



**The Malad
Chamber of
Tax
Consultants**

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MCTC Bulletin

"Never Stop Learning, Never Stop Growing"

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July, 2018

President's Communiqué



Dear Members,

I am really humbled and honoured on taking charge as President of the prestigious 'The Malad Chamber of Tax Consultants' in its 40th year, representing the best and talented Professionals. I thank you all for reposing confidence and trust in me to carry on the vision set up before us by our predecessors. I would also like to thank all the Past Presidents and Committee Members who have served this Chamber and all of us Professionals selflessly.

"Never Stop Learning, Never Stop Growing" is my mantra in this dynamic age of digitalisation. This requires a lot of efforts by all of us to be kept updated and keep on continuously educating ourselves. The advent of the digital age requires us to learn, unlearn and relearn the nuances to face these challenges.

To achieve this goal of growth, I intend to provide as much information and resources possible through the Study Circles, Seminars, Website, Bulletin and other Social Media tools. I also intend to develop newer and newer avenues of Professional Opportunities for my fellow Professional brothers.

The Inaugural Study Circle of the Chamber is scheduled on 5th August, 2018, details of the programme is given inside the bulletin. All of you are requested to attend in large numbers and make it a grand success.

I and my team members will be working wholeheartedly to achieve the objectives set up by our Chamber. I seek your guidance, support and good wishes to ensure success in my endeavour.

With Sincere Wishes,

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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2	1980-1981	Shri R. J. Chokshi (Late)	—	—	—	—	—
3	1981-1982	Shri Vadilal C. Shah	—	—	28835224	9324892028	—
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8	1986-1987	Shri D. M. Jaithwar	—	—	—	9301051240	—
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11	1989-1990	Shri R. S. Majethia (Late)	—	—	—	—	—
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THE MALAD CHAMBER OF TAX CONSULTANTS

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FORTHCOMING EVENT

Dr. BHARAT D. VASANI Inaugural Study Circle meeting	
Chief Guest	Prominent Personality
Day & Date	Sunday, 5th August, 2018
Time	10.15 a.m.
Topic	'Issues in Tax Audit'
Speaker	CA Ketan Vajani
Venue	SNDT College, Liberty Garden, Malad (W), Mumbai-400 064.
Kindly mark the above date and we request all members to keep taking active part in all activities of the Chamber, to attend in large numbers and make it grand success.	

With Regards

≈ ≈ ≈ TEAM MCTC ≈ ≈ ≈

DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

- **SECTION 90 OF THE INCOME TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES - KUWAIT - AMENDMENT IN NOTIFICATION NO. SO 2000(E), DATED 27-11-2007**
NOTIFICATION NO. SO 1823(E) [NO.21/2018 (F.NO.501/03/88-FTD-II)], DATED 4-5-2018

The Protocol amending the Agreement between the Government of the Republic of India and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed at New Delhi on 15th June, 2006 has been signed at Kuwait on the 15th January, 2017, as set out in the Annexure appended to the above notification (hereinafter referred to as the said amending Protocol). The date of entry into force of the said amending Protocol is 26th March, 2018, being the date of the later notification of the completion of domestic requirements for the entry into force of the said amending Protocol, in accordance with Article 3 of the said amending Protocol. The Central Government has notified that all the provisions of the said amending Protocol, shall be given effect to in the Union of India.

- **SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT BETWEEN INDIA AND BRUNEI FOR EXCHANGE OF INFORMATION AND ASSISTANCE IN COLLECTION OF TAXES - CABINET APPROVES SIGNING AND RATIFICATION OF AGREEMENT BETWEEN INDIA AND BRUNEI FOR EXCHANGE OF INFORMATION AND ASSISTANCE IN COLLECTION OF TAXES**
PIB PRESS RELEASE, DATED 16-5-2018

The Union Cabinet Chaired by Prime Minister Shri Narendra Modi has approved the signing and ratification of Agreement between India and Brunei Darussalam for the Exchange of Information and Assistance in Collection with respect to Taxes.

- **INCOME-TAX (SIXTH AMENDMENT) RULES, 2018 - AMENDMENT IN RULES 11U & 11UA**
NOTIFICATION NO. SO 2087(E) [NO.23/2018 (F.NO.370142/5/2018-TPL)], DATED 24-5-2018
In exercise of the powers conferred by sub-section (2) of section 56 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Government has amended the Income-tax Rules, 1962, namely:
 1. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), in Rule 11U, clause (a) shall be omitted.
 2. In the principal rules, in Rule 11UA, in sub-rule (2), in clause (b), the words "or an accountant" shall be omitted.

