



**The Malad  
Chamber of Tax  
Consultants**



**MCTC Bulletin**

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

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September, 2022

## President's Communiqué



Dear Professional Colleagues,

Like every year, we have a festival season and the year end busy compliance season (Income Tax, Companies Act, etc.) which will require a work life balance. One may need to introspect and identify areas which can help reduce stress and lead to a more balanced life. One should focus more on activities that can make a difference and delegate the routine work. A motivated staff can be a good asset in such critical times and come to your rescue and reduce your stress.

The 2nd study circle meeting was held on 27st August 2022 on '**Intricate Issues in Recent GST Changes through Notifications and Circulars**'. The meeting attracted lot of participation and the discussions of practical issues on the subject and benefited the participants.

In its endeavor to spread knowledge and in line with the year's theme of spreading awareness about the activities of the Chamber across various forums, MCTC organized joint lectures with educational and charitable associations. The 3rd study circle meeting was held on 10th September, 2022 jointly with Shree Lohana Mahaparishad CA Group on '**Ease of Managing Practice for CA/Tax Practitioners**' where in two eminent speakers covered topics of ease of managing, hiring and retaining workforce and approaching and building clientele and public relations and use of tally for customization of clause 44 of the tax audit report.

The 4th study circle meeting was jointly organized on 15th september 2022 with the Lions Club of Walkeshwar and Foundation for Skill Development on '**Recent updates for Charitable Trusts under the Maharashtra Trust Act, 1950 and the Income Tax Act, 1961**'.

Full details of the above meetings are printed in this bulletin.

I thank & congratulate my committee members, Past Presidents & the members for their support and active participation in study circle meetings and the activities of the chamber.

**"The key is not to prioritize what's on your schedule, but to schedule your priorities." — Stephen R. Covey**

*Wishing you a very happy Navratri, Dusshera and Diwali in Advance*

Regards

**CA Ujwal Thakrar**  
President

**Do you know?**

The Great Barrier Reef is the largest living structure on Earth at 2,000 kilometers long. 40 percent of human jobs could be replaced by AI in the future

**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](mailto: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
CA Ujwal Thakrar	President	9819946379	ujwalthakrar@gmail.com
CA Khyati Vasani	Vice President	9833288584	khyativasani@yahoo.com
Adv. Jaideep Sonpal	Hon. Treasurer	9892005352	sonpalconsultants@gmail.com
Shri Jitendra Fulia	Hon. Secretary	9820997205	jitendradfulia@rediffmail.com
Shri Rajen Vora	Hon. Secretary	9819807824	vora.rajen@gmail.com

**Life Membership Fees ₹ 2,500**



## The Malad Chamber of Tax Consultants

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Malad (West), Mumbai- 400064. E-mail: [maladchamber@gmail.com](mailto:maladchamber@gmail.com). Mobile: 7039006655.

**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:...../...../..... BLOODGROUP:.....  
 SPOUSE'S NAME: ..... SPOUSE'S DATE OF BIRTH...../...../.....  
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 PROFESSION:  ADVOCATE  CA  ITP  ICWAI  ICSI  GSTP/STP
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 PIN CODE: ..... STATE: .....  
 TEL. NO: ..... FAX NO: ..... MOBILE NO: .....
8. COMMUNICATION TO BE SENT TO:OFFICE RESIDENCE  
 The amount of ₹ 2500/- 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)



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### FOR OFFICE USE ONLY FOR MEMBERSHIP APPLICATION

Issued Acknowledgement Slip No..... Dated..... / ..... / .....

Accepted by the Managing Committee in the Meeting held on...../ ..... / .....

Cheque No. .... Dated ..... / ..... / ..... for ₹ 2,500/- Bank

#### NOTES

1. Please attach educational qualification certificate for eligibility to practice taxlaws.
2. Please write / type in CAPITALLETTERS.
3. Cheques should be drawn in favour of "The Malad Chamber of TaxConsultants".
4. Outstation remittance should be by Demand Draft payable at Mumbaiionly.
5. Please tick (✓) whereverapplicable.
6. The form should be completed in allaspects.
7. The membership application is subject to acceptance by the Managing Council.

