



**The Malad  
Chamber of  
Tax  
Consultants**

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# MCTC Bulletin

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

E-mail: [maladchamber@gmail.com](mailto:maladchamber@gmail.com)

Website : [www.mctc.in](http://www.mctc.in)

Regd. Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai 400 064. Mobile : 7039006655

Admn. Office : C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

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## President's Communique

Dear Friends

The finance minister has presented a growth-oriented budget with more focus on capital expenditure. Bringing income from virtual digital asset under the tax net and facility of filing updated return are welcome news. Capital expenditure in turn will bring more growth and more jobs. Raising customs duty on import of imitation jewellery and steel will boost the respective manufacturing sector.

As per the tradition of the chamber, the budget team of the chamber started compiling the budget book immediately after the budget was presented in the parliament and as is the case every year, the publication was ready within 72 hours of its presentation. Our budget publication is unique in its own way – it contains clause by clause analysis of the Finance Bill and wherever possible details of existing provision, proposed amendments, effective date, reasons for change and examples are provided. It becomes a handy referencer for Professionals and the Business community at large. Very few copies of the same are remaining for sale now – one can contact the secretaries of the chamber if the book is needed.

The annual public meeting of the budget was held virtually on 04th February 2022 and was well attended. It got a good viewership on YouTube also. The event was held jointly with Goregoan Sports Club. The Budget was analysed by Senior Advocate Saurabh Soparkar- Direct tax proposals, by Advocate Bharat Raichandani-Indirect tax proposals & Impact of the budget on Capital Market was analysed by CA Manish Chokshi. All the speakers were as fluent and thorough as usual.

The Rajubhai Choksi Oration Fund Lecture will be held on 20th February with CA Nihalchand Jain giving insights on mismatch in Input Credit under GST and CA Jayprakash Tiwari throwing light on blockchain and crypto currency.

With covid subsiding significantly and tax audits taken care of, we can now heave a sigh of relief and plan on resuming physical meetings, albeit with proper safety measures. We intend to start hybrid or physical meetings as soon as possible.

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.

जाने से पहले किसी को दे दो जीवनदान, अमर रहना है तो कर दो नेत्रदान!!

Stay Safe!

Regards

**CA Jignesh Savla**  
President

**Do you know?**



**Corneal transplantation is a proven, routinely performed surgery and is a successful procedure.**

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Khyati Vasani	Hon. Treasurer	9833288584	<a href="mailto:khyativasani@yahoo.com">khyativasani@yahoo.com</a>
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Rajen Vora	Hon. Secretary	9819807824	<a href="mailto:vora.rajen@rediffmail.com">vora.rajen@rediffmail.com</a>

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## DIRECT TAXES - Law Update

**Haresh P. Kenia**



### **Modification of CBDT's own order issued for exercising power of survey u/s 133A in pursuant to TAXATION AND OTHER LAWS ACT , 2020**

CBDT earlier issued order no ORDER NO. F.187/3/2020-ITA-I, DATED 19-10-2020 under section 119, read with section 133A of Income tax Act , 1961 exercising power of Survey in pursuance of section 133A and TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

The CBDT vide order no ORDER NO. F.NO. 187/3/2020-ITA-I, DATED 31-12-2021 amended its earlier order no F.187/3/2020-ITA -I dated 19.10.2020. as under ;-

In partial modification of the Central Board of Direct Tax's Order under Section 119 of the Income-tax Act, 1961 vide F.187/3/2020-ITA-I dated 19-10-2020, Para 1 (i), 1(iii) and para 5 are modified and may be read as below: —

#### *Para 1 (i) TDS Charges*

Any verification or survey u/s 133A of the Act by the TDS charges shall be conducted by its officers. Where the TDS charge is headed by the Pr.CCIT of the region / CCIT (TDS) / jurisdictional CCIT of TDS charge, the verification or survey action shall be approved by the Pr. CCIT of the region / CCIT (TDS) / jurisdictional CCIT of TDS charges, as the case may be and shall be conducted by the officers of the TDS charge.

#### *Para 1 (iii) International Taxation Division*

The TDS surveys by the International Taxation Division shall henceforth be approved by the collegium of Pr.CCIT (IT&TP) / CCIT (IT&TP) as one member of the collegium and CCIT (TDS) / jurisdictional CCIT of TDS charge or the Pr. CCIT of the region where there is no CCIT (TDS) / jurisdictional CCIT of TDS charge, as the case may be, as the other member of the collegium. The survey shall be conducted by the officers of TDS charge by including officers of IT&TP Division in the team. For any other survey by the International Taxation Division, the same is to be approved by the collegium of Pr.CCIT (IT&TP)/ CCIT (IT&TP) and DGIT (Inv.). Such surveys shall be conducted by the officers of the Investigation Wing by including officers of IT&TP Division in the team.