The above shall come into force from the date of their publication in the Official Gazette.



- **SECTION 56 OF THE INCOME-TAX ACT, 1961 - INCOME FROM OTHER SOURCES - CHARGEABLE AS - NOTIFIED PROVISIONS OF CLAUSE (viib) OF SUB-SECTION (2) OF SECTION 56 OF SAID ACT SHALL NOT APPLY TO CONSIDERATION RECEIVED BY A COMPANY FOR ISSUE OF SHARES THAT EXCEEDS FACE VALUE OF SUCH SHARES SUBJECT TO SPECIFIED CONDITION**

NOTIFICATION NO. SO 2088(E) [NO.24/2018 (F.NO.370142/5/2018-TPL (PT))], DT 24-5-2018

In exercise of the powers conferred by the clause (ii) of the proviso to clause (viib) of sub-section (2) of section 56 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification number S.O. 1160 dated 14th June, 2016 issued by Department of Revenue, Central Board of Direct Taxes, the Central Government, has notified that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification under clause (i) of sub-para (3) of para 4 of the Notification Number G.S.R. 364(E), dated 11th April, 2018 and published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i) dated the 11th April, 2018 issued by the Department of Industrial Policy and Promotion. This notification shall be deemed to have come into force retrospectively from the 11th April, 2018



ANALYSIS OF REFUND CLAIM UNDER SECTION 142(3) OF THE CGST ACT, 2017

Compiled by CA Bhavin Mehta

During the last few days I had received few queries from clients and CA friends where a registered person has either missed out to carry forward the amount of CENVAT credit as on 30-06-2017 in GST under Form TRAN 1 or opted not to carry forward the closing balance of CENVAT credit. So in this months article I have tried to analyse the provision of section 142(3) in order to find solution whereby registered person can claim the refund of closing balance of CENVAT credit which was not transferred to GST. In subsequent months article analysis of penal provision shall be continued.

Sub-section (3) of section 142 of the CGST Act, 2017 is reproduced below:

“(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on appointed day has been carried forward under this Act.”

On first reading of the above provision it appears refund of closing balance of CENVAT credit as on 30-06-2017 would be available under sub-section (3) provided same was available under the existing law i.e. **under Rule 5 of CCR, 2004**. In other words, if the refund of CENVAT credit balance under the existing law (Central Excise and Service Tax law) is not available then no refund shall be available under the CGST Act.

In view of above, let us first examine the provision contained in Rule 5 of CCR, 2004, which is applicable to Central Excise and Service Tax.

Rule 5 of CCR, 2004 grants refund to Manufacturer for export without payment of duty or to Service Provider who provides output service which is exported without payment of service tax. However, with respect to export, separate provision is prescribed under CGST Act, namely sub-section (4) of section 142, which is reproduced below:

“(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under the existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.”

The above specific provision is provided for refund of CENVAT credit for one class of person, namely, exporter. Once a specific provision is provided for one class of persons, the other provision {in the present case section 142(3)} will apply to other class of persons. In other words, sub-section (3) not only includes exporters, but will include other class of persons too, subject to condition that they satisfy the conditions stipulated therein.



So let us now examine the provision of sub-section (3) of section 142 with respect to CENVAT credit. The provision of such-section (3) is bifurcated in four parts as under for better understanding

- Every claim of refund filed before, on or after appointed day, for refund of CENVAT credit shall be disposed of in accordance with the provisions of existing law;
- Any amount eventually accruing shall be paid in cash;
- Notwithstanding anything to the contrary contained under the existing law
- Other than the provisions of sub-section (2) of section 11B of the Central Excise Act.

The provision contained in first part does not specifically talk about closing balance of CENVAT credit as on 30-06-2017 but any amount of CENVAT credit, which will include even closing balance as on 30-06-2017. It states the claim of CENVAT credit shall be in accordance with the provision of existing law. This means a manufacturer or producer of final products or a provider of output service shall be allowed to claim CENVAT credit of levies such as excise duty, additional excise duty, education cess and S.H.E. cess on excise, service tax, education cess and S.H.E. cess on service tax, etc., stipulated in Rule 3(1) of CCR, 2004. So if inputs or input service is not entitled for CENVAT credit as per CCR, 2004, registered person shall not be entitled to claim refund of the same. In other words CENVAT credit shall be claimed in accordance with the existing law.

The second part of the provision states “any amount eventually accruing to him shall be paid in cash”. It means CENVAT claimed but not utilised shall be refunded to him in cash.

