



**The Malad
Chamber of Tax
Consultants**



MCTC Bulletin

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

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March, 2023

President's Communiqué



Dear Professional Colleagues,

Of all the developmental challenges faced by the world today, the biggest and most critical challenge is the climate crisis. In fact, climate change is one of the three major driving forces of humanitarian emergencies across the globe, with countries that have contributed the least to global warming facing the worst climate-related disasters.

Few days before we have read in news "at 39.3 degrees Celsius, Mumbai records its hottest day of 2023 on 6th March". The highest maximum temperature that Mumbai has seen in March is 41.3 degrees Celsius, recorded on March 17, 2011. As you are aware we are again moving towards significant climate changes.

Climate change refers to long-term shifts in temperatures and weather patterns. These shifts may be natural, such as through variations in the solar cycle. But since the 1800s, human activities have been the main driver of climate change, primarily due to burning fossil fuels like coal, oil and gas.

Many people think climate change mainly means warmer temperatures. But temperature rise is only the beginning of the story. Because the Earth is a system, where everything is connected, changes in one area can influence changes in all others.

The consequences of climate change now include, among others, intense droughts, water scarcity, severe fires, rising sea levels, flooding, melting polar ice, catastrophic storms and declining biodiversity.

The planet has a remarkable capacity for resilience and self-healing. However, as human activity continues to exert immense pressure on the natural systems, it is imperative that we take a proactive and holistic approach to addressing the climate crisis. We need to take care of the earth and she will take care of us. Our small steps like avoiding use of single use plastic, planting trees whenever possible, recycling and reuse of products, conserving water etc. has the potential of making a great contribution.

"The world is not to be put in order. The world is in order. It is for us to put ourselves in unison with this order." – *Henry Miller.*

Regards

CA Ujwal Thakrar
President

HAPPY GUDI PADWA

EVENT UPDATES

MCTC had organised a **Rajubhai Chokshi Oration Fund Lecture** on 26th February, 2023 from 9.30 a.m. to 1 p.m. on the following topics:

- Taxation of Charitable Trust - Impact of Budget 2023 proposals and Recent Supreme court Decisions by **CA Natwar Thakrar**.
- Assessment and Issues of SCN under the GST Act by **CA Janak Vaghani**.

It was a very interactive event and participants took maximum benefits. Event photos are printed elsewhere in the bulletin.

MCTC had announced the much-awaited RRC to be held from 14th to 16th April, 2023 at Beacon Resort, Valley View Mahabaleshwar. Many registrations have already been received till the early bird date and executive rooms are booked. Now Deluxe Rooms are available. Details of RRC are printed elsewhere in the bulletin.



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:

Name	Designation	Contact Nos.	E-mail
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Shri Rajen Vora	Hon. Secretary	9819807824	vora.rajen@gmail.com

Life Membership Fees ₹ 2,500

25th Silver Jubilee Budget Publication 2023 Available for Sale

Dear Colleagues,

Our 25th Silver Jubilee Budget Publication (INR 150 per book) is Available for Sale at the following address:

<p>BORIVALI B. D. VASANI & CO. Level 5, Vini Elegance, L.T. Road, Borivali West, Above Tanishq, Mumbai-400 092. Phone : 022 2899 8888</p>	<p>MALAD CA VIRESH SHAH & COMPANY C-401, Krishna Apartment, Behind Milap Apartment, Opp. HP Petrol Pump, S. V. Road, Malad (West), Mumbai-400 064. CA Viresh Shah - 9820780070 Office - 28018520 / 9372206844</p>
<p>KANDIVALI JATIN MEHTA & CO. 2nd Floor, Office No. 1, Sanghvi Chambers, Above Bank of India Kandivali (W), Mumbai-400 067. Phone No. : 28010367/68</p>	<p>MALAD JIGNESH SAVLA AND ASSOCIATES Flat 2, 1st Floor, Somaiya Shopping Centre, Sainath Road, Malad (West), Mumbai-400 064. Above Govindas Hotel. Phone No.: 022 28890477/022 20891192</p>
<p>BORIVALI A P RUPARELIA & ASSOCIATES 304, Goyal Shopping Arcade, L T Road, Opp. Borivali Platform No. 3, Borivali (West), Mumbai-92. Phone : 022 66990015</p>	<p>MALAD BRIJESH CHOLERA & CO. Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (West), Mumbai-400 064.</p>
<p>ANDHERI N. G. THAKRAR & CO. 803, Atrium 2, Behind Courtyard Marriot Hotel, Andheri Kurla Road, Andheri (East), Mumbai-400 093. Phone : 9819946379</p>	<p>GOODS AND SERVICES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA Library 104, 1st Floor, GST Bhavan, Mazgaon, Mumbai-400 010. Phone : 23737153</p>

