The Malad Chamber of Tax Consultants

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42 Years **MCTC Bulletin**

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

E-mail: maladchamber@gmail.com **Website : 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 Cholerra : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

Vol. 1, No. 2 ***For members & private circulation only*** August, 2021

President's Communiqué

Independence Day this year brought independence for Mumbai city in its own unique way with the state government allowing commute in local trains for fully vaccinated people. Though this is a much awaited and wanted relief, it also calls for exercise of more caution from our end too.

The virtual inaugural study meeting of the year was held on 31st July on zoom platform. The occasion was graced by stalwart CA Shri Pinakin Desai as Chief Guest. CA Shri Janak Vaghani put forward hie views on finalisation of accounts keeping in mind the GST annual returns for the year 2020-21. The event was a huge success with more than 170 members attending the same.

The chamber also held a virtual series on 'Compliances using Tally Prime' on 06th, 07th, 13th and 14th August. The series was well attended and the participants got very useful information of generating compliance returns and reports using tally prime.

The 2nd Study Circle meeting is planned on 21st August 2021 on the very important subject of 'New Income Tax Provisions for Restructuring of Partnership Firms' . Meeting will be held virtually on zoom platform and will be addressed by CA Bhadresh Doshi. Details are printed elsewhere in this bulletin.

Knowledge is increased by sharing. There is no better gift than the gift of knowledge. The chamber is running a 'Gift a Membership' drive this year to ensure that more and more people get benefit of the activities of the chamber. I take this opportunity to appeal to you to kindly take advantage of the drive and gift a membership. This will be a gift benefits of which will be reaped by the recipient for lifetime.

When you educate one person you can change a life, when you educate many you can change the world.

– Shai Reshef

The chamber is also running an eye donation awareness campaign this year. I request you to kindly donate your eyes and also spread awareness about eye donation.

We have almost conquered the devil of corona virus by exercising caution over the last few months but the war is not yet won, please stay safe and take care of yourself, especially with a long festival season coming up.

Wishing you a very happy Onam, Raksha Bandhan, Janmashtami and Ganesh Chaturthi.

Regards

CA Jignesh Savla
President

Do you know ☞ **Removal of eyes does not produce any disfigurement of the face.**

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
Jignesh Savla	*President*	9820260070	cajigneshsavla@gmail.com
Ujwal Thakrar	*Vice President*	9819946379	ujwalthakrar@gmail.com
Khyati Vasani	*Hon. Treasurer*	9833288584	khyativasani@yahoo.com
Jitendra Fulia	*Hon. Secretary*	9820997205	jitendrafulia@rediffmail.com
Rajen Vora	*Hon. Secretary*	9819807824	vora.rajen@rediffmail.com

Life Membership Fees ₹ 2,500

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.

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: ..... / ..... / ..... BLOOD GROUP: .....

   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.

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

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 tax laws.
2. Please write / type in CAPITAL LETTERS.
3. Cheques should be drawn in favour of *"The Malad Chamber of Tax Consultants".*
4. Outstation remittance should be by Demand Draft payable at Mumbai only.
5. Please tick (✓) wherever applicable.
6. The form should be completed in all aspects.
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 JIGNESH SAVLA	President	9820260070	cajigneshsavla@gmail.com
CA UJWAL THAKRAR	Vice President	9819946379	ujwalthakrar@gmail.com
CA KHYATI VASANI	Hon. Treasurer	9833288584	khyativasani@yahoo.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

Gift a membership

THE MALAD CHAMBER OF TAX CONSULTANTS

presents a wonderful opportunity to

Give the gift of **MCTC membership** and introduce a friend or colleague to a network of dedicated professionals committed to promoting the profession.

Benefits of MCTC Membership:

- Life Membership
- Access to knowledgeable and insightful Study Circle meetings on Direct Tax, Indirect Tax and Allied Laws
- Access to joint workshops on various topics held with WIRC, GSTPAM, CTC, and other associations.
- Access to RRC, IRRC, Sports tournaments and other social and cultural events.
- Access to monthly Bulletins having insights about various case laws and regular events of MCTC.
- Networking Opportunities with like minded members

Gift is the perfect way to mark a special event, milestone or achievement.

CA Kishor Thakrar | CA Pratik Satyuga
Convenors
Membership & Public Relation Committee

CA Jignesh Savla
President

Contact us: maladchamber@gmail.com

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2. NAME OF INTRODUCED MEMBER MR /MRS /MISS: .....
3. FATHER'S/HUSBAND'S NAME: .....
4. QUALIFICATIONS: .....
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: .....

