



**The Malad
Chamber of
Tax
Consultants**



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MCTC Bulletin

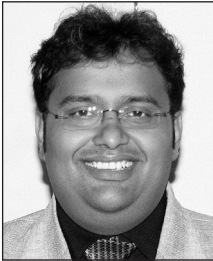
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October, 2012



President's Communiqué



Dear Members,

The Hectic month of September is over which shall be followed by hectic month of October where we will be busy in filing Sales Tax Returns, TDS Returns and Service Tax Returns, which shall be followed by one more hectic month, i.e., due date of VAT Audit which is preponed from 31st January to 30 November the date which is clashing with holy festival of Deepawali.

On 11 October, 2012 service cell meeting was held and various difficulties faced by the dealers and Tax Practitioners were discussed with Hon'ble Commissioner of Sales Tax and his team. The topics discussed were particularly regarding 48(5), Refunds, Registrations, etc.

Regarding 48(5) Commissioner is of crystal clear mind that beneficiary has to pay tax amount along with interest u/s's 30(2) and 30(4), no relief shall be given in such cases to anyone. As per the service cell meeting various important circulars giving some relief to the dealers are in pipeline. Some other gist of service cell meetings and points discussed are also given in this bulletin, for your records.

The Government has issued Order No. 3/2012 dated 15th October, 2012 extending the date of submission of the ST-3 return for the period 1st April, 2012 to 30th June, 2012, from 25th October, 2012 to 25th November, 2012. However, no date for the period 1st July, 2012 to 30th September, 2012 is specified yet.

Since the due date of VAT audit is November we have arranged Diwali get-together and Dr. Bharat D. Vasani Saraswati Sanman Samarambh in the month of December.

We are also expecting the revised ST-3 returns soon and accordingly we will be arranging immediately study circle meetings for the benefit of the Members.

Lastly we all have also requested Hon'ble Commissioner of Sales Tax to restore the due date of VAT audit back to 31st January.

Regards,

Sachin Gandhi
President

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SALES TAX UPDATE

Compiled by CA Nitin D. Kenia and CA Bharat K. Gosar

Notification issued by the State Government under the M.V.A.T Act, 2002

PFT/2012/46/ADM-20 dated 2nd August, 2012

Vide this notification, due date for making payment of profession tax for the year 2012-13 for enrolment holder was extended from 30.6.2012 to 31.8.2012 This Notification was, however, not applicable who is recently enrolled on or after 31.5.2012.

VAT 1512/CR 84/Taxation-1 dated 30th July, 2012

Vide this Notification, following amendments are carried out to the Maharashtra Value Added Tax Rules, 2005. Amendments are effective from 01/08/2012 unless stated otherwise.

Rule 17(15)(b)/Rule 41/45/45A/46/83: If the dealer has not filed return within prescribed time limit then he will have to pay late fees of ₹ 5000/- in addition to the tax and interest, before filing the return. Consequential amendment is made in Rule 41 relating to time of payments; Rule 45 relating to method of payment, Rule 45A relating to electronic payment and refund, Rule 46 relating to notice for payment of tax, Rule 83 relating to grant of certificate of entitlement to eligible industrial unit to incorporate words "Late fees".

Rule 25: Consequential amendment is made in Rule 25 to state that an order imposing late fees of ₹ 5,000/- may be incorporated in the order of assessment relating to that period.

Rule 55A: Amendments are carried out to this Rule relating to conditions and restrictions for grant of refund. In sub-rule (3) amendment is made to redefine export for the purpose of explanation to Rule 51(3) (a)(i). Now the dealer will be treated as exporter for the purpose of quick refund, if his export turnover during previous year or during the period under refund application is more than 25% of his total turnover of sales or ₹ 100 crore whichever is less. This amendment is effective from 1/4/2012.