#### *Para 5.*

The Pr.CIT/CIT/ PDIT/ DIT of the TDS charge or the Investigation Wing should monitor and ensure that the survey does not go beyond the scope as approved by the collegium of the concerned Pr. CCIT / CCIT (TDS)/ jurisdictional CCIT of TDS charge/ DGIT (Inv.), as the case may be as discussed above.

### **Extension of timelines for filing of Income-tax returns and various reports of audit for the Assessment Year 2021-22**

The Central Board of Direct Taxes Vide Circular no -1 /2022 dated 11.01.2022, in exercise of its powers under Section 119 of the Act, on consideration of difficulties reported by the taxpayers and other stakeholders due to COVID and in electronic filing of various reports of audit under the provisions of the Income-tax Act,1961, provides relaxation in respect of the following compliances:

- The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 30th September 2021, in the case of assessee referred in clause (a) of Explanation 2 of Section 139(1) of the Act, as extended to 31st October 2021 and 15th

January 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th February, 2022;

- The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 31st October, 2021, in the case of assessee referred in clause (aa) of Explanation 2 to Section 139 (1) of the Act, is hereby extended to 15th February, 2022;
- The due date of furnishing of Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21, which was 31 st October 2021, as extended to 30th November 2021 and 31st January 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th February, 2022;
- The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 31 st October 2021 under sub-section (1) of section 139 of the Act, as extended to 30th November 2021 and 15th February 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th March, 2022;
- The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 30 th November 2021 under sub-section (1) of section 139 of the Act, as extended to 31st December 2021 and 28th February 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th March, 2022.
- Clarification 1: It is clarified that this extension shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds one lakh rupees.
- Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under Circular No.9/2021, Circular No.17/2021 and this Circular) provided in that Act, shall be deemed to be the advance tax

#### **New IT Rule 8AD on Computation of Capital Gains from ULIPs u/s 45(1B) of the Act.**

The Central Board of Direct taxes Vide Notification G.S.R. 24(E) [NO. 8/2022/F.NO.370142/61/2021-TPL] , DATED 18-1-2022, In exercise of the powers conferred by sub-section (1B) of section 45, hereby gives the Income tax (2nd Amendment) Rules, 2022. It inserts Rule 8AD to Income Tax Rules 1962 and provides for Computation of Capital Gains from ULIPs u/s 45 (1B) of income tax Act.

This is in respect of insurance policy receipts on maturity/ withdrawal including towards bonus, which are subject to capital gains tax where annual premium exceeded Rs. 250,000, Vide Finance Act, 2021, government has rationalized tax provisions restricting the income tax exemption in respect of policies with annual premium above Rs. 250,000, in a way that taxpayers can only take tax benefit instead of making tax gains, out of such incentive schemes for investments/ insurance sector.

Readers may refer to above notification for further details

#### **CBDT Guidelines on Income Tax Exemption for ULIP Receipts u/s 10(10D) of Income Tax Act.**

CBDT clarifies that any sum received including by way of bonus during the current previous year under any one or more eligible Unit Linked Insurance Policy (ULIPs) issued on or after 01/02/2021 shall be exempt u/s 10(10D) of the Income Tax Act, 1961, if the annual premium during the policy term didn't exceed ₹ 250,000, *vide Circular 2/2022 dt. 19/01/2022*. In other words, receipts from ULIPs, on maturity/ withdrawal including towards bonus, shall be subject to capital gains tax in the case of policies with annual premium above ₹ 250,000.

Readers may refer to above Circular for further details

**Securities Transaction Tax (1st Amendment) Rules, 2022**

The Central Government, vide Notification GSR no 25(E) [NO. 9/2022/F. NO. 370142/61/2021-TPL] , DATED 18-1-2022, in exercise of the powers conferred section 114 of the Finance (No. 2) Act, 2004, gives Securities Transaction Tax (1st Amendment), Rules, 2022.

The newly inserted Rule 5A provides for Person responsible for collection and payment of securities transaction tax in case of Insurance Company. It substitutes Rule 6 with regard to Payment of securities transaction tax. It also Inserts Form 2A. It amends Rule 7 and 8 of Income Tax Rules 1962.

