



**The Malad
Chamber of Tax
Consultants**

MNW/I75/2021-23

**43rd
YEAR**

MCTC Bulletin

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

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December, 2022

President's Communiqué



Dear Members,

As the year is about to end, everyone across the world is talking about India as being one of the nations which shall lead the world and shall have enormous growth in the years to come. The journey has already started with wonderful achievements this year. I would like to point out a few highlights.

The recently concluded 21st World Congress of Accountants was held for the first time in India in its history stretching over 118 years and attracted a record 10,000 delegates from over 100 countries.

India is set to assume the G20 Presidency from the 1st of December this year from Indonesia and will convene the G20 Leaders' Summit for the first time in the country in 2023.

India completed 75 years of Independence. The glorious history of its people, culture and achievements were celebrated as "Azadi Ka Amrit Mahotsav" at the initiative of the Government of India

India had a phenomenal performance at CWG 2022 Indian athletes won 61 medals (including 22 golds, 16 silver and 23 bronze).

India is poised to become a powerful economic growth engine. It is one of the fastest-growing economies in the world, has the third-largest start-up ecosystem and tech services, digital, and manufacturing sectors. India's commitment to democracy and self-governance has been unwavering in the past decades and its future today is brighter than ever before.

Just like India's growth story, MCTC has also put in extra efforts to spread knowledge amongst its members and also conduct activities for the betterment of society for a better year ahead.

Tomorrow, is the first blank page of a 365 page book. "New year, a new chapter, new verse, or just the same old story? Ultimately we write it. The choice is ours." — Alex Morritt

MEMBERS CONTRIBUTION

As per the tradition of our Chamber, we shall publish the budget booklet "**Direct & Indirect Tax Proposals – An Analytical Study - The Finance Bill, 2023**" authored by experts in the field. This shall be the **25th Silver Jubilee Year** of the budget book. This publication is a handy guide to the professionals and their clients for the new proposals. In case of advertising and bulk bookings, kindly refer the details printed elsewhere in the bulletin.

EVENT UPDATES

We had a successful programme on Intricacies in filing GSTR9 and 9C for the Financial Year 2021/22 on 10th December, 2022 on Online Zoom Platform led by CA Mayur Parekh. The programme was well attended by more than 100 people and was highly appreciated.

MCTC in association with Interact Foundation organised a webinar on 15th December 2022 on following topics

- India Growth Story by CA Deven Chokshi (Director KR Choksey)
- Start-up Companies Introduction by CA Narendra Mehta.

This was one of the unique webinar where the participants got Insights into India's fast progress in various fields like technology, power generation, farming etc.

Members also got insights about the way start-ups function, how they can raise funds with a practical live example of a start-up's journey right from the conception stage to its implementation, raising funds, marketing of products and going global.

UPCOMING PROGRAMMES (Detailed Programmes Printed in the Bulletin)

MCTC has organised a **Blood Donation** Camp jointly with Shree Kandivali Halai Lohana Mitra Mandal Trust in Association with **TATA CANCER HOSPITAL on 25th December, 2022 from 9.30 am to 4 pm**. Members are requested to support this noble cause by participating and spreading the word in their circles.

16th Dr. B. D. Vasani Saraswati Sanman Samaroh for felicitation of students who achieved academic excellence will be held on 25th December, 2022. This will be an Annual Get Together Programme with a musical evening and shall be followed by Dinner and fellowship. Members are requested to actively participate in the feat.

Wishing you all a Merry Christmas and Happy New Year in Advance.

Regards

CA Ujwal Thakrar
President

Request: Members please send your Mobile No. & Email ID to update list of life members
Please send message on 7039006655 or email to maladchamber@gmail.com

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

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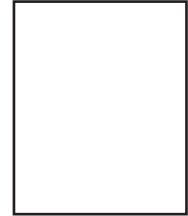


The Malad Chamber of Tax Consultants

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Admin Office: C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

MEMBERSHIP FORM



Date:..... /..... /.....

To,

The Hon. Joint Secretaries,
The Malad Chamber of Tax Consultants, Mumbai.

Dear Sirs,

Being eligible to practice under the Direct and/or Indirect Taxes Laws, I hereby apply for admission as a member of *The Malad Chamber of Tax Consultants* with the following particulars:

1. NAME OF MEMBER MR/MRS/MISS:
2. FATHER'S / HUSBAND'S NAME:
3. QUALIFICATIONS:
4. MEMBERSHIP NO., if any (with name of the association):
5. PERSONAL DATA:
- DATE OF BIRTH:...../...../..... BLOOD GROUP:.....
- SPOUSE'S NAME: SPOUSE'S DATE OF BIRTH...../...../.....
- MARRIAGE ANNIVERSARY:...../...../.....
- PROFESSION: ADVOCATE CA ITP ICWAI ICSI GSTP/STP
6. OFFICE NAME:.....
- OFFICE ADDRESS:
- PIN CODE: STATE:..... TEL. NO: FAX NO:
- MOBILE NO: EMAIL ID:
7. RESIDENTIAL ADDRESS:
- PIN CODE: STATE:
- TEL. NO: FAX NO: MOBILE NO:
8. COMMUNICATION TO BE SENT TO:OFFICE RESIDENCE

The amount of ₹ 2,500/- by Cheque/Draft No. dated /...../..... drawn on

9. Bank Detail for Online Payment

Beneficiary Name: The Malad Chamber of Tax Consultants.