The third part is *non-obstante* provision which overrides the existing provision restricting the refund of CENVAT credit in cash to other than exporters.

The fourth part puts condition that in order to claim the refund of CENVAT credit registered person has to satisfy the provisions of sub-section (2) of section 11B of Central Excise Act. Sub-section 11B is reproduced below:

“(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- (a) Rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) Unspent advance deposits lying in balance in the applicant’s account current maintained with the Principal Commissioner of Central Excise or Commissioner of Central Excise;
- (c) Refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) The duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (e) The duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (f) The duty of excise and interest, if any, paid on such duty borne by any other class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.”

On reading the above provisions contained in sub-section (2), the appropriate clause to claim the refund of excise duty and service tax shall be clause (c) and in respect of education cess and S.H.E. cess the appropriate clause shall be clause (e). The condition prescribed in clause (c) provides that the applicant claiming refund of inputs and/or input service is used in manufacture of final products and/or provision of output service.

In the premises of above analysis, registered person (registered under GST) shall be entitled to claim refund under sub-section (3) of section 142 of CGST Act, 2017.

In terms of section 54 of the CGST Act, refund has to be claimed within a period two years from the end of the financial year in which such claim for refund arises. The claim of refund of closing balance of CENVAT credit as on 30-06-2017 arises on 01-07-2017 which gets covered in the financial year 2017-18. Therefore, the refund claim can be made on or before 31-03-2020.



GST NOTIFICATION AND CIRCULARS

Compiled by CA Brijesh M. Cholera

NOTIFICATION

26/2018-CENTRAL TAX DATED 13-6-2018

Certain Amendments made in Central Goods and service Tax Rules.

27/2018- CENTRAL TAX DATED 13-6-2018

The Government has notified Goods or class of goods which shall, as soon as may be after its seizure under sub-section (2) of Section 67, be disposed having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations.

28/2018 – Central Tax dt.19-6-2018

The Central Government makes amendment to the Central Goods and Services Tax Rules, 2017

12/2018-Central Tax (Rate), 13/2018-Integrated Tax (Rate), 12/2018- Union Territory Tax (Rate) dt. 29-6-2018

Up to 30-9-2018 exempts intra-State and inter-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 and the whole of the integrated tax leviable thereon under section 5(4) of the IGST Act, 2017.

Circular

Circular No. 46/20/2018-CGST dt. 6-6-2018:- Clarification on applicable GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips

Clarified that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit scrips, however, attract Nil GST under S. No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28-06-2017.

Circular No. 47/21/2018-GST dt. 8-6-2018 & Circular No. 48/22/2018-GST dt. 14-6-2018:- Clarifications of certain issues

Circular issued in order to clarify certain issues.

Circular No. 49/23/2018-CGST dt. 21-6-2018

Clarification on certain issues regarding the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST dated 13-04-2018

LIST OF NOTIFICATION IN THE MONTH OF JUNE 2018

NOTIFICATION NO. & DATE OF ISSUE		SUBJECT
26/2018-Central Tax, dt. 13-06-2018	CENTRAL TAX	Seeks to make amendments (Fifth Amendment, 2018) to the CGST Rules, 2017.
27/2018-Central Tax, dt. 13-06-2018	CENTRAL TAX	Seeks to specify goods which may be disposed off by the proper officer after its seizure.
28/2018-Central Tax, dt. 19-06-2018	CENTRAL TAX	Notification issued for amending the CGST Rules, 2017
12/2018-Central Tax (Rate), dt. 29-06-2018	CENTRAL TAX RATE	Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30-09-2018.
13/2018-Integrated Tax (Rate), dt. 29-06-2018	INTEGRATED TAX RATE	Seeks to exempt payment of tax under section 5(4) of the IGST Act, 2017 till 30-09-2018

LIST OF CIRCULARS IN THE MONTH OF JUNE 2018

CIRCULAR NO.	DATE OF ISSUE	SUBJECT
48/2018	14-06-2018	Circulars clarifying miscellaneous issues related to SEZ and refund of unutilized ITC for job workers
47/2018	08-06-2018	Clarifications of certain issues under GST
46/2018	06-06-2018	Applicable GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips – regarding



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Mateen Pyarali Dholkia vs. DCIT (ITAT Mumbai), ITA No. 6950/MUM/2016, 7th July 2018

PMS Fees paid to Portfolio Manager not deductible while computing capital gains from shares

Facts of the case:

Assessee claimed deduction of PMS fees paid by him as deduction in computing capital gains from shares transactions. During assessment, AO disallowed that claim contending that assessee could not explain as to how the said fees could be considered as cost of acquisition of the shares and securities or the cost of any improvement thereto. He had also failed to explain as to how the said fees could be treated as expenditure incurred wholly and exclusively in connection with sale of shares and securities.