**For Query and Submission of forms for Membership please contact any of the following office bearers.**

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Shri Rajen Vora	Hon. Secretary	9819807824	vora.rajen@gmail.com

**Please send the completed application form to the following address:**

**The Malad Chamber of Tax Consultants**

**C/o. Brijesh Cholera & Co.**  
Chartered Accountants  
Shop No. 4, 2<sup>nd</sup> Floor,  
The Mall, Station Road,  
Malad (West), Mumbai-400097



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(Signature)

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## DIRECT TAXES - Law Update

**Haresh P. Kenia**



- **Extension of Time Limit for Filing Form -67 to claim Foreign Tax Credit**

The Central Board of Direct Taxes vide notification no-G.S.R. 636(E) [NO. 100/2022/F. NO. 370142/35/2022-TPL] , Dated 18-8-2022 , in exercise of the powers conferred by Section 295 (2)(h) Of Income Tax Act gives the Income-tax (27th Amendment) Rules, 2022. It amends Rule 128 (9) of Income Tax Rules. It extend the time limit for furnishing of Form No. 67 to claim credit of taxes paid in a foreign country, known as Foreign Tax Credit(FTC).

It provides that Form No. 67 can now be furnished electronically on or before the end of the assessment year relevant to the previous year in which the income has been offered to tax or assessed to tax in India and the return of income is furnished under section 139 of the Income-tax Act, 1961 . Further, FTC can be claimed for filing belated returns under section 139(4) as well as updated returns under section 139(8A) of the Act.

Now as per Rule 128(9), the statement in Form No. 67 and the certificate or the statement shall be furnished on or before the end of the assessment year relevant to the previous year in which the foreign income has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under Section 139(1) or (4) of the Act. Further, where the return has been furnished under Section 139 (8A) , the statement in Form No. 67 and the certificate or the statement to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished.

This amendment in Rule 128 is effective from 01-04-2022 and shall apply to all the claims of foreign tax credit (FTC) in Form No. 67 furnished during the financial year 2022-2023

- **Amendment in Rule 17 CB to include Specified Person for Section 115TD**

The Central Board of Direct Taxes , vide notification no-G.S.R. 647(E) [NO. 101/2022/F.NO. 370142/37/2022-TPL] , Dated 22-8-2022 in exercise of the powers conferred by Section 115TD (2) , read with section 295, of the Income-tax Act gives the Income-tax (Twenty Eighth Amendment) Rules, 2022. It amends Rule 17 CB of the Income-tax Rules, 1962.

Rule 17CB is amended to include specified persons in place of 'trusts or institutions' in order to incorporate the amendments introduced by the Finance Act, 2022 in section 115TD of the Income-tax Act. Further, an Explanation has been added to define the meaning of 'specified person'. The explanation in the Rule refers to the definition of 'specified person' as assigned to it in clause (ia) of the Explanation to section 115TD.

"Specified person" has been defined in section 115TD as follows:

- (a) any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C) (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) ; or

- (b) a trust or institution registered under section 12AA or section 12AB.

Section 115TD was introduced by the Finance Act 2016 to provide for the taxation of accreted income of the trust in certain cases. It is amended with effect from 1st April 2023 to make this section applicable to any trust or institution approved under section 10(23C) (iv)/(v)/(vi)/(via) in addition to a trust or institution registered under section 12AA or section 12AB of the Act.

• **Exclusion of Government from mandatory quoting of PAN in banking transaction prescribed under Rule 114BB**

The Central Board of Direct Taxes vide notification no – NOTIFICATION G.S.R. 677(E) [NO. 105/2022/F. NO. 370142/38/2022-TPL-PART-I] , DATED 1-9-2022 in exercise of the powers conferred by section 139A, read with section 295 of the Income-tax Act. It gives the Income-tax (29th Amendment) Rules, 2022.

