



**The Malad
Chamber of
Tax
Consultants**

MNW/I75/2018-20

Total Pages 8

Price ₹ 5/-

41 Years

MCTC Bulletin

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

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Vol. 1, No. 3

For members & private circulation only

September, 2019

President's Communiqué



My Dear Professional Colleagues,

Firstly, I congratulate everyone for completing the Income Tax Return Filing process with utmost perseverance and dedication. Well begun is half done, so I hope that we continue to work with such sincerity for Tax Audit procedure as well. MCTC had conducted a study circle on Tax Audit to kick start the season. The benefit of which was taken by more than 100 member audience. Your participation is what keeps us going. I would take this opportunity to thank CA Ketan Vajani and CA Nitin Bhuta on behalf of all members for throwing light on the extremely significant topic-Tax Audit.

On a personal note, I would like to draw your attention towards the concept of Work Life Balance. The Economics Times recently quoted, More than 50% of Indian professionals have average to terrible work life balance. As tax professionals, these months are very crucial for us. Our workload is immense and stress is omnipresent. We need to work round the clock. But, it is equally important to spend time for personal hobbies, family discussions and friends outing. This will help in focussing on work better. I believe in what Dolly Parton states- Never get so busy making a living that you forget to make a life.

AUGUST also started with anxiety on the face of CA students who aspire to be future chartered accountants. After all, the results for all the levels of examinations were declared in this month due to late exams. The feeling of anxiety was replaced with moments of joy or disappointment. My hearty congratulations to all the students who cleared the examinations. Celebrate and enjoy your moments of success with family and friends After all, you have cleared one of the most difficult exam in the world.

As far as global issues are concerned, the fire set in Amazon Rainforest is disheartening. Deforestation is increasing every year. In context with this issue, MCTC has decided to publish paperless Bulletins from 1st January 2020. It is a small change but as we had committed- We are here to make a difference. I request every member to refer the last page and do the needful to support this initiative.

MCTC will always work to satisfy your hunger for knowledge by conducting seminars, workshops and study circles. Our next study circle is on 6th October 2019, topic for which is- Transfer Pricing and Sabka vishwas Scheme of Central Government

Be joyful and happy. As Goddess Durga blesses us this Navratri. This festival will sure be filled with cheer and fun.
HAPPY NAVRATRI

CA Viresh Shah
President

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: Forthcoming Events :

1. STUDY CIRCLE 04/2019-20	
Day & Date	Sunday, October 06, 2019
Time	9.15 a.m.
Topic	Transfer Pricing, Sabka Vishwas Scheme of Central Government or E-Assessment under Income Tax
Speaker	CA. Ujwal Thakrar
Venue	1st Floor, MKES College, 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 and make it grand success.	
2. There will be Series of Lectures on Direct Taxes in the month of December 2019	
3. There will be Series of Lectures on GST in the month of December 2019	
4. RRC Will be arranged in first week of January 2020	
With Regards ≈ TEAM MCTC ≈	

DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

- Finance (No. 2) Bill, 2019 264 Taxman (st.) 1.**
A bill to give effect to the financial proposal for the financial year 2019-20 as introduced in Lok Sabha on 05-07-2019. The finance bill, speech of Minister of Finance Nirmala Sitharaman and Memorandum explaining the provisions relating to Direct Taxes are available on above citation of Magazine.
- Finance (No.2) Act, 2019 264 Taxman (st.) 213**
An Act to give effect to the financial proposal of the central government for the financial year 2019-20 as assented by president of India on 01-08-2019. The Act may be called Finance (No. 2) Act, 2019. The certain provisions are deemed to have effect from 1st April, 2019. The certain provisions are to come into effect on such date as the central government may notify in the official gazette specify.
- Section 139-Income tax return – Extension of Due date of filing Income tax return for the Assessment year 2019-20. 264 Taxman (st.) 195**
The CBDT vide circular F No. 225/157/2018/ITA.II DATED 23-07-2019 hereby extend the “due date” as prescribed u/s 139(1) of the Act for filing Income tax returns from 31st July 2019 to 31st August 2019 in cases of all tax payers who are liable to file their Income tax returns by the due date. The due date for filing Income tax return for the assessment year 2019-20 is 31st July 2019. The CBDT has clarified that some of the tax payers are facing difficulties in filing their Income tax return due to various reasons including extension of due date for issue of Form 16 for the assessment year 2019-20.
- DTAA – Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries – China – Amendment in notification No. GSR 331 (E) dated 05/04/1995. 264 Taxman (st.) 205**
The Central Government vide notification no SO 2562 (E) {NO.54/2019(F.NO.503/02/2008-FTD-II)} DATED 17-07-2019 notifies the protocol, amending the agreement between the Government of the Republic of India and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on Income which was signed at New Delhi, India on 18-07-1994. The protocol has been signed at New Delhi on 26-11-2018. The readers may refer to above citation for complete text of the notification.
- Income declaration scheme, 2016-Section 187 of the scheme- Time for payment of tax-Issues in respect of third instalment under the Income Declaration Scheme, 2016. 264 Taxman (st.) 193**
The Central Board of Direct Taxes vide circular no. 15/2019(F.NO 225/282/2017-ITA.II), DATED 12-07-2019 has issued the following clarification in respect of difficulties faced by the declarants of Income declaration scheme, 2016(IDS). Who are required to pay their determined liability towards tax, surcharge and penalty pertaining to 3rd Installment as per the Form-2 issued by the Pr. CIT/CIT, by 30-09-2017. The declarants were facing difficulties while effecting payment of 3rd Installment of IDS around 30-09-2017 due to closure of Banks on account of holidays due to which they couldn't effect payment of 3rd Installment within the stipulated time. The representation was made to the Board u/s. 119 of the Income tax Act read with section 195 of the IDS to grant the appropriate relief.

 - The CBDT, in accordance with the provisions of section 10 of the General Clause Act, 1897, hereby directs that all payment made/effectuated by the declarants on 03/10/2017 shall also be deemed to have been paid by the due date for the 3rd Installment i.e., 30-09-2017.
 - The CBDT clarified that the payment effectuated through cheque/RTGS/Electronic transfer by the declarant 03-10-2017, deemed extended date for the 3rd Installment, which was credited by the Bank till 05-10-2017 shall be deemed to be paid by 30-09-2017.

The CBDT also instructed that all actions which are to be completed as a consequence of this order either by the declarants or the departmental authorities are to be completed, by 31/08/2019.
- Guidelines for Compounding of Offences under Direct Tax Laws, 2019 264 Taxman (st.) 165**
Section 279(2) of the Act provides that any offence under Chapter XXII of the Act may, either, before or after the institution of proceedings, be compounded by the Pr. CCIT/CCIT/Pr. DGIT/DGIT. The necessary guidelines are issued in exercise of power u/s 119

of the Act read with explanation below section 279 (3) of the Act. The CBDT vide CIRCULAR F. NO. 285/08/2014-IT (IN.V)/147, dated 14-06-2019 issued, in supersession of earlier Guidelines on this subject, including the Guidelines of the Board issued vide F. No. 285/35/2013 IT(In. V)/108 dated 23-12-2014, the following Guidelines are issued for compliance by all concerned. These Guidelines shall come into effect from 17-06-2019 and shall be applicable to all applications for compounding received on or after the aforesaid date. The applications received before 17/06/2019 shall continue to be dealt with in accordance with the Guidelines dated 23/12/2014.

