MNW/I75/2021-23

The Malad Chamber of Tax Consultants

43rd YEAR

MCTC Bulletin

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

E-mail: maladchamber@gmail.com Website: www.mctc.in Total Pages 20 Price ₹ 5/-

Regd. Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai 400 064. **Mobile : 7039006655**
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Vol. 1, No. 2 *For members & private circulation only* August, 2022

President's Communiqué

Dear Professional Colleagues,

On 15th August 2022, India celebrated its 75th Independence Day with the theme Har Ghar Tiranga. Azadi Ka Amrit Mahotsav was celebrated wholeheartedly and enthusiastically across India and demonstrated great national spirit.

The Chamber has been playing a pivotal role in educating and empowering its members and is constantly trying to extend its reach to address new developments and help its members to navigate through the challenges and show the way beyond.

In this direction, the first inaugural (Dr. Bharat Vasani) study circle meeting was held on 21st August, 2022 at N.L. College. The occasion was graced by Dr. Suraj Suchak and Dr. Mrs. Abha Suchak from renowned Suchak Hospital as the Chief Guests. CA Rupal Shah, the speaker and the session Chairman CA Ketan Vajani enlightened members about recent amendments in the provisions relating to Tax Audit and also dealt with many practical and legal issues. The participants immensely benefited from the deliberations the event was accordingly a huge success.

The 2nd Study Circle meeting to discuss 'Intricate Issues in Recent GST Changes through Notifications and Circulars'is planned to be held on 27th August 2022. The meeting will be held virtually on zoom platform and will be addressed by CA Ashit Shah. Full details of the meeting are printed elsewhere in this bulletin.

Knowledge increases by sharing. There is no better gift than the gift of knowledge. The Chamber continues 'Gift a Membership' drive to ensure that more and more professionals get benefit of the activities. I take appeal to you to help the Chamber in this drive and gift at least one membership, the benefits of which will be reaped by the recipient for lifetime.

"To attain knowledge, add things every day. To attain wisdom, remove things every day."

– Lao Tse.

I invite members to write articles and provide other informative material which can form part of this bulletin and help members enhance their skills and knowledge and constantly raise the bar of this bulletin.

Wishing you a very **Happy Ganesh Chaturthi** *in Advance.*

Regards

CA Ujwal Thakrar
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

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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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...../...../.....

   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 ₹ 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)

The Malad Chamber of Tax Consultants

Regd. Office: B/6, Star Manor Apartment, 1st Floor, Anand Road Extn.,
Malad (West), Mumbai- 400064. E-mail: maladchamber@gmail.com. Mobile: 7039006655.

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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 Mumbaionly.
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.

Name	Designation	Contact No.	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

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, 2nd Floor,
The Mall, Station Road,
Malad (West), Mumbai-400097

The Malad Chamber of Tax Consultants

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GIFT A MEMBERSHIP FORM

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2. NAME OF INTRODUCED MEMBER MR /MRS /MISS: .....
3. FATHER'S/HUSBAND'S NAME: .....
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5. MEMBERSHIP NO., if any (with name of the association): .....
6. 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
7. OFFICE NAME: .....

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   MOBILE NO: ..... EMAIL ID: .....
8. RESIDENTIAL ADDRESS: .....

   PIN CODE: ..... STATE: .....

   TEL. NO: ..... FAX NO: ..... MOBILE NO: .....
9. COMMUNICATION TO BE SENT TO: ☐ OFFICE ☐ RESIDENCE

   The amount of ₹ 2,500/- by Cheque/Draft No. ..... dated ..... / ..... / .....

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11. Kindly register on this google form link also for faster processing of membership - https://bit.ly/mctc-e-regn

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.....
(Signature)

Forthcoming Events

2nd Study Circle	
Day & Date	27th August 2022, Saturday
Time	11:00 a.m. to 01:00 p.m.
Topic	Intricate Issues in Recent GST Changes through Notification and Circulars
Venue	Virtual Meeting on Zoom Platform
Speaker	CA Ashit Shah

DIRECT TAXES - Law Update

Haresh P. Kenia

1. 'PRESCRIBED AUTHORITY' For the Purpose of E-VERIFICATION SCHEME, 2021

The Central Board of Direct Taxes, vide CIRCULAR F. NO. 282/04/2022-IT (INV.V), PT. I/136, DATED 20-7-2022, in exercise or the powers conferred by Paragraph 2 (1) or clause (l) of the e-Verification Scheme, 2021, hereby authorises the following as "***Prescribed Authority***" for the purposes of the said Scheme

- Director General of Income-tax,
- Directors of Income-tax,
- Additional Directors of Income-tax,
- Joint Directors of Income-tax,
- Deputy Directors of Income-tax,
- Assistant Directors of Income-tax,
- Income Tax Officers and Inspectors of Income-tax working in the Directorate of Income-tax (Intelligence and Criminal Investigation).

2. Transactions not regards Transfer – Section 47 (viiab) – Transfer of Capital Asset – Notified Securities.

The Central Government, vide Notification No S.O. 3652 (E) [NO. 89/2022/F.NO. 370142/26/2019-TPL-PART (1)], dated 3-8-2022, in exercise of the powers conferred by section 47 (viiab)(d) of the Income-tax Act, 1961, hereby notified *"Bullion Depository Receipt with underlying bullion"* as securities for the purposes of sub-clause (d) of section 47(viiab) of the Income-tax Act, 1961.

