



**The Malad  
Chamber of  
Tax  
Consultants**



**Price ₹ 5/-**

# MCTC Bulletin

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

E-mail: [maladchamber@gmail.com](mailto:maladchamber@gmail.com)

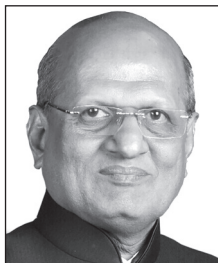
Website : [www.mctc.in](http://www.mctc.in)

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. 2**

**For members & private circulation only**

**September, 2014**



## President's Communiqué

Dear Members,

The festive season has begun and so does our 36th year of activities and that to with a grand success.

On 31st August, 2014 our inaugural Study Circle Meeting for the year 2014-15 under the name of "Dr. Bharat D. Vasani Inaugural Study Circle Meeting" was inaugurated by the eminent personality **DR. DILIP RAICHURA** (a great social worker in the field of organ donation, especially eye donation). I am very thankful to DR. DILIP RAICHURA for accepting our invitation to inaugurate our Study Circle Meeting.

His excellent speech on organs donation was informative and inspiring and it has brought some new insight on the subject matter. A large number of our members have registered themselves for eye donation, I appreciate all of them.

Our other highly learned speaker **CA JAGDISH PUNJABI** spoke on the Subject "Amendment in Income Tax Audit Report Form 3CD with practical aspect and overview of E-filing of Wealth Tax Return." With Powerpoint presentation, he had explained the exact impacts and made detailed analysis of amendments in Audit Report Form 3CD. His lecture was very interactive and the large number of attendees has inspired the committee members a lot.

I am also thankful to **DR. BHARAT D. VASANI** for his presence and appreciation for this meeting.

We have arranged our **12th RRC from 4th to 6th October, 2014 at Lords Resort, Silvassa. The Programme details and Enrollment Form of the RRC is annexed in this bulletin.**

We are planning Diwali Get-together & Saraswati Sanman Samarambh in the first week of November.

Month of September is very hectic month for all of us due to Tax Audit Season. I wish all of you "All the Best and Happy Working".

Thanking you & with heartwarming regards,

**Kishor Hapani**  
President

*Wish you all & your Family - "Happy Navratri and Happy Dussehra"*

*Miracle can't cure blind, you can - Donate eyes*

Call tollfree phone number - 1919

≈ TEAM MCTC ≈

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

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

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

## JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah

**Deputy Commissioner of Income Tax vs. Rajeev G. Kalathil (ITAT Mumbai). ITA No.6727/Mum/2012 (A.Y. 2009-10) dated 20-8-2014**

**Fact that alleged supplier is not traceable and has been termed a “hawala dealer” by the VAT authorities is not sufficient to treat the purchases as “bogus”**

The assessee was engaged in the business of Civil Contractors. In course of Assessment Proceedings, notices u/s 133(6) was sent to some creditors. The A.O. observed that some confirmations were returned back by Postal authorities with remarks ‘Not Known’ were holding TIN Nos. which were listed as ‘Hawala Dealers’ on official website of Maharashtra Sales Tax Department.

In respect of such dealers, assessee submitted sample purchase invoices, delivery challans, and bank statements identifying payments made to such dealers by A/c payee cheque supported by bank managers certificate. The dealer further stated that *‘we tried to communicate with them but there is no response at all from parties. Further our person visited at parties places as per address on our record, but parties are not available on respective places’*.

After considering above submissions, A.O. held that mere payment to parties through banking channel did not prove genuineness of purchases and hence made an addition to income.

Aggrieved by the order, the assessee preferred an appeal against First Appellate Authority. In course of proceedings, it was argued that such dealers were carrying proper VAT Registration, such bills were accounted for in assessee’s books of accounts a certificate from banker stating that payment details were made *vide* banking channel. Also, copies of the consignment received from the Government approved transport contractors showing that material purchased was actually delivered at the site was furnished before the AO and some of the material purchased from the said parties were lying as a part of closing stock as on 31-3-2009 as per the statement submitted on record. Ascertaining the facts, FAA deleted the addition made by A.O.

In the ITAT, Departmental Representative argued that suppliers were not produced before the A.O. and one of them was declared as hawala dealer by VAT Department. He further stated that relying upon Western Extrusion Industries (ITA/6579/Mum/2010-dated 13-11-2013) that merely relying on bank payment purchases cannot be considered as genuine.

