



**The Malad  
Chamber of  
Tax  
Consultants**

MNW/175/2015-17

Total Pages 6

Price ₹ 5/-



# MCTC Bulletin

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

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Vol. 1, No. 4

For members & private circulation only

October, 2015



## President's Communiqué

Dear Members,

स्थस्यैक चक्र भुजगयमिताः सप्ततुरगाः  
निरालबो मार्गश्वरणविक्रलो सारथिरपि ।  
रविर्यात्यंत प्रतिदिनमपारस्य नभसः  
क्रियासिद्धिः सत्त्वे भवति महता नोपकरणे ॥

Everyday the sun travels to the end of endless sky in a single wheeled chariot having seven horses controlled by serpents on an unsupported road with a charioteer having disabled foot. The actions of great people are accomplished by their inner strength, not by the means of doing it.

Close watch is required on effect of VAT-TDS imposed in Karnataka. Other State Governments may follow the same. Statutory compliance time for the same may increase.

RRC 2015 was a great and memorable experience for all participants and their families. It was enriched by all learned speakers. All played games like couple games in which some ladies were injured, cricket in which all cheated and shouted at each other, some had morning walk in very clean air and some could not get up from bed before last call of breakfast. We thank all who have made it a grand success.

I am sure everybody has met with Tax Audit and other compliance targets.

Now it is time to sharpen our knowledge. In our day-to-day practice, we are coming with so many issues related to our practice. In order to educate and update our knowledge, we have organised Lecture Series on Direct Taxes jointly with The Chamber of Tax Consultants. The sequence of the structure is designed by learned professionals and the flow is very much logical. Eminent speakers will address the participants and course material will be designed in such a way that it can be referred when needed. Details of the same is elaborated in this bulletin. All members and their staff, article clerks are requested to take benefit of the same.

We have arranged Diwali Get-together and Saraswati Sanman Samarambh on Saturday, 21st November 2015. I request your participation and look forward to meet you all in person at the said event.

Best Wishes for :- ❖ Navratri ❖ Durga Ashtami ❖ Dusshera

Thank you

**Jayprakash M. Tiwari**

President

With Regards

≈ TEAM MCTC ≈

For Query & 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*

❑ **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 [232 Taxmann (St.) 45]**

The Central Board of Direct Taxes with approval of the Central Government notifies the rules *vide* Notification No. 58 / 2015 [F. No. 133/33/2015-TPL]/GSR 529(E), dated 2-7-2015 in respect of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. These rules are issued in exercise of the powers conferred by Section 85(1) & (2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act. It provides manner of the determining value of various assets along with illustrations, procedure for appeals, forms etc.

❑ **Explanatory notes on provisions relating to tax compliance for undisclosed foreign income and assets as provided in Chapter VI of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [232 Taxmann (St.) 63]**

The CBDT *vide* Circular No. 12/2015 [F. No. 142/18/2015-TPL], dated 2-7-2015 explains the substance of the provisions of the compliance window provided for in Chapter VI of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 as passed by Parliament received the assent of the President on the 26th of May, 2015. The Act contains provisions to deal with the menace of black money stashed abroad. It levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 per cent of the value of such assets, provides for a penalty equal to 90 per cent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for wilful attempt to evade tax in relation to a undisclosed foreign income or assets.

Considering the stringent nature of the provisions of the new law, Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purpose of Income-tax.

It explains the scope of the compliance window, rate of tax and penalty, time limit for declaration and making payment, form for declaration, listing of certain cases in which declaration is not eligible, circumstances where declaration shall be invalid and effect of valid declaration.

❑ **Clarifications on tax compliance for undisclosed foreign income and assets under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [232 Taxmann (St.) 68]**

The CBDT *vide* Circular No. 13/2015 [F. No. 142/18/2015-TPL], dated 6-7-2015 clarified various issues by issue of circular in form of questions and answers. The Black Money and Imposition of Tax Act, 2015 has introduced a tax compliance provision under Chapter VI of the Act. The rules have been notified. The queries have been received from the public with regard to the scheme about the scope of the scheme and the procedure to be followed. The board has considered and decided to clarify the various issues raised in form of questions and answers. There are about 32 questions and answers.