The Department of Economic Affairs (DEA), Ministry of Finance vide its notification number S.O. 2957 (E), published in Gazette of India, Extraordinary, vide number, F.No.3/7/2020-EM dated the 31st August, 2020 defines *"Bullion Depository Receipt with underlying bullion"* vide Clause (iii) of the Explanation as under;-

It defines, *'Bullion Depository Receipt with underlying bullion'* as such bullion depository receipt listed on the International Bullion Exchange (IBE) operating inside the International Financial Services Centre and is licensed by the Authority under the International Financial Services Centres Authority Act, 2019.

Section 47 deals with certain transactions which are not regarded as transfers for the purpose of capital gains.

Section 47(viiab) exempts capital gains arising from any transfer of a capital asset, being following capital asset made by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency

(a) bond or Global Depository Receipt referred to in sub-section (1) of section 115AC; or

(b) rupee denominated bond of an Indian company; or

(c) derivative; or

(d) such other securities as may be notified by the Central Government in this behalf,

It makes the amendments in the notification of the Government of India, Ministry of Finance, (Department of Revenue), number 16/2020, dated the 5th March, 2020. The CBDT earlier, vide Notification No. 16/2020 dated 05.03.2020 notified the following securities for the purpose of sub-clause (d) of section 47(viiab) of the Act-

(i) foreign currency denominated bond;

(ii) unit of a Mutual Fund;

(iii) unit of a business trust;

(iv) foreign currency denominated equity share of a company;

(v) unit of Alternative Investment Fund,

3. Salaries – Perquisites - Section 17(2) of the Act. – Documents to be Furnished by Employee to avail Covid -19 Tax Exemptions.

The Central Government, vide Notification No - 3703(E) [No. 90/2022/F. No. 370142/31/2022-TPL (PART-2)], dated 5-8-2022, in exercise of the powers conferred by section 17 (2), clause (ii)(c) to first proviso, hereby notifies the following conditions:-

1. The employee is required to submit the following documents to the employer,–

   (i) the COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;

   (ii) all necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID19 positive; and

   (iii) a certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

2. This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the assessment year 2020-2021 and subsequent assessment years.

   This notification needs to be understood with following background.

   • Vide Press statement dated 25.06.2021, the Finance Ministry announced that income-tax shall not be charged on the amount received by a taxpayer for medical treatment from the employer or from any person for treatment of COVID-19 during FY 2019-20 and subsequent years.

- The Finance Act 2022 has provided for income-tax exemption of amount received for medical treatment of COVID-19 and on account of death due to COVID-19 by an employee from his employer or from any other person during the financial year 2019-20 and subsequent years. These amendments are retrospectively effective from 1st April 2020 or Assessment Year 2020-21. For this purpose, amendments have been made in Section 17(2) and section 56 [not covered here] of the Act.
- Section 17(2) of the Act which generally defines perquisites. The finance Act 2022 provided by way of proviso to section 17(2) for exemption for the amount received for reimbursement of actual medical expenditure for treatment of self or his family member for COVID-19 in the hands of the employee from his employer. In case of the death of the employee due to COVID-19, the same will be exempt from tax in the hands of the deceased employee as well as a family member.
- It is provided the term 'family' will have same meaning as defined and given in section 10(5) of the Act. The section 10(5) defines family means:-

  (i) the spouse and children of the individual; and

  (ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual
- The first proviso to section 17(2) provides for exemption from perquisite of any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf.

  This amendment is inserted in the Statute with retrospective effect from 1st April, 2020 i.e, AY 2020-21.
- The intend of this notification no 90 dated 05.08.2022 is to notify the conditions that the employee has to submit a list of certain documents to the employer for claiming the exemption. In case the employee fails to submit these prescribed documents for treatment of COVID-19, then the amount so received from the employer by the employee shall be chargeable to tax as 'salary' under section 17(2) of the Act.
- From the wording of the notification, it is not clearly specified from whom the certificate should be obtained. It appears that it should be a self – certified document by employee himself.
- It is to be noted that the finance Act 2022 was notified on 31.03.2022 but the notification specifying the conditions is notified on 05.08.2022 which is after the expiry of due date for filing Return of income for AY 2022-23 by salaried class of Individuals. Further these provisions are applicable from AY 2020-21 onwards.

4. Income from other sources – section 56 – Forms to be furnished by an Individual to claim exemption of any amount received towards expenditure incurred for treatment of Covid-19 Illness.

Notification No-S.O. 3704(E) [NO. 91/2022/F. NO. 370142/31/2022-TPL (PART-2)], dated 5-8-2022

The Central Government, vide Notification No-3704(E) [NO. 91/2022/F.NO. 370142/31/2022-TPL (PART-2)], dated 5-8-2022, in exercise of the powers conferred by section 56 (2) (x), clause (xii) to first proviso, hereby notifies the following conditions;-

1. The Individual is required to keep a record of the following documents–

   (i) The COVID-19 positive report of the Individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;

   (ii) All necessary documents of medical diagnosis or treatment of the Individual or his family member due to COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive; and

2. Statement of any amount received for any expenditure actually incurred by an individual for his medical treatment or treatment of any member of his family, for any illness related to COVID-19 for the purposes of clause (XII) of the first proviso to clause (X) of sub-section (2) of section 56 of the Income-tax Act, 1961 shall be verified and furnished in **Form No. 1.**

3. The details of the amount received in any financial year shall be furnished in **Form No. 1** to the Income Tax Department **within nine months from the end of such financial year or 31.12.2022, whichever is later.**

4. This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the assessment year 2020-2021 and subsequent assessment years.