Rule 58(1A): Under Rule 58(1A), cost of land is to be deducted from the agreement value of under constructed flat, premise, etc. for arriving at the taxable sale value of flat, premise etc. where the land is also transferred along with the flat, premise, etc. But, as per proviso to Rule 58(1A), deduction towards cost of land should not exceed 70% of the agreement value. However, vide this notification, the condition relating to restricting the cost of land to the extent of 70% of the agreement value is removed.

VAT 1512/CR 91(1)/Taxation-1 dated 27th August, 2012

From 1/9/2012 sale of notified furnishing fabrics covered under Schedule Entry C-101 will be exempt when sold except at the last point of sale within the State.

VAT 1512/CR 91(3)& (4)/Taxation-1 dated 27th August, 2012

Vide this notification, the State Government has covered various items of furnishing cloth under Schedule Entry C-101(a) and C-101(b) and levied tax @ 5%. The amendment is effective from 1st September, 2012. Readers may go through the notification to find out the items.

VAT 1512/CR 91(2)/Taxation-1 dated 27th August, 2012

While calculating the turnover of sales by a dealer covered under retail composition scheme, turnover of sales of furnishing fabrics covered by Schedule Entry C-101 will be excluded. Amendment is effective from 1st September, 2012.

Circulars issued by the Commissioner under the M.V.A.T Act, 2002

- **No. 16T of 2012 dated 25th September, 2012**

Vide this circular the Commissioner has, in details, explained the implications of the various Notifications dated 27th August, 2012 issued by the State Government making furnishing cloth taxable @ 5% on last point of sale.





- **No. 17T of 2012 dated 25th September, 2012**

To give effect to the interim order of the Supreme Court in case of Maharashtra Chamber of Housing Industry, the Commissioner has modified his earlier Trade Circular No. 14T of 2012 dated 6th August, 2012 issued for the builders & developers.

- (1) Builders and developers who did not obtain registration under MVAT Act, 2002 can obtain the same on or before 15th October, 2012.
- (2) Time for payment of tax, uploading of returns and application for administrative relief is extended upto 31st October, 2012.

- **No. 18T of 2012 dated 26th September, 2012**

The builders and developers who were unregistered under VAT Act for any period from 20.6.2006 onwards are required to obtain the VAT TIN, pay the tax and upload the returns on or before the dates specified in circular No. 17T of 2012. After payment of tax and uploading of returns, they are further required to apply for administrative relief in prescribed form on or before 31st October, 2012. Vide this Circular, the Commissioner has further asked them to submit the details in prescribed annexure showing the working of his tax liability. The format of annexure is available on the mahavat website.

DIRECT TAX UPDATE

Compiled by CA Haresh P. Kenia

- **DTAA – AGREEMENT FOR EXCHANGE OF INFORMATION WITH RESPECT TO TAXES WITH GUERNSEY {208 TAXMANN 212 (ST.)}**

The Central Government *vide* Notification No. 30/2012 dated 9/8/2012, in exercise of the powers conferred by section 90 of the Income-tax Act, notifies that all the provision of the agreement between Government of Republic of India and State of Guernsey for the exchange of information with respect to taxes as set out in the agreement will be given effect to the Union of India w.e.f. 11th day of June, 2012.

- **TRANSFER PRICING – NOTIFIED PERCENTAGE UNDER SECTION 92C(2) (Second Proviso) FOR THE PURPOSE OF COMPUTATION OF ARM'S LENGTH PRICE {209 TAXMANN 1(ST.)}**

The CBDT *vide* its Notification No. 31/2012 dated 17th August, 2012, in exercise of the powers conferred by section 92C(2) (Second Proviso), notifies that where the variation between the Arm's Length Price determined under section 92C(2) and the price at which international transaction has actually been undertaken does not exceed 5% of the latter, the price at which international transaction has actually been undertaken shall be deemed to the Arm's Length Price for the A.Y. 2012-13.