The Features of the Guidelines are as under:

- ❖ Compounding is not a matter of right.
- ❖ Applicability of these Guidelines to prosecutions under IPC
- ❖ Classification of Offences.
- ❖ Eligibility Conditions for Compounding
- ❖ Offences normally not to be compounded
- ❖ Relaxation of time
- ❖ Authority Competent to Compound an Offence
- ❖ Compounding Procedure
- ❖ Compounding charges
- ❖ Fees for compounding
- ❖ Applicability of these Guidelines to offences under other Direct Tax Laws
- ❖ Format of application in the Form of Affidavit for Compounding of Offences under Income-tax Act, 1961 to be submitted separately by each applicant
- ❖ Suggested Check List for Compounding as per the Guidelines issued by the CBDT vide F. NO. 285/08/2014-IT(In.V)dated 14/06/2019 on Compounding of Offences
- ❖ Format for Order u/s. 279(2) of the Income-tax Act, 1961 for Compounding of an Offence as mentioned in Para 11(ii) of the Guidelines issued by the CBDT vide F.No. 285/08/2014-IT(In.V) dated 14/06/2019 on Compounding of Offences.
- ❖ Format for Order u/s. 279(2) of the Income-tax Act, 1961 for rejecting the Compounding of an Offence as mentioned in Para 11(ii) of the Guidelines issued by the CBDT vide F.No. 285/08/2014-IT(In.V) dated 14/06/2019 on Compounding of Offences.



IMPORTANT ISSUES ARISING IN RESPECT OF SABKAVISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019 – KNOWN AS SVLDRS OR AMNESTY SCHEME

Compiled by CA Bhavin Mehta

Issue 1: EA-2000 was conducted by the Service Tax Audit officials from department of M/s XYZ Enterprise. Audit observations/objections were raised during the audit wherein service tax amount payable by M/s XYZ Enterprise in respect of each of the observation is stated. M/s XYZ Enterprise filed reply to the audit observations. All this activities happened prior to 30.06.2019. Pending Final Audit report, in respect of one of the observation made during audit, show cause notice is issued in the month of August 2019. Whether assessee is eligible to file declaration under the scheme?

My Comments: Section 123 of the amnesty scheme provides meaning of tax dues and section 124 provides for relief of tax dues. With regard to facts of the case clause (b) and clause (c) of section 123 is examined below.

123. For the purpose of the Scheme, "tax dues" means -

"(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then the amount of duty stated to be payable by the declarant in the said notice.".

In the present facts SCN is received after 30.06.2019 and hence clause (b) would not apply.

"(c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019". {Emphasis supplied}

The term "quantified" is defined clause (r) of section 121 of the Scheme, which is reproduced below:

"(r)"quantified", with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment.

In the present facts, EA-2000 audit has made observations/objections during the audit, to which reply was filed against each objections. Communication by the audit official stating tax payable could very well be considered as quantification of demand, irrespective of whether draft audit report or final audit report is issued or not.

Issue 2: In case where order-in-original is received before 30.06.2019 but appeal is filed on or after 01.07.2019, whether a person can file the declaration under the amnesty scheme? {Refer FAQ No.7 issued by CBIC in the month of August, 2019}

My Comments: Section 123 provides meaning of tax dues, wherein clause (b) mandates that SCN should be received on or before 30.06.2019 in order to avail the benefit of amnesty scheme. The provision nowhere states SCN should be pending for adjudication. In other

words, irrespective of whether SCN is adjudicated or not, assessee is eligible to make the declaration under the scheme. If the intention of legislature was to exclude the persons filing appeal after 30.06.2019, they would have incorporated in clause (b) of section 123 that SCN should be pending adjudication. On comparison, clause (c) of section 123 provides enquiry or investigation or audit is pending against the declarant, which is not there in clause (b). Therefore, in my opinion, such person who has filed appeal on or after 01.07.2019 in respect of order passed prior to 30.06.2019 is eligible to file declaration under the scheme.

It is advisable to file the appeal if same is not filed till date. Wherever there is delay in filing the appeal, same may be filed with condonation application and on the basis of outcome of condonation application; assessee may file the declaration under the scheme.

Issue 3: Whether assessee would be eligible to file declaration where order-in-appeal is received prior to 30.06.2019 but corresponding appeal before CESTAT is filed on or after 01.07.2019 within stipulated time?

