The Malad Chamber of Tax Consultants

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

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MCTC Bulletin

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Vol. 1, No. 6 ***For members & private circulation only*** **December, 2016**

President's Communiqué

Dear Members,

"I can do things you cannot, you can do things I cannot; together we can do great things" – Mother Teresa

These golden words by Mother Teresa are the guiding force for any team work. At our Chamber, we work as a team and together try to provide the best possible services to our members. The two full day seminar on GST is a testimony of the collective efforts of the Chamber. The seminar on GST "One Nation - One Tax" held on 25th & 26th November was a huge success with overwhelming enrollments. The Committee, along with the co-operation of the members, garnered a lot of appreciation for providing a learning platform to the participants.

Our 4th Study Circle meeting was on 11th, December, 2016 on the topics, "New VAT Automation Returns and VAT Audit through Tally Software and a glimpse of GST in Tally" by CA. Anand Paurana and "GST Provisional Enrollment" by CA Aalok Mehta. This was also a well-attended lecture meeting with a record 120 plus participants. Considering the expertise of our speakers and the relevance of the topics discussed, it was a successful and an extremely informative lecture meeting.

It makes me proud to know that there is increasing participation of members in all the events of the Chamber and this motivates us to bring to you more and better events for the benefit of the members.

For all those members not receiving e-mail and SMS from the Chamber, I would request them to send an e-mail with their e-mail ID and mobile number at maladchamber@gmail.com. It would help us to have your details updated for better communication.

HAPPY NEW YEAR 2017

Best Regards,

Adarsh S. Parekh
President

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

- **Prohibition of Benami Property Transactions Rules, 2016 [242 Taxman (st.) 73]**
  The Central Government *vide* Notification No. GSR 1004(E) dated 25/10/2016 gives Prohibition of Benami Property Transactions Rules, 2016. It came into force from 1st November, 2016. It provides for determination of price in certain cases, furnishing of information, provisional attachment, confiscation of property under second proviso to Section 27(1), management of confiscated property u/s. 28(1), disposal of the confiscated property u/s. 28(3) of Prohibition of Benami Property Transactions Act. It also provides for appeals to the Appellate Tribunal. One may refer to the above citation for detailed rules.

- **Taxability of Compensation received by Land Owners for land acquired under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) – Section 4 r.w.s. 10(37) of the Income-tax Act & Section 96 of RFCTLARR Act [242 Taxman (st.) 92]**
  The CBDT *vide* Circular No. 36/2016 dated 25/10/2016 clarified that the RFCTLARR Act which came into force from 01/01/2014, in which u/s. 96 provides that Income-tax shall not be levied on any award or agreement made under RFCTLARR Act. Therefore, compensation received from compulsory acquisition of land under the RFCTLARR Act is exempt from the levy of the Income-tax Act.

  Under the existing provisions of Income-tax u/s. 10(37) w.e.f. 01/04/2005 provides for specific exemption to Capital Gains arising to an individual or HUF from compulsory acquisition of agriculture land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, the compensation received from compulsory acquisition of agriculture land is not taxable under the act with respect to specified urban land and subject to fulfillment of certain conditions.

  There is no distinction between compensation received for compulsory acquisition of agricultural land and non agricultural land in the matter of providing exemption from Income Tax under the RFCTLARR Act, the exemption provided u/s. 96 of RFCTLARR Act is wider in scope than the tax emption provided under the existing provisions of Income-tax Act, 1961.

  This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter was examined by the board and clarified that compensation received in respect of award or agreement which has been exempted from levy of income tax *vide* section 96 of the RFCTLARR Act shall also not be taxable under the provision of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act.