It amends Rule 114BB of Income-tax Rules,1962 by inserting Proviso to it. The rule is effective from 09.07.2022. By virtue of this amendment , it excluded Central Government, the State Government or the Consular Office from mandatory quoting of PAN while entering into banking transactions of cash withdrawals and deposits aggregating to Rs. 20 Lakh or more in a financial year or opening of a current account or a cash credit account with any banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies in accordance with the provisions of section 139A(6A) of the Income-tax Act

Section 139A of the Act provides for mandatorily quoting of PAN by a person in the documents pertaining to certain prescribed transactions as envisaged in sub-section (6A) of this section. In this regard, the Board has prescribed certain transaction for mandatory quoting of PAN.

With this exemption, Central Government, the State Government or the Consular Office shall not be required to quote PAN even if they enter into the prescribed transactions specified under 114BB(1).

Readers may refer to complete text of the notification for further details.

• **Additional Guidelines for removal of difficulties under Section 194R (2) of the Act.**

The Central Board of Direct Taxes vide Circular No 18 of 2022 dated 13.09.2022 gives additional guidelines to remove difficulties regarding TDS on business benefits and perquisites as per the provisions of Section 194R of the Income-tax Act, 1961, which came into effect from 1st July, 2022.

This Circular is in continuation of Circular No. 12 issued earlier on 16.06.2022. These additional set of guidelines clarifies earlier guidelines issued by the CBDT.

The Board has issued the various clarification. These are explained in summarized manner.

- No tax is required to be deducted under section 194R in respect of benefits provided to its borrowers by waiver of loan or advance by way of one-time settlement.
- Where tax is deducted as per the provisions of section 194C or section 194J of the Act on reimbursement of expenses, no tax is further required to be deducted under section 194R
- No tax is required to be deducted under the provisions of section 194R in the case of the issue of bonus shares or rights shares. However, the Circular has restricted this exclusion only in the case of a company in which public is substantially interested. On a plain reading , it implies that tax is required to be deducted by a company in which public is not substantially interested in case of issue of bonus shares or rights shares to its shareholders.

The reader may refer to complete text of circular for further details.



## DIRECT TAX CASE LAWS

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



### **ACIT vs. Parsons Brinckershoff India (P.) Ltd.**

Citation: ITA/2207/2018 ITAT Delhi, 28 February 2022

### **TDS not deducted on Provision of Expenses.**

#### **Facts:**

Assessee is a company and engaged in the business of providing consultancy services and manpower supply service to power and infrastructure sector in India and abroad. Assessee created a provision of expense in FY 2011-12 and in FY 2012-13 and not deducted TDS on such expenses. JCIT issued the show cause notice to the assessee asking the assessee as to why penalty u/s 271C r.w.s 274(1) of the act should not be imposed. Assessee explain to the JCIT that it is just an estimation of expense and not the actual expense, TDS will be deducted and deposited to the govt when the actual invoice of the same was received and liability on expense was crystallized and assessee also state that TDS on the same was deducted and deposited in subsequent year when invoice of the same was received.

The Ld JCIT alleged that the argument taken by the assessee is not tenable in law and did not bring on record any material fact or evidence which could prove that the circumstances for non-deduction of tax at source were beyond the control of the assessee and levied penalty of Rs 98,92,242/- for the FY 2012-13 and Rs 3,10,000/- for the FY 2011-12 respectively.

On appeal to the CIT(A). the penalty was deleted on the ground that the appellant was prevented by a reasonable cause to withhold taxes on the year end provisions primarily on account of the following reasons:

*"No income had accrued to the payees and a mere ad-hoc provision was made in the books of accounts at the year end. The existence/accrual of income in the hands of payee is a pre-condition to fasten the liability of tax deduction at source in the hands of the payer. The exact amount payable to the payees were not identifiable and therefore, no liability to deduct tax at source". The mere fact that the taxes have not been deducted on the year end provision but have been subsequently deducted and deposited upon crystallization of liability to pay the expenses will not automatically justify the imposition of penalty under section 271C of the Act."*

On further appeal by the Revenue before the Tribunal,

#### **Held**

Assessee during hearing of penalty proceedings before the JCIT had categorically mentioned that in absence of receipt of actual invoices as in the last day of respective financial years, the amount of provision for expenses were based on estimates. In the absence of invoices and consequential liability to make the payment, the assessee did not withhold taxes on the said yearend provision for expenses u/s 40(a)(i)/40(a)(ia) of the Act.