❑ **Section 139D of the Income-tax Act – e-return – extension of time limit for submitting ITR-V for electronically filed returns for A.Y. 2013-14 and A.Y. 2014-15 [232 Taxmann (St.) 92]**

The Notification No. 1/2015-CPC Scheme 2011 [F. No. 2/3/CIT(OSD)(S)/2014-15/CPC – ITR-V Issues], dated 10-7-2015 hereby extends by time limit for submitting ITR-V Forms relating to the Income Tax returns filed electronically (without digital signature certificate) for A.Y. 2013-14 (filed on or after 1st April, 2014 till 31st March, 2015) and for A.Y. 2014-15 (filed on or after 1st April, 2014 till 30th June, 2015). These ITR V Forms can now be submitted up to 31st October 2015 or within a period of 120 days from the date of uploading of the electronic return date whichever is later.

❑ **Section 139D of the Income-tax Act – e-return of Income – Electronic Verification Code (EVC) for electronically filed Income Tax Return [232 Taxmann (St.) 92]**

The Notification No. 2/2015 [F. No.1/23/CIT(OSD)/e-filing-Electronic Verification/2013-14], dated 13-7-2015 lays down the procedure, data structure and standards for electronic verification code. The explanation to Rule 12(3) of the Income Tax Rule 1962 states that for the purpose of this sub rule “electronic verification code” means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified thereof. The notification explains in detail the procedure, generation, validation, utility etc. of electronic verification code.

❑ **Restriction on issuance of manual refunds by Assessing Officer [232 Taxmann (St.) 95]**

The CBDT *vide* AST Instruction No. 136 [F. No. DGIT(S)/DIT(S)-3/AST/Manual Refunds/85-2015-16] dated 10/7/2015 decided that henceforth no manual refund should be issued in a case which has been processed on AST. In certain and exceptional cases, the manual refunds may be issued with the following safeguards.

- i. It is mandatory for AO to take Approval by Range head for refunds up to ₹ 1 lakh and approval by CIT for refund above ₹ 1 lakh and record reasons as to why manual refund was necessary.
- ii. Mandatory quoting of PAN, AY and Bank Account number on the cheque.
- iii. No manual refund will be permitted if a prior manual refund for same PAN, AY and amount has already been encashed.

The instruction also contains detailed guidelines for issuance of manual refunds.

❑ **Validation of tax returns through electronic Verification Code [232 Taxmann (St.) 98]**

The CBDT *vide* Order [F. No. 225/141/2015/ITA. II], dated 20-7-2015 hereby directs that the taxpayer can validate returns of income through EVC in following cases also.

The Central Board of Direct Taxes ('CBDT') vide Notification No. 41/2015, dated 15-4-2015 in case of categories of 'persons' specified therein, has introduced Electronic Verification Code ('EVC') as one of the modes for validation of return of income which are filed electronically on or after 1-4-2015.

In case of returns of income pertaining to Assessment Years 2013-14 and 2014-15 filed electronically (without digital signature certificate) between 1-4-2014 to 31-3-2015, time-limit for submission of ITR-V to the CPC Bengaluru has already been extended till 31-10-2015 vide Notification No. 1/2015, dated 10-7-2015 issued by the Pr. DGIT (Systems), CBDT. In order to facilitate the process of validation of such returns, CBDT, in exercise of the powers conferred under sub-section (1) of section 119 of the Income-tax Act, 1961, hereby directs that the taxpayer can validate such returns of income within the said extended time through EVC also.

❑ **Capital Gain – Section 48 - Computation of – notified cost Inflation Index [232 Taxmann (St.) 104]**

The Central Government vide Notification No. 60/2015 [F. No. 142/10/2015-TPL]/SO 2031 (E), dated 24-7-2015 makes the amendment in the notification dated 20-8-1998 and notifies the cost inflation index for the F.Y. 2015-16 be 1081.