Readers may refer to above notification for further details

**Rules to Compute Exempt Income of Specified Fund for Section 10(23FF)**

The Central Board of Direct taxes, vide Notification GSR no 883 (E) [NO. 138/2021/F. NO. 370142/58/2021-TPL(PART-II)] , DATED 27-12-2021, in exercise of the powers conferred by section 10 (23FF) of Income tax Act, gives Income-tax (34th Amendment) Rules, 2021.

It inserts Income Tax Rule 2DD which provides for Computation of exempt income of specified fund for the purposes of clause (23FF) of section 10. It also Notifies New Forms i.e. Form No. 10-II being Statement of exempt income under clause (23FF) of section 10 of the Income-tax Act, 1961 and Form No. 10-IJ being Certificate to be issued by accountant under clause (23FF) of section 10 of the Income-tax Act, 1961.

Readers may refer to above notification for further details

**FACELESS APPEAL SCHEME, 2021**

The Central Government, vide Notification no 5429(E) [NO. 139/2021/F.NO. 370142/66/2021-TPL] , dated 28-12-2021 as Corrected by Corrigendum S.O. 90(E) [NO. 2/2022/F.NO. 370142/66/2021-TPL], dated 7-1-2022, in exercise of the powers conferred by Section 250 (6B) and (6C) of the Income tax Act, 1961 , and in supersession of the Faceless Appeal Scheme, 2020 of the Government of India in the Ministry of Finance published in the Official Gazette vide number S.O. 3296(E) dated 25th September 2020 and S.O. 3297(E) dated 25th September 2020, except as respects things done or omitted to be done before such supersession, gives the Faceless Appeal Scheme, 2021. It Provides for the followings

- Definitions for various terms.
- Scope of the Scheme
- Faceless Appeal Centres
- Procedure in appeal
- Penalty proceedings
- Rectification Proceedings
- Appellate Proceedings
- Exchange of communication exclusively by electronic mode
- Authentication of electronic record
- Delivery of electronic record
- No personal appearance in the Centres or Units
- Power to specify format, mode, procedure and processes
- Application of provisions of the Act

Readers may refer to above notification for further details

**SETTING UP OF APPEAL UNITS UNDER FACELESS APPEAL SCHEME, 2021**

The Central Board of Direct Taxes hereby, vide OFFICE ORDER NO. 4 [F.NO. 187/4/2020-ITA-1] dated 29.12.2021, In pursuance of para 4 of S.O. 5429(E) Notification No. 139/2021/F.No 370142/66/2021-TPL, dated the 28th December, 2021, notifying the Faceless Appeal Scheme, 2021 and in supersession of Office Order-2 dated 25.09.2020 (F.No. 187/4/2020-ITA-I), sets up the 293 Appeal Units having specified authorities and came into force with effect from the 29th December, 2021.

For details of Headquarters, readers may refer to above notification.

**E-ADVANCE RULINGS SCHEME, 2022**

The Central Government hereby, vide Notification S.O. 248(E) [NO. 07/2022/ F.NO.370142/62/2021-TPL(PART-I)] , dated 18-1- 2022, in exercise of the powers conferred by Section 245R and Section 245W (2) and (3) Income-tax Act, gives "e-advance rulings Scheme, 2022" It Provides for followings

- Definitions
- Scope of the Scheme
- E-advance rulings by Board for Advance Rulings.
- Allocation of applications for advance ruling.
- Procedure for giving advance ruling
- Procedure for filing and receipt of applications.
- Order for advance ruling
- Submission of additional facts before the Board for Advance Rulings
- Questions contained in the application
- Verification of additional facts
- Powers of the Board for Advance Rulings.–
- Powers and functions of the Secretary.–
- Authorisation to be filed
- Authentication of electronic record
- No personal appearance before the Board for Advance Rulings.
- Rectification of mistakes
- Appellate Proceedings.
- Proceedings not open to the public
- Communication on behalf of the Board for Advance Rulings.
- Communication exclusively by electronic mode.
- Publication of orders
- Application of the provisions of Chapter XIX-B of the Act.
- Power to specify format, mode, procedure and processes

**E-VERIFICATION SCHEME, 2021**

The Central Government hereby, vide Notification no - S.O. 5187(E) [NO. 137 /2021/ F.NO. 370142/57/2021-TPL(PART-I)] , dated 13- 12-2021, in exercise of the powers conferred by section 135A s (1) and (2) of the Income-tax Act, 1961, gives “e-Verification Scheme, 2021”. It Provides for the followings