- **Section 115TD of the Income-tax Act, 1961 – Accreted Income – Tax on – Draft Rules for prescribing method of valuation of Fair Market Value in respect of trust or institution [242 Taxman (st.) 94]**
  The Finance Act, 2016 inserted a new chapter XII – EB consisting of section 115TD, 115TE & 115TF in the Income-tax Act. This chapter contains specific provisions relating to levy of additionals income tax where the charitable institution exempt under the Act ceases to exist as Charitable Organisation or converts into a non Charitable Organisation. Section 115TD(2) provides that the accreted income would mean the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with method of valuation as may be prescribed. Therefore, the method of valuation of fair market value in respect of trust or institution as on the specified date for determination of accreted income need to be prescribed in the rules.

  Accordingly, it is proposed to insert rule 17CB in the Income Tax Rules. Accordingly, *vide* letter Reference No. 370142/21/2016 – TPL, dated 24/10/2016, the comments and suggestions of stakeholders and general public are invited on draft rule 17CB which may be sent electronically by 31/10/2016 at the email address dirtpl1@nic.in. One may refer to the above citation for detailed draft rule 17CB which prescribed method of valuation for the purpose of section 115TD(2) of the Act.

- **Authority for Advance Rulings (Procedure for Appointment as Chairman and Vice Chairman) (Amendment) Rules, 2016 [242 Taxman (st.) 93]**
  The Board *vide* Notification No. GSR 1001 (E) dated 24/10/2016 gives Authority for Advance Rulings (Procedure for Appointment as Chairman and Vice-Chairman) (Amendment) Rules, 2016. It substitutes Rules 3 & 4 as regards selection committee and manner of selection of panels of names for Chairman. It inserts Rules 5 & 6 regarding manner of selection of panels of names for vice-chairman & medical fitness.

- **Income Declaration Scheme, 2016 – Clarification on method of arriving at undisclosed income when capital asset acquired out of undisclosed income is sold before June 1, 2016 and sale of proceeds held in cash [242 Taxman (st.) 35]**
  The CBDT *vide* Instruction No. 9 of 2016 dated 27/09/2016 clarified the provisions content in section 183(2) of the scheme that where the income chargeable to tax is represented in the form of investment in any asset, the fair market value of such assets as on 01/06/2016 shall be deemed to be undisclosed income for the purpose of scheme.

  Board in view of the instance brought to the notice that some taxpayers are of the view that if a capital assets acquired out of undisclosed income is sold before 01/06/2016 and sale proceeds so received are held in cash, then the amount of undisclosed income required to be declared under the scheme shall be the amount of undisclosed income invested in such capital assets as increased by the capital gain arising of the sale of such assets determined in accordance with the provision of the Income-tax Act.

  The CBDT in this regard clarified that the above method for arriving at the amount of undisclosed income for declaration under the scheme is not in accordance with the provisions of the scheme and clarificatory circulars issued by the board from time-to-time. Accordingly, the board has clarified that in such cases the cash in hand is an assets for the purpose of the scheme.

■■■

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

Siemens Public Communications Network Pvt. Ltd. vs. CIT Bangalore (Supreme Court), Civil Appeal Nos. 11934/11936 and 11937 OF 2016, 7th December, 2016

Taxability of voluntary subsidies (subvention) paid by a holding company to its loss making subsidiary

Facts of the case:

The assessee company received subvention from its parent company in Germany as the assessee company was suffering from losses. In its return of income, the assessee company had treated this subvention income as capital receipt and accordingly not offered for tax.

During assessment, the AO treated the subsidy as revenue receipt and added to the total income. CIT (Appeals) and ITAT reversed the order. However, the High Court restored the view taken by the Assessing Officer.

On appeal The Supreme Court Held that,

The High Court in its decision had made reference to two cases of the Supreme court namely *Sahney Steel & Press Works Ltd., Hyderabad versus Commissioner of Income Tax, A.P.-I, Hyderabad [(1997) 7 SCC 764]/ 228 ITR 253* and Commissioner of Income Tax, Madras versus Ponni Sugars and Chemicals Limited [(2008) 9 SCC 337]/ 306 ITR 392 (SC). The view expressed in these cases was that unless the grant-in-aid received by an Assessee is utilised for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt.