❑ **Income Tax authorities – Black Money (Undisclosed foreign Income and Assets) and Imposition of Tax Act, 2015 [233 Taxman (St.) 146]**

The CBDT vide Notification No. 73 / 2015 [F. No. 187/13/2015 {ITA.-I}], dated 24-8-2015 directs the Central Board of Direct Taxes that the Additional Commissioners of Income Tax or the Joint Commissioners of Income Tax, as the case may be shall exercise the powers and perform the functions of the Assessing Officers under the said Black Money (Undisclosed Foreign Income and Assets) and Imposition of the Tax Act, 2015, in respect of territorial areas or persons or classes of persons or incomes or classes of incomes or cases or classes of cases, in respect of which such Additional Commissioners of Income tax or Joint Commissioners of Income-tax have been authorised by the Principal Chief Commissioner of Income Tax or the Chief Commissioner of Income-tax or the Director General of Income Tax or the Principal Commissioner of Income-tax or the Commissioner of Income-tax in pursuance to the directions of the Board under sub-sections (1) and (2) of section 120 of the said Income-tax Act, 1961.

## RECENT JUDGMENTS UNDER SERVICE TAX

Compiled by CA Sunny Kachalia

1. **Whether certifying purity of gold can be considered taxable under the category of 'Technical Inspection and Certification service'**

Facts in brief: Appellant is a jewellery appraiser who certifies the purity and the value of gold ornaments for pledging by the individuals with bank and receives commission from the bank. On reviewing the said income, the authorities issued a show cause notice proposing demand under service tax under the category of Technical Inspection and Certification service. The adjudicating authority dropped the proceedings on the ground that certifying gold does not require any technical knowledge or any technical instruments. Revenue filed an appeal against the order before Commissioner (Appeals) and the demand was confirmed along with interest and penalty.

Being dissatisfied with the order, appellant filed an appeal with CESTAT.

Held: Considering the facts of the case and the order of Adjudicating authority, it was held that examination of gold ornaments do not require any technical skills and hence the amount received by the appellant cannot be classified under the category of 'Technical Inspection and Certification service'.

(Shri A. Vannippan vs. CCE, Tirunelveli 2015 VIL 545 CESTAT-CHE-ST)

## JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah

**ACIT vs. Victory Aqua Farm Ltd. (Supreme Court), 4th September 2015**

**Applying 'functional test' to determine whether an asset is "plant" u/s. 32**

*Facts of the case*

The assessee is doing business of 'Aqua Culture'. It grows prawns in specially designed ponds. In the income tax returns filed by the assessee, the assessee had claimed depreciation in respect of these ponds by raising a plea that these prawn ponds are tools to the business of the assessee and, therefore, they constitute 'plant' within the meaning of Section 32 of the Act. The Assessing Officer disallowed the claim of the assessee.

One Division Bench of the High Court of Kerala in the case of the same assessee had on earlier occasion decided the aforesaid question in the negative holding that it is not a 'plant'.

However, another Division Bench by the impugned judgment dated 14-10-2014, even after noticing the earlier judgment, has not agreed with the earlier opinion allowed the pond as a "plant".

*It was held in favour of the assessee observing that:*

The pond was not a natural pond and was specifically designed in order to rear prawns in the pond. The functional test has been passed as these ponds are tools of the business of the assessee and the depreciation was admissible u/s. 32. on these ponds

**CIT vs. Vijay Singh Kadan (Delhi High Court), 14th September, 2015**

**Measurement of distance from municipal limits in case of agricultural land**

*Facts of the case*

The A.O. and CIT(A) rejected the claim of the assessee that the land in question cannot be regarded as agricultural land since same is not outside the limits of 8 km from the nearest Municipal Corporation. This was based on a presumption that 'area' means the village in which such land is situated.

