The Malad Chamber of Tax Consultants

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41 Years

MCTC Bulletin

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

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President's Communiqué

Dear Members,

Anything excessive is poisonous. To have in abundance or not to have is two extreme situations, real though situation is to balance life with whatever limited one has.

India is changing. India is the most young country in the entire world and upcoming largest economy worldwide. The Government has started taking action considering the youth of the country.

"Learning is never done without errors and defeat"

Congratulations to all students passed out in the recently declared CA examination results. It pleases me to know that despite the odds, you have wholeheartedly prepared for the exams and cleared with flying colours.

In the same breath, I would like to say to the students who were unsuccessful that do not lose heart and continue to put your best efforts. CA course is all about precision, perseverance and never-ending painstaking efforts. Every CA student has faced their share of hurdles including me, but a winner is one who does not shy away from such hurdles but rather chooses to fight them and face them head on.

Upbringing Professional knowledge and increasing harmony is a core activity of your Chamber.

We have Planned 10th Study Circle Meeting On 20th March 2021 - Understanding Income Tax New Penal Provision – Section 270A.

"Invest Your Today's in constructing your Future & not in dissecting your Past. Let the caterpillar focus on becoming a butterfly then the butterfly regretting it was a caterpillar".

Best Regards,

CA M. D. Prajapati
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

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: Forthcoming Events :

Virtual 10th Study Circle Meeeting				
Sr. No.	**Date**	**Time**	**Topic**	**Speaker**
1	20th March	6.00 p.m. to 07.30 p.m.	Understanding New Penal Provion - Section 270A	CA Bhadresh Doshi

DIRECT TAXES - Law Update

Compiled by Haresh P. Kenia

FACELESS ASSESSMENT (FIRST AMENDMENT) SCHEME, 2021

NOTIFICATION S.O. 741(E) [NO. 6/2021/F. NO. 370149/154/2019-TPL], DATED 17-2-2021

The Central Government Vide NOTIFICATION S.O. 741(E) [NO. 6/2021/F. NO. 370149/154/2019-TPL], DATED 17-2-2021 and in exercise of the powers conferred by section 143 (3A) of the Income-tax Act, 1961 , hereby makes the further amendments in para 2, 5 and 11 of the Faceless Assessment Scheme, 2019. It seeks to amend definitions , in respect of no personal appearance in the Centers or Units and substituted procedure for assessment. The Scheme is called the Faceless Assessment (1st Amendment) Scheme, 2021.

It amends para 2 of the Faceless Assessment Scheme, 2019 whereby it inserts the definitions for Dispute Resolution Panel and eligible assesses.

It amends the para 5 of the Faceless Assessment Scheme, 2019 whereby it amends procedure for assessments.

It also amends para 11 of the Faceless Assessment Scheme, 2019 relating to personal appearance in the Centres or Units.

Readers may refer to above mention notification for full text / details .

- **CBDT extends due date for filing declaration under Vivad Se Vishwas scheme**

  The CBDT vide notification no 09/2021 in S.O. 964(E) dated 26/02/2021 extended the deadline for filing declarations and making payment under direct tax dispute resolution scheme Vivad Se Vishwas (VsV) till March 31 and April 30 respectively. As per a CBDT's notification, the date for payment of tax without additional interest under VSV changed to April 30, 2021.

- **Computation methodology prescribed - Tax on income out of excess employer contribution to specified funds – Section 17(2)(viia) of the Act**

  NOTIFICATION G.S.R. 155(E) [NO. 11/2021/F. NO. 370142/52/2020-TPL], DATED 5-3-2021
  The Central Board of Direct Taxes vide Notification G.S.R. 155[E] dated 05.03.2021, in exercise of the powers conferred by Section 17 (2) (viia) read with section 295 of the Income-tax Act , gives the Income-tax (1st Amendment) Rules, 2021. It amends the income tax rules by insertion of new Rule 3B. It come into force from the 1st day of April, 2021.

