



**The Malad  
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# MCTC Bulletin

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

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## President's Communiqué



My Dear Professional Colleagues,

We are ecstatic to announce that the Workshop on GST Law conducted jointly with GSTPAM, AIFTP, BCAS, CTC and WIRC of ICAI has started with great enthusiasm. I consider it as a privilege to have access to such thought-provoking and talented bunch of speakers. I sincerely believe that all the 15 sessions will aid to become a master in the law of GST.

A survey conducted two years ago states that not more than 2% Indians invest in stock market. From those who invest, majority trading done is tip-based. Thus, MCTC organized its 6th Study Circle on the topics related to Trading and Investing in stock markets along with its present and future scope. The highly skilful speakers CA Manish Chokshi and Nirvish Chokshi did a great job in guiding us through the ups and downs of the stock market.

Recently, the smallest continent of the world- Australia is being ravaged by the worst wildfires in decades. Each state had fires but New South Wales has been hit the hardest. NSW is the most populous state of Australia and 1588 homes have already been destroyed just there. Our prayers have finally worked and there is rain in few states. I hope everything returns to normalcy without further damage.

The flagship event of MCTC is round the corner. We, at MCTC have always made sure that we come up with the BUDGET BOOK with clause by clause analysis in the least time possible. We also organize a public meeting along with the book's publication. This year, MCTC along with Goregaon Sports Club invites you to attend Public Meeting on Union Budget 2020 on 4th February, 2020. I urge everyone to buy this book and to attend the public meeting which will be a guiding factor throughout the year.

India celebrates Republic Day on 26th January. On this day in 1950, India became the largest democracy in the world. Babasaheb Ambedkar gave us the most powerful Constitution and made us Republic of India.

Constitution is not a mere lawyer's document, it is a vehicle of life, and its spirit is always the spirit of the age.

**HAPPY REPUBLIC DAY!**

Thank you!

**CA Viresh Shah**  
President

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## DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

### 1. Prescribed class of persons under clause (XI) of the proviso to Section 56(2)(x) of the Income-tax Act-New Rule 11 UAC - [267 Taxman (St.) 15]

The Central Government, in exercise of powers conferred by clause (XI) of the proviso to Section 56(2)(x) r.w.s 295, *vide* Notification No. G.S.R. 836 (E) [NO. 96/2019(F. NO. 370142/29/2019-TPL)], DATED 11-11-2019, gives the Income tax (13th Amendment), Rules, 2019. It shall come in force from 01-04-2020. It shall be applicable from assessment year commencing on the 1st day of April, 2020 and subsequent assessment years. It inserts new Rule, 11UAC. It gives the prescribed class of person for the purpose of clause (XI) of the proviso to Section 56(2)(x) of the Income-tax Act.

It provides that the provision of Section 56(2)(x) does not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazette, regularised the transaction of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognizing right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident. It also defines the term "resident" & "unauthorised colony".

### 2. Section 194M and Sanction 194N – Amendment in Rules 30, 31, 31A, from 26Q and Form No. 27Q, New Form No. 16D and Form No. 26QD - [267 Taxman (St.) 16]

The Central Board of Direct Taxes, in exercise of powers u/s. 295 r.w. Section 194M & Section 194N, *vide* Notification No. G.S.R. 858 (E) [NO. 98/2019(F.NO. 370142/30/2019-TPL)], DATED 18-11-2019, gives Income-tax (14th Amendment), Rules, 2019. It came into force from the date of its publication in the Official Gazette.

- It inserts new Rule (2C) to Rule 30, prescribing the time limit of payment of 30 days from the end of the month in which deduction u/s. 194M is made and also prescribes a challan-cum-statement in Form No. 26QD for the payment of TDS.
- It inserts new Rule (6C) to Rule 30 prescribing the mode of payment being amount to be paid electronically within the time limit prescribed under Rule (2C) in respect of tax deducted u/s. 194M of the Income-tax Act.
- It inserts new Rule (3C) to Rule 31 of the Income-tax Rules prescribing Form No. 16D being certificate of tax deducted at source u/s. 194M and also prescribing the time limit of 15 days from the due date for furnishing the challan-cum-statement in Form No. 26QD.
- It inserts new clause (ix) to Rule 31A(4) of the Income-tax Rules requiring deductor to furnish particulars of amount paid or credited on which tax was not deducted in view of exemption provided in clause (iii) or clause (iv) of the proviso to Section 194N or in view of the notification issued under clause (v) of the proviso to Section 194N.
- It inserts new Rule (4C) to Rule 31A requiring every person responsible for deduction of tax u/s. 194M to furnish to the Principal Director General of Income-tax (Systems) and others, a challan-cum-statement in Form No. 26QD electronically within 30 days from the end of the month in which deduction is made.
- It inserts new Form No. 16D in Appendix-II of the Income-tax Rules.
- It amends Form No. 26Q in Appendix-II of the Income-tax Rules.
- It inserts new Form No. 26QD in Appendix-II of the Income-tax Rules.
- It amends Form No. 27Q in Appendix-II of the Income-tax Rules.