Bank Name: HDFC Bank Ltd. – Marve Road, Malad West Branch, Account No. 00471000136285;
IFS Code: HDFC0000047.

10. Kindly register on this google form link also for faster processing of membership - <https://bit.ly/mctc-e-regn>

UNDERTAKING

I, do hereby declare that whatever stated herein above is true to the best of my knowledge and belief. I also undertake to abide by the Rules, Regulation and Constitution of the Association, as amended from time to time.

.....
(Signature)



The Malad Chamber of Tax Consultants

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CA Ujwal Thakrar <i>President</i>	CA Khyati Vasani <i>Vice-President</i>	Adv. Jaideep Sonpal <i>Hon. Treasurer</i>	Shri Rajen Vora Shri Jitendra Fulia <i>Hon. Secretary</i>
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Dear Sir / Madam,

Sub: Invitation for Advertisement in Booklet “Direct & Indirect Tax Proposal and Bulk Orders of the 25th Silver Jubilee Edition

We introduce ourselves as leading professional organization in, western suburban of Mumbai, representing many well-known Chartered Accountants, Company Secretaries, Cost Accountants, Tax Practitioners, as our members.

As per tradition of our Chamber, we are going to organize Public Meeting on Direct & Indirect Tax proposal to be introduced by the **Union Budget 2023 on 1st February, 2023**. This year also we propose to organize budget public meeting on 4th or 5th of February, 2023 for the benefit of our members and public at large. We shall publish the booklet **“Direct & Indirect Tax Proposals – An Analytical Study - The Finance Bill, 2023”** authored by the masters in the taxation field within 48-72 hours from the day the budget is tabled. This year we are going to publish on the said subject.

All our earlier editions were widely accepted by tax professionals and are circulated to their clients as well. Generally, all the books are sold immediately across the counter every year.

We are inviting advertisements for the same as per rate mentioned as under:

Position	Amount	Complimentary Copies
Back Cover (outer) (Colour)	30,000/-	10
Back Cover (inner) (Colour)	25,000/-	5
Front Cover (inner) (Colour)	25,000/-	5
Inside page (full)	4,000/-	2
Inside page (half)	2,500/-	1
We invite Sponsorship proposal for 25th Silver Jubilee Publication	15	
We invite proposal for Stalls and Standees at Budget meeting Venue		

Kindly place your advertisement order **on or before 15/01/2023**, by drawing a cheque in favor of “The Malad Chamber of Tax Consultants” payable at Mumbai. Advertisers will be entitled to have complimentary copies of “Direct & Indirect Tax Proposals – An Analytical Study” as mentioned above.

You can email us your order or any further inquiry at maladchamber@gmail.com or call us on Mr Jaideep Sonpal - 9892005352.

We shall also take bulk advance bookings of our for 10 or more copies. Kindly contact Mr. Jitendra Fulia 9820997205.

Our bank details for online payment is:

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Bank Name : HDFC Bank Ltd – Marve Road Malad West Branch; Account No.:00471000136285; IFS CODE:HDFC0000047.

Thanking you, Yours faithfully,

For The Malad Chamber of Tax Consultants,

Ujwal Thakrar–
(President)

DIRECT TAX CASE LAWS

Compiled by CA Rupal Shah
(Partner at RHDB & Co LLP)



Wockhardt Limited (Appellant) v/s Deputy CIT (Respondent).

Citation: [2022] 143 taxmann.com 178, Supreme Court, 12 October 2022

'Between conflicting decisions of non-jurisdictional HCs, ITAT must apply the non-jurisdictional HC decision of larger Bench'

Facts:

Assessee file an appeal before the ITAT against the order of the CIT (A). While filing an appeal before ITAT assessee file an additional ground of appeal on supporting the decision of Single bench of Madras High Court a non-jurisdictional High Court. However, department view on the additional ground of appeal is totally different on the basis of the decision of Divisional bench of Andhra Pradesh High Court a non-jurisdictional High Court. Decision of both the court is in contrary view. Now the question arise that in case of conflicting decision of non-jurisdictional court, decision of which court should be taken into consideration.

Held

There is one decision of the division bench consisting of two Hon'ble judges, and there is another decision of a single judge bench consisting of only one Hon'ble judge. We would like to draw the attention in case of CIT vs B R Constructions [(1994) 202 ITR 222 (AP-FC)] & in case of CIT vs Vallabhdas Vithaldas [(2015) 56 taxmann.com 300 (Guj)] wherein in it was observed that "A single Judge is bound by a decision of a Division Bench exercising appellate jurisdiction. If there is a conflict of Bench decisions, he should refer the case to a Bench of two Judges who may refer it to a Full Bench. A single Judge cannot differ from a Divisional Bench unless a Full Bench or the Supreme Court overruled that decision specifically or laid down a different law on the same point".