- **PRESS RELEASE – APPOINTMENT OF Dr. POONAM KISHORE SAXENA AS CHAIRPERSON OF CBDT {209 TAXMANN 1(ST.)}**

Press Release No 402/92/2006-M, dated 21st August, 2012

Dr. Poonam Kishore Saxena has taken over as Chairperson, CBDT on 21st August, 2012. She is an IRS Officer of 1975 batch. She holds a Master Degree in Economics from Rajasthan University and is also a PhD in Economic on the topic "Widening the Direct Tax – Efforts of the Central Government for Economic Growth in India."

Dr. Saxena was selected as member, CBDT in March, 2011. Prior to this appointment she worked as Director General (Investigation) in Jaipur for three years. During her long career, she has worked in Lucknow, Meerut, Ahmedabad, Jaipur, and Delhi in various areas like Administration of Income Tax, Appeals and Recovery.



❑ **AMENDMENT TO INCOME TAX (DISPUTE RESOLUTION PANEL) (First Amendment) Rules, 2012 {209 TAXMANN 3 (ST.)}**

The CBDT, in exercise of the power under section 144C(14) of the Income-tax Act, *vide* Notification No.–33/2012 dated 24th August 2012 gives the Income Tax (Dispute Resolution Panel) (First amendment) Rules, 2012. It amends Rule 3 of the Income Tax (Dispute Resolution Panel) Rules, 2009. Hitherto, Rule 3 (2) authorised board to assign by name three Commissioners of Income Tax to each panel as a member who, in addition to their regular duties as Commissioner shall also carry the function of the panel. This sub-rule 2 has been amended by which the board is now authorised to assign by designation (Earlier by Name) three Commissioners of Income Tax to each panel as a member to carry on the function of a panel.

The sub-rule 3 has been substituted whereby the board is now authorised to assign one Commissioner of Income Tax as a reserve member to each panel who shall also carry on the function of a panel, in place of any member, as and when required by the Director General of Income Tax (International Taxation).

The sub-rule (3A) has been inserted whereby it is provided that the Director General of Income Tax (International Taxation) may after giving the eligible assessee an opportunity of being heard and after recording the reason transfer a case from one panel to another panel.

❑ **DISPUTE RESOLUTION PANEL – RECONSTITUTION OF DISPUTE RESOLUTION PANEL AT MUMBAI – 1 {209 TAXMANN 4 (ST.)}**

The board in partial modification of Order 6/FT & TR/2012, and in exercise of power under section 144C of the Income-tax Act, reconstitutes the Dispute Resolution Panel at the Mumbai with the approval of Chairman, CBDT. The specific details of the order are available at above citation.

❑ **INSTITUTIONAL MECHANISM FOR FORMING DEPARTMENTAL VIEW ON CONTENTIOUS LEGAL ISSUES {209 TAXMANN 5 (ST.)}**

The CBDT *vide* office memorandum dated 28th August, 2012 decided to set up Institutional Mechanism to formulate “Departmental view” on Contentious Legal Issues with a view to provide clarity on Contentious legal issues, promote consistency of approach on a given issue and reduce litigation. The board provides the guidance on the followings:

- a) Formation of Central Technical Committee.
- b) Appointment of the Secretariat.
- c) Regional Technical Committee.
- d) Identification of Contentious Legal Issues.
- e) Procedure at Regional Technical Committee.
- f) Work process of Central Technical Committee.
- g) Dissemination of “Departmental View”.

The further details in this respect are available at above citation.

❑ **REPORT UNDER SECTION 115JC FOR COMPUTING ADJUSTED TOTAL INCOME AND ALTERNATE MINIMUM TAX OF A PERSON OTHER THAN COMPANY. {209 TAXMANN 9 (ST.)}**

The CBDT *vide* Notification No. – 34 dated 28th August, 2012 gives Income Tax (Ninth Amendment) Rules, 2012. It Substitutes rule 40BA and Form No. 29C. It came into force from 1st April, 2013. The rule 40BA provides for report of an accountant which is required to be furnished by the assessee under section 115JC(3) of the Income-tax Act and which shall be in Form No. 29C. It substitutes form of report under section 115JC of the Income-tax Act for computing adjusted total income and Alternate Minimum Tax for a person other than company.