  The new rule 3B Inserted as under –

  "*3B. Annual accretion referred to in the sub-clause (viia)* of clause (2) of section 17 of the Act. — For the purposes of sub-clause (viia) of clause (2) of section 17 of the Act, annual accretion by way of interest, dividend or any other amount of similar nature during the previous year (hereinafter in this rule referred to as the current previous year) to balance to the credit of the fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act shall be the amount or aggregate of amounts computed in accordance with the following formula, namely:—

  TP= (PC/2)*R + (PC1+ TP1)*R

  Where,

  TP= Taxable perquisite under sub-clause (viia) of clause (2) of section 17 of the Act for the current previous year;

TP1 = Aggregate of taxable perquisite under sub-clause (viia) of clause (2) of section 17 of the Act for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year (See Note);

PC= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme during the previous year;

PC_1= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year (See Note);

R= I/Favg;

I=Amount or aggregate of amounts of income accrued during the current previous year in the specified fund or scheme account;

Favg = (Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous Year + Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the last day of the current previous year)/2.

Explanation. — For the purposes of this rule, "specified fund or scheme" shall mean a fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act.

Note: Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year, then the amount in excess of the amount or aggregate of amounts of the said balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP1 and PC1.".

- Extension of Various limitation dates relating to assessments, reassessments, imposition of penalty etc.

Notification no. 10/2021 in S.O. 966 (E) dated 27/02/2021

Section 3 (1) the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act 2020 had extended various dates to 31 march 2021 which were falling between the period of 20 march 2020 to 31 December 2020.

CBDT vide notification no 10 / 2021 dated 27.02.2021 further extends various limitation dates.

a) Date for passing of assessment or reassessment orders under the IT Act, that are getting time barred on 31st March, 2021 due to extension of limitation date by the notification dt 31st December, 2020 has been extended to 30th April, 2021.

b) Date for passing assessment or reassessment orders (not covered by (a) above), that are getting time barred on 31st March, 2021, as per time limit specified in section 153 / 153B of the Income-tax Act, has been extended by 6 months i.e. to 30th September, 2021.

c) Date for passing of penalty orders extended to 30th June, 2021. Date for issue of notice & passing of orders by Adjudicating Authority under the Benami Act extended to 30th September, 2021.

- **RESIDENTIAL STATUS Section 6 - RESIDENTIAL STATUS OF CERTAIN INDIVIDUALS UNDER THE ACT**

CIRCULAR NO. 2 OF 2021 [F. NO. 370142/18/2020-TPL], DATED 3-3-2021

Due to the declaration of the lockdown and suspension of international flights owing to the outbreak of COVID-19, many NRIs had to prolong their stay in India. Consequently, their stay has exceeded beyond the period of their visit and thus they may be regarded as resident/not ordinarily resident. The Central Board of Direct Taxes (CBDT) has recently issued ***CIRCULAR NO. 2 OF 2021 [F. NO. 370142/18/2020-TPL], DATED 3-3-2021*** to provide relaxation in the methodology of computing the 'number of days' of stay in India for the purpose of section 6 of the IT Act

The Central Board of Direct Taxes (CBDT) has received various representations requesting for relaxation in the determination of residential status for the previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to the suspension of international flights. The matter has been examined by the Board and following facts have emerged and same is discussed at length in the aforesaid circular.

- Short stay will not result in Indian residency
- Possibilities of dual non-residency in case of general relaxation
- Tie breaker rule as per Double Taxation Avoidance Agreement (DTAA):

- Employment income taxable only subject to conditions as per DTAA:
- Credit for the taxes paid in other country:
- International Experience

The CBDT also discussed that OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAAs, there does not appear a possibility of the double taxation of the income for PY 2020-21. It was clarified that the possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAAs. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, the Board shall examine that, -

(i) whether any relaxation is required to be provided in this matter; and

(ii) if required, then whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.