- Definitions
- Scope of the Scheme

- Electronic Collection and Verification
- Issue and service of notice
- Response to notice
- No personal appearance
- Communication exclusively by electronic mode
- Authentication of electronic record
- Power to specify procedure and processes

**CBDT Instructions under section 119 to Subordinate Authorities regarding Uploading of Information on VRU Functionality on Insight Portal for Implementation of Risk Management Strategy for Issue of Notice Under Section 148 of the Act. - INSTRUCTION F. NO. 225/135/2021/ITA-II, DATED 10-12-2021**

As per the amended provisions of the section 148 of the Income-tax Act, 1961 ('the Act'), the information which has escaped assessment has been defined to include the two categories of information, i.e., (i) the information which is flagged in accordance with the risk management strategy formulated by the Board; and (ii) final audit objection raised by the C&AG.

- For effective implementation of risk management strategy, the Central Board of Direct Taxes (Board), in exercise of its powers under section 119 of the Act, directs that the Assessing Officers shall identify the following categories of information pertaining to Assessment Year 2015-16 and Assessment Year 2018-19, which may require action under section 148 of the Act, for uploading on the Verification Report Upload (VRU) functionality on Insight portal:
  - (i) Information from any other Government Agency/Law Enforcement Agency
  - (ii) Information arising out of Internal Audit objection, which requires action u/s 148 of the Act
  - (iii) Information received from any Income-tax Authority including the assessing officer himself or herself
  - (iv) Information arising out of search or survey action
  - (v) Information arising out of FT&TR references
  - (vi) Information arising out of any order of court, appellate order, order of NCLT and/or order u/s 263/264 of the Act, having impact on income in the assessee's case or in the case of any other assessee
  - (vii) Cases involving addition in any assessment year on a recurring issue of law or fact:
    - [a.] exceeding Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune while at other charges, quantum of addition should exceed Rs. 10 lakhs; [b]. exceeding Rs. 10 crore in transfer pricing cases. and where such an addition:
      1. has become final as no further appeal has been filed against the assessment order; or
      2. has been confirmed at any stage of appellate process in favor of revenue and assessee has not filed further appeal; or
      3. has been confirmed at the 1st stage of appeal in favour of revenue or subsequently; even if further appeal of assessee is pending, against such order
- As per the provisions of section 149(1)(b) of the Act, in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more,

notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year. Further, the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment. As per explanation provided to section 149 of the Act, the term "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account

In view of the above, it is directed that the information pertaining to Assessment Year 2015- 16, which requires action u/s 148 of the Act shall be identified and uploaded on the VRU functionality on insight portal only as per the provisions of section 149(1)(b) of the Act.

- The above exercise of identifying and uploading the information along with the underlying documents in the above categories of cases must be completed by 20-12-2021.
- These Instructions shall be applicable to the Jurisdictional Assessing Officers and Assessing Officers of Central Charges and International Taxation



## DIRECT TAX CASE LAWS

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



### Kushal Virendra Tandon vs. ACIT

Citation: [2022] 134 taxmann.com 268, ITAT Mumbai, 3 September 2021

**Allowability of deducted u/s 35 where exemption withdrawn by CBDT subsequently.**

#### **Facts:**

The assessee was a film actor/model by profession. He had filed his return of income for assessment year 2014-15 on 28-11-2014, declaring a total income of Rs. 57,28,770.

The assessee had donated an amount of Rs. 10 lakhs to School of Human Genetics and Pollution Health (SHGPH). The assessee had in his return of income claimed a weighted deduction of Rs. 17.50 lakhs (i.e. 175 per cent of the amount of donation of Rs. 10 lakhs) as per section. 35(1)(ii).

At the time of making of such donation SHG&PH was having a valid approval granted by the CBDT. However, said approval was subsequently cancelled vide CBDT order dated 15-9-2016 with retrospective effect. As the approval granted was withdrawn by CBDT, the Assessing Officer disallowed assessee's claim of deduction under section 35(1)(ii).

On appeal, the Commissioner (Appeals) upheld the addition made by the Assessing Officer.

#### **Held:**

Research institution i.e. SHGPH as on the date of giving of donation by the assessee was having a valid approval granted under the Act. Reference was made to 'Explanation' to Sec. 35(1)(ii) of the Act which states as follows:

*The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn ;"*

On a perusal of statutory provision i.e. section 35(1)(ii), as well as the ratio laid down in judicial pronouncements, it can safely be concluded that if the assessee acting upon a valid registration/approval granted to an institution had donated the amount for which deduction is claimed, such deduction cannot be disallowed if at a later point of time the same is cancelled with retrospective effect.