ITAT while holding in favour of assessee held that “AO’s finding of Hawala Dealer was a good starting point for making further investigation and taking it to logical end. However, he left the job at initial point itself. Suspicion of highest degree cannot take place of evidence. No exercise as to examination of the bank accounts of the suppliers was done to find out for any immediate cash withdrawal from their account. Transportation of goods to the site is one of the deciding factor to be considered for resolving the issue. The FAA has given a finding of fact that part of the goods received by the assessee was forming part of closing stock. In the case of Western Extrusion Industries, cash was immediately withdrawn by the supplier and there was no evidence of movement of goods. But in the present case, there is nothing in the order of the A.O., about the cash withdrawal. Secondly proof of movement of goods is not in doubt.

Therefore, considering the peculiar facts and circumstances of the case under appeal, the order of the FAA does not suffer from any legal infirmity and there are not sufficient evidence on file to endorse the view taken by the AO.”

**Cosmic Global Ltd. vs. Assistant Commissioner of Income Tax, Company Circle-I (3) [2014] 48 taxmann.com 365 (Chennai-Trib.) IT Appeal No. 744 (MDS.) of 2014 [A.Y. 2009-10] dated July 30, 2014.**

**Translation services involving translation of text from one language to another does not fall within scope of Explanation 2 to Section 9(1)(vii).**

In the present case, the assessee company was engaged in business of providing translation services through web. The assessee was getting translations done from translators in India and overseas.

While making payment to translators within India, the assessee is complying with provisions of Sec. 194J. However, while making payment to translators overseas, no TDS was being deducted. The A.O. held that translation services are technical in nature and disallowed the expense. CIT (Appeals) confirmed the same.

ITAT while holding the view in favour of assessee, held that :-

The translator is not contributing anything more to the text than what is to be translated. He is not supposed to explain or elaborate the meaning of the text. Apart from the knowledge of the language, the translator is not expected to have the knowledge of applied science or the craft or the techniques in respect of the text which is to be translated.

A bare perusal of Explanation 2 to Section 9(1)(vii), which explains "fees for technical service" and the dictionary meaning of the word "technical" makes it unambiguously clear that translation services rendered by the assessee are not technical services. Therefore, the payment made by the assessee to the non-resident translators would not fall within the scope of "fees for technical, managerial or consultancy service."

## DIRECT TAXES – Law Update

Compiled by CA Haresh P. Kenia

### ❑ **INCOME-TAX (SEVENTH AMENDMENT) RULES, 2014 – SUBSTITUTION OF FORM NOS. 3CA, 3CB AND 3CD**

#### **NOTIFICATION NO. 33/2014 [F.NO.133/1/2014-TPL]/SO 1902(E), DATED 25-7-2014**

In exercise of the powers conferred by section 295 read with section 44AB of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, has substituted Form No. 3CA, Form No. 3CB and Form No. 3CD in the Income-tax Rules, 1962, in Appendix-II.

### ❑ **SECTION 164 OF THE INCOME-TAX ACT, 1961 – CHARGE OF TAX WHERE SHARE OF BENEFICIARIES UNKNOWN - CLARIFICATION ON TAXATION OF ALTERNATIVE INVESTMENT FUNDS HAVING STATUS OF NON-CHARITABLE TRUSTS UNDER INCOME-TAX ACT, 1961 {224 TAXMANN (St.) 235}**

#### **CIRCULAR NO. 13/2014 [F. NO. 225/78/2014-ITA.II], DATED 28-7-2014**

The SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations') *vide* Regulation No. 4 issued in May 2012 aims at regulating all forms of private pool of funds in India. The said Regulations divide the Alternative Investment Funds ('AIFs') into three broad categories – Category-I, Category-II and Category-III Alternative Investment Funds, depending upon the operational strategies, objectives and fund structure. A large number of AIFs registered with SEBI have been set up in the form of non-charitable trusts.

While the AIFs, being Venture Capital Funds, making investment in the Venture Capital Undertakings have been accorded 'tax pass through' status under section 10(23FB) read with section 115U of the Income-tax Act, 1961 ('Act') (whereby income arising in the hands of such Fund would be treated as tax exempt, while investors of such funds would become liable to tax liability on as if the investors have made the investments directly in the Venture Capital Undertaking), clarification has been sought about tax-treatment in cases of AIFs being non-charitable trusts where the investors name and beneficial interest are not explicitly known on the date of its creation – such information becoming available only when the funds start accepting contributions from the investors.

The Board has been requested to clarify whether the income of such funds would be taxable in the hands of the Trustees of the AIF in the capacity of a 'Representative Assessee' (as defined u/s. 160(i)(iv) of the Act) or in the hands of investors (i.e. contributors of funds).