The circular also provides that if any individual is facing double taxation even after taking into account the relief provided by the relevant Double Taxation Avoidance Agreement (DTAA), he/she may furnish the specified information by 31st March, 2021. The information has to be submitted in Form –NR and is to be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation)

Reader may refer to full text of the Circular

- **INCOME ESCAPING ASSESSMENT- Section 148 - INSTRUCTION REGARDING SELECTION OF CASES INSTRUCTION F. NO. 225/40/2021/ITA-II, DATED 4-3-2021**

1. The Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income-tax Act, 1961, with an objective of streamlining the process of selection of cases for issue of notices under section 148 of the Act, hereby directs that the following categories of cases be considered as 'potential cases' for taking action under section 148 of the Act by 31.03.2021 for the A.Y 2013-14 to A.Y 2017-18 by the Jurisdictional Assessing Officer (JAO):

   i. Cases where there are Audit Objections (Revenue/Internal) which require action under section 148 of the Act;

   ii. Cases of information from any other Government Agency/Law Enforcement Agency which require action under section 148 of the Act;

   iii. Potential cases including:—

      (a) Reports of Directorate of Income-tax(Investigation),

      (b) Reports of Directorate of Intelligence & Criminal Investigation,

      (c) Cases from Non-Filer Management System(NMS) & other cases as flagged by the Directorate of Income-tax(Systems) as per risk profiling;

   iv. Cases where information arising out of field survey action, requiring action under section 148 of the Act.

   v. Cases of information received from any Income-tax authority requiring action under section 148 of the Act with the approval of Chief Commissioner of Income Tax concerned.

2. No other category of cases, except the above, shall be considered for taking action under section 148 of the Act by the JAO.

3. It is clarified that action under section 148 of the Act shall be taken by the Assessing Officer in respect of the above categories of cases after forming a reasonable belief that income chargeable to tax has escaped assessment and 'reasons to believe' shall be recorded and required sanction as per section 151 of the Act shall be obtained before issuing notice under section 148 of the Act.

4. These instructions shall not be applicable to the Central charges and International Taxation charges for which separate instructions are being issued.

■■■

DIRECT TAX UPDATES

Compiled by CA Rupal Shah

Babuji Jacob vs. ITO

Citation: [2021] 124 taxmann.com 363, Madras HC, 8 December 2020

No penalty on change in classification of land sold as non-agricultural in asses

Facts:

Assessee had filed return of income claiming exemption on sale of 2 lands being agricultural lands. During scrutiny assessment AO classified one land as agricultural and one as non-agricultural. Subsequently, AO initiated penalty proceedings against the transaction of sale of land and passed an order. Assessee contended that while filing the return of income, he was under the impression that both the properties were agricultural lands and that there was no tax liability.

On appeal, CIT(A) and ITAT both did not consider the assessee's plea and upheld AO Order.

Held:

Assessee offered an explanation and we find the explanation to be cogent. AO accepted the assessee's stand that one of the properties was an agricultural land. Hence, the burden cast upon the assessee to offer an explanation stands fulfilled.

If the Revenue does not agree with the explanation offered by the assessee, then the onus is on the Revenue to prove that there was concealment of particulars of income or furnishing of inaccurate particulars of income.

CIT(A) found fault with the assessee in not challenging the assessment order and for having accepted the same. However, this cannot be a ground to enable the AO to automatically levy penalty.

Thus, penalty order was dismissed.

Important Decision relied upon:

CIT v. Smt. Anita Kumaran [2017] 79 taxmann.com 304 (Mad.)

National Textiles v. CIT [2001] 114 Taxman 203/249 ITR 125 (Guj.)

CIT v. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322/322 ITR 158 (SC)

ACIT vs. PTC Engineering (India) P. Ltd.

Citation: ITA No. 4986/Del/2017, ITAT Delhi, 25 February 2021

No penalty on addition of share capital when all documentary evidence was filed at the time of assessment.

Facts:

The assessment completed u/s 143(3) reducing loss from ₹ 5.49 Cr to ₹ 2.91 Cr. by adding 2.5 Cr on share capital and other deductions. Since then, the company is making losses.

During assessment, assessee provided all evidence regarding share capital like ITRs, Share application forms, confirmations, bank accounts, Balance sheet, board resolution, etc. This fact was not noted in the assessment order.

The assesee could not produce the share applicants as they were not on good terms with the assessee due to prolonged losses. However, AO also did not issue further notice u/s. 133(6) or summons u/s 131 to the shareholders.

The assessee has surrendered the income on the condition that no penalty levied.