### 3. Double Taxation Agreement Section 90 – DTAA with Morocco – Amendment in Notification No. GSR 245(E), dated 15-03-2000 [267 Taxmann (St.) 1]

The Central Government *vide* Notification No. S.O. 3789(E) [NO. 84/2019 (F.NO. 503/09/2009-FTD-II)], DATED 22-10-2019 notifies the Protocol amending the Convention between the Republic of India and the Government of the Kingdom of Morocco for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has been signed at New Delhi on the 8th day of August, 2013, and the date of entry into force of the said Protocol is 15th July, 2019.

One may refer to above citation for further details.

### 4. Section 194N of the Income-tax Act – Payment of certain amount in cash-notified other person and class of persons. [266 Taxmann (St.) 54]

The Central Government, in exercise of the power conferred by Section 194N(v) of the Income-tax Act, *vide* Notification No. S.O. 3719(E) [NO. 80/2019 (F.NO. 370142/12/2019 - TPL (PART2))], DATED 15-10-2019, after consultation with Reserve Bank of India, hereby specifies,-

- The authorised dealer and its franchise agent and sub-agent; and
- Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent;

maintaining a separate bank account from which withdrawal is made only for the purposes of,-

- (i) Purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve Bank of India; or

- (ii) Disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India;

and a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the Reserve Bank of India have been adhered to.

It also defines the term "authorised dealer", This notification is deemed to have come into force with effect from the 1st day of September, 2019.



## Availment, Utilization and Refund of Goods and Services Tax Compensation Cess

Compiled by CA Bhavin Mehta

Availment, Utilization and Refund of Goods and Services Tax Compensation Cess

In this article I have analyzed availment, utilization and refund of compensation cess by a registered person.

**Some of the relevant provision of Goods and Services Tax (Compensation) Act, 2017 are reproduced below:**

Section 8(1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Service Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council;

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the CGST Act.

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**Section 9 (1)** Every taxable person, making a taxable supply of goods or services or both, shall –

- (a) Pay the amount of cess as payable under this Act in such manner;
- (b) Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Service Tax Act; and
- (c) Apply for refunds of such cess paid in such form,

as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods and services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or rules made thereunder.

**Section 11(1)** The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection integrated tax on such inter-State supplies under the said Act or rules made thereunder:

Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilized only towards payment of said cess on supply of goods and services leviable under the said section.

On reading the above provisions it becomes clear that Compensation cess is levied under section 8 of the Goods & Service Tax (Compensation) Act, 2017. Section 8 is the charging provision prescribing Compensation cess to be levied as CGST (as provided in section 9 of CGST Act) on the specified supply of goods or services or both. Section 11 of Goods & Service Tax (Compensation) Act, 2017 prescribes that all the provisions of CGST Act and IGST Act is applicable to Compensation Cess. Section 11 provides that provisions of CGST Act and the rules made thereunder including those relating input tax credit shall as far as may be, applicable in relation to the levy and collection of Compensation cess as they apply to CGST. Section 9 of Goods & Service Tax (Compensation) Act, 2017 provides that for claiming refunds of cess provision of CGST Act would apply.

Input tax credit provisions are prescribed in section 16 to 21 of CGST Act and rules notified under rules 36 to 45 of CGST Rules would apply to Compensation Cess. Refund is prescribed in section 54 of the CGST Act.

In terms of section 16 of CGST Act, every registered person as specified in section 49 shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to electronic credit ledger of such person.

Section 49(2) of CGST Act: The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

Section 41(1) of CGST Act: Every registered person shall, subject to such conditions and restrictions as may be prescribed entitled to take the credit of eligible input tax as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

Section 49 (5) of CGST Act: The amount of tax credit available in the electronic credit ledger of the registered person on account of –

- (a) Integrated tax shall first be utilized towards payment of integrated tax and the amount remaining, if any, may be utilized towards the payment of integrated tax and the amount remaining, if any may be utilized towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
- (b) The central tax shall first be utilized towards payment of central tax and the amount remaining, if any, may be utilized towards payment of integrated tax
- (c) The State tax shall be first be utilized towards payment of State tax and the amount remaining, if any, may be utilized towards payment of integrated tax:

Provided that the input tax credit on account of State tax shall be utilized towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) .....

(e) .....

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Section 49(6) of CGST Act: The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provision of section 54.

