



**The Malad
Chamber of
Tax
Consultants**

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MCTC Bulletin

"Every Passing Minute is Another Chance to Turn it Around"

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President's Communiqué



My Dear Professional Colleagues,

It gives me immense pleasure to write to you as the President of the esteemed 'THE MALAD CHAMBER OF TAX CONSULTANTS'. I express my sincere thanks and gratitude to all my colleagues and everyone for reposing faith in me and entrusting me with such huge responsibility. It is my humble faith that the almighty will bestow upon me enough strength to work with dedication and integrity, and take The Chamber to further heights.

In the long and rich journey of 40 years, our Chamber has not only grown in strength and size but also in levels of excellence. The credit for this goes to all the Past Presidents and Committee Members for working selflessly.

I am "nothing without my team, is what I have faith in. I take utmost pride in announcing this year's committee members.

1) Jaimin Trivedi 2) M. D. Prajapati 3) Kishore Thakrar 4) Jignesh Savla, 5) Ujwal Thakrar, 6) Khyati Vasani 7) Priyal Pratik Shah 8) Bhavin Mehta, 9) Sandip Parikh, 10) Rajen Vora 11) Pratik Doshi 12) Jitendra Fulia

The best part about the core is that we share a common set of value system, and believe that- WE ARE HERE TO MAKE A DIFFERENCE! I am quite hopeful that our endeavours and initiatives towards creating an environment full of knowledge and learning will be beneficial for everyone and will be instrumental in adding a feather to our cap of professional excellence.

The 1st event i.e. the innagural study circle / seminar scheduled to be held is an informative yet practical seminar.

It is regarding GST Annual Return and GST Audit which is of extreme importance for all of us. Details of the seminar are given on the next page.

I obviously seek your good wishes to ensure success in my endeavour but along with it, I request your active participation and unstinted support to add a new chapter in the growth story of our beloved Chamber.

With sincere wishes,

Happy Independence Day

CA Viresh Shah
President

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

| Name | Designation | Contact Nos. | E-mail |
|----------------|-------------|--------------|--|
| CA Viresh Shah | President | 9820780070 | vireshbshah9@gmail.com |

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

: Forthcoming Events :

| | | |
|---|--|------------------------------------|
| 1. | Dr. Bharat D. Vasani Inaugural Study Circle / Seminar: | |
| | Chief Guest | Prominent Personality |
| | Day & Date | Saturday, 3rd August, 2019 |
| | Topic | Issues in filing GSTR9 & GST Audit |
| | Speaker | Eminent Faculty |
| | Venue | Malad (W) or Goregaon |
| Kindly mark the above dates and we request all members to keep taking active part in all activities of The Chamber, to attend in large and make it grand success. | | |
| With Regards | | |
| ≈ TEAM MCTC ≈ | | |

DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

- ❑ **SECTION 197A OF THE INCOME-TAX ACT, 1961 READ WITH RULE 29C OF THE INCOME TAX RULES, 1962 - DEDUCTION OF TAX AT SOURCE - NO DEDUCTION IN CERTAIN CASES - CBDT ISSUES NOTIFICATION FOR AMENDMENT OF FORM NO. 15H OF THE INCOME TAX RULES, 1962**

CBDT PRESS RELEASE, DATED 24-5-2019

Section 87A of the Act has been amended *vide* Finance Act, 2019 which provides that a resident individual, having total income up to ₹ 5 lakh, shall be entitled to a rebate of an amount being the amount of tax chargeable or ₹ 12,500/-, whichever is less.

However, at present, the note 10 of Form 15H does not take into account the maximum allowable rebate of ₹ 12,500/- provided under section 87A as above, which is available to the assessee in respect of the tax calculated on income, there could be cases, where, though income of the assessee would be above the minimum amount chargeable to income-tax, tax liability may be nil after taking into account the rebate available under section 87A. Deduction of tax in such cases may cause undue hardship to senior citizens.

Accordingly, Income-tax Rules, 1962 have been amended by way of insertion of proviso in Note 10 of Form No. 15H and have already been notified *vide* Notification No. G.S.R. 375(E) dated 22nd May, 2019, so as to provide that the person responsible for paying the income referred to in column 15 of Part I shall accept the declaration in the case of the assessee, being a senior citizen, who is eligible for rebate of income-tax under section 87A, and his/her tax liability is nil after taking into account this rebate.