Held:

AO had not detected any concealment or furnishing of inaccurate details on his own till the point that the assessee itself stated that it is offering ₹ 2.5 crore as its income. This was accepted in assessment order without bringing out the fact in order that this was concealment of income.

Penalty order was passed without carrying out any enquiry or confronting the assessee on the source of surrendered income or positively recording a finding of concealment which can invite penalty. AO did not analyse the intent of why the assessee would conceal such income when it could have shown it as income since there were huge losses. The

penalty imposed is on concealment of income which is not proved. Whereas, it was initiated for furnishing inaccurate detail which was not proved either.

Decisions relied upon:

SSA's Emerald Meadows, [2016] 242 Taxman 180 (SC)

Manjunath Cotton & Ginning Factory, 359 ITR 565.

■■■

WHETHER GST AUDIT WILL BE APPLICABLE FOR FINANCIAL YEAR 2020-21?

Compiled by CA Bhavin Mehta

The Finance Bill 2021 has proposed to remove the mandatory requirement of getting the annual accounts audited and reconciliation statement submitted by the chartered accountants and cost accountants under the GST laws. Sub-section (5) of section 35 stipulating accounts to be audited by specified professional is proposed to be omitted by section 101 of the Finance Bill 2021. Simultaneously, section 44 is also proposed to be amended by section 102 of the Finance Bill 2021.

The question which comes to mind is from which financial year GST Audit would be discontinued?

In this regard for beneficial gain reference is invited to Chapter 1 of Finance Bill 2021 which provides "(b) section 99 to 114 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint." In other words, the amendment pertaining to omission of GST Audit would be effective from the date to be notified by the Central Government after the enactment of the Finance Bill. Further, as per the Memorandum to Finance Bill 2021 the amendment to CGST Act, 2017 and IGST Act, 2017 carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States and Union territories with Legislature.

Section 44 stipulates the time limit for filing of annual return along with audit report on or before 31st December following the end of the financial year for which annual return and GST audit report have to be filed. GST Audit and annual return is a pending action to be done after the end of the financial year. Any amendment made in the pending action has to be considered.

Ratio can be drawn from the amendment made to erstwhile section 73 of Finance Act, 1994 (Service Tax laws), whereby the time limit for issue of SCN was increased from 18 months to 30 months with effective from 14.05.2016. Issue of SCN is pending action for the returns filed for the earlier periods. Therefore, the increase in time limit for issue of SCN will also apply for the returns filed for the earlier periods.

In the premises of above analysis, in the opinion of author, if the amendment pertaining to removing mandatory GST audit is notified before the due date of filing GST audit, i.e. before 31.12.2021, GST Audit is not required to be done for F.Y.2020-21.

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GST PE CHARCHA
WHETHER "INTEREST" ISSUE IS SETTLED?

Compiled by Monarch Bhatt, Advocate

(Partner at FairLaw Consultancy)

GST has been introduced on 01st day of July, 2017 and thereafter four union budgets has been announced by the Finance Minister including the interim budget 2019. One of the favourite section which has undergone the changes twice out of the four budget is section 50, which provides for interest on delayed payment of tax. Initially, under Finance (No. 2) Act, 2019 proviso was inserted under sub section (1) of section 50 which came into effect from 1st day of September, 2020. Now, again for the second time in the small tenure of GST that same proviso which was introduced by Finance (No. 2) Act, 2019 has been proposed to be substituted with the new proviso with retrospective effect.

The issue for such constant amendment is known to all of us to settle the tug of war between assessee and revenue on the point whether interest is payable on the gross tax liability or on the net cash liability after reducing the ITC available with the assessee?

This was first time discussed in the 31st GST council meeting held on 22nd day of December, 2018 whereby, council had recommended that section 50 needs to be amended and interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit and interest would be leviable only on the amount payable through the electronic cash ledger.

After the recommendations of the GST Council on 18th day of April, 2019 ***Telangana High Court in the case of Mega Engineering & Infrastructure Limited Versus Commissioner of C. T., Hyderabad*** reported in ***2019-TIOL-893-HC-TELANGANA-GST*** held that interest is payable on the gross tax liability without reducing the ITC and under para. 41 and 42 court stated that unfortunately, the recommendations of the GST Council are still on paper. Therefore, we cannot interpret Section 50 in the light of the proposed amendment.

