



**The Malad
Chamber of
Tax
Consultants**



Price ₹ 5/-

MCTC Bulletin

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

E-mail: maladchamber@gmail.com

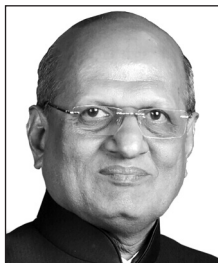
Website : www.mctc.in

Regd. Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai 400 064
Admn. Office : C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

Vol. 1, No. 3

For members & private circulation only

October, 2014



President's Communiqué

Dear Members,

In the course of our profession getting timely knowledge is an essential investment rather than an expense. As timely knowledge gives one the power to manage the issues in a conscious manner and save a lot of unnecessary effort.

Recognising the need of time, during the month of October 2014, we had our 12th RRC at Silvassa – Lords Resort. The subject that was selected for deliberation is of today's importance and has immense value in the context of the present time.

Our learned paper writer and speaker **Dr. BHARAT D. VASANI** had presented the compilation on the subject – **Implications & Practical Issues Relating to Disallowances of Purchases from Suspicious Dealers under I. Tax Act, 1961**. He had explained the issues involved, assessment proceedings, submission of evidences to be made by assessee and applicability of various Sections etc. reference to above subject-matter with supporting case laws.

I am thankful to our learned paper writer and speaker **Dr. BHARAT D. VASANI**, who has put in his best efforts and hard work in writing excellent and thought-provoking papers as well for providing initiative whereby this time we have come out with a booklet on our RRC subject.

I am thankful to all our Past Presidents who have graced the occasion with their presence, who have guided us and have made the RRC memorable and successful.

My thanks to our past president, **Shri Sachin Gandhi**–President of STPAM at present & his entire team of STPAM for co-ordinating this RRC at above venue and their support for making this event successful.

I thank all the participants of RRC as their presence has made the RRC very successful and memorable in its true sense.

We have arranged Diwali Get-together & Saraswati Sanman Samarambh on 9th November, 2014 at SNDT College. I request your participation & look forward to meet you all in personal at said event.

Thanking you & with heartwarming regards,

Kishor Hapani

President

**Wishing you all & your family – Happy Deepavali & a Peaceful, Prosperous Happy New Year.
New Year Pray – Not for things but for wisdom and courage.**

≈ TEAM MCTC ≈

For Query & submission of forms for Membership / Seminar please contact any of the following office bearers:

Name	Designation	Contact No.	E-mail
Kishor J. Hapani	<i>President</i>	28881568/28890845 9820438125	kishor_hapani@rediffmail.com
Jayprakash M. Tiwari	<i>Vice President</i>	28835364 9820496297	jmt@jmtco.in
Utpal V. Patel	<i>Hon. Treasurer</i>	28071408 9892099551	utpal_pats@hotmail.com
Vipul M. Somaiya	<i>Hon. Secretary</i>	28828855/28828844 9223418790	vipul@somaiyaco.com
Adarsh S. Parekh	<i>Hon. Secretary</i>	28094049 9869105103	asparkhca@yahoo.co.in

Life Membership Fees ₹ 2,500 • Ordinary Membership Fees ₹ 1,000 p.a.

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah

ITO vs. Axon Global (P.) Ltd. (2014) 146 ITD 473 / (2013) 38 taxmann.com 392 (Jodh.)(Trib.)

Overseas commission represented discount given to purchasers and not business commission

Assessee company was engaged in business of manufacturing and trading of fabric. During the year, the assessee claimed deduction of agency commission and overseas commission. A.O. accepted local commission paid since it had been paid to local agents for their services provided for introducing to overseas parties, to whom it sold goods on principal to principal basis. A.O. disallowed overseas commission since it represented a discount given to purchasers and not a business commission. Further, no service was provided by them.

Tribunal held that the A.O. was wrong in disallowing overseas commission without appreciating real nature of entries since amount represents discount given to the purchasers and not a business commission. There is no element of 'agency' to attract the provisions of section 194H.

The assessee is not crediting the personal accounts of the overseas parties. It is a settled principle of law that existence or absence of entries in the books of account is not a decisive or a conclusive factor in ascertaining the income or claiming the expenditure. Therefore, no such disallowance u/s. 37(1) can be made (A.Y. 2009-10).

Edac Engineering Ltd. vs. ACIT (2014) 159 TTJ 526 (Chennai)(Trib.)

Disallowance of payment made to sub-contractors after deducting TDS at the instance of non-resident contractor. Whether TDS deductible u/s. 194C or 195.

A.O. disallowed the expenses on pretext that assessee had not deducted TDS u/s. 195 in respect of payments made to Non-Resident Contractor.

