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MCTC Bulletin

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

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President's Communiqué

Dear Members

It gives me great pleasure to wish you all happy & successful New Financial Year 2022-23. The financial year has begun on a very positive note with covid cases coming down drastically and the state government lifting all covid restrictions from 02nd April 2022. With things returning to normalcy, ailing businesses will get new life which in turn will bring further boost to the economy. The new year also brought some encouraging news, GST collections during the month of March 2022 were at all time high of ₹ 2,16,965 crores. Congratulations to all members of GST professionals and the department for achieving all India highest collection of GST in the month of March 2022. Despite covid lockdown it was possible due to untired efforts by all of us, trade and industry including department who worked hard and made it possible.

A session on Succession Planning and Role of Professionals was held on 27th March 2022. Learned speaker CA Paras Savla enlightened the attendees about the role they can play in helping their clients plan their business as well as personal succession.

I request you to kindly take advantage of the opportunity of joining the three study circles formed by the chamber – one each on direct tax, indirect tax and capital market.

I also request you to kindly participate in the 'Gift a Membership' drive of the chamber and help spread the benefits of the chamber to as many tax professionals as possible.

Also, humble request to please donate eyes and inspire people to donate eyes.

नेत्रदान कीजिये, मानवता के हित में काम कीजिये

Please wear masks wherever possible, especially in public places, corona cases have reduced, it has not been eliminated as yet!

Happy Eid!

Regards

CA Jignesh Savla
President

Do you know? **Eye donation does not interfere with or delay final rites, as the corneal excision procedure takes less than 20 minutes.**

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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DIRECT TAX CASE LAWS

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

Shahi Exports (P.) Ltd. vs. ACIT

Citation: ITA/843/DEL/2021, ITAT Delhi, 17 January 2022

Applicability of provisions relating to specified domestic transaction and pending proceedings under that section.

Facts:

Assessee Company is engaged in the business of manufacture and export of ready-made garments and generating electricity through windmill. During the scrutiny assessment for AY 16-17, it was observed that the assessee engaged in Specified domestic transactions with Associated Enterprises (AE). Thus, the case was referred to TPO (Transfer Pricing Officer).

During the pendency of the proceedings, Section 92BA was omitted by the Finance Act, 2017. Thus, the assessee stated that once clause (i) of section 92BA is omitted from the statute book, result is that it has never existed, and based thereon, said provisions under law cannot be continued.

Held:

The Supreme Court in the case of Glaxo Smith Kline Asia (P.) Ltd. Suggested that the fair market value of transactions between two domestic associate enterprises will be revenue neutral unless there is some tax arbitrage involved. For Example, shifting of revenue from profit making AE to loss making AE or from regular tax paying AE to AE associated in SEZ or any other regime enjoying specific tax holidays.

Thus, the contention of the assessee was upheld and ITAT drew reference from another case law of Kolhapur Cane Sugar Works that *"the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision."*

ITAT held that Clause (i) of section 92BA has been omitted with effect from 1-4-2017 and, it would be deemed that clause (i) has never been on the statute and since while omitting clause (i) of section 92BA, nothing was specified whether the proceeding initiated or action taken on this continue, the proceeding initiated, or action taken under that clause would not survive at all.

Cases referred to:

CIT vs. Glaxco Smithkline Asia (P.) Ltd. [2010] 195 Taxman 35,
Pr. CIT vs. Texport Overseas (P.) Ltd. [2020] 114 taxmann.com 568
Kolhapur Cane Sugar Works Ltd. vs. UOI [2000] taxmann.com 1065 (SC)

Saptagiri Grameena Bank vs. ITO(TDS)

Citation: [2022] 136 taxmann.com 84, ITAT Hyderabad, 29 November 2021

Penalty on non-submission of Form 15G/H received from deductees.

Facts:

During survey operations, Form Nos. 15G and 15H maintained in Bank were verified by the AO and found that they did not contain any of the details, such as name of the depositor, amount of fixed deposit, date of said deposit made, date of maturity, interest rate etc. Chief Manager of the Bank failed to give a convincing reply, hence, the AO treated the assessee as an assessee in default for non-deduction of tax u/s. 201 of the IT Act and accordingly, raised demand u/s. 201(1) and interest u/s 201(1A).