Thus, the judgement of the non-jurisdictional High Court having divisional bench need to be consider and not the decision of the non-jurisdictional High Court having single bench.

P. Srinivasan (Appellant) v/s Income Tax Officer (Ward 3) (Respondent)

Citation: IT APPEAL NO. 709 (CHNY.) OF 2019,19 October 2022

'Constructive Gift' from paternal uncle is tax exempt u/s 56(2)(vii)

Facts:

Assessee is a sole proprietor of rice mill and was scrutinized u/s 143(3) on the ground that assessee has received the gift of Rs 50 lakhs from his uncle (father's brother). During the assessment proceeding assessee submit that the donor confirm that the gift given was out of love and affection for the welfare of the brother son and his family and as per donner instruction gift was transferred through the bank account of his son and daughter in law residing at Singapore as non-residence (NRI). However AO passed the order on the ground that the evidence of relationship, copy of return of income of the donor was not produced, assessee uncle is nowhere involved in the transaction, fail to prove the genuineness of the gift since gift was received directly from the bank account of uncle son and daughter in law and invoke the provision of Sec 56(2)(vii) on the basis that uncle son and daughter in law not fall in the definition of 'relative'. Aggrieved by the order of the AO assessee file an appeal before CIT (A) however CIT (A) passed the order against the assessee on following grounds that assessee fail to submit evidence which prove the capacity of the uncle's son and daughter in law to make the payment and mere submitting the statement from the person who fall within the definition of 'relative' that the particular sum has been given as gift cannot make the sum of money received from other person as a receipt of gift from the said relative. Being aggrieved from the order of CIT(A) assessee file an appeal before ITAT.

Held

The term 'relative' include brother or sister of either of parents of the assessee. The gift received from such relatives is considered exempt for recipient for the simple reason that such gifts could normally be received by a person out of natural love and affection. In the present case, the assessee's uncle falls within the term 'relative' and it is clear that the gift has happened on instruction of the uncle. The uncle has, unequivocally, confirmed the grant of gift to the assessee. The uncle is assessed to tax in India. The only reason to treat the same as the income of the assessee is that the amount has been transferred from bank account of uncle's son and his daughter-in-law who are residing abroad as non-resident. Under such circumstances, the gift so received by the assessee could not be considered as income of the assessee. The son and daughter-in-law are not alien to the uncle but very close relatives and it could be construed that the gift was given by the son and daughter-in-law first to uncle and thereafter, it was remitted by uncle to the assessee.

State Bank of India (Appellant) v/s Asst CIT (TDS) (Respondent)*Citation: IT APPEAL NOS. 1135 (JP) OF 2018,31 December 2018***No TDS leviable on reimbursement of foreign leave travel allowance****Facts:**

Assessee, the bank, during AY 2012-13 reimbursed the travel expenses of its employees who travelled outside India under Leave Fare Concession (LFC) claim. However ACIT(TDS) passed the order u/s 201 & 201(A) of the act on account of non-deduction of tax u/s 192 of the Act on reimbursement of LFC claim for foreign travel, stating that LTA provisions are applicable only for travel within India and not for outside India.

Being aggrieved by the order of AO for imposing penalty u/s 271 C assessee filed an appeal before CIT (A) who also confirmed the imposition of penalty on the ground that the assessee failed to bring the material against the observation of JCIT at the time of proceeding. On second appeal,

Held

In the context of an employee who has availed LFC, it is for the employee to submit to his employer, the declaration in support of his LFC claim along with the evidence of expenditure having been incurred towards the travel so undertaken by him and/or his family to the assessee bank. Once the employee submits such LFC claim and self-declaration, the employer is required to take the same into consideration while estimating his salary income.

Question is whether employer should take such self-declaration on face value, or it should do some reasonable verification and due-diligence before allowing such claim while estimating the salary income.

Reliance is placed on decisions of Hon'ble Supreme Court in case of CIT v. I.T.I. Ltd . [2009] 183 Taxman 219 (SC) & CIT v. Larsen & Toubro Ltd. [2009] 181 Taxman 71/313 ITR 1 (SC) wherein it was held that the beneficiary of exemption under section 10(5) is an individual employee. There is no circular of Central Board of Direct Taxes (CBDT) requiring the employer under section 192 to collect and examine the supporting evidence to the declaration to be submitted by an employee(s).

Hence an assessee-employer is under no statutory obligation under the Income-tax Act, 1961, and/or the Rules to collect evidence to show that its employee(s) had actually utilized the amount(s) paid towards leave travel concession(s)/ conveyance allowance.

Conclude that on the basis of fact of the case and decision of the supreme court as stated above employer (ie assessee bank) is no longer required to deduct the TDS on reimbursement of LFC and penalty levied under section 271 C is directed to be deleted.

Analysis of the decision of the Supreme Court in case of CIT vs. Mansukh Dyeing and Printing Mills [2022] 145 taxmann.com 151 (SC)

Gunjan Kakkad

This article is an attempt to analyze the decision of the Supreme Court in case of Mansukh Dyeing and Printing Mills (supra) (hereinafter referred to as "the Assessee firm"). For this purpose, it would be relevant to understand the facts and circumstances of the case.