My Comments:

- (i) The provision contained in clause (a) of section 123 provides “tax dues” means appeal arising out of an order is pending as on 30th June 2019 before appellate forum.
- (ii) Clause (a) of section 124(1) grants relief of tax dues in respect of appeal/s arising out of show cause notice which is pending as on 30th June 2019.

Pending refers to pending action, pending case, pending proceedings etc.

- (iii) Section 125 provides for exclusion of cases from the scheme, wherein clause (a) stipulates appeal is heard finally before appellate forum on or before the 30th June 2019.

Heard finally implies appeal is heard but order is awaited as on 30th June 2019 (refer department circular No. 1071/4/2019-CX.8 dated 27.08.2019). The instant case does not fall under the said exclusion (section 125) because appeal order is received before 30.06.2019.

In the present case, order-in-appeal is received before 30.06.2019 but Appeal is filed on or after 01.07.2019 within stipulated time. The phrase “appeal arising out of notice/order is pending” refers to the time before which an appeal is taken for filing, as well as to the period during which an appeal is in progress. Till the time, period of filing the appeal has not lapsed, appeal may be considered as pending.

Issue 4: If a SCN covers multiple issues, whether the person can file an application under the scheme for only few issues covered in SCN? (Refer FAQ No.4)

My Comments: In terms of clause (b) of section 123 “tax dues” means where a show cause notice has been received by the declarant on or before the 30th June 2019, then the amount of duty stated to be payable by the declarant in the said notice. Proviso to clause (b) states “provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant”.

Section 123 is silent to whether “tax dues” means aggregate duty in a SCN or issue-wise duty payable as per SCN. In many cases, it seen different SCNs are issued for different issues falling under same period. Merely because single show cause notice is issued for more than one issue where each of the issue is quantified separately, declarant has right to opt for one or more issue at his discretion.

Issue 5: Whether an assessee can make a voluntary disclosure after having filed ST-3return, wherein he has indicated the amount of service tax payable but same has not been paid. Whether assessee is eligible for the Scheme? (Refer FAQ No.13)

Comments: “Amount in arrears” is defined in section 121, which is reproduced below:

“(c) ‘amount in arrears’ means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of –

- (i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
- (ii) an order in appeal relating to the declarant attaining finality; or
- (iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it;

In the present facts, assessee has filed ST-3 return before 30.06.2019, wherein he has declared the same (admitted the tax liability) but has not paid it. This would qualify as amount in arrears.

Clause (e) of section 123 provides tax dues means where an amount in arrears relating to the declarant is due, the amount in arrears.

In terms of sub-clause (iii) of clause (c) of section 124 the relief available to declarant under the scheme where tax dues are relatable to an amount in arrears and, in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is, -

- (A) rupees fifty lakhs or less, then sixty per cent. of tax dues;
- (B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of tax dues;

On conjoint reading of above provisions contained in section 121, 123 and 124 of the scheme it appears declarant can avail the benefit under the scheme. However, before concluding, it is important to refer to exclusion provision contained in section 125 of the scheme. Section 125 (1) provides all persons shall be eligible to make a declaration under this Scheme except the following, namely:-

- (a)

-
-
- (f) a person making a voluntary disclosure, -
- (i); or
- (ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;
-
- **

The above provision under section 125 provides a person making voluntary disclosure having filed ST-3 return, wherein he has indicated service tax payable but has not paid it, is not eligible to file declaration under the scheme.

Thus it becomes clear that provision contained in section 121 and section 125 is inherently contradictory. It appears section 121 classifies the amount shown in ST-3 return as amount in arrears and would be eligible under the scheme; however, section 125 excludes the same.

The meaning given in section 121 is not exhaustive, especially when section 121 starts with a phrase “unless the context otherwise requires”. The phrase “unless the context otherwise requires” is meant to prevent a person from falling into the whirlpool of "definitions" and not to look to other provisions of the Act which, necessarily, has to be done as the meaning ascribed to a "definition" can be adopted only if the context does not otherwise require. The expression “unless the context otherwise requires” excludes all situations except those for compelling reasons the intended definition has to be abandoned. Thus it appears section 125 would prevail over section 121. However, it is a rule firmly established that the intention of the legislature must be found by reading the statute as a whole.