- ❑ **SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES - EXTENSION OF DUE DATE FOR FILING OF TDS STATEMENT FOR LAST QUARTER OF F.Y. 2018-19 FROM MAY 31, 2019 TO JUNE 30, 2019 & DUE DATE FOR ISSUE OF TDS CERTIFICATE IN FORM 16 FROM JUNE 15, 2019 TO JULY 10, 2019**

PRESS RELEASE, DATED 04-6-2019

The Central Board of Direct Taxes (CBDT) had earlier notified amended Form 24Q for filing TDS statement by deductors of tax *vide* Notification No. 36/2019 dated 12th April, 2019. Subsequently, the File Validation Utility (FVU) for online filing of Form 24Q was updated by NSDL on 21st of May, 2019.

With a view to redress genuine hardship of deductors in timely filing of TDS statement in Form 24Q on account of revision of its format and consequent updating of the File Validation Utility for its online filing, CBDT has ordered the following:

- (i) Extended the due date of filing of TDS statement in Form 24Q for financial year 2018-19 from 31st of May, 2019 to 30th of June, 2019 and

- (ii) Extended the due date for issue of TDS certificate in Form 16 for financial year 2018-19 from 15th of June, 2019 to 10th of July, 2019.

□ **SECTION 90 OF THE INCOME-TAX ACT, 1961 - AGREEMENT FOR EXCHANGE OF INFORMATION BETWEEN INDIA AND MARSHALL ISLANDS NOTIFIED**

PRESS RELEASE, DATED 06-6-2019

The Agreement between the Government of the Republic of India and the Government of the Republic of the Marshall Islands for the Exchange of Information with respect to taxes (India – Marshall Islands TIEA) was signed on 18th March, 2016 at Majuro, the Republic of the Marshall Islands. The India-Marshall Islands TIEA has been notified in the Gazette of India (Extraordinary) on 21st May, 2019.

The Agreement enables exchange of information, including banking and ownership information, between the two countries for tax purposes. It is based on international standards of tax transparency and exchange of information and enables sharing of information on request. The Agreement also provides for representatives of one country to undertake tax examinations in the other country.

The Agreement will enhance mutual co-operation between India and Marshall Islands by providing an effective framework for exchange of information in tax matters which will help curb tax evasion and tax avoidance.



ADVANCE RULING VERSUS PROVISIONAL ASSESSMENT UNDER GST

Compiled by CA Bhavin Mehta

Predictability of applicable taxes is utmost important to develop the trust with its taxing paying population and investor. It will help businesses become more productive and efficient. For that to happen timely dispute resolution machinery should be kept in place, more particularly an advance resolution mechanism.

Under GST law every registered person has to self assess his taxes and furnish the return. Thus under GST, determination of tax liability has to be undertaken by the assessee himself. However, there might be situation when the assessee is unable to ascertain the value of supply or rate of tax applicable thereto.

In such situation the assessee has two options, namely, Advance Ruling (for registered as well as for unregistered person) and Provisional Assessment (only for registered person).

Advance Ruling

Advance ruling means a decision provided by the authority or the appellate authority to an applicant on specified matters in relation to the supply of goods or services or both. These rulings are issued in respect of specific transaction. Advance Ruling Authority (AAR) is an authority independent of the tax administration. Decisions on the disputed matters in advance provide transparency and certainty to the business. An applicant can approach the AAR for an advance ruling before undertaking a transaction; or after undertaking the transaction, if tax authorities have not initiated proceedings to determine the tax liability arising from the transaction. For the first time, appeal mechanism against advance ruling is introduced i.e. appeal to Appellate Authority of Advance Ruling (AAAR).

AAR has to issue decision within a period of 90 days from the date of application. An order by AAAR has to be passed within a period of 90 days from the date of receipt of appeal. The total period involved under Advance rulings including appeals may work to 90+30+90=210 days (seven months approx).