In the cases mentioned below, it is stated that the TDS will not be deducted on the provision of the expense same will be deducted and paid to the government when liability of the expenses is crystallized.

Consequently, grounds raised by the Revenue are dismissed.

#### **Cases referred to:**

*ITO v. DLF Southern Homes (P.) Ltd. 2017 SCC Online ITAT 148*

*Dy. CIT v. Telco Construction Equipment Co. Ltd. [ITA/478/2012 ITAT Bangalore]*

**PCIT vs. M/s ABC Papers Ltd.**

*Citation: Civil Appeal no.4252 and 4253 of 2022 (Supreme Court), 18 August 2022*

**Determination of High Court jurisdiction for filing appeal against ITAT order.****Facts:**

Assessee is the company engaged in manufacturing of writing and printing paper. Assessee filed the income tax return before the AO of Delhi for the AY 2008-09 and assessment for the same year was done by DCIT of Delhi under sec 143(3). Aggrieved by the order of DCIT assessee preferred an appeal to the CIT(A) of Delhi. Order of the CIT(A) was in favour of the assessee. Aggrieved by the order of CIT(A) revenue file the appeal to ITAT(Delhi). ITAT upheld the order of CIT(A) and dismissed the appeal filed by the revenue.

Meanwhile the case of the assessee was transferred u/s 127 of the Act to DCIT of Chandigarh. On the basis of the said transfer revenue took decision to file appeal against the order of the ITAT of Delhi before the High Court of Punjab & Haryana.

High Court of Punjab & Haryana disposed off the appeal stating that the high court would not have jurisdiction as the Assessing Officer who passed the initial assessment order is situated outside the jurisdiction of the High Court.

At the same time, revenue also filed an appeal before the High Court of Delhi against the order of ITAT(Delhi). Delhi High Court dismissed the appeal on the ground of lack of territorial jurisdiction of the Delhi High Court. In two decisions mentioned below, the High Court of Delhi had taken a view that when an order of transfer under Section 127 of the Act is passed, the jurisdiction gets transferred to the High Court within whose jurisdiction the situs of the transferee officer is located.

**Held**

On the basis of the above fact High Court of Punjab & Haryana as well as the High Court of Delhi have refused to entertain the appeals on the ground that they lack territorial jurisdiction. Both the High Court relied on decisions of their own Courts which have taken diametrically opposite perspectives. Hence, Revenue filed an appeal before Supreme Court to resolve the issue as to which High Court would have the jurisdiction to entertain an appeal against a decision of a Bench of the ITAT exercising jurisdiction over more than one state, particularly when case(s) of same assessment year are transferred under Section 127 of the Act.

Appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the AO who passed the assessment order is situated. Even if the cases of an assessee are transferred in the exercise of power under Section 127, the High Court within whose jurisdiction the Assessing Officer has passed the order shall continue to exercise the jurisdiction of the appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year

**Cases referred to:**

*CIT v. Motorola India Ltd. (2010) 326 ITR 156 (P&H)*

*CIT (Central), Gurgaon v. M/s Parabolic Drugs Limited, ITA No. 49 of 2012 (P&H)*

*CIT v/s Sahara (2007) 294 ITR 363 (Del)*

*CIT v/s Aar Bee Industries Ltd (2013) 357 ITR 542 (Del)*





# APPLICATION OF LIMITATION ACT, 1963 TO GST APPEALS

Compiled by CA Bhavin Mehta



The table below provides time limit prescribed in the statute for filing appeal under the GST Act by the aggrieved person.

Section	Appeal Before	Time Limit	Extended Time	Limitation Act	Remarks
107	First Appellate Authority	3 months <sup>1</sup> 6 months <sup>2</sup>	1 month <sup>3</sup>	Cannot apply <sup>4</sup>	No power to condone delay beyond one month
112	Appellate Tribunal <sup>5</sup>	3 months <sup>1</sup> 6 months <sup>2</sup>	3 months <sup>3</sup>	Cannot apply <sup>4</sup>	No power to condone delay beyond three months
117	High Court	180 days	Discretion with Court	Applicable <sup>6</sup>	—
118	Supreme Court	60 days <sup>7</sup>	Discretion with Court	Applicable <sup>6</sup>	