□ **ADVANCE PRICING AGREEMENT SCHEME {209 TAXMANN 29 (ST.)}**

The CBDT *vide* Notification No. 36/2012 dated 30th August, 2012 gives the Income Tax (Tenth Amendment) rules, 2012, whereby it notifies an “Advance Pricing Agreement Scheme”. It inserts rule 10F to Rule 10T of Income Tax Rules, 1962. The Finance Act, 2012 had inserted sections 92CC and 92CD in the Income-tax Act, introducing the provision of Advance Pricing Agreement. The Advance Pricing Agreement scheme came into force from 30th August, 2012. The rules provides as under :

- a) Rule 10F : Provides for meaning of the expression used in the matter of Advance Pricing Agreement.
- b) Rule 10G : Provides for persons eligible to apply.
- c) Rule 10H : Provides for pre-filings consultation.
- d) Rule 10-I : Provides for advance pricing agreement.
- e) Rule 10J : Provides for withdrawal of application for agreement.
- f) Rule 10K: Provides for preliminary processing of application.
- g) Rule 10L : Provides for procedure.
- h) Rule 10M : Provides for terms of the agreement.
- i) Rule 10N : Provides for amendments to application.
- j) Rule 10-O: Provides for furnishing of annual compliance report.
- k) Rule 10P : Provides for compliance audit of the agreement.
- l) Rule 10Q : Provides for revision of an agreement.
- m) Rule 10R : Provides for cancellation of an agreement.
- n) Rule 10S : Provides for renewing an agreement.
- o) Rule 10T : Provides for miscellaneous.

It also insert rule 44GA which provides for procedure to deal with the request for bilateral or multilateral Advance Pricing Agreement.

It insert the following forms :

- 1) Form No. 3CEC : Application for pre-filing a meeting.
- 2) Form No. 3CED : Application for an Advance Pricing Agreement.
- 3) Form No. 3CEE : Application for withdrawal of Advance Pricing Agreement Request.
- 4) Form No. 3CEF : Annual Compliance report on Advance Pricing Agreement.

The further details of the notification is available at above citation.

□ **PRESS RELEASE – RATIONALE BEHIND ADVANCE PRICING AGREEMENT SCHEME {209 TAXMANN 11 (ST.)}**

The CBDT *vide* press release dated 31st August, 2012 explains the rationale behind Advance Pricing Agreement scheme introduced by the Minister of Finance *vide* Notification No. 36/2012 dated 30th August, 2012.





SERVICE TAX UPDATE

Compiled by CA Rajkamal Shah

"The CBEC has informed that Service Tax Return for the period from April to September 2012, will not be submitted as the automated system of Central Excise and Service Tax (ACES) site is closed for modification in ST-3 return forms to accommodate the change in service tax regime from 1.7.2012 (changeover from specified taxable services to negative list based levy). The new due date shall be announced after the required changes are made in the software.

It may be noted that earlier the Government had issued a notification that in the present return form only details from 1st April to 30th June should be given. However, the latest communication as above has clarified that the entire half year period from 1st April to 30th September would be filed as ACES would not accept any return for the time being".

The Government has issued Order No. 3/2012 dated 15th October, 2012 extending the date of submission of the ST-3 return for the period 1st April, 2012 to 30th June 2012, from 25th October, 2012 to 25th November, 2012. However, no date for the period 1st July, 2012 to 30th September, 2012 is specified yet.