The matter has been examined. In the situation where the trust deed either does not name the investors or does not specify their beneficial interests, provisions of sub-section (1) of section 164 would come into play and the entire income of the Fund shall become liable to be taxed at the Maximum Marginal Rate of income-tax in the hands of the trustees of such AIFs in their capacity as 'Representative Assessee'. It is also clarified that in such cases, provisions of section 166 of the Act need not be invoked in the hands of the investor, as corresponding income has already been taxed in the hands of the 'Representative Assessee' in accordance with sub-section (1) of section 164 of the Act.

However, in cases of funds where names of the beneficiaries and their interests in the Fund are determined i.e. stated in the trust deed, the tax on whole of the income of the Fund – consisting of or including profits and gains of business, would be leviable upon the Trustees of such AIF, being 'Representative Assessee' at the Maximum Marginal Rate in accordance with sub-section (1A) of section 161 of the Act.

The clarification given above shall not be operative in the area falling in the jurisdiction of a High Court which has taken or takes a contrary decision on the issue.

□ **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 – GOVERNMENT OF MALTA**

**NOTIFICATION 34/2014 [F. NO. 504/06/2003-FTD-I]/SO 1996(E), DATED 5-8-2014**

An Agreement and the Protocol was entered into between the Government of the 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.

The date of entry into force of the said Agreement and the Protocol is the 7th day of February, 2014, being the date of later of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Agreement and the Protocol, in accordance with paragraph 1 of Article 29 of the said Agreement.

Sub-paragraph (a) of paragraph 3 of Article 29 of the said Agreement provides that the provisions of the said Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the said Agreement enters into force.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of said Agreement and the Protocol between the Government of the 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, as set out in the Annexure hereto, shall be given effect to in the Union of India with effect from the 1st day of April, 2015.

□ **FINANCE (NO. 2) ACT, 2014 {224 TAXMANN (St.) 179}**

The Finance (No. 2) Bill received the Presidential Assent on 6th August, 2014 and was enacted as Act after certain amendments. The above citation may be referred for complete details.

□ **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 – FIJI**

**NOTIFICATION 35/2014 [F.NO.503/11/2005-FTD-II]/SO 2049(E), DATED 12-8-2014**

Whereas, an Agreement between the Government of the Republic of India and the Government of the Republic of Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in India on the 30th day of January, 2014 (hereinafter referred to as the Agreement);

And whereas, the said Agreement entered into force on the 15th day of May, 2014, being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the Agreement, in accordance with paragraph 2 of Article 30 of the Agreement;

And whereas sub-paragraph (a) of paragraph 3 of Article 30 of the said Agreement provides that the provisions of the Agreement shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which the Agreement enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Agreement, as annexed hereto, shall be given effect to in the Union of India.

- **SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – EXTENSION OF DUE DATE FOR OBTAINING AND FURNISHING OF REPORT OF AUDIT UNDER SECTION 44AB FOR A.Y. 2014-15 IN CASE OF ASSESSEES WHO ARE NOT REQUIRED TO FURNISH REPORT UNDER SECTION 92E FROM 30-9-2014 TO 30-11-2014**

**ORDER [F.NO.133/24/2014-TPL], DATED 20-8-2014**

In exercise of power conferred by section 119 of the Income-tax Act ('the Act'), the Central Board of Direct Taxes (CBDT) hereby extends the due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 in case of assesseees who are not required to furnish report under section 92E of the Act from 30th day of September, 2014 to 30th November, 2014.

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

## Recent Judgments under Service Tax

Compiled by CA Sunny Kachalia

### 1. Whether CENVAT Credit is admissible for the period prior to Service Tax registration.

Facts: The appellant was registered with the Service Tax authorities under the category of "Management Consultancy services". For providing the services, appellant was availing various input services. As the output services qualified for export of service, CENVAT credit remained unutilised and the same was claimed as refund under Rule 5 of CENVAT Credit Rules, 2004.

Refund claims were sanctioned basis the formula prescribed in Rule 5 of CENVAT Credit Rules, 2004, however claim was reduced to the extent of levy of interest on account of wrong availment of credit. Interest was charged on the ground that credit was taken during the period for which registration was not obtained by the appellant for a particular premise.

Held: Reference was made to the case of C. Metric Solution Pvt. Ltd. wherein it was held that credit of inputs/input services during the period prior to Service Tax registration is admissible. Accordingly reduction of claim to the extent of interest is not sustainable.