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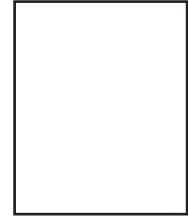
The Malad Chamber of Tax Consultants

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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)

DIRECT TAX CASE LAWS

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



Smt Shivani Madan (Appellant) v/s ACIT (Respondent).

Citation: I.T.A NO.1642/DELHI/2022 January 2023

50% Income chargeable to tax in absences of percentage of share in sale deed

Facts :

Residential premises of assessee was searched by Department on 28.11.2017. Search material revealed that the assessee has purchased the property of ₹ 3.5 Cr in joint ownership with the husband of the assessee on 08.03.2011. During the assessment proceeding AO asked the assessee why income from such property be not charged to tax under the head "Income from house property". In response Assessee submitted that the said property is a single unit and is owned by her husband. Her name in the sale deed is only for the security purpose and she contributed ₹ 20 Lakhs only during AY 2011-12.

AO contended that registered deed of the property does not define % of ownership. Thus, It would be considered as 50-50 and taxed the assessee amounting to ₹ 9,80,000/- being 50% share of the assessee in the property.

Appeal before CIT(A) addition was confirmed by observing "As per the provisions of Section 22 of the Act, the ownership of a property is a condition precedent for levy of tax and as per section 22 of the act the word "owner" is related with the taxability of the income from house property and not with the interest of a person in the property. Part of the payment, however small, has been made by the appellant. The dominion over the property existed in the name of wife and she was lawfully entitled to claim the income emerging from the property."

Held

Assessee contended that assessee has contributed only 5.4% amounting to 20 Lakhs of the total investment of the property therefore, taxing 50% of the house property income in her own hand is not justified.

ITAT placed reliance on decision of Allahabad High Court in case of *Saiyad Abdulla v. Ahmad AIR 1929 All 817* and held that, since there is no specification of shares of husband and wife in the sale deed, it must be held that husband and wife purchased equal shares.

Appeal was dismissed and additions upheld.

Decisions relied upon:

Saiyad Abdulla v. Ahmad, Allahabad HC, 1929 All 817

Neo Structo Construction (P) Ltd (Petitioner) v/s ACIT (Respondent).

Citation: R/Special Civil Application no 3697 of 2022, Gujarat High Court

Refund beyond 20% of demand could not be adjusted merely on the ground that adjustment was done by CPC.

Facts :

Assessee being a company filed its return of income for the AY 2012-13. Case for the same assessment year was selected for scrutiny u/s. 143 of the income Tax Act by the AO and assessment order was passed by the AO after raising a demand of ₹ 20,53,38,770/-. Being aggrieved by the order of the AO assessee file an appeal before CIT(A) meanwhile AO adjusted the demand of the assessee against the various year refund of the assessee. Demand adjusted by the AO is ₹ 30,43,48,695/- which is 65% of the total demand raised by the AO. Due to harsh action of the AO assessee file an application before AO and CIT to release the refund beyond 20% of the demand in accordance with the office memorandum issued by the CBDT dated 31.07.2017 which prescribe the payment of 20% of the disputed amount if demand is contested before CIT(A). AO rejected the application on the ground that such office memorandum prescribes stay application procedure however in the present case no stay application was filed by the assessee before AO or CIT hence refund due for the subsequent year have been adjusted through the system itself and it's a system generated adjustment. Being aggrieved by the action of the AO assessee file a special civil application before this court.