RECENT JUDGMENT UNDER SERVICE TAX

Compiled by
CA Sunny H. Kachalia

1. Whether Commission received from shipping lines / freight forwarders is subject to Service Tax.

Facts: The appellant M/s. Seagull Freight Systems, Chennai was engaged in the business of rendering Customs House Agent service and Transport of goods by road Service. Apart from receiving income for clearing the goods from customs, the appellant had received sea freight commission / brokerage @ 2% on ocean freight under pre-paid terms from the liner / carrier / shipping line for availing their service to various destinations in connection with supporting their business of liner / carrier / forwarders. Lower Adjudicating authority held that appellant is liable to pay service tax on such commission / brokerage under business auxiliary service.

Held: Shipping line is not the client of appellant and there is no client / service provider relationship with the shipping line as far as incentives are concerned. Reference was also made to the case of *Lee and Muir Head Pvt. Ltd vs. Commissioner of Service Tax, Bangalore*, which was similar to the facts of the present case, wherein the Court held that "as regards brokerage commission of 2% paid for booking export cargo, it is seen that the agents of the shipping lines normally book the export cargo. The appellants actually get commission for getting orders for export of cargo and if the same is considered as business auxiliary service then the same would be considered as exempt as per Notification No. 13/2003 which grants exemption to services rendered by commission agent. Further secondary service providers are not taxable".

Considering the above judgment, Court held that primary service of appellant is CHA and booking of export cargo with shipping line is the secondary service and cannot be classified under the category of business auxiliary service as there is no client service provider relationship. Therefore commission received from freight forwarders is not subject to service tax.

(In RE: *Seagull Freight Services 2012 (27) STR 530 (Commr. Appl.)*)

2. Whether CENVAT credit can be claimed for service tax paid on GTA for transportation from place of removal to customer's premises.

Facts: The appellant Ms. Madras Cements Ltd. had claimed CENVAT credit for service tax paid on GTA service for the period prior to 31.3.2008 and post said date for transportation from place of removal to the customer's premises. Department had argued that credit of the said expenses cannot be claimed as





credit as the same is not an “input service” as defined under Rule 2(l) of CENVAT Credit Rules, 2004.

Held: Prior to 1.4.2008, the definition of input service included transportation of final products from the place of removal and also having regard to the case of *Commissioner of Central Excise vs. ABB Ltd*, it was held that outward transportation from place of removal to the customer’s site is eligible as credit. Accordingly, Court held that credit can be claimed of Service Tax paid on GTA service for period prior to 01.04.2008.

However, for period post 1.4.2008, the definition of input service included only clearance of final product up to the place of removal. In the present case, appellant has claimed service tax credit on GTA service for transportation from factory / depot to the customer premises and the same cannot qualify as “up to the place of removal”. Accordingly Court held that credit cannot be claimed of service tax paid on GTA service for the period post 1.4.2008.

(Madras Cements Ltd vs. Commissioner of C. Ex., Bangalore 2012 (27) STR (Tri-Bang.)

FORTHCOMING EVENT

DECEMBER, 2012

Joint workshop on MVAT and Service Tax organised jointly with STPAM, CTC, AIFTP and BCAS starting from 6th December, 2012

Along with Diwali get together we have Saraswati Sanman Samarambh in which we will be awarding Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC member for outstanding performance in passing exams of SSC/HSC with 75% marks & above & students who cleared post graduation professional exams like CA, CS, CWA, MBBS, MBA, Engineers. All members are requested to send the certified marksheets to any of the office bearers of the chamber before 31st October, 2012. In case of any query members can please contact Shri Sachin Gandhi, President on 9821482020.

Details Required:-

Member's Full Name, Email Id, Mob. No., Student's Full Name, Gender, Age, Name of Exam Cleared, Year Of Exam, Percentage, Name of School / College / Institution

Members Can Also Forward the above details and contact any of the office Bearers for any clarifications

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Proforma Form for Seventh Dr. Bharat D. Vasani Saraswati Sanman Trophies

(Fill The Form in Capital Letters only)

Member's Name : _____

Email 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, 2012

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JUDICIAL JUDGMENTS

CA Dharmen Shah

Sec. 194C read with Sec. 40(a)(ia) of Income-tax Act 1961:- Violation of provisions of Provident Fund Act is no ground to determine TDS liability under Sec. 194C

The assessee was a civil contractor and made payment to various persons but failed to deduct TDS on said payments. In course of assessment proceedings, the assessing officer invoking provisions of Sec. 40(a)(ia) disallowed the said charges.