Thus, the weighted deduction claimed by assessee was upheld by the Hon'ble ITAT.

**Maheshwari Woods Pvt.Ltd. vs. DCIT(CPC)**

*Citation: ITA No. 585/586/2021, ITAT Bangalore, 21 December 2021*

**Allowability of Employee's contribution to PF paid after due date but before filing return in view of the amendment effected by Finance Bill 2021.**

**Facts:**

In AY 2018-19 and AY 2019-20 certain amounts were disallowed on the account being Employee Contribution to PF and ESIC. These were disallowed u/s 36(1)(va) as the same were paid after due date under respective acts. However, assessee contended that since these payment were paid before the due date of filing of the return of income u/s 139(1) of the I.T.Act, the same should be allowed to the assessee.

On first appeal before CIT(A), the appeal of the assessee was rejected citing that the provisions of Section 43B did not apply to Employees Contribution but applied only to Employer's contribution. Further, by placing reliance on the judgment of the Hon'ble Apex Court in the case of CIT Vs. Gold Coin Health Food Pvt. Ltd., reported in 304 ITR 308 (SC), the CIT(A) concluded that amendment to section 36(1)(va) and 43B of the I.T.Act by Finance Act, 2021, is clarificatory and has got retrospective operation.

**Held:**

In view of the judgment of the Hon'ble jurisdictional High Court the assessee would have been entitled to deduction of employees' contribution to ESI, if the payment was made prior to due date of filing of the return of income u/s 139(1) of the I.T.Act.

Therefore, the amendment brought about by the Finance Act, 2021 to section 36[1][va] and 43B of the I.T.Act, alters the position of law adversely to the assessee. Therefore, such amendment cannot be held to be retrospective in nature.

For this reliance is placed on The Hon'ble Supreme Court in the recent judgment in the case of M.M.Aqua Technologies Limited v. CIT reported in (2021) 436 ITR 582 (SC) where it is had held that retrospective provision in a taxing Act which is "for the removal of doubts" cannot be presumed to be retrospective, if it alters or changes the law as it earlier stood.

Even otherwise, the amendment has been mentioned to be effective from 01.04.2021 and will apply for and from assessment year 2021-2022 onwards.

Thus, the appeals filed by the assessee were allowed.



## WHETHER THE DUE DATE OF CLAIMING THE CREDIT NOTE IS MANDATORY OR DIRECTORY

*Compiled by CA Bhavin Mehta*

**Section 34 of CGST Act, 2017 is reproduced below:**

SECTION 34. Credit and debit notes.

- (1) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.





- (2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than ~~September~~ **the thirtieth day of November<sup>1</sup>** following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed :

**Provided** that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

- (3) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.
- (4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation. — For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

On reading sub-section (1) above, it can be seen that the registered supplier may issue credit note where the taxable value or tax charged in the tax invoice is found to exceed the taxable value for supply of goods or services or both in the following circumstances:

- (i) Where the goods supplied are returned by the recipient; or
- (ii) Where the goods or services or both supplied are found to be deficient.

The registered supplier may issue one or more credit notes for supplies made in a financial year. The particular to be mentioned in the credit note is prescribed in Rule 53(1A) of CGST Rules, 2017.

It may be noted that sub-section (1) does not prescribe the time limit for issuing the credit note. However, sub-section (2) provides that details of such credit note will be required to be declared in the return for the month during which such credit note has been issued but not later than 30th November following the end of the financial year in which corresponding supply was made. Without issuance of credit note, it cannot be declared in the return, which means the credit note has to be issued before declaring in the return. The purpose of issue of credit note is to reverse the excess tax charged in the tax invoice. It is imperative to refer to provision of charging section and valuation provision under the GST statute.

Levy of GST is provided in section 9 of the Act, wherein levy is on the value of supply of goods or services or both, in terms of section 15 (valuation provision). In other words, the revenue does not have authority to collect tax in excess of the value of supply of goods or services or both. Any amount collected beyond the authority of law shall be refunded. The doctrine of unjust enrichment will trigger, i.e. No one should be unjustly enriched at the expense of another. Article 265 of the Constitution of India provides “No tax shall be levied or collected except by authority of law”.

There cannot be dispute that tax cannot be collected in excess of the value of supply determined between supplier and recipient, where the value of supply shall be at transaction value between unrelated parties and at arm’s length price in case of related party. It is important to determine whether the time limit prescribed in sub-section (2), namely, declaring the details of credit note in the GST return, can be considered as procedural provision or mandatory provision.