**Facts of the case**

1. The Assessee firm had four partners viz. Mr. M. H. Doshi, Mr. Manohar Doshi, Mr. V. H. Doshi and Mr. Hasmukhlal H Doshi.
2. Vide a family settlement agreement dated 2nd May, 1991, the share of Mr. M. H. Doshi was reduced from 25% to 12% and Mrs. Ranjan Doshi, Mr. Prakash Doshi and Mr. Rajeev Doshi were admitted as partners. Thereafter, the first three partners mentioned above retired.
3. On 1st November, 1992, the Assessee firm underwent reconstitution. Under the terms of reconstitution, four more partners were admitted viz. Mrs. Vaishali Shah, Mrs. Bhavna Doshi, Mrs. Rupal Doshi and M/s. Ranjana Textile Pvt. Ltd and the existing partners viz. Mr. Hasmukhlal Doshi and Mrs. Ranjan Doshi had decided to withdraw a part of their capital and the same was recorded in the reconstituted partnership deed.
4. The new partners that were admitted to the partnership firm had contributed a sum of Rs. 4.50 lakhs, Rs. 2.25 lakhs, Rs. 2.25 lakhs and Rs. 2.50 lakhs respectively.
5. On 1st January, 1993, the assets of the firm were revalued and an amount of Rs. 17.34 crores were credited to the accounts of the partners in their profit-sharing ratio. Mr. Hasmukhlal Doshi and Mrs. Ranjan Doshi (the existing partners) had withdrawn around a sum of Rs. 20-25 lakhs.
6. The Assess firm had revalued the land and building from Rs. 21,13,225/- to Rs. 17,56,00,000/- thereby increasing the value by Rs. 17,34,86,772/-. It was the case of the Revenue that crediting the capital accounts upon revaluation

constitutes transfer as per section 45(4) of the Act. It was contended by the Revenue that the new partners had contributed a very small amount and that revaluation and credit to capital accounts benefitted the partners. The benefit in case of each such new partners was recorded as under:

Sr. No.	Name of the Partner	Amount contributed	Capital balance after revaluation
1.	Mrs. Vaishali Shah	4.50 lakhs	3.12 crores
2.	Mrs. Bhavna Doshi	2.25 lakhs	1.56 crores
3.	Mrs. Rupal Doshi	2.25 lakhs	1.56 crores
4.	M/s. Ranjana Textiles Pvt Ltd	2.50 lakhs	1.73 crores

7. The firm challenged the order of assessment in appeal before the CIT(A) without any success. Aggrieved by the same, an appeal was filed before the Hon'ble Income-tax Appellate Tribunal ("the Tribunal").
8. The Tribunal held that revaluation of asset and crediting the capital account did not involve transfer. In coming to this conclusion, reliance was placed upon the decision of the Supreme Court in case of Hind Construction Ltd [1972] 83 ITR 211 (SC).
9. The order passed by the Tribunal was affirmed by the Hon'ble High Court. Challenging the correctness of the decision of the High Court, the Revenue filed an appeal before the Hon'ble Supreme Court.

Decision of the Court

10. After considering the contentions raised by both the parties, the Court has decided the issue in favour of the Revenue and held as under:

*"7.5 In the present case, the **assets of the partnership firm were revalued to increase the value by an amount of Rs. 17.34 crores on 01.01.1993 (relevant to A.Y. 1993-1994) and the revalued amount was credited to the accounts of the partners in their profit-sharing ratio and the credit of the assets' revaluation amount to the capital accounts of the partners can be said to be in effect distribution of the assets valued at Rs. 17.34 crores to the partners and that during the years, some new partners came to be inducted by introduction of small amounts of capital ranging between Rs. 2.5 to 4.5 lakhs and the said newly inducted partners had huge credits to their capital accounts immediately after joining the partnership, which amount was available to the partners for withdrawal and in fact some of the partners withdrew the amount credited in their capital accounts. Therefore, the assets so revalued and the credit into the capital accounts of the respective partners can be said to be "transfer" and which fall in the category of "OTHERWISE" and therefore, the provision of Section 45(4) inserted by Finance Act, 1987 w.e.f. 01.04.1988 shall be applicable". (Emphasis supplied)***

11. There are two other important aspects that needs to be highlighted. Firstly, the Court has distinguished the decision in case of Hind Construction Ltd (supra) on the ground that section 45(4) was inserted subsequently and thus, the Court had no occasion to consider the amended/ inserted section 45(4) of the Act. Secondly, the ratio and the reasoning adopted in the case of A. N. Naik Associates and Ors. (2004) 265 ITR 346 (Bombay) which dealt with a situation of retirement of a partner in a firm which continued to exist was applied in the case of the Assessee firm.