On appeal, the assessee had produced some registers, namely labour register, wage register etc., which were accepted by the Commissioner (Appeals) and the additions were deleted.

These registers did not contain the addresses of the labourers nor it contained revenue stamp, nor it was signed by the Labour Department. Adding to above no PF had also been deducted. Question was whether all these wrongs in its entirety or individually make the expenses incurred by the assessee deniable. It was held that violation of Provident Fund Act and Labour Laws are not of Income-tax Act.

Unless violation of any law makes payment illegal, the same cannot be hit under the Income-tax Act. These are circumstances where Sec. 37(1) is to be considered.

Thus, since above registers are available and not proved to be bogus, it cannot have effect of assuming assessee was not employing labourers directly and the payments had been made to the sub-contractors, who had provided the assessee with the labourers.

Deputy Comm. of Income Tax, Circle 51, Kolkata vs. Arjun Bhowmick [IT Appeal No. 1071.(kol.) Of 2010 dated 3rd July 2012 (A.Y. 2006-07)]

Sec. 56(2):- A company can validly transfer the shares by way of gift, provided Articles of Association of the donor company permit the same; and such gift being capital receipt is not taxable unless it falls under section 56(2)

The assessee had received three residential flats from its sister concern, a UK based Co. which were capitalised as fixed assets. In this respect, assessee explained that it has received shares of company as a gift from sister concern and thereby the assessee became entitled for use and occupation of three flats. The gift of shares was duly supported by a registered Deed of Gift executed between the foreign donor company and the assessee wherein the donor had unconditionally gifted, transferred and assigned to the donee the shares along with all its rights, title and interest attaching thereon

This transaction was a colourable device and therefore, he taxed the value of flats as adopted for wealth-tax purpose as income from other sources under section 56(1). Opinion held that a gift could not logically be made by one artificial juridical entity to another because in such cases the basic condition of love and affection did not exist. – **Assessing Officer.**

Held that it was nothing but a benefit derived by the donee out of its business relations with the donor company and therefore, was to be taxed as profit and gains of business & profession under section 28(iv). Value adopted by stamp duty authorities for levy of stamp duty to be value of flats. – **CIT (Appeals)**

Held, that a combined reading of Sec. 82 of the Companies Act, Section 5 and Section 122 of the TPA suggests that a company can validly transfer the shares by way of gift, provided Articles of Association of the donor company permit the same. Since foreign donor company, produced Certificate and Attestation by the Notary Public of the City of London, it amply showed that it was legally authorised to gift shares.

Since the transaction is a gift and therefore, a capital receipt in the hands of the assessee, it cannot be said to be a case of any benefit or perquisite arising from business. Thus, in the absence of any specific provision taxing a 'gift' as a deemed business income, provisions of sec. 28(iv) cannot be applied.

Section 56(2)(viii) are applicable for the transactions effected after 1-6-2010; thus having no impact on this case. The transaction involved is nothing but a gift and is, therefore, a capital receipt not taxable under the alleged provisions of the Act. – **Tribunal**

DP World (P.) Ltd. vs. Deputy Commissioner of Income-tax - 2(1) [IT APPEAL NOS. 3627 & 3841 (Mum.) of 2012 dated 12th October 2012 (A.Y. 2008-09)]

S. 143(3) : Assessment – Service of notice at address other than address shown on return which returned unserved, assessment held to be invalid. (Provisions of section 292BB is not applicable prior to assessment years 2008-09)

The assessment was completed on the basis that notice issued under section 143(2) which was received back unserved. When penalty proceedings were initiated the assessee challenged the assessment order stating that no notice were served





on the assessee under section 143(2), as the notice issued was not sent to correct address hence returned unserved. The Commissioner (Appeals) dismissed the appeal on the ground that the assessee participated in the proceedings through authorised representative and by virtue of section 292BB, the assessee was precluded from challenging the notice.