   OFFICE ADDRESS: .....

   PIN CODE: ..... STATE:..... TEL. NO: ..... FAX NO: .....

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

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(Signature)

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SHRI JITENDRA FULIA	Hon. Secretary	9820997205	jitendradfulia@rediffmail.com
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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

: Forthcoming Events :

2nd Study Circle Meeting		
Day & Date	:	21st August 2021
Time	:	11.00 am to 01.00 pm
Topic	:	New Income Tax Provisions for Restructuring of Partnership Firms
Venue	:	Zoom Platform
Speaker	:	CA Bhadresh Doshi

DIRECT TAXES - Law Update

Haresh P. Kenia

❑ **GOVERNMENT GRANTS FURTHER EXTENSION IN TIMELINES OF COMPLIANCES. ALSO ANNOUNCES TAX EXEMPTION FOR EXPENDITURE ON COVID TREATMENT AND EX-GRATIA RECEIVED ON DEATH DUE TO COVID**

PRESS RELEASE, DATED 25-6-2021

A. Tax exemption

I. Many taxpayers have received financial help from their employers and well-wishers for meeting their expenses incurred for treatment of Covid-19. In order to ensure that no income tax liability arises on this account, it has been decided to provide income-tax exemption to the amount received by a taxpayer for medical treatment from employer or from any person for treatment of Covid-19 during FY 2019-20 and subsequent years.

II. Unfortunately, certain taxpayers have lost their life due to Covid-19. Employers and well-wishers of such taxpayers had extended financial assistance to their family members so that they could cope with the difficulties arisen due to the sudden loss of the earning member of their family. In order to provide relief to the family members of such taxpayer, it has been decided to provide income-tax exemption to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of Covid-19 during FY 2019-20 and subsequent years. The exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons.

Necessary legislative amendments for the above decisions shall be proposed in due course of time.

B. Extension of Timelines

In view of the impact of theCovid-19 pandemic, taxpayers are facing inconvenience in meeting certain tax compliances and also in filing response to various notices. In order to ease compliances to be made by taxpayers during this difficult time, reliefs are being provided through Notifications nos. 74/2021 & 75/2021 dated 25th June, 2021 Circular no. 12/2021 dated 25th June, 2021. These reliefs are:

(1) Objections to Dispute Resolution Panel (DRP) and Assessing Officer under section 144C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for which the last date of filing under that section is 1st June, 2021 or thereafter, may be filed within the time provided in that section or by 31st August, 2021, whichever is later.

(2) The Statement of Deduction of Tax for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31st May, 2021 under Rule 31A of the Income-tax Rules,1962 (hereinafter referred to as "the Rules"), as extended to 30th June, 2021 vide Circular No. 9 of 2021, may be furnished on or before 15th July, 2021.

(3) The Certificate of Tax Deducted at Source in Form No. 16, required to be furnished to the employee by 15th June, 2021 under Rule 31 of the Rules, as extended to 15th July, 2021 vide Circular No. 9 of 2021, may be furnished on or before 31st July, 2021.

(4) The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64D for the Previous Year 2020-21, required to be furnished on or before 15th June, 2021 under Rule 12CB of the Rules, as extended to 30th June, 2021 vide Circular No. 9 of 2021, may be furnished on or before 15th July, 2021.

(5) The Statement of Income paid or credited by an investment fund to its unit holder in Form No. 64C for the Previous Year 2020-21, required to be furnished on or before 30th June, 2021 under Rule 12CB of the Rules, as extended to 15th July, 2021 vide Circular No. 9 of 2021, may be furnished on or before 31st July, 2021.

(6) The application under section 10(23C), 12AB, 35(1)(ii)/(iia)/(iii) and 80G of the Act in Form No. 10A/Form No. 10AB, for registration/provisional registration/intimation/approval/provisional approval of Trusts/Institutions/Research Associations etc., required to be made on or before 30th June, 2021, may be made on or before 31st August, 2021.

(7) The compliances to be made by the taxpayers such as investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purpose of claiming any exemption under the provisions contained in Section 54 to 54GB of the Act, for which the last date of such compliance falls between 1st April,2021 to 29th September, 2021 (both days inclusive), may be completed on or before 30th September, 2021.