1. Whether the provision is mandatory or directory (procedural) would, in the ultimate analysis, depend upon the intent of the law maker and that has to be gathered not only from the phraseology of the provision but also considering the nature, its design and the consequence

which would follow from construing it in one way or other. Procedural provision even if uses “shall”, may be construed as directory if no prejudice is caused. The Supreme Court in the case of **State of U.P. V. Manbodhan Lal Srivastava, 1957 AIR 912**, held that the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and upon the language in which the intent is clothed.

2. In **Crawford, Statutory Construction, at page 104**, it is observed as under:

“A statute, or one or more of its provisions, may be either mandatory or directory. While usually in order to ascertain whether a statute is mandatory or directory, one must apply the rules relating to the construction of statutes; yet it may be stated, as general rule, that those whose provisions relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely a matter of convenience rather than of substance, are directory”.

3. The Supreme Court of India has been stressing time and again that the question whether the statute is mandatory or directory is not capable of generalization and that in each case the court should try and get at the real intention of the legislature by analysing the entire provisions of the enactment and the scheme underlying it.

4. To find the true character of the legislation, one is required to ascertain the object which the provision of law in question is to sub-serve and its design and the context in which it is enacted. As per the principle of statutory interpretation, a provision in the statute is not to be read in isolation rather it has to read along with other related provisions itself, more particularly when the subject matter of adjustment of credit note is dealt within the different sections of the same statute. This proposition was observed by **Supreme Court in Kailash Chandra and Another v. Mukundi Lal and Others, 2002 (2) SCC 678**. In paragraph 11, following has been laid down: -

“11. A provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly, when the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature”

Therefore, it becomes imperative to examine, whether the reversal of excess tax in the form of credit note to recipient, would be entitled to refund.

1. Section 54(8)(e) provides the refundable amount shall, instead of being credited to the Fund be paid to the applicant, if such amount is relatable to the tax and interest, if any, or any other amount paid by the applicant, if had not passed on the incidence of such tax and interest to any other person

2. The time period for refund claim is two year from the date of payment of tax as per section 54. However, the said time period applies for payment of tax, wherein in the present case, the excess payment cannot be considered as tax and therefore the two year time limit shall not apply. The refund can be claimed within a period of three years from the cause of action, i.e. date of rejection of goods or intimation of deficiency in supply, as per General Clauses Act, 1897.

It means non-declaration of details of credit note in the return within stipulated time prescribed in sub-section (2) of section 34 would not lead to any specific consequence. It is case of revenue neutral, irrespective of whether refund is given in cash or is adjusted against the tax liability. This means the provision of sub-section (2), whose compliance is a matter of convenience rather than a substance could be considered as directory. The time limit specified in section 34(2) can be considered as administrative.

**Conclusion:** In the opinion of author the refund can be claimed by cash or by adjustment against subsequent month/s tax liability (even after 30th November).

## KEY BUDGET HIGHLIGHTS

Compiled by **Jaideep P. Sonpal, Advocate**

Writer is regular contributor to [www.taxconsult.online](http://www.taxconsult.online)



At the outset, I would like to thank President Sir to encourage new members like me to contribute to bulletin and giving me opportunity to nurture professional skills.

**Members are requested to go through MCTC Budget 2022 publication for detailed clause wise budget analysis.** Hereby I am listing some important key budget highlights for your reference.

### Direct Taxes

#### 1) Tax impact on Virtual digital assets (Crypto Currency):

Most awaited government's stand on virtual digital currency is clarified in this budget.

- Virtual digital assets will be taxed @ 30%
- No expenses are allowed except cost of acquisition.
- No set off of losses against any other income.
- TDS will be deducted @1% on consideration above specific threshold
- Gift of Virtual digital assets shall be taxable in the hands of donee i.e. recipient U/s. 56(2)(x).

#### 2) Updated Return (New Section 140B)

Updated return can be filed within 2 years of original return to rectify errors and omissions by paying additional taxes.

- **Where ITR is not furnished before:**

When no ITR is furnished before for any relevant Assessment Year then, Assessee can furnish ITR within 2 years with tax payable along with interest, late fees & additional tax U/s 139(8A) after taking credits of TDS, Advance-Tax, Relief or deduction claimed U/s 89,90,91, 90A, or tax credit claimed U/s 115JAA or 115JD.