*It was held in the favour of the assessee observing that:*

The presumption of the Assessing Officer as well as CIT(A) was baseless. The correct interpretation of the word 'in any area within such distance not being more than 8 kms. from the local limits of any municipality' would mean the land should be within such area which is not more than 8 kms. from the local limit of the municipality.

The Court is of the view that for the purposes of Section 2(14)(iii)(b) of the Income-tax Act, the distance had to be measured from the agricultural land in question to the outer limit of the municipality by road and not by the straight line or the aerial route. The distance has to be measured from the land in question itself and not from the village in which the land is situated.

## UPDATES ON SERVICE TAX

*Compiled by CA Bhavin Mehta*

1. Ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage, etc. provided in the course of transportation of goods by road would also qualify for abatement of 70%. [Circular No. 186/5/2015-ST dated 5-10-2015]. It is clarified that single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on the gross value. Refer serial No. 7 of Notification No. 26/2012-ST dated 20-6-2012 for abatement granted for GTA.
2. Clarification regarding binding nature of circular and instructions. [Circular No.1006/13/2015-CX dated 21-9-2015]. It is clarified that board circulars contrary to the judgments of Supreme Court become *non-est* in law and should not be followed. The circular is issued taking into consideration Hon'ble Supreme Court judgment in the case of *M/s Ratan Melting & Wire Industries vs. Commissioner of Central Excise, Bolpur {2008 (231) E.L.T. 22(SC)}*.
3. Streamlining the process of adjudication [F. No. 280/45/2015-CX.8A dated 17-9-2015]. The Hon'ble Bombay High Court in its judgment dated 15-7-2015 in the case of *Lanvin Synthetics Pvt. Ltd. and Another vs. UOI [2015-TIOL-1668-HC-MUM-CUS]* has quashed the SCN dated 13-3-1997 and prohibited department from passing any adjudication order as the SCN was not adjudicated for 17 long years. The Hon'ble High Court observed "If law postulates early end to such proceedings and there is no period of limitation prescribed, does not mean that the proceedings initiated could be concluded at the sweet will and fancies of the department". The Circular ask to refers to board letter F. No. 275/17/2015-CX.8A dated 11-3-2015 on the subject of 'Steps needed to be taken to improve tax administration'. It directs all the Commissioners to explore the possibility of scanning and digitisation of all papers connected with adjudication and litigation matters.
4. Instruction issued with respect to issue of show cause notice in pursuance of amendment made in sections 73, 76 and 78 in the Finance Act, 2015. [F. No. 137/46/2015-ST dated 18-8-2015]:
  - (a) The cases where the department feels that the grounds on which there has been short/non-payment of tax/duty are intimated to the assessee orally with its quantification and the assessee also accepts the same in writing about such grounds and the quantification. Then if the department feels waiving of a written SCN, then a written SCN need not be issued. (Cases other than covered under proviso of section 73(1) i.e., cases other than of will ful default, suppression, fraud, etc. – service tax paid along with interest, no SCN should be issued.)
  - (b) Where any service tax has not been levied or paid, or has been short-levied or short paid, or erroneously refunded, by reason of fraud or collusion or wilful misstatement or suppression of facts, than in addition to service tax and interest, such assessee is liable to pay penalty which shall be equal to 100% of the amount of such service tax. If such assessee makes a written request for waiver of written SCN and makes payment of service tax along with interest and penalty equal to 15% of such service tax within thirty days from the date of such written request than SCN need not be issued.