- 1 Appeal by any person from the date of communication of order
- 2 Appeal by department from the date of communication of order
- 3 Sufficient cause for delay in filing the appeal
- 4 Authorities created by statute can act only in terms of powers vested by statute. In other words, Limitation Act, 1963 cannot be applied to Authorities including Tribunal, as they being the creatures of statute.
- 5 If one of the issue involved relates to the place of supply in the order against which appeal is filed, the Appeal have to be file before the National Bench or Regional Bench of the Appellate Tribunal.
- 6 Section 5 of the Limitation Act would be applicable. Where the appellant is able to satisfy the court that he had sufficient cause for not preferring the appeal within the stipulated time, High Court may admit the appeal.
- 7 In case of SLP the limitation period for filing appeal before Supreme Court is 90 days.

## Comments

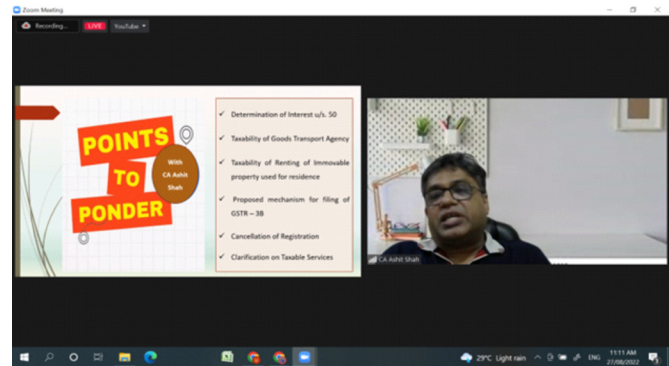
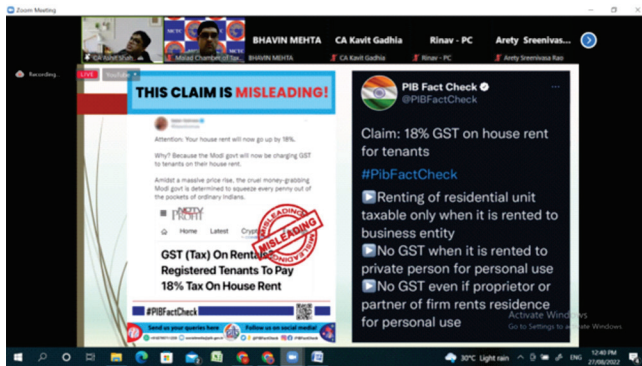
1. GST being special law will override general law as provided in section 107 (Appeal before First Appellate Authority) and section 112 (Appeal before Appellate Tribunal). The Hon'ble Supreme Court in **Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Ors., reported in (2008) 3 SCC 70**, held that the proviso to sub-section (1) of Section 35 of the Central Excise Act makes the position crystal clear that the Appellate Authority has no power to condone the delay beyond the period of 30days. The language used in section 107 and 112 makes the position clear that the Legislature intended to entertain the appeal by condoning the delay upto one month and three months respectively. Thus authorities created by statute cannot apply Limitation Act, 1963, unless empowered by that statute. Refer Supreme Court decision in **Om Prakash vs. Ashwini Kumar Bassi, 2010 (258) E.L.T. 5 (S.C.)**.
2. In **Debabrata Mishra vs. Commissioner of CGST, 2020 (36) G.S.T.L. 325 (Ori.)**, the registration certificate of the petitioner was cancelled. The petitioner filed appeal beyond the limitation of four months (including extended period of one month) and the appeal was dismissed. The petitioner filed writ application along with medical reports to show that he had reason not to approach the appellate authority during the time allowed by the Act. The Hon'ble High Court observed that

Court cannot direct the appellate authority to entertain the appeal. The Hon'ble Court further observed that petitioner may file detailed representation before the CT & GST Officer within a period of three weeks for restoration/reissuance/issuance of the registration certificate. The Court directed that the representation of petitioner should be disposed on in accordance with the law taking a liberal view of the matter, as the petitioner was indisposed for a long time.