The context here means scheme as a whole, the general scope of the scheme and the mischief that it was intended to remedy. Every clause of a scheme should be construed with reference to the context and other clauses of the scheme, so as, as far as possible, to make a consistent enactment of the whole scheme relating to the subject matter.

Under the scheme section 124 grants relief where a person has filed a return and has indicated an amount of duty as payable, but has not paid. Further section 123 also provides such amount qualifies as “tax dues”. The purposive interpretation of the scheme has to be considered.

It appears the legislature is clear but the unskillfulness of the draftsman in introducing certain words in the scheme results in apparent ineffectiveness of the language. Since courts strongly lean against reducing a statute to a futility, it is permissible in such cases to reject the surplus words to make the statute effective and workable. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly construction giving rise to anomalies should be avoided. {VeluswamiThevar v. G. Raja Nainar, AIR 1959 SC 422, pp. 427, 428}.

In the premises of above discussion, it can be derived that sub-clause (ii) of clause (f) of section 125(1) have to be read down. Thus, those cases where a return is filed indicated an amount of duty as payable, but has not paid shall qualify under the scheme and relief would be available as amount in arrears.



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Dalpatsinh Ukabhai Vasava vs. PCIT, Gujarat HC. [2019] 108 taxmann.com 265 (Gujarat). 24 June 2019

Requirement of depositing disputed tax dues before CIT(A) relaxed

Facts of the case:

For AY 2016-17, AO passed an assessment order raising huge tax demands against assessee towards additions made in respect of bogus unsecured loan received by it and bogus investment in properties made by it.

Assessee filed appeals before CIT (A) and approached AO and requested for stay of demand pending such appeals. AO directed to deposit 20% of disputed tax demand, to stay recovery of remaining amount.

The assessee thereafter also applied to PCIT for stay of demand. PCIT did not give any relief to the assessee and directed to pay 20 per cent of the demand.

On writ petition HC observed as follows:

The High Court quoted reference to instruction No 14 issued by CBDT dtd. 2 Feb 1993 and then dated 29 Feb 2016. The circular lays down 15 per cent of the disputed demand to be deposited for stay, as a general condition. The circular does not prohibit deviation from this standard formula.

The Circular itself grants discretionary powers to AO and Commissioners to decrease or increase the % of tax dues to be deposited for taking stay pending appeal.

Based on the above, the Court directed the Assessee to deposit 10% of dues for stay pending appeal as the tax demand was high and 20% amount was ₹ 34 Lakhs which the assessee could not deposit based on his financial condition.

Pankajbhai Jaysukhlal Shah C/o. Meena Agency Limited vs. ACIT(1), Gujarat High Court, Spl. Civil Application 230/2019, 9 April 2019**Jurisdiction on reopening of assessment***Facts of the case:*

Assessment was completed for AY 11-12 u/s. 143(1), thereafter notice was issued for reopening the assessment u/s. 148. In response, the petitioner submitted that the return filed initially be treated as the return filed in response to notice u/s. 148 and requested the AO to supply a copy of the reasons recorded for reopening the assessment.

After issuance of notice u/s. 148, the charge over the petitioner's case was transferred to ACIT.

Upon receipt of the reasons recorded, it was observed that the same had been recorded by DCIT. In the meanwhile, assessee participated in the assessment proceedings. Thereafter, by a letter dated 20-12-2018, assessee raised objections against the initiation of proceedings under section 148 of the Act. Before such objections could be decided by the respondent, the assessee has filed the present petition seeking reliefs noted hereinabove.