On first appeal, CIT(A) observed that the purpose of obtaining forms in the prescribed mode will be lost if the declarants allowed to file the forms without fulfilling all the columns as applicable. Filing of declarations without fulfilling the mandatory fields is as good as non-filing of declarations.

Assessee contended that in assessee's own case in Saptagiri Grameena Bank v. Asstt. CIT [ITA/815/Hyd of 2015 & ITA/1233/Hyd. of 2015, dated 6-5-2016] the disallowance made u/s. 40(a)(ia) has been allowed by the Tribunal by observing that all the branches of the Bank are in rural areas, where majority of the customers are either farmers having exempt income or other customers having meagre income. Also majority of the form 15G/H for more than 75% of the customers were duly filled and submitted.

Held:

In assessee's own case for another assessment year it was decided that assessee was in compliance with section 197A considering facts that assessee had collected above 75 per cent of Forms and percentage of Forms not submitted compared to total interest disbursal by assessee was just 2.26 per cent – The same ratio was applied and the order of AO was set aside.

■■■

GST IMPLICATION ON INSURANCE CLAIM DAMAGED GOODS AND ITC REVERSAL

Compiled by CA Bhavin Mehta

In this article I have tried to examine GST implication on insurance claim received on damaged goods and ITC reversal. The case study for the same is given below:

M/s. XYZ Ltd., Mumbai is a manufacture of coated paper. Paper is the main input for the manufacture, which is procured from the paper mills. It sales coated paper across India. In the month of June 2021 it sent one such consignment to its customer located in New Delhi. However, due to heavy rains, the certain lot of papers got damaged in the transit and become unusable. The customer returned the damaged quantity. The insurance claim was sanctioned to the extent of 80% of the value of goods plus GST thereon. M/s. XYZ Ltd. sold the damaged goods to local paper mill who procured it for 20% of the original sale price of the coated paper. M/s. XYZ Ltd. paid GST on goods sent to paper mill. The issue involved is discussed below:

1. Whether GST would be leviable on insurance claim?

   My Comments: A contract of insurance is a contract by which a person promises to indemnify other, for a consideration called premium, against losses that might happen

as a result of the perils or events against which insurance is taken. Every contract of Insurance, except life assurance, is a contract of indemnity. A contract of indemnity is one in which one party promises another party to save him from loss caused to him by the promisor himself, or by the conduct of any other person. The purpose of entering into an indemnity contract is to protect the promisee against unplanned damages. In the given facts the insured company reimbursed the claim on damaged goods to the extent of 80% of the value of goods. The amount received by M/s. XYZ Ltd is not towards any supply of goods or service by them to insurance company but received compensation on suffering loss on account of damaged to the goods. In other words, the payment received is not a consideration for any supplies made to Insurance Company but a payment in lieu of contract of indemnity to indemnify the insured from loss or damage. The liability to GST would arise only where the payment received can be linked to a supply. In case of indemnity contract, the payment is for loss suffered and not supply effected. It can be concluded that GST is not payable on insurance claim.

2. *Whether M/s. XYZ Ltd. would be required to reverse ITC on inputs (paper) used in manufacture of coated paper to the extent of damaged goods returned back by the customer.*

My Comments: *Section 16 of the GST Act entitles the registered person to take credit of input tax charged in 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. This means the registered person on the very day of receipt of goods or services or both would be entitled to claim the credit of input tax charged on such goods or services or both, if such goods or services are used or intended to be used in his business. In the present facts, for the purpose of taking and utilization of the credit all vestitive facts or necessary incidents thereto have taken place prior to damaged goods are returned back by the customer. In this regard, for beneficial gain reference is invited to Hon'ble Supreme Court decision in the case of* **Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. reported in 1999 (112) E.L.T. 353 (S.C.),** *wherein the Apex Court at para 17 held as under:*

> "17. It is clear that these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable products. There is no provision in the Rules which provides for a reversal of credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit-can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

With respect to restriction or non-entitlement of credit under the GST Act, section 17 of the Act, provides for apportionment of credit and blocked credit in certain circumstances. Clause (h) of section 17(5) does not allow ITC in respect of "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples".