3. There is difference between 'condonation of delay' and 'exclusion of period'. The distinction, which needs to be kept in mind, is the one between the condonation of delay on the one hand and exclusion of period spent in pursuing the remedy before a wrong Forum. The exclusion of time period in legal proceedings is dealt under various provisions under Chapter III of that enactment. While condonation is invariably in respect of the proceedings, which are not original in nature, exclusion of time takes in its fold the original proceedings as well as the appellate proceedings. Further, the condonation of delay is in the discretion of the Court or Forum, whereas exclusion of time under Section 14 is a mandate under law, without leaving any scope for subjectivity. In the case of **CCE vs. Cairn Energy India Pvt. Ltd., reported in 2015 (316) E.L.T. 612 (A.P.)**, the appeal was filed before Tribunal instead of filing before Commissioner (Appeals). On being informed, appeal was filed belatedly by 150 days. Commissioner (Appeals) dismissed the appeal as having been presented beyond 60 days. The Hon'ble Andhra Pradesh High Court upheld the Tribunal decision that the period during which proceedings were pending before Tribunal was required to be excluded under Section 14 of the Limitation Act, 1963 read with Section 35 and 35B of the Central Excise Act, 1944.
4. The expression 'sufficient cause' in section 5 of the Limitation Act, 1963 employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice. Any Appeal may be admitted after prescribed period if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within stipulated time. The Hon'ble Supreme Court in Collector **Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. Reported in 1987 AIR 1353**, observed as under:
  1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
  2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
  3. "Every day's must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
  4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
  5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by restoring to delay. In fact he runs a serious risk.
  6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
5. As per Section 4 of the Limitation Act, where the prescribed period for filing appeal expires on a day when the Office of Appellate Authority is closed, the appeal can be filed the next day when the Office of Appellate Authority re-opens for normal working hours.
6. As per Section 12 of the Limitation Act, for the purpose of computing the period of limitation for appeal, the day on which the order is served shall be excluded.



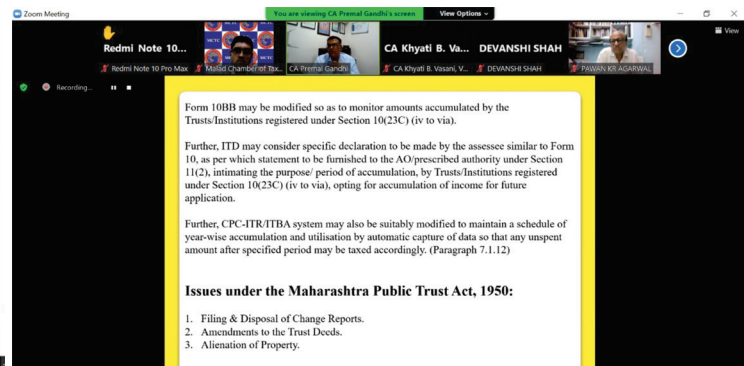
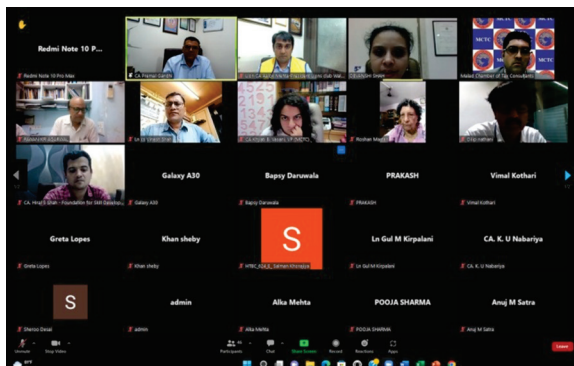
## 27<sup>th</sup> August 2022 on 'Intricate Issues in Recent GST Changes through Notifications and Circulars'.



## 10<sup>th</sup> September 2022 on Ease of Managing practice for CA/Tax Practitioners Jointly organised with Shree Lohana Mahaparishad CA Group



## 15<sup>th</sup> September 2022 on Lecture on Recent Update for Charitable Trusts under the Maharashtra Trust Act, 1950 and the Income tax Act, 1961 Jointly Organised with Lions Club of Walkeshwar, Foundations for Skill Development



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