Held

That the office memorandum dated 29.02.2016 which was amended on 31.07.2017 issued u/s. 220 of the Income Tax Act state that the AO is required to grant stay of demand till the disposal of the First Appeal where outstanding demand is disputed before CIT(A) on payment of 20% of the disputed demand. If in the opinion of the AO if 20% payment of lump sum amount is of lower side, it can refer the matter to the administrative Principal CIT or CIT who can then decide the quantum of proportion of demand to be paid. We notice that the petitioner has made an application for stay of demand to CIT and specifically stated in the application that the petitioner is in the process of filing the appeal before CIT(A) and they expect to succeed in the appeal therefore demand raise to be kept in abeyance till the appeal is finally disposed of. Hence ground of the AO that the application has not filed is not valid in law.

Conclude that on the basis of fact of the case and record produce before us AO is not correct to adjust the demand beyond 20% of the total demand raised against the various year refund of the assessee merely on the ground that the assessee has not file a stay application and action of the adjusting the refund is not done by the AO it's a system generated action. Hence, we direct the authority to refund the excess amount which is adjusted beyond 20% of the demand raised to the assessee.

Whether non-exclusion of an activity or a transaction from the Exemption Notification or Schedule III entries would be considered as taxable supply of goods or services



Compiled by CA Bhavin Mehta

Section 7 of the CGST Act provide the scope of supply, wherein all forms of supply of goods or services or both is made for a consideration in the course or furtherance of business. Section 9(1) of CGST Act levies tax on all intra-state supplies {section 5(1) of IGST Act levies tax on all inter-state supplies}. On conjoint reading of section 7 and section 9 it becomes clear that unless there is supply of goods or services or both, the question of taxation does not arise.

It is observed that though some of the activities or transactions do not qualify as supply of goods or services are still covered under exemption notification. Take an example of entry 27 of exemption notification no.12/2017-CTR which grants exemption to interest on loans or advances from levy of GST. In the opinion of author interest is neither supply of goods nor supply of service. Interest is time value of money payable as compensation for use of money by the borrower. Lending of money is a transaction in money wherein neither the lender nor the borrower is rendering service to another. Payment of interest is monetary transaction in money, which cannot be considered as consideration for rendering any service. The lender does not undertake any activity, when it hands over the money to the borrower. In this transaction, money flows in both directions whereas in service transaction, service flow in one direction and money in the opposite direction. Interest is neither supply of goods nor supply of services and hence the question of granting exemption does not arise. It may be noted that inputs and input services used for exempt supply is not entitled to ITC (reversal of ITC is not required in respect of interest on loans and advance in terms of rule 43(5)), whereas inputs and input services used for non-supply activity or transaction ITC would be available other than for transaction in securities and sale of under construction premises.

Similarly, whether the activities or transaction specified in schedule III alone would be treated neither as supply of goods nor supply of services. Let us take an example of "sale of immovable property". Entry 5 of Schedule III provides "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Sale of immovable property is neither mentioned in exemption notification nor in schedule III.

Section 2(52) of the GST Act defines "goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply".

Section 2(102) of the GST Act defines 'services' as under:

"Services' means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities."

A perusal of the definition of “services” would show that it is an exhaustive definition and it encompasses anything other than goods. Just because it includes anything other than goods, does it mean it can include anything which normally not understood as service? Can it include living beings? Answer is NO. Though the expression “services” means anything other than goods, it cannot include anything which is not normally understood as service. Service is never understood to include property. Though service is an activity, it doesn't include an activity which involves transfer of property whether movable or immovable. The transfer of immovable property is not liable to levy of GST as it is neither a goods nor a service. Entry No. 5 of Schedule III is clarificatory and inserted out of an abundance of caution. Therefore, just because right in immovable property has not been specifically stated in Schedule III, it doesn't mean that they are liable to levy of GST.

Therefore, specific provision of treating sale of land and sale of building as neither supply of service nor as supply of goods would in the absence of such provision make the sale of land or building liable for GST as there is no charge on the same in first place. Similarly, absence of reference to right in land or building in entry no. 5 of schedule II cannot deem the presence of charge of GST. The satisfaction of levy should be arrived at de hors the entries in Schedule III and for that matter exemption notification.

