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Consultants**

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"Never Stop Learning, Never Stop Growing"

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 Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

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President's Communiqué



Dear Members,

***Happy Diwali and wishing everyone a prosperous and
glittering New Year!***

Each day is a new challenge. To stay fresh and alive in spirit, there must be change. Find new tactics, methods and modes of operation that are right for today's situation otherwise you will be left behind. Learning is a continuous process and we can face the challenges of changes that are happening all around us by acquiring new knowledge.

After concluding the busy Income-tax and Tax Audit filing season, members must be taking time off for relaxation and short vacation. By the time you will be receiving this bulletin we at the Chamber also would have celebrated the new year by way of Dr. Bharat D. Vasani Saraswati Sanman Samarambh Diwali Get-together and Talent Show by our Members on 18th November, 2018.

The Chamber successfully concluded Seminar on GST Annual Returns and GST Audit on 4th November 2018 at SNDT Hall, Malad. The response for the Seminar was tremendous and nearly 150 members attended. This shows the enthusiasm and excitement by our Members to understand the new forms and its procedures but also the concern and responsibility the Members are having for these compliances. On such occasions the Chamber has been always on the forefront in assisting its Members by way of holding Seminars, Study Circle meetings, circulation of information material, etc. We assure you more such initiatives will be taken as need arises.

As time remaining to complete the GST Annual Returns, GST Audit and VAT Audit will become shorter, more prudence and planning on the part of our Members will be required. Gear up and rise for the occasion so you can complete your work well in time and are not stressed out.

With Sincere Wishes,

CA Vaibhav D. Seth
President

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

Name	Designation	Contact Nos.	E-mail
Vaibhav D. Seth	President	9619721743	sethvaibhav@hotmail.com
Viresh Shah	Vice President	9820780070	vireshbshah9@gmail.com
Jaimin Trivedi	Hon. Treasurer	9892931325	ca.jstrivedi@gmail.com
Jignesh Savla	Hon. Secretary	9820260070	cajigneshsavla@gmail.com
Darshan Shah	Hon. Secretary	9821868254	darshanshahfca@gmail.com

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DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

- **SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - CBDT FURTHER EXTENDS DATE FOR FILING INCOME-TAX RETURNS AND AUDIT REPORTS FOR ASSESSMENT YEAR 2018-19**

ORDER [F.NO.225/358/2018/ITA-II], DATED 8-10-2018

The due date for filing of Income Tax Returns and Audit Reports for Assessment Year 2018-19 was 30th September, 2018 for certain categories of taxpayers. Central Board of Direct Taxes (CBDT) had earlier extended the date for filing of Income Tax Returns and various reports of Audit to 15th October, 2018. Upon consideration of representations from various stakeholders, CBDT further extends the 'due date' for filing of Income Tax Returns as well as reports of Audit (which were required to be filed by the said specified date) from 15th October, 2018 to 31st October, 2018 in respect of the said categories of taxpayers. However, as specified in earlier order dated 24-09-2018, assessees filing their return of income within the extended due date shall be liable for levy of interest as per provisions of section 234A of the Income-tax Act, 1961.

- **SECTION 112A OF THE INCOME-TAX ACT, 1961 - LONG TERM CAPITAL GAINS - NOTIFIED TRANSACTIONS OF ACQUISITION OF EQUITY SHARES - CHARGEABILITY TO STT SHALL NOT APPLY**

NOTIFICATION NO. SO 5054(E) [F.NO. 60/2018 (F.No.370142/9/2017-TPL)], DATED 1-10-2018

In exercise of the powers conferred by sub-section (4) of section 112A of the Income-tax Act, 1961 (43 of 1961) hereinafter referred to as the Income-tax Act, the Central Government, with a view to specify the nature of acquisition in respect of which the provision of sub-clause (a) of clause (iii) of sub-section (1) of section 112A of the Income-tax Act shall not apply, hereby notifies the transactions of acquisition of equity shares entered into—

- (I) Before the 1st day of October, 2004; or
- (II) On or after the 1st day of October, 2004 which are not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004), other than the following, namely:—

- (a) Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue:

Provided that nothing contained in this clause shall apply to acquisition of listed equity shares in a company;—

- (i) Which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
- (ii) By any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;
- (iii) By an investment fund referred to in clause (a) of *Explanation 1* to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the Income-tax Act or a Qualified Institutional Buyer; and
- (iv) Through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.