The ITC will not be available in respect of:

(i) goods lost;

(ii) goods stolen;

(iii) goods destroyed;

(iv) goods written off; or

(v) goods disposed of by way of gift; or

(vi) goods disposed of by way of free samples.

In the present facts of the case study the goods are damaged. They are neither, lost, stolen, destroyed or written off. Therefore, the restriction contained in section 17(5) would not apply to the present facts of the case study. This means there is no provision under the GST Act or rules which provides for reversal of the ITC claimed by M/s. XYZ Ltd. except where it has been irregularly taken in which event it stands cancelled or if utilized has to be paid for. M/s. XYZ Ltd. is entitled to get the credit of GST paid on inputs.

As M/s. XYZ Ltd. has insured the goods, they put forth a claim of payment of the loss sustained by them. The insurance company in terms of the policy has compensated the assessee. Merely because the insurance company paid the assessee the value of goods that would not render the availment of the Cenvat credit wrong or irregular. M/s. XYZ Ltd. has paid the premium and covered the risk of his goods and when the goods were damaged in terms of the insurance policy, the Insurance Company has compensated the assessee. In the premises of above analysis, it can be determined that M/s. XYZ Ltd. is not required to reverse the credit claim on the goods or services or both in respect of damaged goods.

Reference Material

1. Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. reported in 1999 (112) E.L.T. 353 (S.C.)

2. CCE, Bangalore vs. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)

DIRECT TAXES - Law Update

Haresh P. Kenia

➢ **Deduction of Tax at Source – Section 192 -Income Tax Deduction From Salaries**

Annual CBDT Circular on TDS on Salaries ;-

CBDT has issued a Circular on TDS from Salary under 192 for AY 2022-23 (FY 2021-22) vide **Circular No.** 04 /2022 **dated 15.03.2022** detailing the procedure to be followed by an employer for deducting TDS from the salary income of employees paid during FY 2021-22 or assessment year (AY) 2022-23.

Refer to above circular for Detailed Instruction

➢ **Exclusion of certain cases from Faceless Penalty Scheme**

CBDT Order F.no. 187/4/2021-ITA-I, dated 10-03-2022

The Faceless Penalty Scheme was made applicable w.e.f. 12-01-2021 in similar manner like Faceless Assessment Scheme, 2020 and Faceless Appeal Scheme, 2020 vide notification S.O. 117(e), dated 12-1-2021. Subsequently , the CBDT vide Order F. No. 187/4/2021-ITA-1, dated 26-2-2021 & 20-1-2021, had notified that this scheme would not be applicable to the following cases:

- Penalty proceedings arising/pending in the Investigation Wing, the Directorate of I&CI, erstwhile DG (Risk-Assessment) or by any prescribed authority;
- Penalty proceedings arising out of any statute other than the Income-tax Act, 1961;
- All the penalties imposable by the officers of the level of Commissioner/Director/ Commissioner (Appeals/Appeal Unit);
- Penalty proceedings in cases assigned to Central Charges;
- Penalty proceedings in cases assigned to International Tax Charges; and
- Penalty proceedings arising in TDS charges.

The board vide **Order F.no. 187/4/2021-ITA-I, dated 10-03-2022,** has notified another class of penalties as under that shall not be covered by the Faceless Penalty Scheme 2021.

It has been specified that penalty proceedings in cases where pendency could not be created on ITBA because of technical reasons or cases not having a PAN shall be out of the purview of the Faceless Penalty Scheme 2021.