## FORTHCOMING EVENT

<b>1</b>	<b>Dr. BHARAT D. VASANI - Saraswati Samman Samaroh &amp; Diwali Get-together</b>		
	<b>CHIEF GUEST</b>		Prof. M. S. Kurhade
	<b>DAY &amp; DATE</b>		Saturday, 21st November, 2015
	<b>TIME</b>		5.30 p.m. to 9.00 p.m.
	<b>VENUE</b>		SNDT College, Liberty Garden, Malad (W), Mumbai-400 064
We will award 10th Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC members for outstanding performance in passing exams. of SSC/HSC with 75% marks & above & to the students who have cleared post graduation professional exams like CA, C.S., C.W.A., MBBS, MBA, Engineers.			
All members are requested to send attached form along with the certified marks sheets to Brijesh M. Cholera at following address along with following details OR Scan copy of marks sheet mail to maladchamber@gmail.com on or before 31st October, 2015.			
<b>FORM FOR 10TH DR. BHARAT D. VASANI SARASWATI SANMAN TROPHIES</b>			
Member's Name:-.....			
Email ID:- .....			
Mob.No.:- .....			
Details of Student			
NAME:- .....			
FIRST NAME		MIDDLE	NAME SURNAME
Male/Female .....			
Age .....			
Name of Exam Cleared .....			
Year of Exam .....			
Percentage .....			
Name of School .....			
College/Institution:- .....			
Send it to following address or else you can mail to maladchamber@gmail.com with scan copy of marksheet on or Before 31st October,2015			
BRIJESH M. CHOLERA, SHOP NO. 4, 2ND FLOOR, THE MALL, STATION ROAD, MALAD-WEST, MUMBAI-400064. TEL : 022-28895161			
<b>2</b>	<b>WORKSHOP ON DIRECT TAXES JOINTLY WITH THE CHAMBER OF TAX CONSULTANTS</b>		
<b>VENUE</b> : Conference Hall, N. L. College, S. V. Road, Malad, Mumbai			
	<b>DATE, DAY &amp; TIME</b>		<b>TOPIC</b>
	<b>5-12-2015</b> <b>Saturday</b> <b>5 p.m. to 8 p.m.</b>	<b>a</b>	Issues under head Salaries & Tax Planning of Salaried individuals
		<b>b</b>	Capital Gain Related to Real Estate Transactions / Impact u/s. 50C including exemptions u/s 54, 54F & 54EC
	<b>6-12-2015</b> <b>Sunday</b> <b>10 a.m. to 1 p.m.</b>	<b>a</b>	Capital Gains vs. Business income relating to Shares & Securities etc.
		<b>b</b>	Issues relating to Builders Income including income on unsold stock
	<b>12-12-2015</b> <b>Saturday</b> <b>5 p.m. to 8 p.m.</b>	<b>a</b>	Issues under the head Profits & Gains from Business or Profession including impact under section 14A
		<b>b</b>	Presumptive Taxation 44AD & 44AE
	<b>13-12-2015</b> <b>Sunday</b> <b>10 a.m. to 1 p.m.</b>	<b>a</b>	Issues under Section 56 to 58, Issues relating to 68 to 69B and deemed income u/s 2(22)(e)
		<b>b</b>	Issues under TDS/TCS including TDS on Real Estate Transactions
	<b>19-12-2015</b> <b>Saturday</b> <b>5 p.m. to 8 p.m.</b>	<b>a</b>	Reassessment
		<b>b</b>	Drafting of Appeals & Tips on representation before CIT Appeals
	<b>20-12-2015</b> <b>Sunday</b> <b>10 a.m. to 1 p.m.</b>	<b>a</b>	Overview of Black Money Act
		<b>b</b>	BRAINS TRUST
<b>Fees for members : Enroled up to 20th Nov 15 ₹ 2,250/- . After that ₹ 2,750/- . For Non-Members ₹ 3,250/-</b>			
DETAIL CIRCULAR WILL BE MAILED TO MEMBERS/WILL BE AVAILABLE ON MCTC WEBSITE.			
KINDLY BOOK YOUR SEATS AS THE SERIES WILL BE VERY EDUCATIVE AND COST EFFECTIVE.			
With Regards			
≈ TEAM MCTC ≈			

RRC 2015



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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, 2015**

To

If undelivered, please return to :

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Anand Road Extn., Malad (W),  
Mumbai-400 064.