However in both cases referred above the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent Company as in the present case. The voluntary payments made by the parent Company to its loss making Indian company can be understood to be payments made in order to protect the capital investment of the Assessee Company. Hence, the same should not be held as revenue receipts. The Supreme Court also made a reference to similar decision in *Commissioner of Income Tax versus Handicrafts and Handlooms Export Corporation of India Ltd [(2014) 49 Taxmann.com 488 (Delhi).*

ITO vs. Vikram A. Pradhan (ITAT Mumbai), ITA No. 2212/MUM/2012, A.Y. 2008-09, 24th August, 2016

Amounts shown as liabilities in the Balance Sheet outstanding for several years cannot be deemed to be cases of "cessation of liability".

Facts of the case

During scrutiny assessment, outstanding creditors balances were added to the income of the assessee on the grounds that the liability was outstanding for several years and the assessee has not discharged the burden of proving that liability exists by any evidence whatsoever since even confirmation from the concerned creditors was not filed. It was further submitted that since these creditors were in most cases 7-8 years old, its recovery by legal means stands barred by law of limitation.

The assessee contended that the creditor’s outstanding balances as reflected in the Balance Sheet were mostly 7-8 years old and were not paid so far due to certain disputes with the creditors. The assessee is liable to make the payment thereof as and when the disputes are resolved and the amount is crystallised.

On appeal the Tribunal observed that:

The very fact that the assessee reflects these amounts as creditors in his Balance Sheet is an acknowledgement of his liability to these creditors and this also automatically extends the period of limitation under Section 18 of the Limitation Act.

The Assessing Officer failed to cause enquiries to be made with or notices issued to creditors to ascertain from them whether they have remitted the dues from the assessee in their books of account. Hence, no material was brought on record by the Assessing Officer to show that there was remission or cessation of liability.

In view of the above, the ITAT concluded that the addition to income under section 41(1) of the Act as cessation of liability is unsustainable and stands withdrawn.

■■■

UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. **Principal Commissioner, Large Taxpayer Unit, Bengaluru, will have jurisdiction all India basis over person located in non-taxable territory providing “Online Information and Database Access or Retrieval Services” to non-assessee on-line recipient [Notification No. 50/2016 - Service Tax dated 22nd November, 2016]**

   Notification No.20/2014-ST has been amended by inserting a proviso, whereby Principal Commissioner, Large Taxpayer Unit, Bengaluru and all subordinate officers to him shall have jurisdiction over person located in non-taxable territory providing “Online Information and Database Access or Retrieval Services” to non-assessee on-line recipient.

2. **Telecommunication Services will include “online information and database access or retrieval service” w.e.f. 01.02.2016 under Place of Provision of Service Rules, 2012 [Notification No.51/2016 - Service Tax dated 30th November, 2016 w.e.f. 01.12.2016]**

   With effect from 1st December, 2016 the place of provision of service of online information and database access or retrieval

services shall be location of the recipient of service. However, when such service is provided by a person located in non-taxable territory to non-assessee online recipient, service provider shall be liable to pay service tax.

Non-assessee online recipient means Government, a local authority, a Governmental authority, or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business of profession, located in taxable territory. Now, w.e.f. 01.12.2016, the definition of 'telecommunication services' defined in Rule 2(q) of POPS, shall include online information and database access or retrieval services.

JUDGMENTS UNDER CENTRAL EXCISE & SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. ***If refund claim filed originally by assessee is complete in all respects and refund is not granted within 3 months therefrom, then, assessee is entitled to interest on belated refund; revised calculation submitted by assessee on insistence of department cannot amount to filing of fresh 'refund claim' [Jindal Drugs (P.) Ltd. vs. Union of India [2016] 75 taxmann.com 47 (Bombay)].***

FACTS:

- Jindal Drugs Pvt. Ltd. (Appellant) is engaged in the manufacture of Cocoa Powder/Cocoa Butter. The petitioner also undertakes labelling/repacking of Cocoa Butter and other products which amount to manufacture in terms of Note 3 of Chapter 18 of the First Schedule to the Tariff Act read with Section 2(f) of the Central Excise Act, 1944.
- Appellant filed periodical refund application of unutilised CENVAT Credit under Rule 5 of the CENVAT Credit Rules, 2004 pertaining to inputs and input services used for export of goods on monthly / bi-monthly.
- Department denied the refund claim on the ground that activity did not amount to manufacture. Majority order of the Appellate Tribunal *vide* Order No. A/914/15/EB dated 20th March, 2015 pronounced on 16th April, 2015 decided in favour of appellant.
- Commissioner (Appeals) allowed subsequent period/s appeals filed by appellant and sanctioned refund claim on the basis of aforesaid Tribunal order. Revenue insisted upon appellant to file quarterly refund application instead monthly/bi-monthly basis. On the basis of revised application, revenue granted the refund. Appellant applied for interest on delay refund, which was rejected by the revenue on the ground that refund was granted from the date of revised application and not from original application and therefore it is within the period of three months time period.
- Appellant filed writ petition before Bombay High Court.

HELD:

- Regarding the issue related to Interest on belated refund, Section 11BB of the Central Excise Act, 1944 states that if any duty ordered to be refunded under sub-section (2) of Section 11B to any Applicant is not refunded within three months from the date of receipt of the application under sub-section (1) of section 11B, then the applicant would be entitled to such rate of interest (as notified), from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.
- In this case the original refund applications were filed on various dates ranging from June 2013 to December 2014.
- The Hon'ble Bombay High Court held in favour of the appellant that since refund claims filed were complete in all respects, and refund was rejected only on merits, hence, three months would be counted from the date of filing of original refund claim and not from the date of revised claim. Hence, assessee was entitled to interest.

2. ***Levy of service tax on air conditioned restaurants is unconstitutional since when food is supplied as a part of any service, such transfer would be deemed as sale. Thus, there is no component of service which could be charged to service tax when food is supplied by air conditioned restaurant. [Kerala Classified Hotels & Resorts Association v/s Union of India [2016] 75 taxmann.com 272 (Kerala)]***

- The Kerala High Court held that the levy of service tax on air conditioned restaurants is unconstitutional. It relied on its own judgment in case of *Kerala Classified Hotels & Resorts Association vs. Union of India [2013] 35 taxmann.com 568 (Kerala)* and Supreme Court judgment in the case of *K. Damodarasamy Naidu & Bros. vs. State of Tamil Nadu and others [(2000) 1 SCC 521].*
- the Article 366(29A)(f) of the Constitution empowers the State Governments to impose sales tax on supply of goods, whether it is by way of or as a part of any service.
- In the 2013 judgment of *Kerala Classified Hotels & Resorts Association (supra)*, the Hon'ble Court held that when food is supplied as a part of any service, such transfer would be deemed to be a sale. Thus, there is no component of service which could be charged to service tax when food is supplied by air conditioned restaurant. The aforesaid ruling of the High Court is pending before the Apex Court.
- The present writ is decided in favour of the assessee and it was ordered that service tax which was collected shall be refunded to the parties.

3. **Hiring of heavy earth moving equipment for excavation and allied works at Lignite Mines, and removal of over-burdens and Lignite, amount to 'mining service' and are liable to service tax only from 1-6-2007 [Sadbhav Engineering Ltd. vs Commissioner of Service Tax, Ahmedabad (2016) 68 taxmann.com 2016 (Ahmedabad CESTAT)]**

FACTS:

- The appellant is service provider of:
  i. Hiring of heavy earth moving equipment for excavation and allied works at Lignite Mines
  ii. Removal of over-burdens and Lignite
- The appellant paid service tax thereon from 01.06.2007 under “mining services”
- The department demanded tax with penalty for prior period classifying the services as “site excavation services”
- The appellant did not challenge classification of services before lower authorities but challenged the same for first time before Tribunal and argued that no service tax was payable prior to 01.06.2007 under mining services.