- **Where ITR is furnished before:**

When ITR is furnished before for any relevant Assessment Year then, Assessee can furnish ITR within 2 years with tax payable as reduced by tax paid in original return along with interest, late fees & additional tax U/s 139(8A) after taking credits of TDS, Advance-Tax, Relief or deduction claimed U/s 89,90,91, 90A, or tax credit claimed U/s 115JAA or 115JD.

- **Additional tax:**

Additional tax will be worked out as follows:

- i) 25% of aggregate tax & interest payable if ITR is furnished within 1 year after expiry of time of relevant assessment year.
- ii) 50% of aggregate tax & interest payable if ITR is furnished within 1 year after expiry of time of relevant assessment year.
- iii) It will also include surcharge & cess.

#### 3) Amendment in Society tax rates:

- There is reduction in Alternate minimum tax rate from 18.5% to 15%.

- Surcharge rate reduced from 12% to 7% for Co-operative society having total income less than 10crores.
- 4) Health & Education cess and surcharge shall not be allowed as business expenditure U/s 37, effective from 1st April, 2022.

**5) Exclusion of Covid treatment expenses from perks:**

It is propose to exclude from perquisite, any sum paid by employer to employee on his medical treatment or treatment of any family member in respect of illness related to Covid-19 subject to such conditions as may be notified by central government in this behalf. Retrospectively effective from 1st April 2020.

**6) Relief in Long term Capital Gains :**

Surcharge on Long term Capital Gains on any assets to be capped @ 15%.

- 7) No set off of losses against undisclosed income detected during search or requisition or survey.
- 8) New sub-section has been inserted wherein the AO to pass an order giving effect to the resolution of dispute by DRC.

**9) Refund without hassles:**

Now U/s 239A, Assessee can file a refund application without going for appeal process and the tax deducted and paid can now be brought on the records.

**10) Reliefs, Deduction, Incentives**

- Relief in the form of deduction U/s 80DD(2)(a) for annuity or lump sum amount received under a scheme by dependant disabled person on attaining age of 60 years or death.
- NPS Deduction limit U/s 80CCC increased to 14% to state employees to bring them at par with central employees.
- Incentives to startups continues- period of incorporation extended by a year to 31/03/2023.

**11) Introduction of new TDS sections:**

Section 194R: TDS @10% to be deducted by person responsible for providing any perquisite or benefit arising from Business or profession. This section is applicable where value of such benefit is more than Rs. 20000 in a financial year & this section is applicable to Individual & HUF if T/o is exceeding 1cr in case of business & if T/o is exceeding 50lakhs in case of profession in any financial year. (w.e.f 1st July 2022)

Section 194S: TDS @1% to be deducted in case of transfer of a virtual digital asset if payable by specified person having aggregate value of such consideration exceeds Rs. 50,000/- or if payable by any other person having aggregate value exceeding Rs. 10,000/- (w.e.f 1st July 2022)

**Indirect Taxes**

Key-Highlights of GST Proposals in Finance Bill 2022:

**1. Extension of time limit for claiming ITC:**

Time-limit to avail ITC u/s 16(4) extended from 30th September to 30th November of next year.

**2. Extension of time limit for issuing credit notes:**

Time-limit to issue credit notes is extended from 30th September to 30th November of next year.

**3. Extension of time limit for rectification:**

Time-limit to make rectifications in GSTR-1/ GSTR-3B is now extended from 30th September to 30th November of next year.

**4. Additional condition for availing ITC:**

Additional Condition for availment of ITC u/s 16(2)- ITC can be availed only if the same is not restricted in GSTR-2B.

**5. Composition dealer's registration in danger:**

Composition Tax Payer's Registration can be cancelled suo-moto if they have not filed their GSTR-4 return beyond 3 months delay from the due date.

**6. Deletion of 2 way communications:**

The two-way communication matching process which was originally provided in GST law was never implemented hence on becoming redundant finally it is proposed to be scrapped.

**7. Due date for NRIs prepended:**

The due date for filing return by non-resident taxable person is prescribed as 13th day of next month instead of 20th of next month.

**8. Amendments in certain sections:**

- **Provisional ITC claiming restricted now:** Section 41 of the CGST Act is being substituted so as to do away with the concept of "claim" of ITC on a "provisional" basis.
- **Late fees on delayed TCS returns:** Section 47 of the CGST Act is being amended so as to provide for levy of late fee for delayed filing of TCS returns.
- **Restrictions on utilizing electronic ledger:** Section 49 of the CGST Act is being amended so as to provide for restrictions for utilizing the amount available in the electronic credit ledger.
- **Permit the transfer of utilizing cash ledger:** Section 49 of the CGST Act is being amended so as to allow transfer of amount available in E- cash ledger of a registered person to the E- cash ledger of a distinct person (i.e. another branch of the same legal entity).
- **Limit for discharge of output tax liability:** Section 49 of the CGST Act is being amended so as to provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger to justify Rule 86B in force.