Analysis

12. A reading of the above paragraph indicates that due to following aspects, the Court decided the issue in favour of Revenue:
 - a. Assets of the Assessee firm were revalued;
 - b. The revalued amount was credited to the accounts of the partners in their profit-sharing ratio and such credit can effectively be said to be distribution of the assets;
 - c. There was a huge credit balance in the capital account of the new partners upon revaluation despite introducing amounts ranging from 2.50 lakhs to 4.50 lakhs immediately after joining the Assessee firm which was available to the partners for withdrawal and in fact, some of the partners did withdraw the amount credited in their capital accounts.
13. It is humbly submitted that the decision of the Hon'ble Court is incorrect for the following reasons:
 - a. Concept of revaluation under the Act is irrelevant and to the contrary, it is specifically ignored.
 - b. Treatment in the books of accounts is irrelevant to determine taxability under the Act.
 - c. In order to levy capital gains, the test of transfer provided under section 2(47) of the Act ought to have been satisfied.
 - d. The decision in case of A. N. Naik Associates and Ors. (supra) arose in completely different facts and circumstances of the case and thus, the same is not applicable.

14. The above aspects are elaborated hereunder.

Concept of revaluation is irrelevant under the Act and to contrary specifically provided to be ignored

15. It is submitted that the concept of revaluation of assets is of no relevance under the Act. Infact, there are certain provisions under the Act which ignore the concept of revaluation. Reference may be made to the following provisions of the Act:
- Second proviso to section 45(4) (as amended by Finance Act, 2021) specifically provides that credit to capital account of the partners upon revaluation has to be ignored.
 - Section 32(1)(ii) read with section 43(6) of the Act provides that depreciation has to be computed on actual cost (in the year of acquisition) or upon written down which is nothing but actual cost less depreciation which is actually allowed. The concept of revaluation of the asset is completely ignored.
 - Explanation 1 to section 115JB(2) of the Act provides that any amount of depreciation debited to profit and loss account which relates to the revalued amount of the asset has to be ignored for the purpose of computing taxable book profit. In other words, if the carrying value of an asset (without revaluation) is Rs. 90 and after revaluation, the amount is Rs. 100 and depreciation has been claimed on the said revalued amount of Rs. 100, then for the purposes of computing the book profits, depreciation attributable to the increased amount of Rs. (100 – 90) has to be ignored.
 - Proviso to explanation 1 of section 50B of the Act specifically provides that any change in the value of assets on account of revaluation of assets shall be ignored for the purpose of computing the net worth of undertaking.
16. In view of above, it is submitted that revaluation per se is of no consequence and in fact, irrelevant for the purpose of determining the charge of tax under the Act.

Treatment in the books of accounts is irrelevant to determine taxability under the Act

17. One of the reasons for the Court to hold that section 45(4) was applicable was that some of the partners, after revaluation of the assets had withdrawn from the capital balance and therefore, the assets so revalued and credit into capital account of the partners can be said to transfer.
18. It is submitted that if an amount is withdrawn by a partner, the same can be deposited back as well. In such a scenario, question that arises is that can this act of repaying would have the effect of nullifying the transfer? It is humbly submitted that credit of revalued amount and withdrawal by the partner should not have been the basis to hold it as transfer. It is further submitted that the Hon'ble Court has not appreciated that it is not unusual for a partner to withdraw a sum of money and deposit the same back with the firm or vice versa.
19. In order to attract transfer, the conditions provided under section 2(47) of the Act ought to have been satisfied and entries in books of account are not relevant [See Alapati Venkataramiah vs. CIT [1965] 57 ITR 185 (SC) and Taparia Tools Ltd [2015] 372 ITR 605 (SC)]. In the case of the Assessee firm, the assets were merely revalued and the revalued amount was credited to capital account of partners.
20. It was not even the case of the Revenue that assets of the firm were taken over by any of the partner of the firm. It is therefore humbly submitted that revaluation of assets and corresponding credit in the capital accounts of the partners cannot have any impact and infact, the same has no relevance under the Act.

In order to levy capital gain tax, the test of transfer provided under section 2(47) of the Act ought to have been satisfied

21. In the case of Sunil Siddharthbhai vs. CIT [1985] 156 ITR 509 (SC), it is held by the Supreme Court that transfer in general sense connotes the passing of rights in the property from one person to another. In one case there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In a third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. It is humbly submitted that upon satisfying the above test that one could contend that there is a transfer and an exception to the test is provided under section 45(2) of the Act read with clause (iv) to section 2(47).
22. In the present case, the Revenue has failed to apply the test laid down by the Supreme Court and merely considered that revaluation and corresponding credit to capital account constitutes transfer. It is sincerely submitted that the entire case of the Revenue was on untenable basis.