On appeal Tribunal held that the service of notice at address other than address shown on return, which returned unserved held to be not proper service. Provision precluding assessee from taking such objection is not applicable to assessment years prior to 2008-09, hence the assessment order passed by the Assessing Officer under section 143(2)(ii) was held to be bad in law.

Ashok B. Bafna vs. Dy. CIT (2012) 18 ITR 43 (Mum.) (Trib.) (A.Y. 2007-08)

S. 237: Refunds – Credits for tax deducted at source – CBDT- High Court seeks to end TDS & refund harassment by Department. (S.199)

One Anand Parkash, FCA, addressed a letter dated 30.4.2012 to the High Court in which he set out the numerous problems being faced by the assessee across the country owing to the faulty processing of the Income Tax Returns and non-grant of TDS credit & refunds. He claimed that because of the department's fault, the assessee were being harassed. The High Court took judicial notice of the letter, converted it into a public interest writ petition and directed the CBDT to answer each of the allegations made in the letter and certain other queries that the Court raised. The Court also appointed eminent senior counsel to assist it. The department accepted that tax payers are facing difficulties in receiving credit of TDS & refunds on account of adjustment towards arrears. As an interim measure to provide immediate relief to the assessee, the Court passed the following order:

- (i) The problem is apparent, real and enormous. It has escalated because of centralised computerisation and problems associated with incorrect and wrong data which is uploaded by both the deductors or payees and the AOs. The issue is of general governance, failure of administration, fairness and arbitrariness. The magnitude of the problem and the number of tax payers adversely affected thereby is apparent from the fact that 43% and 39% of the returns in Delhi zone for the FYs 2010-11 and 2011-12 were defective. Huge demands are created on this count. Every attempt possible has to be made to redress the grievance of the tax payers. The tax payers should not be made to run around, make repeated visits to deductor or the AO.

Rejection of TDS, which has been deducted and paid, hurts the assessee and puts him to needless inconvenience, harassment and costs. It gives bad name to the Revenue.

The problems faced by tax payers can be broadly classified into two categories. First, failure and difficulties in getting credit of TDS paid and second, adjustment of past demands or arrears of tax from refunds payable.

- (ii) As regards the first problem of failure of tax payers to get credit for TDS on account of (a) incorrect entries/ mismatch in Form 26AS and (b) failure of the deductor to correctly upload the TDS return, the department's response is unconvincing and unsatisfactory. It expresses complete helplessness on the part of the Revenue to take steps and seeks to absolve them from any responsibility. Denying benefit of TDS to a tax payer because of fault of the deductor, which is not attributable to the deductee, is a serious matter and causes unwarranted harassment and inconvenience. Revenue cannot be a silent spectator and wash their hands or express helplessness. This problem is normally faced by the small taxpayers including senior citizens as they do not have CAs on their pay roles. The marginal amount involved compared to the efforts, costs and frustration, makes it an unviable and a futile exercise to first approach the deductor and then the AO. The CBDT should examine the issue and take appropriate steps to ameliorate and help small tax payers and senior citizens;
- (iii) If there are small and insignificant mismatches in the TDS details, they should be condoned or ignored. After all tax has been paid or credited in the name of the assessee. Once the amount is correctly and rightly reflected in Form AS26, small or technical mismatch in the return should not be a ground to deny credit of the amount paid. If the AO still feels that benefit of TDS reflected in AS26 should not be given, he should issue notice to the assessee to revise or correct the mistake and only if the necessary rectification or correction is not made, an order u/s 143(1) should be passed and demand should be raised.
- (iv) As regards the second problem, CPC has stated in letter dated 21.8.2012 that refunds to the extent of Rs. 4800 crores have been adjusted against arrears at the s. 143(1) stage by the CPU. The department's action of adjusting the refunds without giving prior intimation to the assessee is contrary to s. 245. In a few cases where prior intimation is given and the assessee approaches the AO, he is told to approach the CPC, Bengaluru, and when he approaches the CPC, he is told to approach the AO. The department should file an affidavit stating whether prior intimation is sent or not and set out the procedure followed if an assessee objects to the adjustment. In the meanwhile, the department shall not adjust the refunds against the demands at the s.143(1) stage without giving the assessee an opportunity to file a reply. The AO should deal with the reply and communicate his findings to the CC before processing the refund or adjustment of demand.