   This notification needs to be understood with following background

   - Vide Press statement dated 25.06.2021, the Finance Ministry announced that income-tax shall not be charged on the amount received by a taxpayer for medical treatment from the employer or from any person for treatment of COVID-19 during FY 2019-20 and subsequent years
   - The Finance Act 2022 has provided for income-tax exemption of amount received for medical treatment of COVID-19 and on account of death due to COVID-19 by an employee from his employer or from any other person during the financial year 2019-20 and subsequent years. These amendments are retrospectively effective from 1st April 2020 or Assessment Year 2020-21. For this purpose, amendments have been made in Section 17(2) [not covered here] and section 56 of the Act.

     The clause (xii) of the first proviso to section 56(2)(x) deals with the receipt of reimbursement of cost by the individual himself for treatment of COVID-19 of self or his family members
   - Section 56(2)(x), clause(xii) of first proviso, provides for exemption to any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf.
   - It is provided the term 'family' will have same meaning as defined and given in section 10(5) of the Act.
   - This amendment is inserted in the Statute with retrospective effect from 1st April, 2020 i.e, AY 2020-21.
   - This Notification No 91/2022 provides/ notifies the conditions which needs to be satisfied in order to claim exemption from any sum received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 under clause (XII) of the first proviso of clause (x) of sub-section (2) of section 56 of the Act

- The provisions of section 56(2)(x) do not apply in respect of any sum of money received from a relative. Hence, it is to noted that these provisions related to receipt of money in COVID-19 cases and chargeability to tax and exemption thereof shall apply only in cases of receipt of money from a non-relative person.
- This notifications no 91/2022 have been made effective retrospectively from 01.04.2020, hence, Form No. 1 for any amount received and claimed as exempt under clause (xii) of the first proviso to section 56(2)(x) for the FY 2019-20, FY 2020-21 and FY 2021-22 shall be required to be furnished latest by 31.12.2022.
- A new condition is added in the notification that the illness due to COVID-19 must have been suffered within a period a period of six months from the date of being determined as COVID-19 positive.

5. Income from other sources – section 56-Forms to be submitted and conditions to be satisfied for claiming exemption of an amount received due to covid-19 Death.

Notification No. S.O. 3705(E) [NO. 92/2022/F.NO. 370142/31/2022-TPL (PART-2)] dated 05.08.2022

The Central Government, vide Notification no - 3705(E) [NO. 92/2022/F.NO. 370142/31/2022-TPL (PART-2)], dated 5-8-2022, in exercise of the powers conferred by section 56 (2) (x), clause (xiii) to first proviso, hereby notifies the following conditions:-

1. (i) The death of the individual should be within six months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family
2. The family member of the individual is required to keep a record of the following documents –
   (a) The COVID-19 positive report of the Individual or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician;
   (b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).; and
3. Statement of any sum of money received by a member of the family of a deceased person from the employer of the deceased person or from any other person or persons, on account of death due to COVID-19 for the purposes of clause (xiii) of the first proviso to clause (x) of sub-section (2) of section 56 of the Income-tax Act, 1961 shall be verified and furnished in Form A
4. The details of the amount received in any financial year shall be furnished in Form A to the Assessing Officer within nine months from the end of such financial year or 31.12.2022 whichever is later.
5. This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the assessment year 2020-2021 and subsequent assessment years.

This notification needs to be understood with following background

- Vide Press statement dated 25.06.2021 by Finance ministry and finance Act 2022 provided for income-tax exemption of amount received for medical treatment of COVID-19 and on account of death due to COVID-19 by an employee from his employer or from any other person during the financial year 2019-20 and subsequent years. This amendments are retrospectively effective from 1st April 2020 or Assessment

Year 2020-21. For this purpose, amendments have been made in Section 17(2) [not covered here] and section 56 of the Act.

- Similar to clause (xii), exemption under clause (xiii) of the first proviso of clause (x) of sub-section (2) of section 56 of the Act shall be available if conditions specified in Notification No. 92/2022 are satisfied from any sum received by a member of the family of a deceased person, where the death occurs due to illness related to COVID-19,

  (i) from the employer of the deceased person, or

  (ii) from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ₹ 10 lakh, and such sum has been received within 12 months from the date of death.

- The Clause (xiii) of the first proviso to section 56(2)(x) deals with the receipt of exgratia amount by family member of the deceased individual who died due to illness related to COVID-19. It is provided the term 'family' will have same meaning as defined and given in section 10(5) of the Act.
- The exemption under notification 92/2022 is available on furnishing of Form A with the assessing officer within 9 months from the end of the financial year in which such amount is received or 31.12.2022, whichever is later.
- This notifications no 92/2022 have been made effective retrospectively from 01.04.2020, hence Form A for any amount received and claimed as exempt under clause (xiii) of the first proviso to section 56(2)(x) for the FY 2019-20, FY 2020-21 and FY 2021-22 shall be required to be furnished latest by 31.12.2022.
- A new condition is added in the notification that the death of the individual shall be within a period of six months from the date of being determined as COVID-19 positive.