Decision of A. N. Naik Associates and Ors. (supra) was not applicable

23. Further, it is submitted that the case of A. N. Naik Associates and Ors. (supra) was a case where a retiring partner was indeed taking away a capital asset of the firm. In that context, the Court held that the word "otherwise" appearing in section 45(4) would be applicable and the firm would be liable to pay capital gains tax.
24. It is humbly submitted that in the case of the Assessee firm, the assets were merely revalued and the amounts were credited to the capital account of the partners. None of the partners whose capital account got credited were retiring from the partnership firm nor did they take away any capital asset from the Assessee firm. The asset continued to be with the firm. It was not even contended by the Revenue that revalued assets are taken over by any of the individual partner of the firm and that the firm ceased to have control and domain over the asset in any way. It is submitted that the decision of the Hon'ble Court in case of Sunil Siddharthbhai (supra) was not pointed out.
25. In my humble opinion, further complication that arises is that if the assets were transferred in future for a sum of Rs. 50 crores, question that arises is that who will be the person liable to capital gain tax? The partner can contend that the capital asset was never in exclusive domain and control [CIT vs. Podar Cement (P) Ltd (1997) 226 ITR 625 (SC)] and thus, the same was never held by him and thus, question of capital gains in the hands of the partners does not arise. The firm on the other hand may contend that it cannot transfer same asset twice once in assessment year

1993-94 and second in future and since the Court has already held that the assets are transferred in assessment year 1993-94, the same cannot be taxed again.

26. In view of above, it is humbly submitted that the decision in case of Assessee firm requires reconsideration.

Impact of the decision after amendment under the Act by Finance Act, 2021

27. It is important to note that prior to amendment, section 45(4) was applicable in case of transfer of capital asset by way of distribution of capital asset on dissolution of a firm or other association of persons or body of individuals or otherwise. Section 45(4) of the Act has been completely amended and the specified entity (firm, AOP, BOI not being co-operative society) would be charged to tax where specified person (partner of a firm, member of AOP or BOI) receives money or capital asset or both in connection with reconstitution. Reconstitution has been defined under section 9B of the Act.
28. Along with the amendment to section 45(4) of the Act, Finance Act, 2021 has inserted section 9B with effect from 1st April, 2021. Under section 9B, the charge of tax is levied upon the specified entity (firm, AOP, BOI not being co-operative society) in case where specified person (partner of a firm, member of AOP or BOI) receives capital asset or stock in trade in connection dissolution or reconstitution.
29. It is pertinent to note that the term "otherwise" is not mentioned and thus, the decision in case of Assessee firm may not be relevant with effect from 1st April, 2021.

HISTORY OF GEOGRIPHICAL INDICATION & PRESENT CHALLENGES UNDER INDIAN LEGAL FRAMEWORK

Advocate Mansi Bathiya



HISTORY

The concept of formalizing Geographical Indication ("G.I.") was developed in France which was widely known as "appellation d'origine controlee" (AOC) which means "controlled designation of origin". The idea of G.I. is to protect and give legal rights to people whose trade or craft is from a specific region. A G.I. reflects the quality of a product that comes essentially from a particular region's features or attributes e.g., a G.I. for wine might indicate not only the region where the grapes are grown but it also considers the soil, the climate and might also indicate a particular patch of land in a vineyard.

INTERNATIONAL AGREEMENTS AND INDIAN LEGAL FRAMEWORK

The standards of protection and safeguarding for G.I. took its forms from the Paris Convention for protection of Industrial Property, 1883. It was followed by the Madrid Agreement for Repression of False or Deceptive Indications of Source of Goods, 1891 and covered under the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). India in particular follows 'The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) and the Geographical Indications of Goods(Registration and Protection) Rules, 2002 (GI Rules). The GI registry is established at Chennai by the Indian government, with all India jurisdictions.

G.I. REGISTRATION, VALIDITY AND THE INDIA APPROACH

It is pertinent to note that G.I. registration is not mandatory in India. But at the same time, there are some exclusive advantages for registered GI holders as ascribed u/s 21 of the GI Act. Further, before granting registration; the Producers are provided with insight on the need for registration and being recognized as an authorized and appraised about requirement of authenticity of a registered good(s) and to ensure the uniform quality of the good(s). Section 11(1) of the GI Act explains that G.I. can be filed by the producers or organization, an association of persons or any authority.

GI – u/s 18 GI Act is valid for a period of 10 years and it can be renewed after the completion of the validity. India has adopted a sui generis system concerning G.I. which ensures to focus on business practices, consisting of administrative product approval schemes, Usage of certification marks and safeguard Special regimes of protection (sui generis systems)

ADVANTAGES OF REGISTERED GI

G.I. not only protect and gives legal rights to people whose trade or craft is from a specific region; but it also has various other benefits. (Rights conferred by registration are mentioned under Article 21 of GI Act) Some of additional advantages are explained below.

❖ Curbs Migration:-

Most of the people who grow or make products which have the GI tag stay in rural or semi-urban areas. Their livelihood is specific to the region where the goods are produced.

❖ **Women Empowerment:-**

A lot of women are also involved in trades which have GI tag. GI protection will help them to generate more income and help them to lead a better and dignified life. A great example is the traditional industry of producing saffron (GI applied) in the state of Jammu & Kashmir. The process of producing saffron is mostly taken by women of the house who pick flowers as well as produce saffron after hours of back breaking work.

❖ **Economic Progress:-**

A direct result of getting the status is getting better remuneration for their product or produce. Once the status is granted, the manufacturer can charge a premium for his product. [we all have had at least once in our life thought of owning a Switz - watch or to have a Switz chocolate – that is the kind of branding a G.I. product can generate with right mix of awareness and quality control]. The proceeds from this increased revenue can help the producers to make a better life for themselves and it also incentivizes them to produce high quality goods which directly benefits the consumers.