AAR role is to provide timely assistance to taxpayers and tax administration through advance rulings. If properly managed it would be win-win situation for both tax payer and tax administration. But unfortunately, looking to catena of rulings given in past two years, many controversial decision are given without following the rule of law and are decided in favour of revenue. Adding to these uncertainties in no small measure are the contradictory rulings on same subject are being delivered by different 'AARs'. Most of the rulings are like assessment order. In jest AAR is referred to as 'Adverse Ruling Authority'. Further, the applicants rarely got any relief before the

AAARs as well. Unless it becomes absolute business necessity it may not be advisable to go for AAR. The reason probably may be due to the composition of this forum from revenue officer alone instead of independent judicial member.

The advance ruling is binding on the applicant and the concerned jurisdictional officer. There is no statutory remedy against appeal order of AAARs. Recently Bombay High Court in the case JSW Energy Ltd. {2019-VIL-276-Bom} refused to interfere with the AAAR's order on the ground that statute does not provide any further remedy of appeal and therefore it does not become fit case for further appeal under Article 226/227 seeking judicial review.

In the current Budget 2019, it is proposed to have National Appellate Tribunal for Advance Ruling (NATAR) under section 101A of the CGST Act to resolve the demand of trade and industry. However, an Assessee would be allowed to approach NATAR when there are contradictory view either by the members of the same bench of AAR or AAARs or co-ordinate benches of different AAR or AAARs.

Provisional Assessment

Where a taxable person is unable to determine the value of supply or rate of tax on supply, may furnish an application along with the documents in support of his request, electronically in Form GST ASMT-01, on the common portal.

The payment of tax on provisional basis may be allowed, if the taxable person executes a bond along with surety or security in the form of bank guarantee (not exceeding 25% of the bond amount), binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed. Such order for provisional payment shall be issued within a period of 90 days from the date of receipt of application.

The final assessment order shall be issued within a period of six months from the date of communication of order for provisional payment of tax. Where such final assessment order is passed by the joint commissioner or additional commissioner the period of six month can be extended for a further period of six months and where the order is passed by the Commissioner such six month period can be extended for a further period of four years. After issue of final assessment order and payment of differential tax, if any, security would be released.

Interest would be payable / receivable on difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

As compared to Advance Ruling, the period of passing final assessment order under section 60 provide more time to the revenue officer for passing the order, where such orders are passed by high rank officers. For passing the final assessment order by Joint Commissioner or Additional Commissioner the effective period may works out to around 15 months. Whereas, if such final order is issued by Commissioner the effective period allowed may work out to around 57 months.

In view of foregoing, it appears to be better for assessee to opt for provisional assessment (adjudication) process so that the doors of Tribunal and Courts remains open for him.



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Radhika Roy vs. DCIT, Circle-18(1), ITAT Delhi Bench F, IT Appeal Nos 2019, 2020 (DELHI) OF 2017 & OTHS, 14th June 2019

For the purpose of calculation of capital gains, where shares are held in dematerlised form and maintained multiple security account, then FIFO method would apply account wise and not across accounts of assessee as per provision of section 45(2A) rw. Board's Circular No. 768 dated 24-06-1998.

Facts of the case

Assessee is a promoter of the NDTV Limited, have individual demat account and joint demat account with her husband. During the year, assessee bought around 48.35 lakh shares of the said company on 26-12-2007 in her joint demat and thereafter both of them have transferred 6.25 lakh shares of NDTV each from their individual demat account to said joint demat account. On 19-06-2019 12.5 lakh shares were sold and LTCG was claimed considering shares sold out stock transferred from individual demat account.

However AO while completing assessment applied FIFO method with respect to joint demat account and considered first lot of shares bought on 26-12-2007, and determined STCG on such transfer.

Aggrieved by AO action, assessee filed appeal before CIT(A) and then ITAT Delhi and contended that provisions of section 45 (2A) and various circulars relied upon by the learned assessing officer are to be considered 'qua person' and not 'qua demat account'.

ITAT observed as follows:

According to Section 45(2A), cost of acquisition and the period of holding of the security shall be determined on the basis of First-in-First-out method (FIFO) when beneficial interest on securities is held by the assessee.