APPELLANT’S ARGUMENTS

- It merely pleaded that there was no *malafide* intention in not remitting the tax and therefore, neither interest nor penalty should be levied.
- The appellant is paying service tax under “mining service” w.e.f 01.06.2007.
- The appellant was filing returns and remitting service tax under the category of mining service w.e.f. 01.06.2007 in view of introduction of mining service as a taxable service with effect from the said date, defined and enumerated in Section 65(105)(zzzy) of the Act.

DEPARTMENT’S ARGUMENTS

- The department argued that the services provided by the appellant are to be classified as “site excavation services” and accordingly tax is to be paid on the same for prior period also along with penalty.

HELD

- The challenge to the classification confirmed in the impugned order has been urged only in the appeal before Tribunal. As the validity of the classification of the service is a factor integral to the legitimacy of levy and collection of tax, the Hon’ble Tribunal have allowed the Miscellaneous Application for raising additional grounds. Since classification/taxability issue was a pure question of law, permission was granted to appellant to raise same for first time before Tribunal.
- The Hon’ble Tribunal observed that on a true and fair construction of the matrix and bouquet of service provided by the appellant, considered in the light of the two taxable services i.e. "site formation" on the one hand and "mining" on the other, and applying the provisions of Section 65A of the Act, the conclusion is compelling that since the essential character of the services provided by the appellant is mining of lignite and removal of Over Burdens is an activity incidental to facilitate and effectuate mining of lignite, the contract should be considered in essential character as a contract for mining of lignite. On this reasoning, the service provided by the appellant clearly and undisputedly falls within the ambit of mining service and cannot be classified as "site formation etc." service.
- The Hon’ble Members relied upon its own judgment in the case of *Associated Soapstone Distributing Co. (P.) Ltd. vs. CCE* [Appeal No. ST/376/2008-CU[DB], dated 4-10-2013 and held that the service provided by the Appellant cannot be classified as site formation service and will be classifiable only as mining service.

4. **Flying training services provided by an approved flying training institute are not liable to service tax, as services fall within meaning of 'qualification recognised by law' *(Ahmedabad Aviation & Aeronatics Ltd. vs. Commissioner of Service Tax, Ahmedabad.)* (2016) 66 taxmann.com 180 (Ahmedabad- CESTAT)**

FACTS

- The appellant is engaged in the activity of providing flying training to the students for obtaining pilot licence under various categories. It is also engaged in providing training for obtaining Basic Aircraft Maintenance Engineering Licence.
- The appellant is an approved flying training institute in terms of approval granted by Director General of Civil Aviation, Govt. of India, New Delhi.
- Service tax was demanded on such training service under the category of Commercial Training or Coaching Services and Management, Maintenance or Repair Services.

APPELLANT'S ARGUMENTS

- Demand of tax on Commercial Training or Coaching Services cannot be sustained in view of the decision of the Hon'ble Delhi High Court in the case of *Indian Institute of Aircraft Engineering vs. Union of India* [2013] 34 taxmann.com 191/40 STT 77 which was followed by Hon'ble Allahabad High Court in the case of CCE, *C&ST vs. Garg Aviations Ltd.* [2014] 46 taxmann.com 305/46 GST 188.

HELD:

- Relying on the above cited judicial rulings where it was held that such commercial training or coaching services, which are regulated by any law inasmuch as recognition of certificate/degree/diploma/qualification conferred by such training or coaching centres will necessarily entail regulation by the same law of various facets of such training or coaching centres and are excluded from the ambit of service tax.
- The certificate/training/qualification offered by approved Institutes, has by the Act, Rules been conferred some value in the eyes of law, even if it be only for the purpose of eligibility for obtaining ultimate licence/approval for certifying repair/maintenance/airworthiness of aircraft.
- The Act, Rules distinguish an approved Institute from an unapproved one and a successful candidate from an approved institute would be entitled to enforce the right, conferred on him by the Act, Rules and CAR, to one year relaxation against the DGCA in a Court of law. The inference can only be one, that the Course Completion Certificate/training offered by such Institutes is recognized by law.
- There can be no doubt whatsoever that the activities of the appellant are very much regulated by the Act and the Rules and are thus out of ambit of service tax.