6. Reduction of Time Limit for Verification of ITR form within 120 days to 30 days of Transmitting data of ITR Electronically.

The Central Board of Direct Taxes vide notification no 5 of 2022 dated 29.07.2022 notified the reduction of time limit for verification of Income Tax Return (ITR) from within 120 days to 30 days of transmitting the data of ITR electronically with effect from 1st August 2022.

- It has been decided that in respect of any electronic transmission of return data on or after the date this Notification comes into effect i.e 01.08.2022, the time-limit for e-verification or submission of ITR-V shall now be 30 days from the date of transmitting/uploading the data of return of income electronically.
- It is clarified that where the return data is electronically transmitted before the date on which this Notification comes into effect i.e, 31.07.2022, the earlier time limit of 120 days would continue to apply in respect of such returns.
- In case of verification through ITR-V submission, the duly verified ITR-V shall be required to be sent to CPC Bangalore only by Speed Post. Earlier, posting of duly verified ITR-V by Ordinary Post was also allowed.
- CBDT has also amended the rule for determining the date of filing of return where the return is verified after uploading the return online and it is clarified as under:-.

  ✓ where the ITR is uploaded online on and after 01.08.2022, and the return is e-verified or ITR-V is submitted within 30 days of the filing of return of income, the date of uploading of ITR shall be considered as the date of filing of return.

  ✓ Where the ITR is uploaded online on and after 01.08.2022, and the return is e-verified or ITR-V is submitted after 30 days of the filing of return of income, the date of

e-verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Act shall follow. It means the return will be marked as a belated return. Accordingly, late fees under section 234F will be levied. Further, carry forward of loss of the current year shall not be allowed.

- ✓ Where ITR is verified by sending duly verified ITR-V to CPC Bangalore by Speed Post, the date of despatch of duly verified ITR-V by speed post shall be considered for computing the time limit of 30 days of verification. In other words, if the ITR-V is despatched by speed post within the time limit of 30 days, then even if the return is verified after 30 days, it will be treated as verified within the time limit of 30 days

7. Procedure of PAN Allotment to Newly Incorporated Limited Liability Partnerships (LLPs) through Form FiLLiP of MCA

The Directorate of Income-tax (Systems) vide Notification No. 4/2022 dated 26.07.2022 notified the procedure of PAN application & allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically Form FiLLiP of Ministry of Corporate Affairs (MCA).

- Rule 114(1) of the Income-tax Rules, 1962 prescribes Form No. 49A and Form No. 49AA for making an application for obtaining the Permanent Account Number or PAN in accordance with the provision of section 139A of the Income-tax Act, 1961.
- The proviso to Rule 114(1) prescribes that one can apply for allotment of PAN through a common application form (CAF) to be notified by the Central Government in the Official Gazette and the Principal Director General of Income Tax (Systems) or Director General of Income-tax (Systems) shall specify the classes of persons, forms and format along with the procedure for the safe and secure transmission of such forms and formats in relation to furnishing of Permanent Account Number (PAN). By exercising this power conferred to it by the said proviso, the CBDT has notified the Form-FiLLiP notified by the MCA as the CAF for incorporation of LLPs
- The Director General of Income-tax (Systems) lays down the classes of persons being the newly incorporated LLPs through the Form FiLLiP to whom the PAN will be allotted after the generation of LLP Identification Number by the MCA.

8. CBDT Notifies Maintenance of Books of Accounts and Other Documents for Trust or NGO under new Rule 17AA

The Central Board of Direct Taxes, vide notification no 94/ 2022-GSR 622 (E) dated 10.08.2022, in exercise of the powers conferred by section 12A (1)(b)(i) and clause (a) of the tenth proviso section 10 (23C) read with section 295 of Income Tax Act, hereby gives the Income-tax (24th Amendment) Rules, 2022

- It inserts new rule 17AA to Income tax rules 1962.
- It prescribes Books of accounts and a very comprehensive list of other documents to be kept and maintained as per section 12A(1)(b)(i) or under clause (a) of tenth proviso to section 10(23C) by following entities.
  - ✓ a Trust or an NGO registered under section 12AB or
  - ✓ any university or other educational institution or
  - ✓ any hospital or other medical institution approved under section 10(23C) of the Income-tax Act, 1961.
- It provides that the prescribed books of accounts and other documents may be kept in written form or in electronic form or in digital form or as print-outs of data stored in electronic form or in digital form or any other form of electromagnetic data storage device.

- Such books of accounts and other documents shall be maintained at the registered office of the Trust or fund or the NGO and other entities and shall be required to be kept and maintained for a period of ten years from the end of the relevant assessment year.

  A relaxation is provided from keeping and maintaining the books of accounts and other documents at a place other than the registered office in a case where the management has passed a resolution for keeping the prescribed books of accounts and other documents at any other place in India and shall intimate full address of such other place to the jurisdictional Assessing Officer within 7 days thereof.