As per the dematerialization rules as per the Depositories act, the identification of individual sets of lots are lost, moment they are dematerialised. In a depositories mechanism, where individual shares lose their identity and lose themselves in the wilderness of a homogenous mass, it is mandatory to follow FIFO method.

As the holdings of any securities in dematerialized, form is represented only by the account with the Depository and all transfers are affected through book entries in the accounts maintained by the Depository.

Based on the above, ITAT dismissed appeal filed by Assessee.

M/s. Chheda Housing Development Corporation vs. Addl CIT-32(1), ITA No. 86/Mum/2017, 29th May 2019

A receipt in lieu of source of income is a capital receipt, but a receipt in lieu of income is revenue receipt

OR

Receipt towards compensation in lieu of 'right to sue' is of capital nature which is not chargeable to tax under section 45 of the Act.

Facts of the case

Assessee is a partnership firm stated to be engaged in the business of financing, construction and development. In 2005, firm signed a MOU with the owner of the land to develop the land and paid advance of ₹ 2.5 crore. The landowner could not obtain commencement certificate from local authorities. The firm found out that the landowner had already transferred the development rights to another company even before entering into MOU with assessee firm.

After pursuing several legal proceedings, from 2005 to 2011, the dispute was settled, and the MOU was cancelled. The landowner paid ₹ 20 crore on account of refund of the advance with interest, loss of profit, liquidated damage and loss of opportunity to develop his own property and cost of litigation. The assessee treated this sum as capital receipt and filed its return of income declaring Nil income and claimed the refund of tax ₹ 3 crore already paid in advance.

The case was selected for scrutiny and the Assessing Officer treated the receipt of ₹ 20 crore as income and taxed the same as Long Term Capital Gains (LTCG).

Aggrieved by AO's order, assessee filed appeal before CIT(A) and then ITAT.

On further appeal ITAT observed as follows

The terms 'capital receipt' and 'revenue receipt' are not defined in Income-tax Act. It is settled position that a receipt in lieu of source of income is a capital receipt, but a receipt in lieu of income is revenue receipt.

By deed of cancellation signed in 2011, the assessee has not transferred any right in favour of the landowners. In fact all those rights already stand transferred by the owners in favour of M/s. Star Habitat Pvt Ltd. the amount received by the assessee in excess of advance is on account of compensation for extinction of its right to sue the owner, the receipt is a capital receipt not chargeable to tax.

THE MALAD CHAMBER OF TAX CONSULTANTS

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| 2 | 1980-1981 | Shri R. J. Chokshi (Late) | — | — | — | — | — |
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GLIMPSES OF 40TH AGM



Election officers Shri Janakbhai Rawal & Shri Rameshbhai Gandhi – Declaring name of Shri Viresh Shah as President of MCTC for the year 2019-20



Felicitation of outgoing President Shri Vaibhav Seth by incoming President Shri Viresh Shah with Committee members



Welcome of Incoming President Shri Viresh B. Shah at AGM



Managing Committee of MCTC for the year 2019-20

GLIMPSES OF 40TH AGM



Participants at 40th Annual General Meeting held on 14th July 2019



Appreciation Award as Best Managing Committee member to Shri Dipesh Singhania at AGM



Felicitation of Convener of Budget Committee Shri Utpal Patel and all compilers of budget publication

GLIMPSES OF BUDGET MEETING



Dignitaries of Goregaon Sports Club & MCTC at Public Meeting on Budget held on 8th July 2019



Felicitation of Shri Sunil Dewali ji, President of Goregaon Sports Club



Speaker CA Vimal Punmiya ji at Public Meeting on Budget held on 8th July 2019



Speaker CA Manish Choksi at Public Meeting on Budget held on 8th July 2019



Speaker Adv. Bharat Raichandani at Public Meeting on Budget held on 8th July 2019



Participants at Public Meeting on Budget held on 8th July, 2019



Budget Compilation Team with Past Presidents

GLIMPSES OF BUDGET MEETING



President Shri Viresh Shah introducing the Managing Committee Members for the year 2019-20



Felicitation of CA Ketan Vajani



Managing Committee Members of MCTC for the year 2019-20



President Viresh Shah and Vice President Jaimin Trivedi sharing a lively moment with the Managing Committee.



President Shri Viresh Shah with Past Presidents

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 those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

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