Section 54(1) of CSGT Act: Any person claiming refund of any tax and interest, if any paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

Section 54(3) of CGST Act: Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than –

- (i) Zero-rated supplies made without payment of tax;
- (ii) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on recommendations of the Council.

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Explanation - For the purpose of section 54

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund or tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).

(2) "relevant date" means –

- (a) in case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods, -
  - (i) if the goods are exported by sea or air, the date on which the ship or aircraft in which such goods are loaded, leaves India; or
  - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
  - (iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;

(b) in the case .....

(c) .....

(d) .....

(e) in the case of refund of unutilized input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period to which such claim of refund arises;

(f) .....

(g) .....

(h) .....

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Section 16(1) of Integrated Goods and Service Tax Act defines zero rated supply as under:

16. (1) "Zero rated supply" means any of the following supplies of goods or services or both, namely:-
- (a) export of goods or services or both; or
  - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

As the provision of CGST Act including section 16 is applicable to Goods & Service Tax (Compensation) Act, 2017, input tax credit of Compensation Cess can be taken to electronic credit ledger. However, in terms of proviso to section 11 of Goods & Service Tax (Compensation) Act, 2017, such cess can be utilized only towards payment of cess on outward supply. This means there is restriction in utilization of cess but not on availment of cess.

Though there is restriction in utilization of cess but there is no debarment to claim the refund of cess. Refund of cess is available under either of the two cases as prescribed in section 54(3) of the CGST Act, namely, (i) Zero-rated supplies made without payment of tax or (ii) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

Therefore, though an exporter may not be entitled to utilize the compensation cess against output tax of CGST or SGST or IGST but he can claim the refund of input credit of compensation cess against export of goods or services.

Similarly, a registered person who has the credit accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies may not be entitled to utilize the input tax credit of cess but can claim the refund of cess.



## JUDICIAL JUDGMENTS

*Compiled by CA Rupal Shah*

**Sharan Hospitality (P) Ltd. vs. DCIT 9(3), Mumbai, Bombay HC. [2019] 112 taxmann.com 372. 1st July, 2019**

**No rent income on deemed LOP, if the property is not legally occupiable.**

*Facts of the case*

The assessee had purchased a commercial property in a building towards end of December 2018, which was given occupancy certificate in May 2009. Assessee had leased out the property with effect from 1 April 2009. While filing return for AY 2009-10, assessee computed the notional rental receipts for the said period of three months and claimed the vacancy allowance, thus offering NIL amount to tax.

During assessment for AY 2009-10, AO held that for the period 1st Jan 2009 to 31st March 2009, the assessee had to pay tax on the notional rent for the said property. Assessee did not agree to the contention of AO.

On further appeal CIT(A) and the ITAT also rejected the assessee's appeal.

*On appeal to the High Court*

During the pendency of OC, assessee did execute a lease deed putting the lessee in possession of the property on 1st April, 2009. The assessee's explanation is that the same was only for completing the furniture and fixtures and not for occupation for commercial use.

During the period where the OC was not received, the property was not legally occupiable by the owner or by assessee or any other person under the license given by the assessee.

The appeal is decided in favour of the assessee.

**P. P. Mahatme vs. ACIT Circle 2, Margao, Bombay HC. [2019] 112 taxmann.com 253, 8th November 2019**

**Sum received on settlement of case of property from relatives was taxable as capital gains**

*Facts of the case*

The appellant is a Power of Attorney holder to Lorna Margaret Pinto, who is a Non-Resident Indian (NRI). Appellant was involved in a dispute relating to an immovable property in the State of Goa which was sought to be usurped by Cristovam and Alvaro, relatives of the Appellants. This led to the institution of Special Civil Suit No. 255/1999, which was ultimately disposed of by a Consent Decree dated 17-4-1998. In terms of the Consent Decree, the Appellant received an amount of ₹ 5.50 crore during the Assessment Year 1999-2000.

Notices for reassessment were served on P. P. Mahatme as POA holder of Lorna Pinto. The same was challenged before the Court for time barring, however the same was dismissed. Appellant then filed a SLP before the Supreme court, during pendency of which the assessment order was passed by AO treating the amount of compensation as capital gains. The Supreme Court rejected the SLP but allowed the appellant to file appeal on the assessment order.

The appeal before CIT(A) and ITAT against the above assessment order were dismissed.

*The High Court observed that*

There was no issue of any 'pre-existing right' as such between the appellant and the said Cristovam and Alvaro, it can really not be said that the settlement arrived at between the appellant and the said two persons qualify the same as bona fide family settlement, in order to infer therefrom that the consideration received was not some capital gains. These are all findings of fact, recorded by the three authorities.

