2018 (F.NO.370142/10/2018-TPL)] dated 25-10-2018 gives Income Tax (Eleventh Amendment) Rules, 2018. It substitutes Rule 28, 37G and Form 13 – and amends Rule 28AA, 28AB and 37H.

The newly substituted Rule 28/37G prescribes new substituted Form 13 being an application for grant of certificate for deduction of Income Tax at lower rate/ grant of certificate for collection of Income Tax at lower rate. The Form No. 13 is required to be submitted electronically under digital signature or through electronic verification code. The principal director general of Income Tax (Systems)/ director general of Income Tax (Systems) will prescribe procedures, formats and standards for ensuring secured capture and transmission of data and uploading of document etc. It also amends Rule 28AA, 28AB and 37H. It came into force from the date of its publication in the Official Gazette. One may refer to the notification for further details.

3. Section 139, read with section 119 of the Income-tax Act,1961 – Return of Income – Rejection for further extension of due date for filing ITR/TAR beyond 31-10-2018

The Central Board of Direct Taxes passed the order NO - F. No 225/358/2018-ITA.II dated 25-10-2018, in consequence to the directions of Hon'ble Gauhati High Court with regards to extension of due date for filing ITR's as well as TAR's.

The Tax Bar Association, Gauhati (Petitioner), has filed a representation dated 20-09-2018 before the Central Board of Direct Taxes (CBDT) seeking extension of the due date prescribed under section 139(1) of the Income-tax Act, 1961(Act), being 30th September, 2018, for filing of Income-Tax Returns (ITR's) as well as Tax Audit Reports (TAR's) pertaining to assessment year 2018-19. It may be mentioned that taking note of all the relevant issues, CBDT, *vide* orders dated 24-09-2018 & 08-10-2018, has already extended the due date for filing ITR's as well as TAR's from 30-09-2018 to 31-10-2018. In this matter, petitioner had also filed a Writ-Petition before the Hon'ble Gauhati High Court. In hearing before the Hon'ble Court, Petitioner stated that the relaxation provided by the CBDT

till 31-10-2018 may not be sufficient. The Hon'ble Gauhati High court *vide* order dated 12-10-2018 in WP(C) 7361/2018 while disposing off the petition has directed the CBDT to consider representation of the Petitioner dated 20-09-2018 and pass a speaking order in this matter on or before 25-10-2018. Accordingly, this order is being passed on consequence to the directions of the Hon'ble Gauhati High Court.

The CBDT has discussed three grounds in representation of the petition for extension of the due date. The CBDT under para 5 rejected the request for further extension of due date for filing ITR/TAR beyond 31-10-2018. One may refer to the above CBDT order for further details.



RATE OF GST ON CONSTRUCTION OF LOW-COST HOUSES UP TO A CARPET AREA OF 60 SQUARE METRES PER HOUSE IN AN AFFORDABLE HOUSING PROJECT

Compiled by CA Bhavin Mehta

Issues:

1. What shall be the rate of GST applicable on service by way of construction of low-cost houses up to a carpet area of 60 square meters?
2. Whether all houses in the housing projects should have area up to or less than 60 square meters in order to be eligible for lower rate of GST?

Legal Position

Sub-clause (da) of Clause (v) of Sr. No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28-06-2017 as amended by Notification No. 1/2018 Central Tax (Rate) dated 25-01-2018 is provided hereunder:

(da) Low- cost houses up to a carpet area of 60 square metres per house in an **affordable housing*** project which has been given infrastructure status *vide* notification of Government of India, in Ministry of Finance, Department of Economic Affairs *vide* F. No. 13/6/2009-INF, dated the 30th March,2017; Rate of tax applicable @ 6% (CGST). (copy of notification is enclosed).

****Affordable Housing**" is defined as a housing project using at least 50% of the Floor Area Ratio (FAR) / Floor Space Index (FSI) for dwelling units with carpet area** of not more than 60 square meters.

****Carpet area**" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

Clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 defines "carpet area":

"**Carpet area**" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.

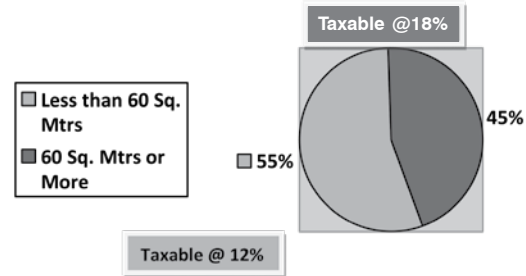
Interpretation

1. In my opinion service by way of construction of low-cost houses up to a carpet area of 60 square metres shall be classified under clause (da) of Clause (v) of Sr. No. 3 of Notification No.11/2017 Central Tax (Rate) dated 28-06-2017 as amended by Notification No. 1/2018 Central Tax (Rate) dated 25-01-2018. GST rate applicable for the same is 12% (CGST @ 6% & SGST@ 6%).
2. In order to be classified under clause (da) of Clause (v) of Sr. No. 3 of Notification No.11/2017 Central Tax (Rate) dated 28-06-2017 as amended, the condition required to be satisfied as per notification of Government of India, in Ministry of

Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017. It stipulates condition that at least 50% of the Floor Area Ratio (FAR) / Floor Space Index (FSI) for dwelling units with carpet area shall not be more than 60 square meters. The above provision has been explained by way of an example given below.