On appeal to Tribunal, it held that the work was done by the Indian contractors and the TDS was deducted at source in accordance with section 194C and not u/s. 195. Further, Tribunal found that there is no finding by any of the lower authorities that the foreign contractor had done any work for the assessee, for which assessee was obliged to make any payments. In such circumstances, assessee had reasonable grounds to have a *bona fide* belief that the payments effects to contractors did not attract section 195 of the Act.

The Tribunal in favour of assessee decided that there could not be any failure for non-deduction of tax at source u/s. 195. Disallowance under section 40(a) of the Act is deleted.

DIRECT TAXES – Law Update

Compiled by CA Haresh P. Kenia

□ **CLARIFICATION ON ALLOWABILITY OF DEDUCTION UNDER SECTIONS 10A/10AA ON TRANSFER OF TECHNICAL MANPOWER IN CASE OF SOFTWARE INDUSTRY {225 TAXMANN (ST.) 1}**

CBDT *vide* circular no. 12/2014 dated 18-07-2014 made certain clarification applicable only in the case of assessee engaged in development in software in providing IT enabled services in SEZ unit eligible for deduction u/s. 10A or u/s. 10AA of Income Tax Act. It is clarified that mere transfer or redeployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20% of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

□ **SUBSTITUTION OF FORM NOS. 3CA, 3CB & 3CD {225 TAXMANN (ST.) 7}**

The CBDT *vide* notification No. 33/2014 dated 25-07-2014 gives Income Tax (Seventh Amendment) Rules, 2014. It amends the Income-tax Rules, 1962 & substitutes the Form No. 3CA, Form No. 3CB & Form No. 3CD.

Form No. 3CA is substituted with the new Form No. 3CA being Audit Report u/s. 44AB of the Income-tax Act in a case where the accounts of the business or profession of a person have been audited under any other law.

Form No. 3CB is substituted with a new Form No. 3CB being Audit Report u/s. 44AB of Income-tax Act in case of a person refer to clause (b) of Rule 6G(1) of the Income-tax Rules.

Form No. 3CD is substituted with new Form No. 3CD being statement of particulars required to be furnished u/s. 44AB of the Income-tax Act, 1961.

□ **INCOME TAX AUTHORITIES – INSTRUCTION TO SUBORDINATE AUTHORITIES – EXTENSION OF DUE DATE OF OBTAINING AND FURNISHING OF REPORT OF AUDIT U/S. 44AB FOR A.Y. 2014-15 FROM 30-9-2014 TO 30-11-2014 {225 TAXMANN (ST.) 18}**

The CBDT *vide* order [F.No. 133/24/2014-TPL], dated 20-08-2014 extends the due date for obtaining and furnishing of the report of audit u/s. 44AB of the Income-tax Act for the Assessment Year 2014-15 in case of assessees who are required to furnish report u/s. 92E of the Act from 30th day of September, 2014 to 30th November, 2014.

It is clarified that the tax audit report u/s. 44AB of the Act filed during the period from 1st April, 2014 to 24th July, 2014 in pre-revised Forms shall be treated as valid tax audit report furnished u/s. 44AB of Income-tax Act.

□ **DTAA – AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES – MALTA {225 TAXMANN (ST.) 19}**

The Central Government *vide* Notification No. 34/2014 dated 05-08-2014 entered into agreement and the protocol between the Government of Republic of India and the Government of Malta, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and which shall be given effect to in the Union of India with effect from the 1st day of April, 2015.

□ **DTAA – AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES – FIJI {225 TAXMANN (ST.) 37}**

The Central Government *vide* notification No. 35/2014 dated 12-08-2014 entered into agreement between the Government of Republic of India and the Government of Republic of Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

□ **CONSTITUTION OF A COMMITTEE FOR PROPER ADMINISTRATION OF CERTAIN CLARIFICATORY AMENDMENTS INTRODUCED IN FINANCE ACT, 2012 {225 TAXMANN (ST.) 55}**

The CBDT *vide* order [F.No. 149/141/2014-TPL] dated 28-08-2014, directs the constitution of the committee consisting of the following officers of the CBDT as a member.

- i) Joint Secretary (FT & TR-I)
- ii) Joint Secretary (TPL-I)
- iii) Commissioner of Income-tax (ITA)

The director (FT & TR-I) shall be the secretary of the committee. The committee has been constituted for proper administration of certain clarificatory amendments which were introduced in clauses (14) & (47) of section 2, in clause (i) of sub-section (1) of Section 9 & in section 195 of Income-tax Act, with retrospective effect from 01-04-1962 in relation to transfer of assets.

The process has been formulated for a functioning of the committee. One may refer to be above magazine for full text of the instruction.