Thereafter, Finance (No. 2) Act, 2019 came into effect on 01st day of August, 2019 but proviso to subsection (1) of section 50 was not came into effect as notification was not issued for introduction such amendment and matter came before the Madras High Court in the case Refex Industries Ltd reported in 2020-TIOL-358-HC-MAD-GST. The court categorically held that ITC was always available with the department and therefore payment by way of adjustment can neither be termed as belated nor delayed. The proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the department to the credit of the assessee.

In the light of such distinguishing decisions, the proviso to sub section (1) of section 50 was inserted with effect from 01st day of September, 2020 by Notification No. 63/2020-Central Tax, dated 25-08-2020. However, still revenue argued that since it is not retrospective amendment till 31st day of August, 2020 interest is payable on gross tax liability.

Therefore, again in the Finance Bill 2021 it has been proposed to substitute the proviso retrospectively which will come into effect from 01st day of July, 2017 whereby, interest will be applicable only on the net cash liability payable by the tax payer after reducing the credit balance available with him on the due date of filing of return. However, proviso has exception and it is not applicable were return is to be filed after commencement of proceeding under section 73 (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts) and section 74 (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts). In my view, the cases where return is not required to be filed under section 73 and section 74 interest will be payable only on the net tax liability payable after reducing the available ITC. Therefore, if any liability arises after commencement of any proceeding under section 73 or section 74 where it has been discharged by DRC 03, then such exception is not applicable and tax payer will be liable for the payment of interest only on the net cash liability as it is furnished through DRC 03 and not by filing of return.

In the time to come tax payer need to prove that return was filed by him and liability is not arising out of the non-filing of return. Unless it is proven, tax payer will be required to pay interest on the gross tax liability even after such retrospective amendment. Hence, interest story is still on and not yet settled and tax payer need to prove his liability of interest only on the net tax liability and not on the gross tax liability.

■■■

STUDENTS' CORNER

THE THREE WARNINGS

Compiled by Neel Randeria

This write-up is of paramount importance for people adoring history. Without any doubt, India has rich culture and an amazing history. There are some events in the past, which are so insightful that even after years, they stand to be relevant and path-breaking. I want to discuss one such incident- *the 3 warnings by B. R. Ambedkar.*

On 25th November 1949, Ambedkar gave a speech in the house, summing up the work done by him and drafting committee. He gave a short speech regarding the constitution and some of its striking features. But, at the tail-end of his speech, he gave 3 warnings about the future.

Warning-1: Satyagraha

I know what you might be thinking right now- that how can a concept which helped us gain independence be a threat for our future? In the opinion of Ambedkar, activities like- civil disobedience, satyagraha and non-cooperation should be abandoned for the benefit of all. The reason for the same is that- such acts are justifiable to a certain extent in an autocratic set-up but not under democracy.

Do you agree to this? Should popular protests be considered as a threat to the nation?

Warning-2: Political Democracy

Democracy is a concept which promotes equality and liberty. Through the drafting of constitution, politics has surely been democratized. But keeping aside political angle, are we really democratic in true sense? In voting, vote of man and woman are equal, but does all strata of our society mean this? Is there equality in our social status? Thus, Ambedkar warned us about not ending up being democratic only from political stand-point!

Should be strive for democracy in all facets of life?

Warning-3: Blind Faith and Submission to Autocracy

India believes in bhakti i.e. devotion and surrender to almighty to achieve salvation. But this should not be the approach of an Indian towards politics. The logic of Bhakti might be correct from religious point of view, but it can be devastating from political lens. Such attitude results in dictatorship. There should not be unthinking submission to charismatic authority.

Even if a man is great, his greatness should not be a justification for blind devotion.

Are you surrounded by people who blindly follow a political figure without having his research done?

In conclusion, I just have two emotions. Praise and Regret.

Praise for Dr. Babasaheb Ambedkar, because the honesty in the insights he shared were extremely accurate.

Regret for not inculcating and learning from his speech. Only if someone had taken this speech seriously, India would have not been stuck with the same problems which were predicted 71 years ago.

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