- a) Total FAR / FSI of Housing Project = 10,000 sq. mtrs.
- b) Dwelling units with carpet area less than 60 sq. mtrs. = 5100 sq. mtrs.
- c) % dwelling units with carpet area of less than 60 sq. mtrs. = $5,100 / 10000 * 100 = 51\%$
- d) Dwelling units with carpet area of 60 sq. mtrs or more = 4900 sq. mtrs.
- e) % Dwelling units with carpet area of 60 sq. mtrs. or more = $4,900 / 10000 * 100 = 49\%$
- f) GST Tax rate on 5,100 sq. mtrs shall be @ 12%
- g) GST Tax rate on 4,900 sq. mtrs shall be @ 18%

Land deduction would be available from the value of flat.



SYNOPSIS OF GST NOTIFICATION AND CIRCULARS

Compiled by CA Brijesh M. Cholera

NOTIFICATION

61/2018-CENTRAL TAX DATED 5-11-2018

By this notification a proviso is inserted in Notification No. 50/2018-Central Tax and thereby the provisions of section 51 (Tax Deduction at Source) shall not apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person w.e.f. 1-10-2018.

62/2018, 63/2018, 64/2018 & 65-2018-CENTRAL TAX DT. 29-11-2018

By this notification for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh date for GSTR-3B, GSTR-1 & GSTR-4 extended and thereby the return in Form GSTR-3B for Sep. 2018 & Oct. 2018 & Form GSTR-1 for the month of Sep. 2018, Oct. 2018 and for GSTR-1 & GSTR-4 for the quarter from July. 2018 to Sep. 2018 shall be furnished electronically on or before 30-11-2018.

For registered persons whose principal place of business is cuddalore, Thiruvarur, Pudukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu shall furnished Form GSTR-3B & Form GSTR-1 electronically for the month of October, 2018 on or before 20-12-2018.

66/2018-CENTRAL TAX DT. 29-11-2018

The Commissioner hereby extends the time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 for the months of October, 2018 to December, 2018 till the 31st day of January, 2019.

Circular

Circular No. 73/47/2018-GST dated 5-11-2018

Clarification given on issues regarding Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of *del-credere* agent.

Circular No. 74/48/2018-GST dated 5-11-2018

It is clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board of India respectively from the sellers (i.e., tea producers) on the net value of supply of goods i.e., tea; and from auctioneers on the net value of supply of services (i.e., brokerage)



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

MAJ Hospital vs. DCIT (Exemption), Kochi, [2018] 100 taxmann.com 1, 12th Nov. 2018

Trust running Hospital and Nursing School both was entitled to exemption u/s 11 as both were intricately connected and amendment to section 11 denying depreciation to trust is prospective in nature

Facts of the case

The assessee trust was registered u/s. 12A. It claimed income from Hospital and Nursing School as exempt u/s. 11. The AO treated both income as business income and levied tax thereon. On appeal, CIT (A) granted exemption to income from running hospital and the income from running school was charged to tax.

Also, depreciation claim was disallowed on the grounds that cost of fixed asset was allowed as application in earlier years.

On second appeal it was held as under:

The school of nursing is in the same premises, as the hospital. The students of the nursing school get training in the hospital. Thus, the hospital and nursing schools are intricately connected and dependent on each other and in fact part of one inseparable activity.

ITAT relied on decision of Supre Court in the case of Asstt. CIT vs. *Thanthi Trust [2001] 247 ITR 785/115 Taxman 126* where exemption u/s. 11 was granted to income derived from an activity incidental to the achievement of the main objects of the trust.

The income from school only about 2% of income from hospital. Thus, corroborating the fact that it was only incidental to the main cause of the Trust.

The depreciation claim of the assessee was allowed by ITAT by drawing reference to decision of the Apex Court in the case of *CIT vs. Rajasthan & Gujarati Charitable Foundation [2018] 402 ITR 441/253 Taxman 165/89 taxmann.com 127* by holding that the amendment brought about to section 11(6) is not retrospective in effect and is only prospective and applicable for and from 2015-16 onwards.



Details of Sponsors and Well-wishers for the Diwali Get-together and talent show

Mrs. Alka B. Vasani

Prominent Life Insurance Consultants and Insurance Portfolio Managers
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Mobile: Prakash Dodhia 9324681218; E-mail: vmpinvestment@gmail.com and vmpinfotech11@gmail.com

Saraswati Sanman Awardees



Deep Prajwalan for Saraswati Sanman Samarambh



President CA Vaibhav Seth addressing the Members



Past President CA Manish Chokshi presenting bouquet to Dr. Bharat D. Vasani



Dr. Bharat D. Vasani addressing the Members



Past President CA Hiten Shah hosting the Talent Show



Secretary CA Jignesh Savla announcing the names of Awardees



Participants for the Diwali Get Together

Saraswati Sanman Awardees



'Diwali Get Together and Talent Show'

Participants at the Talent Show



Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

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