□ **SPECIFIED DIRECTION TO ASSESSING OFFICERS WITH RESPECT TO ALL FRESH CASES ARISING OUT OF THE RETROSPECTIVE AMENDMENTS OF 2012 IN RESPECT OF INDIRECT TRANSFER {225 TAXMANN (ST.) 57}**

Press release dated 02-09-2014 directs as under:

Henceforth, in all fresh cases where income on account of retrospective amendments to the provisions related to indirect transfer is considered to accrue or arise before the 1st April, 2012, the Assessing Officer shall be required to seek prior approval of any proposed action in this regard from the committee. The committee shall, after providing an opportunity to the taxpayer, issue appropriate directions to the Assessing Officer in a time-bound manner. The Committee would be required to submit periodic report to the CBDT. The CBDT may intervene in the working/deliberations of the committee, as and when required.

The Finance Minister in his budget speech on 10th July, 2014 had made an announcement that all fresh cases arising out of the retrospective amendments of 2012 in respect of indirect transfer and coming to the notice of Assessing Officer will be scrutinised by a High Level Committee to be constituted by Central Board of Direct Taxes (CBDT) before any action is initiated in such cases.

□ **ADMINISTRATIVE SUPERVISION OF THE REVISION ORDER PASSED U/S. 264 {225 TAXMANN (ST.) 57}**

The circular no. 11/2014 dated 16-05-2014 gives guidelines to be complied forthwith in respect of the order passed u/s. 264 of the Income-tax Act.

- a) The CIT shall prepare a brief of the orders passed under section 264 of the Act and report the same to the Principal Chief Commissioner of Income Tax/Chief Commissioner of Income Tax (CCIT) in the monthly DO letter along with a copy of such order.
- b) The Pr. CCIT/CCIT shall report the number of orders passed under section 264 of the Act by the CsIT under his/her jurisdiction along with his/her observation in relation to any order, if deemed fit, to the Zonal Member of CBDT in the monthly DO letter. The Pr. CCIT/CCIT shall also communicate his/her observation to the CIT.

□ **DTAA – AGREEMENT OF AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES – BHUTAN {225 TAXMANN (ST.) 59}**

The Central Government *vide* Notification No. 42/2014 dated 05-09-2014 notifies the agreement between the Government of Republic of India and Royal Government of Bhutan for the avoidance of double taxation and prevention of fiscal evasion with respect of taxes on income.

□ **SECTION 143 OF THE ACT – ASSESSMENT – COMPULSORY MANUAL SELECTION OF CASES FOR SCRUTINY DURING FINANCIAL YEAR 2014-15. {225 TAXMANN (ST.) 60}**

The CBDT *vide* Instruction No. 6/2014 dated 02-09-2014 in supersession of earlier instruction on the above subject lays down the procedure and criteria for manual selection of returns/cases for scrutiny during the Financial Year 2014-15.

It provides that, list of Computer Aided Scrutiny Selection (CASS) cases shall be separately intimated by the DGIT (Systems) to the jurisdictional authorities concerned. Further, in order to ensure the quality of assessments being framed, Pr. CCsIT/CCsIT/ Pr.DsGIT/DsGIT should evolve a suitable monitoring mechanism and by 30th April, 2015, such authorities shall send a report to the respective Zonal Member with a copy to Member (IT) containing details of at least 50 quality assessment orders from their respective charges. In this regard, IT Authorities concerned must ensure that cases selected for publication in 'Let us Share' are picked up only from the quality assessments as reported.

One may refer to the above citation for detailed specific procedure and criteria for manual selection of returns and cases for scrutiny.

Recent Judgments under Service Tax

Compiled by CA Sunny Kachalia

Apotex Research Pvt. Ltd. & Others vs. CC, Bengaluru-Cus & Others

2014 – TIOL – 1836 – CESTAT – BANG

In light of the recent judgment passed by the Bengaluru Tribunal, in the above mentioned case, in relation to the grant of refund of CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004 and the notifications issued thereunder, various common issues has been discussed and an Interim Order has been passed on the legal issues. The same has been summarised as below:

Sr. No.	Issue	Decision
1.	Whether Refund under Rule 5 of the Credit Rules would be admissible when there was no notification issued prescribing safeguards, conditions and limitations to be fulfilled?	Wherever the refund has been rejected on the ground of words used in the notification, it will have to be remanded to the original adjudicating authority for reconsideration of the eligibility of credit.
2.	In the case of refund under Rule 5 of the Credit Rules, place of removal which has been a subject matter of dispute in several cases	Place of removal shall be taken as port/airport/land customs station and all the services utilised up to the stage would become eligible for refund under Rule 5.
3.	Whether CENVAT credit can be refunded under Rule 5 when there was no Notification prior to 14-03-2006?	Yes, the CENVAT credit can be refunded even when there was no Notification prior to 14-3-2006.
4.	Stand taken by the Revenue that in respect of 100% EOUs, the CENVAT credit cannot be taken at all since the finished goods are exemptable	Post 10-09-2004, CENVAT credit cannot be denied on the ground that unit availing the credit is a 100% EOU. And so refund has to be given.
5.	The activity of provision of service is in India and therefore the claim for refund on the ground that service has been exported cannot be accepted	The Central Board of Excise & Customs (“the CBEC”) has issued a clarification <i>vide</i> Circular No. 111/5/2009-ST dated 24-02-2009. In this Circular, in paragraph-3, the CBEC has accepted that for category (iii) services (<i>As per Export of Services Rules, 2005</i>), it is possible that export of service may take place even when all the relevant activities take place in India so long as benefits of these services accrue outside India.
6.	Nexus between the input services and the output services	It is nobody's case that there is no need to establish the relation between the input services and the business of manufacture.
7.	Foreign Inward Remittance Certificate	In certain cases, the lower authorities have taken a view that production of foreign inward remittance certificate by the claimant to claim refund is not sufficient. A certificate from the bank certifying that the amount in the invoice has been received specifically with reference to the invoice has to be made available. What is required to be established by an exporter is that in respect of Invoices raised by him, consideration in foreign currency has been received.

Sr. No.	Issue	Decision
8.	Can clearance to a 100% EOU be considered as export?	Yes, clearance to a 100% EOU has to be considered as export.
9.	Proof of payment of service tax	Proof of payment of service tax is not required to be asked for from the claimant while determination of refund claims.
10.	Defective documents	Rejection of the claim for refund of CENVAT credit on the ground that it is not admissible when the unit was not registered cannot be upheld.
11.	Condonation of omissions in documents as per the provisions of Rule 9 of the Credit Rules	Rule 9(2) of the Credit Rules provides that if the document does not contain all the particulars but contains details of duty or service tax payable, description of goods, etc. CENVAT credit may be allowed.
12.	Rejection of refund claim on the ground that output service is not taxable	Decisions in cases where credit has been denied or refund has been denied on the ground that export is not made under Bond or Letter of Undertaking cannot be sustained.
13.	CENVAT credit without registration	Provisions of Rule 3 of the Credit Rules show that credit can be taken by a manufacturer or a provider of output service and there is no requirement of registration under Rule 3 of the Credit Rules at all.
14.	Taxability of output and admissibility of CENVAT credit	The admissibility of Cenvat credit is not relevant for the purpose of determining whether refund is admissible under Rule 5 of the Credit Rules or not.
15.	Relevant date for filing refund claim	Provisions of Section 11B of the Central Excise Act, 1944 for the purpose of limitation would be applicable.
16.	Method for calculation of relevant date	The relevant date should be the date on which the consideration has been received where the claimant is service provider and consideration paid where the claimant is service receiver.

FORTHCOMING EVENTS

DIWALI GET-TOGETHER & SARASWATI SANMAN SAMARAMBH

Day and Date	Sunday, 9th November, 2014
Time	10.00 a.m to 12.30 p.m
Venue	SNDT College, Liberty Garden, Malad (West), Mumbai-400 064
	Detailed Programme will be mailed in due course & will be available on website.

Wherein we will award 9th 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 marksheets to Brijesh M. Cholera at following address along with following details OR Scan copy of marksheet and mail to maladchamber@gmail.com on or before 31st October, 2014.

FORM for 9th Dr. Bharat D. Vasani Saraswati Sanman Trophies

(Fill the Form in Capital Letters only)

Member's Name: _____

E-mail 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 before 31st October, 2014.

Brijesh M. Cholera, Shop No. 4, 2nd Floor, The Mall, Station Road,

Malad-West, Mumbai-400064. Tel No. 022-28895161

After sending your details Plz confirm with Mr. Brijesh Cholera Or Mr. Kishor Hapani - 9820438125

PLEASE NOTE : 12th RRC Booklet is available at Nominal Price of ₹ 50/- at STPAM Library as well contact any Office Bearer for the same.

We request all members to take active part in various activities of our Chamber and help us to make every event very successful.

≈ TEAM MCTC ≈

Snapshots of 12th RRC at SILVASSA



Inauguration of 12th RRC by Paper Writer and Speaker Dr. Bharat D. Vasani



Felicitation of Shri Sachin Gandhi - President of STPAM by our Past President Shri Manish Chokshi



Speaker Dr. Bharat D. Vasani addressing participants



Some of the Participants at 12th RRC

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, (name of owner) 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 (name of printing press) and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Tel. No. 022-2880 3123. (full address of the place of publication)

• Editor : Shri Kishor Vanjara

Posted at Malad ND (W) Post Office, Mumbai 400 064

Date of Posting : 20th & 21st October, 2014

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.