It is well settled legal principle that exemption doesn't pre-suppose a charge. In **Jurgen Mohr vs Finanzamt Bad Segeberg, Case C-215/94 dated 29.2.1996**, the farmers where paid compensation for discontinuing milk production, the European Court held that such compensation could not be brought to tax as there was no supply. It may be noted that under the European legislations, the clause to tax these transactions is similarly worded to the present clause.

In **Gypsy Pegasus vs. State of Gujarat reported in 2018 (15) GSTL 305 (SC)**, the Hon'ble Court held that the exemption granted to Musical Programme by Notification subject to certain conditions is redundant and has no relevance when the Musical Programme was excluded from the levy provisions of the Entertainment Tax Act, 1977.

The Schedule II is only for the purpose of classification between goods and services. The entries in schedule II cannot be taken as prescribing a deeming fiction, making a transaction taxable even when it does not fall within the purview of GST Act. The sale of under construction flat cannot be construed to involve construction service. There is no deeming provision under GST as was provided for Sales Tax laws under Article 366(29A) of the Constitution. In the premises, it is possible to argue that if the real estate is outside the purview of GST, the conditions prescribed in Schedule III for exclusion on account of sale of land and building has no relevance.

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT

Form IV (See Rule 8)

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| 6. Names & Addresses of Individuals who own the newspaper and partners or shareholders holding more than one per cent of the capital | : | N.A. |

I, Kishor Vanjara hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date : 18th March, 2023
Place : Mumbai

Kishor Vanjara
Signature of the Publisher



The Malad Chamber of Tax Consultants

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17th RESIDENTIAL REFRESHER COURSE 2023

We are pleased to announce the 17th MCTC Residential Refresher Course 2023.

The details are as under:

Dates	Friday 14th April, 2023 - 12 Noon <i>Check In</i> Sunday 16th April, 2023 - 10 a.m. <i>Checkout Followed by Lunch</i>		
Venue	Valley View Beacon Resort, Valley View Road, Near Market, Mahabaleshwar-412806		
	TIME	SUBJECT	SPEAKER
	Friday 4.00 p.m. to 8.00 p.m.	GD on Practical Issues Under GST Including Practical Case Studies GD on Income Tax – Practical Issues on Real Estate Transactions, Clause 44, Partnership Firms [9B and 45(4)], MSMEs and Budget Provisions, 2023	CA Nidhi Khakhar and Bhavin Mehta Dr. Bharat Vasani, CA Khyati Vasani and CA Rima Shah and Adv. Deepak Thakkar

Deluxe Rooms

Members	Non Members
INR 9,500	INR 10,000

Transport	To be managed by Participants (We shall help create a group for Car pool few days before the RRC)
INCLUSIONS:	<ul style="list-style-type: none"> Vegetarian Buffet Meals Lunch, Hi Tea, Dinner & Breakfast Swimming Pool, Use of Game Zone (Carom, Chess & Table Tennis) Children's Play Area and Magic Show

Notes:

- Package will start with Lunch & end with Lunch (2 Breakfast, 3 Lunch, 2 High Tea and 2 Dinner)
- Costume is compulsory in Swimming Pool.
- The guests are requested to show their identification proof during the check in time.
- Any items which are not a part of the package shall be paid by the members directly to the hotel immediately on demand. Any chargeable room Service charges will be borne by the occupants of the rooms. MCTC is not responsible for personal room service charges.
- Those who want to extend their stay can do so at same rates. For this kindly contact hotel

Enrolment form is attached in Google Sheet. <https://forms.gle/fL7JDwnW6MveUmf86>

For any clarification, kindly contact the following members.

Name	Mobile No.
Convenor, Bhavin Mehta	9224208781
Convenor, Rinav Khakhar	9920022323

CA Ujwal Thakrar

President

RAJUBHAI CHOKSHI ORATION FUND LECTURE
held on 26th Feb at Durgadevi Saraf Institute of Management Studies



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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