On appeal ITAT held in favour of revenue observing that

The basis on which the said fees was paid by the assessee showed that it had no direct nexus with the purchase and sale of shares and as rightly contended by the revenue, the said fees was payable by the assessee even without there being any purchase or sale of shares in a particular period.

New Okhla Industrial Development Authority (NOIDA) vs. CIT, Supreme Court, [2018] 95 taxmann.com 80 (SC), 2nd July 2018

Annual Rent to be paid to NOIDA for lease deed of land, is liable for deduction of TDS

Facts of the case

The respondent Company was a builder that had taken land from NOIDA on lease for development of properties on the land. As per terms of the lease deed, the company partially paid the consideration amount for the acquisition of the plot to Greater NOIDA on execution of the lease deed and balance lease premium annually. AO issued notice u/s. 201/201(A) and held Company had defaulted under the provisions of the Act.

In response the assessee submitted that as it was advised by Greater NOIDA that it is a Government authority, hence the TDS provisions are not applicable.

On appeal to higher authorities like CIT, ITAT and High Courts, the view of the AO was upheld. Aggrieved assessee presented his case before Supreme Court.

Before the High Court, Noida authorities contended that they are local authorities within the meaning of Section 10(20) of the Income-tax Act, 1961, hence their income is exempt from the Income-tax. It was further contended that the interest received by them is exempt under Section 194A(3)(iii)(f) of the Income-tax Act and they are exempted from payment of any tax on the interest.

Hon'ble Supreme Court held the opinion of High Court

The final ruling that prevails is as follows:

1. Amounts paid as part of the lease premium in terms of the time-schedule(s) to the Lease Deeds executed between the petitioners and GNOIDA, or bi-annual or annual payments for a limited/specific period towards acquisition of leasehold rights are not subject to TDS, being capital payments.
2. Amounts constituting annual lease rent, expressed in terms of percentage (e.g. 1%) of the total premium for the duration of the lease, are rent, and therefore subject to TDS. Since the petitioners could not make the deductions due to the insistence of GNOIDA, a direction is issued to the said authority (GNOIDA) to comply with the provisions of law and make all payments, which would have been otherwise part of the deductions.
3. Amounts which are payable towards interest on the payment of lump sum lease premium, in terms of the Lease which are covered by Section 194-A are covered by the exemption under Section 194A(3)(f) and therefore, not subjected to TDS.



GLIMPSES OF 2017-18

6TH STUDY CIRCLE MEETING



Past President Manibhai Simaria
Welcoming Speaker Aditya Surte

39TH ANNUAL GENERAL MEETING

Appreciation award as Best Managing
Committee Member to Shri Harsh Shah



Appreciation award as Best Convenor
to Shri Tejas Shah





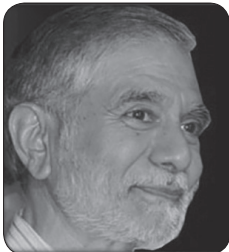
Election Officer Shri Janak Rawal

Welcoming of Incoming President
Shri Vaibhav Seth



Felicitatation of Outgoing President
Shri Vipul Somaiya by Incoming President
Shri Vaibhav Seth

OBITUARY



CA Mahesh Ramlal Dave, a very dedicated Member of Chamber and past Jt. Convenor of Malad Goregaon CPE Study Circle left for Heavenly Abode on 22/06/2018.

May his soul rest in peace

Managing Committee 2018-19

OFFICE BEARERS



Jaimin Trivedi, Vaibhav Seth, Viresh Shah



Standing : Jignesh Vora, Ramesh Sanghvi, Sandeep Parekh, Sanjay Shah, Dipesh Singhanian, Harsh Shah, Moolshankar Prajapati, Kishor Thakrar

Sitting: Manish Chokshi, Vipul Somaiya, Jaimin Trivedi, Vaibhav Seth, Viresh Shah, Kishor Vanjara



Standing Position (Left to Right): Dilip Parekh, Vishal Shah, Sachin Gandhi, Brijesh Cholera, Adarsh Parekh, Ashwin Tanna, Ashwin Acharya, Jayprakash Tiwari

Sitting Position (Left to Right): Janak Vaghani, Hiten Shah, Manish Chokshi, Vipul Somaiya, Vaibhav Seth, Kishor Vanjara, V. B. Goyal

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