5. **Refund of 'technical, inspection and certification services' used for export cargo cannot be allowed if bill of service provider does not contain details of : (a) assessee's invoice, (b) shipping bill, (c) cargo, and (d) place and date of inspection, etc. *[(Ashi Creations (P.) Ltd. vs. Commissioner of Service Tax, Delhi)* (2016) 70 taxmann.com 177 (New Delhi-CESTAT)]**

FACTS

- Assessee claimed refund of 'technical, inspection and certification services' used for export cargo.
- Department denied refund on the ground that there was nothing in bill of service provider to show that services were used for exports.

DEPARTMENT'S ARGUMENTS

- There is nothing in the invoices issued by the inspection agencies to show or to prove that their services were used for the purpose of respective exports and the documents submitted by the assessee do not have any evidence to co-relate the services received and their utilization was for the goods exported. As such, he observed that the conditions in para 1(a) and in para 1(b) of the Notification No. 17/2009-ST dated 7/7/2009, which require specified services to have been used for export of the goods, does not stand satisfied.
- The appellant was with a mala fide intention to mislead the authorities by falsifying the relevant document

APPELLANT'S ARGUMENTS

- The appellant produced copies of the invoices which contained the invoice number as also the shipping bill number issued by the service provider.
- Certificate from service provider that services were used for export was also submitted.

HELD

- Invoice of the service provider only mentioned 'fees for inspection' and did not contain details of assessee's invoice/shipping bill.
- Only after denial of refund *vide* order, dated 11-2-2011, assessee introduced said details in invoice of service provider, which was *mala fide*.
- In any case, such invoice of service provider did not contain details of cargo and place and date of inspection.
- Certificate from service provider that services were used for export was undated and also did not contain relevant details and was, apparently, prepared after passing of adjudication order.
- Hence, in absence of any co-relation of services with export, refund was denied.

FORTHCOMING EVENTS

PUBLIC MEETING ON UNION BUDGET, 2017			
Venue	**Goregaon Sports Club, Malad West, Mumbai**		
Date	**Time**	**Subject**	**Speaker**
Saturday, 4th February, 2017	5.30 pm to 8.30 pm	Union Budget, 2017	Eminent Speakers
Note: It is a Public Meeting and is free for all.			

TWO FULL DAY SEMINAR ON GST 25TH & 26TH NOVEMBER, 2016

President CA. Adarsh Parekh Addressing the GST Seminar along with CA. Vipul Somaiya , Adv. Bharat Raichandani, Shri Sachin Gandhi, CA. Tejas Shah

Lighting of Lamp by Adv. Bharat Raichandani along with from Left to Right CA Vipul Somaiya, CA Viresh Shah, CA Ketan Soneji, Shri Sachin Gandhi, CA. Tejas Shah & President CA. Adarsh Parekh

Participants at the GST Seminar

Left to Right :- Speaker's on day one Adv. Bharat Raichandani, CA. Tejal Mehta, CA Ashit Shah & CA Jayesh Gogri,

Left to Right :- Speaker's on day two Shri Dhaval Talati, CA. Ishaan Patkar, CA. Pranav Mehta & CA. Janak Vaghani.

Left to Right :- Trustees for the Brain Trust Session CA. S.S. Gupta, CA. Janak Vaghani & Adv. Nikita Badheka

PHOTOS OF THE 4th STUDY CIRCLE MEETING

Left To Right : Shri Darshan Shah CA. Anand Paurana (Speaker) CA Adarsh Parekh & CA Vipul Somaiya.

Left to Right : CA. Ketan Soneji, CA Adarsh Parekh, CA. Aalok Mehta CA. Viresh Shah.

Full House at the 4th Study Circle Meeting on Tally as a Tool for New Returns & Audit Report and Provisional GST Enrollment.

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 of the Chamber. For full details the readers are advised to refer to the relevant act, rule and relevant statutes.

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 December, 2016

To

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.