  The books of accounts and other documents may be required to be kept and maintained for a period of more than 10 years where the assessment is reopened under section 147 of the Act within the prescribed period of 10 years, in that case, the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has become final

- Prior to the finance Act 2022, there was no specific provision under the Act providing for the books of accounts to be maintained by these trusts or institutions. The Finance Act 2022 has amended the provisions of section 12A of the Act to provide for compulsory maintenance of books of accounts and other documents where the total income of any trust or institution without giving effect to the provisions of section 11 and section 12 of the Act exceeds the maximum amount which is not chargeable to income-tax in any previous year.
- This notification is issued by virtue of powers conferred to the Board under this clause with respect to maintaining books of account and other documents in the prescribed form and manner and at the prescribed place.

The newly inserted rule 17AA provides for following;-

- ✓ Maintenance of Books of accounts by a Trust or NGO as per section 12A or section 10(23C)
- ✓ Maintenance of Other Documents by a Trust or NGO as per section 12A
- ✓ Form and Manner of maintenance of Books of accounts and other documents by a Trust or NGO as per section 12A
- ✓ Place where the Books of accounts and other documents are required to be maintained by the Trust or NGO as per section **12A,**
- ✓ Period for which Books of accounts and other documents to be kept and maintained

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

■■■

DIRECT TAX CASE LAWS

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

Nitesh Estates Ltd. vs. ADIT (Intl. Tax)

Citation: [2022] 140 taxmann.com 400, ITAT B'lore, 23 June 2022

Liability u/s 195 for TDS deduction cannot be compensated by deductee filing income tax return and paying due taxes thereon.

Facts:

The assessee is engaged in the business of real estate. It developed a residential apartment complex in Bangalore. It sold one of the flats to Mr. Mahesh Bhupathi for ₹ 2 crores on 16 Feb 2009, On 17 July 2010, Mr. Bhupathi sold this flat back to assessee for a consideration of ₹ 4 Crores. Later, a

tri-partite agreement was executed whereby Mr. Bhupathi nominated Mr. Shetty to the benefits of the agreement for a consideration of ₹ 6 Crores.

During assessment, AO raised query as to why TDS was not deducted on payment to Mr. Bhupathi of ₹ 4 Crores u/s. 195 as he was a non-resident. He held assessee to be in default and levied tax and interest liability.

On appeal before CIT(A), the assessee contended that, it was not aware that Mr. Bhupathi was non-resident. Ld. CIT(A) observed that Mr. Bhupathi was also an independent Director of the Company, and the Company was in contact with Mr. Bhupathi since the day the MOU for purchase of flat was entered into in 2005. Thus, it was difficult to accept that the assessee was not aware of the residential status of Mr. Bhupathi. In any case, paying in Indian currency or not being aware of the residential status does not absolve the assessee of the liability cast upon it. Bona fide belief could be a ground for proceedings u/s. 271C and Sec 221 of the Act, but not for the proceedings u/s. 201(1) and 201(1A) of the Act.

On further appeal before the Tribunal,

Held:

On a plain reading of the section, the only two conditions required for the provisions of S. 195 to trigger are:

i) Payment is to a non-resident

ii) The sum paid/credited is chargeable to tax

Further, ITAT observed that There is no relevance whether payee has taken that amount in filing return of income or not. Once the conditions laid down u/s. 195 of the Act are fulfilled the assessee is bound to deduct TDS.

The action of the A.O. in charging the assessee interest u/s. 201(1A) is consequent to the quantification of tax demand u/s. 201(1) r.w.s. 195 of the Act and is chargeable in respect of any person who has failed to deduct the whole or any part of tax at the rates and specified therein.

Consequently, appeal of the Assessee is rejected.

Marvel Industries Ltd vs. DCIT

Citation: ITA/779/MUM/2022, ITAT Mumbai, 19 July 2022

Ex-parte Order by CIT(A)

Facts:

The assessee has not filed the Income tax return since the company was under liquidation. High Court had appointed a liquidator for liquidation process. Assessee case was re-opened u/s. 147 by issuing the notice u/s. 147. Since the company was in liquidation assessee had not responded the notice issued by the AO assuming that the liquidator has to respond to the notice. AO passed the order by stating that the assessee is not willing to comply with the statutory notices and is not in possession of any supporting evidence and made addition of ₹ 11,24,53,595/- as unexplained income u/s. 68 of the IT Act.

Aggrieved by the order of the AO assessee filed the appeal before the CIT(A). During proceeding, notices for hearing were issued to appellant through ITBA system however appellant failed to file any submission nor seek any adjournment. Based on the above conduct CIT(A) passed the Ex-parte order without referring the statement of fact and issuing raise in ground of appeal and confirm the addition made by the AO.

On further appeal before the Tribunal,

Held:

Whether an appellant appears before the CIT(A) or not, it is the statutory obligation of the CIT(A) to decide an appeal on its merits. The scheme of section 250 does not visualize any situation in which an appeal

can be summarily dismissed disregarding the material on record. Section 250 (6) lays down that the CIT(A)'s order "disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision". As for the points of determination, in our considered view, it cannot be open to the learned CIT(A) to disregard what the assessee has placed before him by way of a statement of facts and the grounds of appeal.

The exercise of the "right to be heard at the hearing of the appeal" by "the appellant, either in person or by an authorized representative condition", under section 250(2)(a), is not a condition precedent for the disposal of appeal on merits in accordance with the scheme of Section 250(6).

Irrespective of the non-appearance of the assessee before the CIT(A), the CIT(A) ought to have dealt with the issues so raised by the assessee-appellant on merits and by way of speaking order and in accordance with the law.