❖ **Other Benefits:-**

- o Creation of a common supply chain for the area
- o Uniformity and stabilized prices
- o Preservation of traditions and traditional expertise
- o Tourism
- o Focus to preserve natural resources on which the product is based.

ILLUSTRATIONS

❖ **Rasgolla**

Government of West Bengal and Orrisa both had claim over the sweet dish 'Rasgolla'. After two years of tussle finally on 14 November 2017, the GI Registry of India granted West Bengal the GI status for "Banglar Rasogolla".

❖ **Darjeeling Tea V/s ITC**

Darjeeling tea was the first product in India to receive Geographical Indication in the year 2004-2005. Under the Tea Act, 1953 the tea plantations were owned and controlled by the government. Darjeeling Tea is famous for its well-known quality and aroma. There was a Tea Board which managed all the activities right from sowing till harvesting and sale in the market. ITC Limited had a lounge named 'Darjeeling Lounge' in the ITC Hotel in Sonar since 2003. The board filed a suit in Calcutta High Court stating that ITC was infringing their right by using 'Darjeeling Lounge' as it was their registered GI. The contention of the defendant was that Darjeeling is the name of the place and it is not famous only for tea. The board had its tag over tea and not the word 'Darjeeling'. Also, the suit was barred by limitation since the lounge started its operation prior to the Geographical Indication Act came into force. The judgement came in favour of ITC Limited as the board was authorized to use its certification of GI tag over tea and not a lounge.

CHALLENGES

❖ **AWARENESS:-**

The present government is doing its best to sensitize people about the benefits of G.I., especially through Ministry of Ayush however it is still not enough as there are several other products which despite having the coveted G.I. tag are relatively less known e.g., 'Surkha Guava' from Allahabad and Green Cardamom from Coorg.

❖ **QUALITY**

There is no central agency which monitors the manufacturing and quality of products having the G.I. tag which leads to different quality of products under the same G.I. tag. It is imperative to educate people about the proper manufacturing process and quality control. The Government must focus on creating strict guidelines in place to check that all the products having the G.I. tag are of a uniform quality.

WAY FORWARD

Considering the size and varied socio-cultural canvas of the country, many products/goods are still not on the GI list. There is a need to increase awareness amongst the artisans, craftsmen, and consumers as well. For it is not only the uniqueness and protection of the products that come with it, but the G.I. tag is also the symbol of the rich and varied history of India that can add to the inclusive development of the country. Which India has immense possibilities in G.I. it is contingent to government adopting strict implementation of the G.I. registration rules and ensure proper guidelines for quality standard compliance.



THE MALAD CHAMBER OF TAX CONSULTANTS

16TH DR. B.D. VASANI SARASWATI SANMAN SAMAROH

SARASWATI SANMAN AND MUSICAL GET - TOGETHER PROGRAM

CHIEF GUEST : MR. NIHAR JAMBUSARIA

Date : 25th December 2022
Time : 6 pm followed by dinner

VENUE : MCF Club, Gymkhana Road, Prem Nagar, Borivali (West), Mumbai

Contribution Rs.500/- per person

Kindly register in google form
<https://forms.gle/BovuXYxEMgGgg7pA6>

Blood Donation Camp

Jointly Organised by

Shree Kandivali Halai Lohana Mitra Mandal Trust



The Malad Chamber of Tax Consultants

Shree Kandivali Lohana Parivaar

In Association with TATA Cancer Hospital
 Donors will get certificates from TATA hospital

Please contact below organisers for any inquiry
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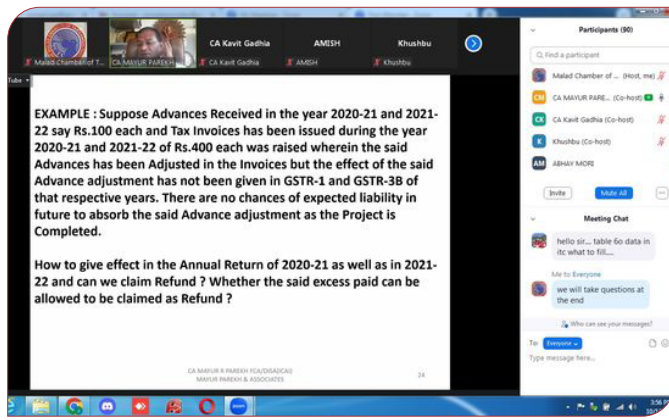
Sunday 25th December 2022 | 9.30am to 2.00 pm

Venue : Shree Kandivali Lohana Mahajanwadi, S.V. Rd, Kandivali (West), Mumbai-400067



Donate Blood | Save Life

Intricacies in filing GSTR9 and GSTR9C for Financial Year 2021/22 held on zoom platform on 10th Dec 2022



EXAMPLE : Suppose Advances Received in the year 2020-21 and 2021-22 say Rs.100 each and Tax Invoices has been issued during the year 2020-21 and 2021-22 of Rs.400 each was raised wherein the said Advances has been Adjusted in the Invoices but the effect of the said Advance adjustment has not been given in GSTR-1 and GSTR-3B of that respective years. There are no chances of expected liability in future to absorb the said Advance adjustment as the Project is Completed.