Court on its own Motion v. CIT (Delhi)(High Court).





PROFORMA OF ENROLLMENT FORM FOR
JOINT WORKSHOP ON MVAT AND SERVICE TAX JOINTLY WITH STPAM,
CTC, AIFTP AND BCAS for the year 2012-2013

To
 The President
 Malad Chamber of Tax Consultants
 Malad (West), Mumbai 400 064.

Dear Sir,

Please enroll me as participant for the Workshop on MVAT and Service Tax for the year 2012-2013. The Registration fees of ₹ 1,500/- for members of the association and ₹ 2,000/- for Non Members is remitted herewith by Cash / DD / Cheque No _____ dated _____ drawn on _____.

Particulars of Member/Participants is as under :

Name : Mr. / Mrs. / Miss _____
 Address : _____

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 Telephone : (O) _____ (R) _____ Fax _____
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The Malad Chamber of Tax Consultants

JOINT WORKSHOP ON MVAT & SERVICE TAX organised jointly by S.T.P.A.M., B.C.A.S, C.T.C, A.I.F.T.P. & M.C.T.C.

Venue : STPAM Library Hall, R. No.104, 1st Floor, Vikrikar Bhavan, Mazgaon, Mumbai-400010

Time : 2.30 p.m. to 5.30 p.m.

Fees : ₹ 1,500/- for Members & ₹ 2,000/- for Non-Members (Including Service Tax)

Sr. No.	Date	Day	Subject	Speakers
1	6.12.2012	Thursday	Issues in Definition of Service, Exempt & Declared Services	CA Sunil Gabhawala
2	15.12.2012	3rd Saturday	Issues in Valuation of Services, Abatement & Reverse Charge Mechanism	CA Naresh Sheth
3	29.12.2012	5th Saturday	Issues in Place of Provision of Service Rules, 2012	CA Girish Raman
4	3.1.2013	Thursday	Issues in Taxation of Intangible Goods & Leasing Trans. under MVAT) CST & Service Tax	CA Deepak Thakkar - MVAT CA Bharat Shemlani - Service Tax
5	19.1.2013	3rd Saturday	Issues in Works Contract Transactions under MVAT, CST & Service Tax	CA Vikram Mehta - MVAT CA Ashit Shah - Service Tax
6	2.2.2013	1st Saturday	Issues in Point of Taxation Rules, 2011 Issues in Interest, Penalties and Showcause Notices/Summons.	CA Rajiv Luthia
7	16.2.2013	3rd Saturday	Issues in CENVAT Credit Rules, 2004	Eminent Faculty
8	2.3.2013	1st Saturday	Issues in Input Tax Credit under MVAT	Adv. C. B. Thakar
9	16.3.2013	3rd Saturday	Issues in Branch Transfer & Sales in transit under CST Act.	Adv. Nikita Badheka
10	30.3.2013	5th Saturday	Taxation of Hoteliers, Restaurants, Caterers, Franchisee etc. under MVAT, Luxury Tax & Service Tax	CA Sujata Ranganekar - MVAT CA Manish Gadia-Service Tax

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