Revenue contended that issuance of the notice by the AO is a procedural lapse which has happened on account of the mandate of e-assessment scheme and non-migration of PAN in time. It was submitted that this being a procedural lapse, such defect would be covered under the provisions of section 292B of the Act and therefore, the impugned notice cannot be said to be invalid.

On writ petition HC observed as follows:

In the matter of Hynoup Food & Oil Industries Ltd. vs. ACIT, 307 ITR 115 (Gujarat), wherein the court after referring to the provisions of sections 147 and 148 of the Act, held that when section 147 is read in conjunction with section 148(2) of the Act which mandates that the AO shall, before issuing any notice under section 148(1) of the Act, record his reasons for issuing the notice, it is clear that the officer recording the reasons under section 148(2) and the officer issuing notice under section 148(1) has to be the same person.

Since the notice under section 148 of the Act is a jurisdictional notice, any inherent defect therein cannot be cured under section 292B of the Act. A notice under section 148(1) of the Act would be a valid notice if the jurisdictional AO records the reasons for reopening the assessment u/s. 148(2) and thereafter the same officer namely the jurisdictional AO issues the notice u/s. 148(1) of the Act.

Since the same has not been followed in the instant case, notice u/s. 148 is set aside.

**STUDENTS' CORNER****MANAGEMENT LESSONS OF UNORGANISED SECTORS IN INDIA*****Compiled by Heet Shah***

According to a report by Indian Labor Market (ILO) and NSSO, it was found that 90% of the employment in the agriculture sector and 70% of the employment in non-agriculture sector lies under unorganized sector, generating around 50% of country's gross domestic product. Thus, it is imperative to discuss the unorganized sector from various perspectives.

There is more entrepreneurship per square feet in unorganized sector. Considering from the Dabbawala management to newspaper vendor, their management skills are always apt to provide services on time without even knowing much about supply chain management, ERP, mergers. The unorganized sector knows how to keep the operational cost and capital investment to be low by using bare minimum requirement and satisfying the customers' need. Often knowing or unknowingly they do follow PORTERS FIVE FORCE MODEL and SIX SIGMA RULE and many other such things.

The unorganized sector still faces many difficulties which corporate and organized sector don't face. This include insufficient labour laws, no social security, no concept of occupational safety/services, lack of implementation of Health & Safety legislation and many more such problems. Due to all these problems, the skill set that unorganized sector has cannot be explored to its maximum. Considering today's world example, a milk vendor would never want his next generation to become a milk vendor due to all these because of all the hindrances faced by him.

We can overcome this problem by HUMAN RESOURCE MANAGEMENT. Generally employees are not that educated and therefore employers assume them as labour and not as human capital. Employer- Employee interpersonal relations in the unorganized sector are very poor and hence at times employees face difficulties. Human resource management helps to solve this problem by recruitment, selection, performance appraisals, compensation, training and development. Challenges of the unorganized sector such as lack of skilled workforce, higher attrition rate, lack of formal education, insufficient skill development centers etc. can be addressed through a proper framework of HR policies and procedures may be implemented.

Also a PLATFORM BASED MODEL should be created for unskilled and semi skilled labour, where their selection is done on the basis of the skill set, the prior experience and all the core competence instead of just selecting them on qualifications. It will provide recognition to the worker with prior skills or information to get equal acceptance to the formal way of learning. This platform will assist them in out performing their capabilities to train and further train themselves in a way that the expertise levels coordinate with the prerequisites of the activity.

Currently, the unorganized sector's GDP contribution is 50% without even using the concepts discussed. If they are inculcated, the GDP growth of unorganized sector is unimaginable, isn't it?



3rd Study Circle Meeting



Momento to Speaker Ketan Vajani by Past President, Manish Choksi



Sponsor Finwell Presentation



Momento to Speaker Nitin Bhuta by Past President Hiten Shah



Participants during breaktime

3rd Study Circle Meeting



Group Picture



Participants of 3rd Study Circle

ATTENTION

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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

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Associate Editor of MCTC Bulletin : Shri Brijesh M. Cholera

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

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st September, 2019

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.