- (b) Where transaction for acquisition of existing listed equity shares in a company is not entered through a recognised stock exchange in India:

Provided that nothing contained in this clause shall apply to the acquisition of listed equity shares in a company which has been made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and is—

- (i) Through an issue of shares by a company other than the issue referred to in clause (a);
- (ii) By scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
- (iii) Approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
- (iv) Under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
- (v) By any non-resident in accordance with foreign direct investment guidelines of the Government of India;

- (vi) In accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
 - (vii) From the Government;
 - (viii) By an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the income-tax Act or a Qualified Institutional Buyer; and
 - (ix) by mode of transfer referred to in section 47 or section 50B or sub-section (3) of section 45 or sub-section (4) of section 45 of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause (c) [other than the transactions referred to in the proviso to clause (a) or clause (b)].
- (c) Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder;

Explanation.— For the purposes of this notification,—

- (a) "Frequently traded shares" means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent of the total number of shares of such class of the company:
Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares;
- (b) 'Listed' means listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder;
- (c) "Preferential issue" and "Qualified Institutional Buyer" shall have the meanings respectively assigned to them in sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (d) "Public financial institution" and "scheduled bank" shall have the meanings respectively assigned to them in *Explanation* to clause (viiia) of sub-section (1) of section 36 of Income-tax Act;
- (e) "Recognised stock exchange" shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; and
- (f) "Reconstruction company" and "securitisation company" shall have the meanings respectively assigned to them in sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

This notification shall come into force with effect from the 1st day of April, 2019 and shall accordingly apply in relation to the assessment year 2019-20 and subsequent assessment years.

■■■

ANALYSIS OF PENALTY PROVISIONS – PART IV

Compiled by CA Bhavin Mehta

In the earlier three articles we have studied provisions of section 73, 74, 122, 123 to 135 of GST Act. In this article provisions of sections 133 to 138 is examined.

Section 133: Liability of officers and certain other persons

- (1) Where any of the following person wilfully discloses any information or the contents of any return furnished otherwise than in execution of his duties he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 25,000, or with both.
 - (i) Person engaged in connection with collection of statistics u/s. 151 or compilation or computerisation thereof; or
 - (ii) Any officer of Central tax or State tax having access to information specified u/s. 150 (as per section 150 specified persons such as local authority, banks, electricity board have to furnish information return); or
 - (iii) Any person engaged in connection with the provision of service on the common portal or the agent of common portal.

- (2) (a) In case where any of the above persons is Government servant, previous sanction of the Government is required.
- (b) In case of other than Government servant, previous sanction of Commissioner is required.

Section 134: Cognisance of offences

For any offence punishable under CGST/SGST Act or Rules, without previous sanction of Commissioner no court shall have power to try the offence. Courts below First Class Magistrate will not have power to try the offence.

Section 135: Presumption of culpable mental state

Onus to prove that there was no culpable mental state shall lie on accused. In other accused has to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Section 136: Relevancy of statements under certain circumstances

A statement made at the time of summons shall be relevant for the purpose of proving in any prosecution for an offence when the person who has made the statement is dead or cannot be found or incapable of giving evidence or when such person is examined as witness before the court.

Section 137: Offences by companies

- (1) Where an offence committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for conduct of business, such person as well as company shall be deemed to be guilty of the offence. However if such person proves that such offence was committed without his knowledge or he had exercised all due diligence to prevent such commission of such offence.
- (2) Where an offence is committed by a company with the consent or connivance of or is attributed to any negligence on the part of any director, secretary or other officer, such person also be deemed to be guilty of that offence. However if such person proves that such offence was committed without his knowledge or he had exercised all due diligence to prevent such commission of such offence.
- (3) Where an offence has been committed by a partnership firm, a LLP or HUF or Trust, the partner or karta or managing trustee shall be deemed to be guilty of such offence. However if such person proves that such offence was committed without his knowledge or he had exercised all due diligence to prevent such commission of such offence.