**9) Interest on wrong ITC availment & utilisation:**

Section 50(3) of the CGST Act is being substituted retrospectively, with effect from the 1st July, 2017, so as to provide for levy of interest @18% p.a. on input tax credit wrongly availed to the extent utilized.

**10) Power to withhold refunds:**

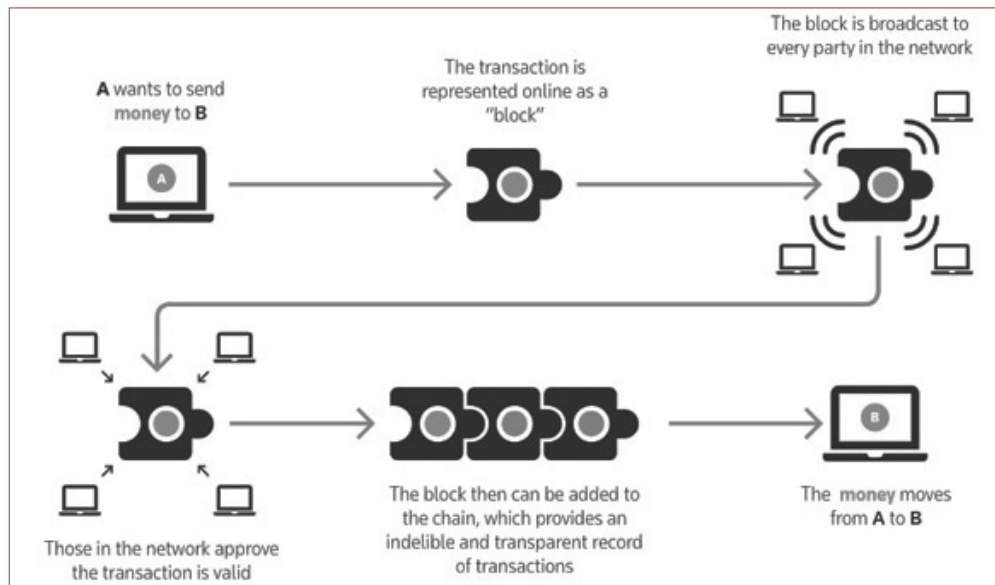
Amendment U/s 54 (10) is proposed for permitting withholding refunds under section 54(3) in case of outstanding tax payments so as to widen the scope of all kind of refunds.



## STUDENTS' CORNER

**BLOCKCHAIN AND ACCOUNTING.***Compiled by Harsh Jatania***What is blockchain?**

A blockchain is a distributed, decentralized ledger that lets information be viewed but not copied or altered. Originally designed to facilitate transactions using the cryptocurrency Bitcoin, blockchain is a distributed database. There is no central version of blockchain: it lives across a network of computers. This makes it incredibly secure, since a hacker can't access all instances of the blockchain. Blockchain stores records in groups called blocks. Each block is time-stamped and linked to the previous block. It's incorruptible and unalterable, making it ideal for recording transactions without requiring a central authority.



The industry is likely to face disruption due to blockchain technology since it fundamentally changes the way transactions are made and recorded. With the government promoting and experimenting with blockchain-based solutions for auditing and filing taxes, the disruption could be real.

**But, why is blockchain so disruptive?**

It is disruptive because information is contained in a distributed ledger which is updated in real time and it is permanent, so deletion of the information is out of the question. Additionally, the information is publicly viewable, so the blockchain is completely transparent.

Blockchain lets participants verify and audit transactions without the need of a third party, thus delivering a level of certainty and trust not earlier seen in internet-based transactions. It practically automates the manual tasks involved in an audit. The technology may render certain accounting practices obsolete. It is unlikely that auditors will be completely replaced.

**How can accountants prepare for blockchain technology?**

If a business depends on audit or other transactional services, it might consider diversifying into areas that are more creative, because the audit process will be streamlined, fast and automated by blockchain. Accountants can add more value by providing strategic advice than by undertaking basic book keeping functions and the emergence of blockchain technology should accelerate firms' evolution away from these tasks.

There are still many questions unasked and unanswered about blockchain and how it will be adopted and implemented. So, accountants, auditors and tax practitioners should make themselves part of that conversation to help drive the industry's direction.





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## Glimpses of Public Meeting on Union Budget 2022



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