Merely because said dispute regarding immovable property involved some family members and such dispute was ultimately settled by filing consent terms, same could not be styled as a family settlement and on such basis, it could not be held that consideration received as a result of such settlement did not constitute capital gains.

The amount received by the appellant was thus regarded as capital gains and taxed accordingly.



**STUDENTS' CORNER**

**SMART-CONTRACTS**

*Compiled by Heet Shah*

In recent times, the major two technologies that are considered to revolutionise the traditional business are blockchain and artificial intelligence. New and inventive models and types of business are invented and worked. One such implementation with the support of blockchain is Smart contract. Imagine two parties of different countries enter into contract, it takes days to enter into formal contract because one signs, send it to other and get authorized and everything. During this if any copies get misplaced or anything it will take months. What if? The whole contract can be accomplished within seconds with the help of the two parties and digital signature.

Smart contracts are a type of contract formed online. The interaction between the parties in forming the contract can be by many different electronic means: e-mail, through a computer program, or by two electronic agents programmed to recognize the formation of the contract.

They mainly have 3 distinct features:

1. They are executed, negotiated and coded in a blockchain technology.
2. They are mainly made of yes-no and if-then terms.
3. They are authenticated by third party miners who are paid in a cryptocurrency like Ethereum.

The concept of smart contracts is a modern and undefined one right now in our country. It can simply be said as a form of digital contract that is able to implement itself, without the help of any middlemen. Smart contracts along with blockchain technology propose to eliminate the needs of banks and other third parties which are needed to execute the “consideration” part of the contracts.

Basically, it is a part of the program that stores the rules of negotiations of a contract, checks the contract to automatically verify it and then by the end of it, executes it. It is an easy way of the transaction without any third party being involved in the transaction.

A smart contract is based on a program, unlike a traditional contract which is drafted with the help of human beings. Smart contracts just like the regular contracts define strict rules and consequences of non-performance of the contract. They use certain information as the input, process using the code wrt the regulations. Then move on to take necessary actions that are required to obtain the result.

Smart contracts are legally enforceable as they introduce rights, duties, obligations and remedies to all the parties to the contract and hence these are legally enforceable as contracts. It fulfils all the conditions of contract law and works efficiently with blockchain technology. Smart contracts cannot be modified easily, the obligations are computer coded. The obligations cannot be modified or amended and the parties will have to code the contract from the scratch.

**How do they actually work?**

As the terms and conditions have to be encoded in the program, smart contracts are mainly formed around contracts which are based on an ‘if-then situation’ – if x happens then y obligation will be enforced. Smart contracts with these features are best suited for industries like the insurance and the financial services sector.

There will be a permanent, time-stamped and irrevocable record of the transaction formed on the blockchain, it is accessible to all the participants in the transaction. The identity of all the parties will remain confidential because all the identification, negotiation and execution is done in code.

**Smart Contract over Traditional Contracts**

1. Smart contracts are easy to understand and comprehend. It ensures authentication and helps in preventing all kinds of frauds.
2. In a traditional contract, there will always be a risk factor of the parties not fulfilling their part of the contract. This is not the case in smart contracts, as a sanction is needed for the performance of the contract.
3. Traditional contracts can always end up in litigation which can go on for years. Smart contracts ensure that the parties are legally averse to crimes such as cheating and fraud.
4. Smart contracts have a minimal chance of being wrong due to the intervention of computer codes. Traditional contracts are drafted and executed by human beings. The degree of legal exposure will always be greater in traditional contracts.
5. Smart contracts are self-regulated. Traditional contracts can be regulated by a court of law if any kind of dispute arises.
6. Smart Contracts nullify the role of banks and third parties, so they are practically cost effective. Complex traditional contracts may involve a team of lawyers which may cost a fortune to the client.
7. Traditional contracts, first have to be drafted, then executed and then if the need arises a remedy has to be given by a court of law which can take a lot of time. A smart contract, on the other hand, ensures speedy execution and remedy.

It would be interesting to see as to how the market evolves with the changing times. The government is expected to come up with some kind of rules and regulations governing the smart contracts and blockchain technology. Smart contracts seem like a fantastic opportunity, especially for the government to stop leakages in various sectors and departments. Smart contracts taking over the traditional contract is bound to happen in the near future. It’s simplicity, low cost are some of the factors that make it a bestseller already.





### JOINT WORKSHOP ON GST LAW WITH GSTPAM, BCA, AIFTP, CTC, WIRC



### DIGNITARIES AT THE JOINT WORKSHOP



Vipul Choksi (President of CTC), Manish Sampat (President of BCAS), Viresh Shah (President of MCTC), Dinesh Tambde (President of GSTPAM), Nikita Badheka (President of AIFTP, WZ), along with other dignitaries (from left to right)

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