Consequently, appeal of the Assessee is allowed for statistical purpose and the matter was remanded back to CIT(A).

Sujan Azad Parikh vs. DCIT

Citation: ITA/186/Mum/2021, ITAT Mumbai, 13 July 2022

Capital Gain on family Settlement.

Facts:

Assessee filed his return of Income declaring the total income of ₹ 2,81,83,911/- (including the capital gain arising from the transfer of share out of family arrangement as per CLB order) for the AY 2007-08. The assessment for the same was completed u/s. 143(3). However, assessee claimed before the Assessing officer that no tax should be levied on sum of ₹ 2,08,64,396/- being long term capital gain arising from the transfer of share out of family arrangement as per CLB order which was inadvertently offered by the assessee in its return of Income for AY 2007-08.

AO rejected the aforesaid claim on the ground that the return for the same asst year was not revised by the assessee. CIT(A) also upheld the same view. On appeal before ITAT, the matter was referred back to AO to consider the same on legal grounds and allow the fact, that the return was not revised.

While deciding the matter afresh, AO again disallowed the claim of exempt long term capital gain on the grounds that the shares were sold back to the Company self and this cannot be treated as transfer out of family arrangement and hence should be taxable.

When assessee filed appeal before CIT(A) against this order, the view of the AO was upheld by CIT(A).

On further appeal before the Tribunal,

Held:

Assessee is one of the family members of the Parikh Group and the above group has two divergent groups identified as SAP Group and ANP Group represented by the respective family heads. Assessee being one of the family head, who was representing the SAP Group. Due to dispute in the functioning of the company and other group concerns, in order to restore the peace and harmony in the family, all have agreed to family arrangements by filing petition before CLB.

As per the direction of CLB, the assessee has to either transfer the shares to ANP Group or to the company whichever is acceptable to the ANP Group. As far as assessee is concerned, he has agreed to transfer the shares, it is irrelevant for him how the shares are being transferred, as long as he receives the compensation as set out by the CLB. In this case, the ANP Group has decided to buy back the shares in the NPCL itself. Therefore, it is not proper on the part of the tax authorities to take divergent view without their being proper reasons.

As held in the case R Nagaraj Rao, the Hon'ble Karnataka High Court observed that Partition or family settlement is not transfer. When there is no transfer there is no capital gain and consequently no tax on capital gain is liable to be paid.

Consequently, it is established that assessee has transferred the share under family arrangement only and the same is not taxable.

Decision relied upon:

B. A. Mohota Textiles Traders (P) Ltd. vs. DCIT, Bom HC, 397 ITR 616

R Nagaraja Rao, Karnatak HC, 352 1TR 565

■■■

Whether GST is Leviable on Cancellation Charges Collected by Airlines, Railways or Hotels?

Compiled by CA Bhavin Mehta

Before we venture into the analysis of the GST implication on cancellation of Airline ticket, Railway ticket or hotel booking, it is imperative to bring to the notice of the reader the recent circular No. 178/10/2022-GST dated 03.08.2022 issued by Government of India. The Circular No. 178/10/2022-GST has clarified on the applicability of GST on liquidated damages, compensation, penalty, cancellation charges, etc. As per said circular no. 178/10/2022-GST, cancellation charges collected on booking of hotel accommodation, entertainment event or a journey would attract levy of GST.

The relevant portion as per said circular no. 178/10/2022 pertaining to cancellation charges is reproduced below:

"Cancellation charges

11. A supply contracted for, such as booking of hotel accommodation, an entertainment event or a journey, may be cancelled by a customer or may not proceed as intended due to his failure to show up for availing the same at the designated place and time. The supplier may allow cancellation of supply by the customer within a certain specified time period on payment of cancellation fee as per commercial terms of the contract. In case the customer does not show up for availing the service, the supplier may retain or forfeit part of the consideration or security deposit or earnest money paid by the customer for the intended supply.

11.1 It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee. Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

11.2 Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal. All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

11.3 Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

11.4 Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

11.5 However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable."

Analysis:

1. The aforesaid circular no. 178/10/2022-GST has clarified that cancellation fee can be considered as the charges for the costs involved in making the arrangements for the intended supply. It is claimed that services such as transportation and tour constitute bundle of services. It starts with booking of the ticket for travel and last at least till the exit of the passenger from the destination terminal. The facilitation service of allowing cancellation against payment of cancellation charges is also natural part of this bundle. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as principal supply.

2. In the aforesaid circular no. 178/10/2022, at para 7.1.5, it is clarified that "Similarly, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of Earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable. The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' within the meaning of the Act, otherwise it is not a 'supply'". However, with regards to cancellation of air/rail ticket or hotel accommodation, the circular on superficial argument determines the deposit as taxable supply. It considers making the arrangement as supply. The reservation of seat or accommodation in hotel, the Airlines, Railways or Hotelier, means they would honour the contract entered into with their customers, in terms of the contract. The execution of that obligation cannot be classified as consideration for the payment of a deposit. The circular further claims that allowing the customer to cancel the booking is a separate supply. The contractual terms between the parties define the terms of their contract, including the consequences of a cancellation or breach of obligations of the parties. Permitting the customer to cancel the booking is terms of the contract between the service provider and customer and cannot be considered as separate supply. There is no direct

connection between making the arrangement or allowing the customer to cancel the booking and the consideration received.