Section 138: Compounding of offences

- (1) Either before or after institution of prosecution, any offence can be compounded by the Commissioner on payment of compounding amount after making payment of tax, interest and penalty involved in such offences. Compounding allowed under this section shall not affect the proceedings instituted under any other law. However, in following cases compounding of offence is not permitted:
 - (a) A person who has been allowed to compound the offence once in respect of specified offence, as under:
 - (i) Supplies of goods and services without issue of invoice with intent to evade tax;
 - (ii) Issues invoice or bill without supply of goods or services leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (iii) Avails input tax credit using such invoice or bill referred to in clause (ii) above;
 - (iv) Collects tax but fails to pay in the Govt. treasury beyond period of 3 months of it become due for payment;
 - (v) Evades tax, fraudulently avails input tax credit or fraudulently obtains refund;
 - (vi) Falsifies or substitute financial records or produces fake accounts or documents or furnishes false information with an intent to evade payment of tax;
 - (vii) Attempts to commits, or abets the commission of any of above offences
 - (b) A person who has allowed to compound the offence once under the SGST Act or IGST Act or UGST Act in respect of supplies of value exceeding one crore rupees;
 - (c) Offence committed under this Act is also an offence under any other law;
 - (d) A person convicted for an offence under this Act by a Court;
 - (e) A person accused of committing the offence of –
 - (i) Obstructing or preventing any officer in the discharge of his duties;
 - (ii) Tampering with or destroys any material evidence or documents;
 - (iii) Fails to supply information or supplies false information.
 - (f) Any other class of person or offences as may be prescribed.

- (2) Compounding amount shall be subject to minimum amount of ₹ 10,000 or 50% of the tax involved, whichever is higher and maximum amount of ₹ 30,000 or 150% of tax involved, whichever is higher.
- (3) On payment of compounding amount no further proceedings shall be initiated under this Act and any criminal proceedings, if already initiated in respect of such offence shall stand abated.



SYNOPSIS OF GST NOTIFICATION AND CIRCULARS

Compiled by CA Brijesh M. Cholera

NOTIFICATION

53/2018, 54/2018-CENTRAL TAX DT. 9-10-2018

Notified amendments in GST rules, Rule 89 (4B) Application for refund of tax, interest, penalty, fees or any other amount substituted. Rule 96(10) Refund of integrated tax paid on goods or services exported out of India, substituted w.e.f. 23-10-2017.

55/2018-CENTRAL TAX DT. 21-10-2018

The Commissioner hereby extends the time limit for furnishing the return in Form GSTR 3B for the month of September, 2018 from 20-10-2018 to 25-10-2018.

56/2018-CENTRAL TAX DT. 23-10-2018 & 3/2018-Integrated Tax Dt. 22-10-2018

The Central Government hereby specifies the categories of casual taxable persons who shall be exempted from obtaining registration under the said Act.

57/2018-CENTRAL TAX DT. 23-10-2018

The Central Government hereby excludes the Ministry of defense (other than authorities mentioned in Annexure A of Notification) from section 51 (Tax Deduction at Source) w.e.f. 1-10-2018.

58/2018-CENTRAL TAX DT. 26-10-2018

The Commissioner hereby notifies the persons whose registration under the said Act has been cancelled by the proper officer on or before the 30-9-2018, as the class of persons who shall furnish the final return in FORM GSTR-10 of the said rules till the 31-12-2018.

59/2018-CENTRAL TAX DT. 26-10-2018

The Commissioner hereby extends the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to September, 2018 till the 31-12-2018.

60/2018-CENTRAL TAX DT. 30-10-2018

The commissioner hereby amends the rules, new rule 83A inserted regarding Examination of Goods & Service Tax Practitioners, In rule 109A Appointment of Appellate Authority, New Rule 142A inserted regarding Procedure for recovery of dues under existing laws, Form GST REG-16, Form GSTR-4, Form GST PMT-01 minor changes done.

14/2018-Union Territory Tax DT. 8-10-2018

The Central Government, hereby, notifies the Constitution of the Authority for Advance Ruling in the Union territories.

15/2018-Union Territory Tax DT. 8-10-2018

The Central Government, hereby, notifies the Constitution of the Appellate Authority for Advance Ruling in the Union territories.

Circular

Circular No. 68/42/2018-GST DT. 5-10-2018

Clarification given that UN and specified international organisations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, *mutatis mutandis*, as prescribed in Notification No. 16/2017-Central Tax(Rate) dated 28-06-2017.



Circular No. 69/43/2018-GST DT. 26-10-2018

Clarifications issued on various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in FORM GST REG-16.

Circular No. 70/44/2018-GST DT. 26-10-2018

Clarification given on refund related issues.

Circular No. 71/45/2018-GST DT. 26-10-2018

Clarifications of issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor.

Circular No. 72/46/2018-GST DT. 26-10-2018

Circular to clarify the procedure in respect of return of time expired drugs or medicines.