How to give effect in the Annual Return of 2020-21 as well as in 2021-22 and can we claim Refund ? Whether the said excess paid can be allowed to be claimed as Refund ?

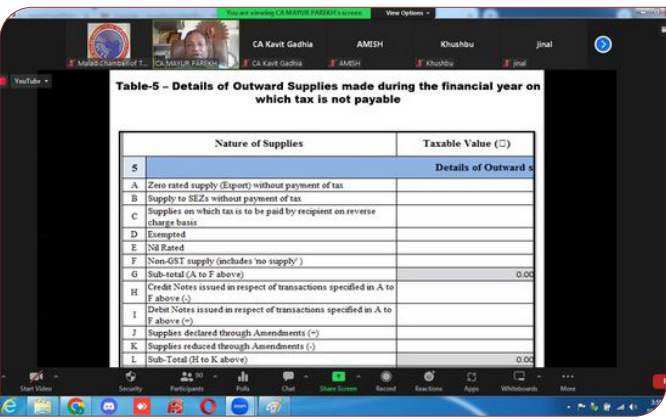



Table-5 - Details of Outward Supplies made during the financial year on which tax is not payable		
Nature of Supplies	Taxable Value (₹)	
Details of Outward Supplies		
A	Zero rated supply (Export) without payment of tax	
B	Supply to SEZs without payment of tax	
C	Supplies on which tax is to be paid by recipient on reverse charge basis	
D	Exempted	
E	Not Rated	
F	Non-GST supply (includes 'no supply')	
G	Sub-total (A to F above)	0.00
H	Credit Notes issued in respect of transactions specified in A to F above (-)	
I	Debit Notes issued in respect of transactions specified in A to F above (+)	
J	Supplies declared through Amendments (+)	
K	Supplies reduced through Amendments (-)	
L	Sub-Total (H to K above)	0.00

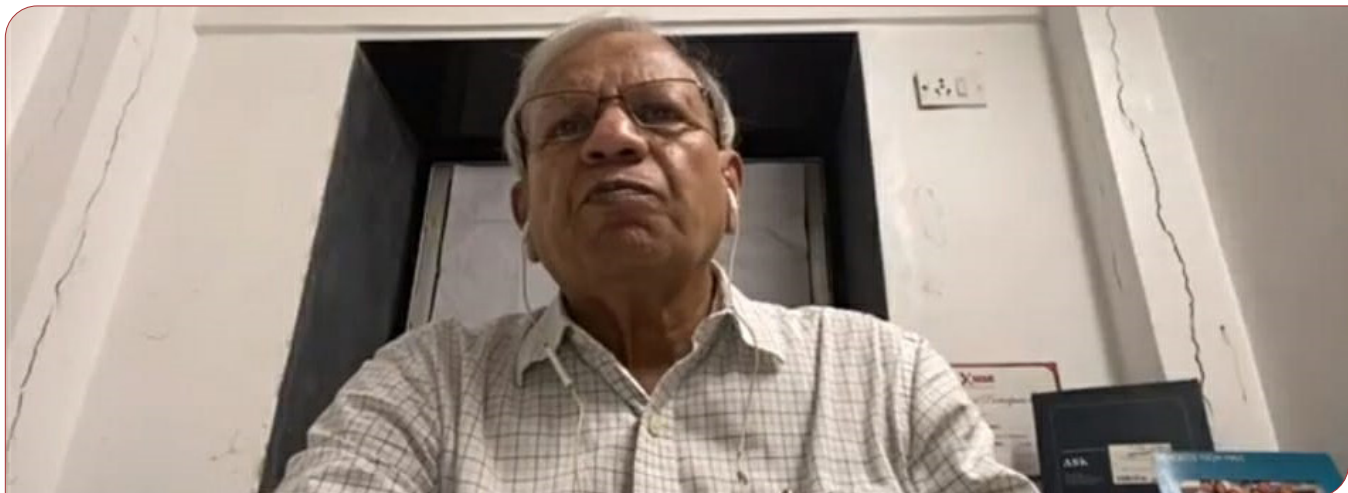
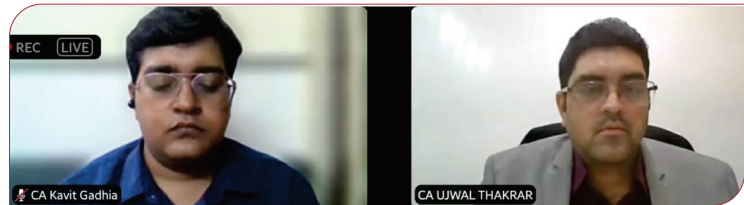


CA Mayur Parekh

**India growth story and capital market hereon and startup cos introduction
held on 15th Dec 2022**



CA Deven Choksi



CA Narendra Mehta

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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