3. There should be no dispute that the travelers pay an amount to Airline or Indian Railway in order to avail travel service. Similarly, customers pay an amount on hotel booking in order to avail hotel accommodation services and not for availing the booking facilitation. Air Ticket or Rail Ticket itself is not a service but a means to enjoy the transportation services. Money is a means to enjoy transportation services, which at the time of booking is replaced with ticket. On cancellation of ticket, either entire amount of money is forfeited or part amount is forfeited, without availing the services. Forfeiture of amount can be regarded as payments made by way of compensation for its loss as a result of traveler/ customer default. The supply doctrine does not contemplate or encompass a wrongful unilateral act or any resulting payment of damages.

4. The sums paid in advance shall be deposits with the result that either party to the contract may go back on its undertaking, the customer losing the deposit, has right to exact damages exceeding the amount of the deposit retained. The sum paid in advance for hotel accommodation is either deducted from the amount to be paid for the accommodation or retained by the Hotelier in case where the customer cancel their reservation. Following the reservation of seat or accommodation in hotel, the Airlines, Railways or Hotelier, provides the agreed service, they does no more than honour the contract entered into with their customers, in accordance with the principle that contract must be performed. Accordingly, the fulfilment of that obligation cannot be classified as consideration for the payment of a deposit. Since the obligation to make a reservation arises from the contract for accommodation itself and not from the payment of a deposit, there is no direct connection between the service rendered and the consideration received. The fact that the amount of deposit is applied towards the price of the reserved seat or room, if the customer occupy the seat or room, confirms that the deposit cannot constitute the consideration for the supply of an independent and identifiable service. On consideration received due to termination of the arrangement, no identifiable service can be attributed for such consideration. On cancellation of booking, the customer is adversely put to loss.

5. As explained, the cancellation charges are for putting the Airlines, Railways, or Hotelier into inconvenience by initially booking the ticket or accommodation and subsequently cancelling. Inasmuch as no service stand provided by the Airlines, Railways, or Hotel to their customers and for which purpose no consideration was ever received by them, it can be derived that the cancellation charges recovered by them cannot be held to be the consideration for providing transportation services or accommodation services. Compensation for cancellation do not attract GST in the absence of underlying supply.

6. There has to be an express or implied agreement; oral or written, to do or abstain from doing something against payment of consideration for doing or abstaining from such as act, for a taxable supply to exist. An agreement to do an act or abstain from doing an act or to tolerate an act or a situation cannot be imagined or presumed to exist just because there is a flow of money from one party to another. Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation. Payments in form of retention of deposit is not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation. Unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act. The contract for booking of Air ticket or Rail ticket or hotel accommodation is entered into for execution and not for its breach. Any compensation received from supplier for breach of trust would not be considered as supply. For levy of GST requirement of 'Supply' is essential. Compensation received for breach of contract and not for fulfilment of contract, which is not a supply. The damage, loss or injury, being the substance of the dispute cannot in itself be characterized as a supply made by the aggrieved party.

7. There is neither any active or passive role played by the Airline, Railway or Hotelier. The Hon'ble Tribunal in the case of ***Faridkod Co-operative Sugar Mills Ltd. vs. CCE, Ludhiana – 2004 (171) E.L.T. 174,*** following the decisions of ***Spring Fresh Drinks vs. CCE, 1991 (54) E.L.T. 333 (Tri.) and Inox Air Products Limited vs. CCE, 2001 (134) E.L.T. 224 (Tri.),*** held that damages received by appellant for non-lifting of quantity of molasses, is not includible in the assessable value.

8. The European Court of Justice in the case of ***Societe Thermale d'Eugenie-les-Bains vs. Ministere del 'Economie, des Finances et de 'IIndustrie*** observed, if there is direct link between the service rendered and the consideration received, the sums paid constituting consideration for an identifiable service supplied in the context of legal relationship in which performance is reciprocal. The payment of a deposit by the customer, on the one hand, and the obligation of the hotelier (with respect to hotel booking), on the other, not to contract with anyone else in such a way as to prevent it from honouring its undertaking towards that client cannot be classified as reciprocal performance, because the obligation in those circumstances arises directly from the contract for accommodation, not from the payment of the deposit. The same ratio is applicable for airline or railway booking. The conclusion of the contract and the legal link between the parties do not usually depend on the payment of a deposit.

9. The Court further observed, in accordance with the general principles of civil law, each contracting party is bound to honour the terms of its contract and to perform its obligations thereunder. The obligation to fulfill the contract does not therefore arise from the conclusion, specifically for that purpose, of another agreement. Nor does the obligation of fulfilling contractual performance depend on the possibility that otherwise compensation or a penalty for delay may be due, or on the lodging of security or a deposit; that obligation arises from the contract itself. The contracting parties are at liberty to define the terms of their legal relationship, including the consequences of a cancellation or breach their obligations. In the event of non-performance the contractual provision may include for compensation or a penalty, which are intended to strengthen the contractual obligations of the parties.

10. The deposit itself does not constitute independent supply. Deposit mark the conclusion of a contract, since their payment implies a presumption that the contract exists. It encourages the parties to perform the contract, because otherwise the party who has paid its stands to lose the corresponding sum. The deposit constitute fixed compensation, since its payment releases one of the parties from the need to prove the amount of loss suffered if the other party goes back on the agreement. Such compensation does not constitute the fee for a service and does not form part of the taxable amount for GST purpose.