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Ratan Paul vs. ITO-2(2), ITAT Kolkata, ITA No. 312/Kol/2018, 5th September 2018

Asking details of land improvement cost incurred 25 years ago uncalled for. Ad-hoc deduction allowed.

Facts of the case

The assessee is an individual and derives income from land which was sold for ₹ 46,00,000/-. The assessee purchased land on 28-12-1990 for ₹ 9,000/-. The assessee further claimed cost of improvements over the years as per the below table.

A.Y.	Cost of Improvement claimed by assessee (in ₹)	Cost of improvement allowed by AO (in ₹)
1990-91	3,50,000	6,898
1991-92	3,45,000	8,892
1992-93	2,50,150	9,505
2012-13	3,36,000	1,27,546

The AO contended that assessee being a Government employee, did not have adequate sources to substantiate his claim of cost of improvements. Hence 50% of his salary was allowed as cost of improvements to the land.

In reply to the above, the assessee submitted that he had received gifts from 18 donors and also produced their gift deeds to support the expense of land improvements. However, there was contradictory evidence brought on record when some of the donees were questioned in person. Hence both the AO and CIT(A) ignored the contention of gifts and upheld the addition.

ITAT observed as under:

The said expenditure is claimed to have been incurred more than 25 years ago. To ask the assessee to substantiate the source of income earned by him in these years for meeting his claim for cost of improvement of land is uncalled for.

If the assessee cannot produce the evidence of having incurred such expenditure, on the ground that it is very old, then a valuation report can be taken from a valuer in support of the claim.

ITAT held that *ad-hoc* deduction at 25% of the amount claimed by assessee should be allowed as deduction and long-term gains to be computed accordingly.

Kohinoor Industrial Premises Co-operative Society Ltd. vs. ITO 3(2)(2), ITAT Mumbai 'SMC', [2018] 98 taxmann.com 365 (Mumbai - Trib.), 5 October 2018

Income earned from installation of mobile tower/antenna on terrace was taxable as 'income from house property'. Standard deduction of 30% allowed.

Facts of the case:

The assessee had earned income from installation of mobile towers/antenna which was offered as income from house property and standard deduction was claimed u/s. 24(a).

The AO observed that terrace was common amenity for members and not house property. Further the conveyance was not executed in the favour of the society, so Society was not the owner of the premises. Also, the annual letting value of the terrace was not ascertainable.



On the above grounds, income from mobile tower was treated as income from other sources by AO. On first appeal CIT(A) observed that the income was compensation received for providing services and facilities to the cellular companies and hence cannot be termed as rent.

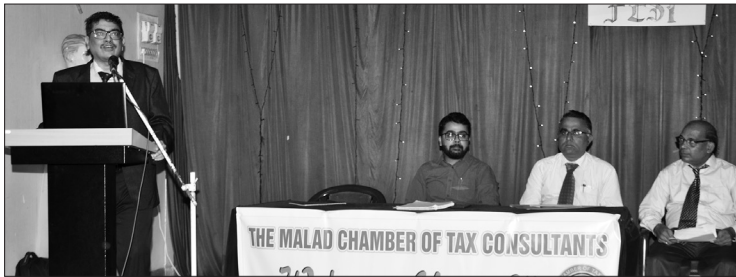
On further appeal ITAT held:

The terrace of the building cannot be considered as distinct and separate but certainly is a part of the house property. Therefore, letting-out space on the terrace of the house property for installation and operation of mobile tower/antenna certainly amounts to letting-out a part of the house property itself. Thus, the contention of AO is not acceptable.

With regard to view of CIT(A), the revenue did not bring any material on record to justify that the Housing Society provided any other services to the mobile companies apart from setting up of mobile tower on the terrace.

Hence, concluded that the income earned by the assessee is for letting out of terrace space for installation and operation of antennas and nothing else. Accordingly, the same to be treated as income from house property and standard deduction to be allowed u/s. 24(a).

Seminar on GST Annual Returns and GST Audit held on 4th November 2018



President CA Vaibhav Seth addressing the Members

CA Ramesh Sanghvi introducing the Speaker CA Aditya Surte



Speaker CA Aditya Surte addressing the Members

CA M. D. Prajapati proposing Vote of Thanks to Speaker CA Aditya Surte





CA Dipesh Singhania introducing
Speaker CA Govind Goyal



Speaker CA Govind Goyal addressing
the Members

Vice President CA Viresh Shah
proposing Vote of Thanks to Speaker
Govind Goyal



Members participating in the Seminar

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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B/6, Star Manor Apartment, 1st Floor,
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