➢ **CLARIFICATION REGARDING THE MOST-FAVOURED-NATION (MFN) CLAUSE IN THE PROTOCOL TO INDIA'S DTAAS WITH CERTAIN COUNTRIES**

CIRCULAR NO. 3/2022 [F.NO. 503/1/2021-FT&TR-I], DATED 3-2-2022

It is hereby clarified that the applicability of the MFN clause and benefit of the lower rate or restricted scope of source taxation rights in relation to certain items of income (such as dividends, interest income, royalties, Fees for Technical Services, etc.) provided in India's DTAAs with the third States will be available to the first (OECD) State only when all the following conditions are met:

(i) The second treaty (with the third State) is entered into after the signa- ture/Entry into Force (depending upon the language of the MFN clause) of the treaty between India and the first State;

(ii) The second treaty is entered into between India and a State which is a member of the OECD at the time of signing the treaty with it;

(iii) India limits its taxing rights in the second treaty in relation to rate or scope of taxation in respect of the relevant items of income; and

(iv) A separate notification has been issued by India, importing the benefits of the second treaty into the treaty with the first State, as required by the provisions of sub-section (1) of Section 90 of the Income-tax Act, 1961.

If all the conditions enumerated in (i) to (iv) are satisfied, then the lower rate or restricted scope in the treaty with the third State is imported into the treaty with an OECD State having MFN clause from the date as per the provisions of the MFN clause in the DTAA, after following the due procedure under the Indian tax law.

It is also Clarified as under ;-

Notwithstanding the clarification given in the above paragraphs, where in the case of a taxpayer there is any decision by any court on this issue favourable to such taxpayer this Circular will not affect the implementation of the court order in such case

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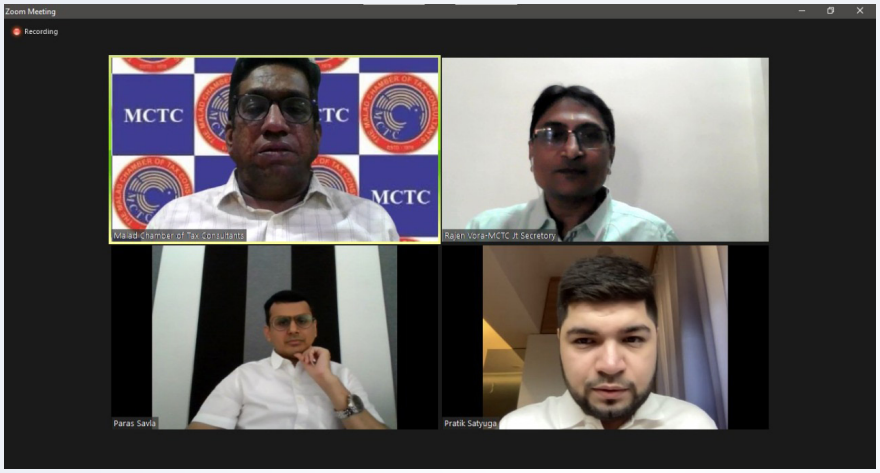
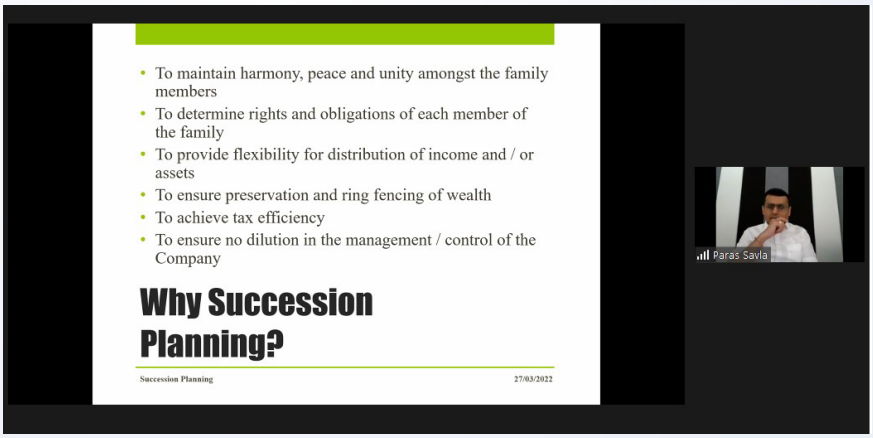
Meeting on Succession Planning and Role of Professionals





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