11. Section 73 of the Indian Contract Act provides for compensation for loss and damage caused by breach of contract. The party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally, arises in the usual course from such breach or which party know, when making the contract, to be likely to result on breach. The parties may determine in advance, the amount of compensation to be paid on account of loss or damage caused by a breach of contract where the parties agree on a reasonable sum as compensation, which is a pre-estimate of the loss or damage on account of the breach of contract. Such a clause may be enforceable in law. Where the quantification is not reasonable but is intended to penalise the party committing the breach, it is regarded as "penalty" and not enforceable in Court of Law. Section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.

12. Liability to pay GST would arise only where the payment received can be linked to a supply. In case of compensatory damages, the payment is for loss suffered and not supply effected. While the process of determining loss suffered may be the value of the consideration receivable if the contract had been performed, such process of computing damages will not alter the character

of the payment, namely a compensation for loss suffered. This is premised on the principle that the supply doctrine does not encompass a wrongful unilateral act or any act resulting in payment of damages. Damages may arise in an action, in tort, or one in breach of contract as they both entail civil wrongs. Damages represent the compensation or restitution for the loss caused to the plaintiff for the violation of a legal right. It may even be the closest monetary alternative to a remedy in specific performance. The term 'Damages' may be used to include payments towards contractual obligations which are performed yet unpaid for, but the law of damages is not restricted to ordering that what ought to have been done or ought to have been paid under contract. {Refer Bombay High Court decision in the case of ***Bai Mamubai Trust vs. Suchitra (2019) 109 taxmann.com 300 (Bombay)*}.**

13. In the case of *Lemon Tree Hotel vs. Commissioner, GST, C.E. & Customs, Indore, 2020 (34) G.S.T.L. (Tri.-Del.),* the Hon'ble tribunal held as under:

"5. Having considered the rival contentions, I find that the aforementioned observation of the Commissioner (Appeals) are erroneous and have no legs to stand. Admittedly, the customers pay an amount to the appellant in order to avail the hotel accommodation services, and not for agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and chargeable on full value and not on abated value. The amount retained by the appellant is for, as they have kept their services available for the accommodation, and if in any case, the customers could not avail the same, thus, under the terms of the contract, they are entitled to retain the whole amount or part of it. Accordingly, I hold that the retention amount (on cancellation made) by the appellant does not undergo a change after receipt. Accordingly, I hold that no service tax is attracted under the provisions of Section 66E(e) of the Finance Act. Accordingly, this ground is allowed in favour of the appellant."

14. In the case of *Ford India Pvt Ltd. vs. Commissioner, LTU, Chennai, in Appeal No. ST/196 & 197/2009,* the Hon'ble Chennai Tribunal held as under:

"7. Regarding the tax liability on the consideration received due to termination of the arrangement, we note that no identifiable service can be attributed for such consideration. It is rather a termination of arrangement which itself the original authority held as a service. We note that by terminating the arrangement, the appellants are adversely put to certain business The consideration has been paid forsuch loss. No identifiable service could be attributed for such payment during the material time. Accordingly, the tax liability on such consideration could not be sustained."

15. In *Jaipur Jewellery Show vs. CCE & ST, Jaipur-I, 2017 (49) S.T.R. 313 (Tri.-Del.),* in respect of cancellation of booking of exhibition booth, the Hon'ble Delhi Tribunal held as under:

"6. As regards the cancellation charges, we note that the same are being retained by the appellant from the initial amounts given to them for booking a booth, when the same is subsequently cancelled by the customer and the amount is refunded to them. Admitted position, which emerges is, that no booths are ultimately rented out by the appellant to their customers. As explained, such cancellation charges are for putting the appellant into inconvenience by initially booking the booths and subsequently cancelled. Inasmuch as no service stand provided by the appellant to their customers and for which purpose no consideration was ever received by them, we are of the view that the cancellation charges recovered by the appellant cannot be held to be the consideration for providing business exhibition services. The same are thus not liable to service tax."

Conclusion: In the premises of above discussion, in the opinion of author, cancellation charges collected by Airlines, Railways or Hoteliers, on cancellation of booking would not be liable to levy of GST. The aforesaid circular No. 178/10/2022 dated 03.08.2022 in respect of cancellation charges have to be read down and is liable to challenge.

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Dr. Bharat Vasani Inaugural Study Circle on 21 August 2022 - Workshop on Practical & Legal Issues in Tax Audit Including Recent Amendments




CA Ketan Vajajni



CA Rupal Shah



Dr. Suraj Suchak

Do you know?

If you multiply any number by three. Then, take the digits of that new number and add them all together, whatever number that equals will always be divisible by three, no matter what number you started with.

Eg: If I take number 4, then 4 x 3 = 12 and now if I add 1+2= 3 which if divisible by 3

Eg: If I take number 24, then 24 x 3 = 72; 7+2 = 9 and 9 is also divisible by 3

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Adm. Off. Tel. 022-2889 5161

• **Editor : Shri Kishor Vanjara**

Associate Editor of MCTC Bulletin : Shri Brijesh M. Cholera

Posted at Malad ND (W) Post Office, Mumbai-400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st August, 2022

To

If undelivered, please return to :

The Malad Chamber of Tax Consultants,
B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064