*(M/s. Actis Advisers Pvt. Ltd. vs. C.S.T. Delhi-IV 2014-VIL-CESTAT-Del-ST)*

## FORTHCOMING EVENTS

### 1. 12th RRC on 4th-6th October, 2014 at Lords Resort - Silvassa

The Programme of the RRC is as follows :—

<b>SUBJECT</b>	: Implications & Practical Issues Relating to Disallowances of Purchases from Suspicious Dealers under I. Tax Act, 1961
<b>Speaker</b>	: Dr. Bharat D. Vasani
<b>Day &amp; Date</b>	: Saturday 04-10-2014 at 4.30 p.m.
<b>RRC VENUE</b>	: Lords Resort, Silvassa is located 180 km from Mumbai and nearest railway station is Vapi
<b>Transport</b>	: All members are requested to reach resort directly at 11.30 am on 4th October. Our package starts with lunch on 4th October and ends with lunch on 6th October
<b>Participation Cost (Members)</b>	: ₹ 4,500/- per head for Double sharing : ₹ 2,800/- for Children 6 to 12 Yrs.
<b>Participation Cost (Non-Members)</b>	: ₹ 5,000/- per head for Double sharing : ₹ 2,800/- for Children 6 to 12 Yrs.

**Kindly Fill up the Enrolment form attached herewith and submit it to Admn. Office or to any of the Office Bearers at the Earliest.**

### 2. DIWALI GET-TOGETHER & SARASWATI SANMAN SAMARAMBH

We are planning Diwali Get-together & Saraswati Sanman Samarambh in month of November in which 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 & students who cleared post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers. All members are requested to send fully filled up attached form along with the certified marksheet to Brijesh M. Cholera at the following address OR mail the scan copy of the fully filled up form along with marksheet to malad chamber at [maladchamber@gmail.com](mailto:maladchamber@gmail.com) before **31st October, 2014**. Programme details will be circulated in next Bulletin as well through mail and website.

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

(Fill the Form in Capital Letter 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](mailto: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 • **Please after sending your details confirm with Mr. Brijesh Cholera.**

*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 ≈

**ENROLMENT FORM**

**12TH RRC AT LORDS RESORT, SILVASSA**

Saturday 4-10-2014 to Monday 6-10-2014

<b>Participation Cost</b>	₹ 4,500/- per head for Double Sharing for members and
	₹ 5,000/- per head for Double Sharing for Non-members
	₹ 2,800/- for children age 6 to 12 years – Extra Bed only.

NAME : Mr./Mrs. ....

Membership of MCTC: YES / NO

ADDRESS: .....

.....

TELEPHONE : (O):..... ( R ) :.....

E-MAIL :.....MOBILE NO.:.....

Total Number of Persons for whom payment is made.....(Pls Specify)

AMOUNT: ..... /- (RUPEES.....)

CHEQUE /D.D. No. ....DATED .....

BANK / BRANCH : .....

Direct Join : Yes  No

Food Choice : Veg  Jain

If joining with family, please fill in following details:

Name of Spouse :..... (Age:.....yrs.)

Name of Child : 1)..... (Age: .....yrs.)

2)..... (Age:..... yrs.)

SIGNATURE .....

(Name )

- N.B.**
- Members are requested to make the payment only by cheque in favour of "The Malad Chamber of Tax Consultants" payable at Mumbai.
  - Please tick/fill in the appropriate boxes.

**MEMBERS CAN ALSO DOWNLOAD FORM: [www.mctc.in](http://www.mctc.in)**



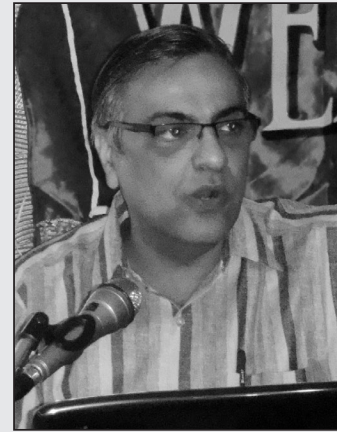
**Inauguration of 1st Study Circle by Chief Guest Dr. Dilip Raichura, along with L to R – Speaker CA Jagdish Punjabi, Dr. Bharat Vasani - 1st Study Circle fund donor, Kishor Hapani – President, Ketan Soneji – Committee Member & Utpal Patel – Treasurer**



**Address by Chief Guest**



**Attentive Participants at 1st Study Circle Meeting**



**Speaker CA Jagdish Punjabi addressing members**

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 September, 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.