(8) The Quarterly Statement in Form No. 15CC to be furnished by authorized dealer in respect of remittances made for the quarter ending on 30th June, 2021, required to be furnished on or before 15th July, 2021 under Rule 37 BB of the Rules, may be furnished on or before 31st July, 2021.

(9) The Equalization Levy Statement in Form No. 1 for the Financial Year 2020-21, which is required to be filed on or before 30th June, 2021, may be furnished on or before 31st July, 2021.

(10) The Annual Statement required to be furnished under sub-section (5) of section 9A of the Act by the eligible investment fund in Form No. 3CEK for the Financial Year 2020-21, which is required to be filed on or before 29th June, 2021, may be furnished on or before 31st July, 2021.

(11) Uploading of the declarations received from recipients in Form No. 15G/15H during the quarter ending 30th June, 2021, which is required to be uploaded on or before 15th July, 2021, may be uploaded by 31st August,2021.

(12) Exercising of option to withdraw pending application (filed before the erstwhile Income-tax Settlement Commission) under sub-section (1) of Section 245M of the Act in Form No. 34BB, which is required to be exercised on or before 27th June, 2021, may be exercised on or before 31st July, 2021.

(13) Last date of linkage of Aadhaar with PAN under section 139AA of the Act, which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.

(14) Last date of payment of amount under Vivad se Vishwas(without additional amount) which was earlier extended to 30th June, 2021 is further extended to 31st August, 2021.

(15) Last date of payment of amount under Vivad se Vishwas (with additional amount) has been notified as 31st October, 2021.

(16) Time Limit for passing assessment order which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.

(17) Time Limit for passing penalty order which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.

(18) Time Limit for processing Equalisation Levy returns which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.

❑ INCOME TAX AMENDMENT (EIGHTEENTH AMENDMENT), RULES, 2021 - AMENDMENT IN RULE 8AA AND INSERTION OF RULE 8AB AND FORM NO. 5C

NOTIFICATION NO. G.S.R. 470(E) [NO. 76/2021/F. NO. 370142/22/2021-TPL], DATED 2-7-2021

In exercise of the powers conferred by section 48 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:-

Short title

1. (1)These rules may be called the Income-tax Amendment (18th Amendment), Rules, 2021.

2. In the Income-tax Rules, 1962, (hereinafter referred to as the principal rules) in rule 8AA, after sub-rule (4), the following sub-rule shall be inserted, namely:-

"(5). In case of the amount which is chargeable to income-tax as income of specified entity under sub-section (4) of section 45 under the head "Capital gains",—

(i) the amount or a part of it shall be deemed to be from transfer of short term capital asset, if it is attributed to,-

(a) capital asset which is short term capital asset at the time of taxation of amount under sub-section (4) of section 45; or

(a) capital asset forming part of block of asset; or

(b) capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of Explanation 1 to sub-section (4) of section 45; and

(ii) the amount or a part of it shall be deemed to be from transfer of long term capital asset or assets, if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under sub-section (4) of section 45.".

3. In the principal rules, after rule 8AA, the following rule shall be inserted, namely: —

"8AB. *Attribution of income taxable under sub-section (4) of section 45 to the capital assets remaining with the specified entity, under section 48.*—

(1) For the purposes of clause (iii) of section 48, where the amount is chargeable to income-tax as income of specified entity under sub-section (4) of section 45, the specified entity shall attribute such amount to capital asset remaining with the specified entity in a manner provided in this rule.

(2) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, chargeable to tax under sub-section (4) of section 45,relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with the specified entity for purpose of clause (iii) of section 48 shall be the amount which bears to the amount charged under sub-section (4) of section 45 the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation.

(3) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital

account, charged to tax under sub-section (4) of section 45 does not relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

(4) Notwithstanding anything contained in sub-rules (2) or (3), where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 relate only to the capital asset received by the specified person from the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

(5) The specified entity shall furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C.

(6) Form No. 5C shall be furnished electronically either under digital signature or through electronic verification code and shall be verified by the person who is authorised to verify the return of income of the specified entity under section 140.

(7) Form No. 5C shall be furnished on or before the due date referred to in the Explanation 2 below sub-section (1) of section 139 for the assessment year in which the amount is chargeable to tax under sub-section (4) of section 45.

(8) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall –

(i) specify the procedure for filing of Form No. 5C;

(ii) specify the procedure, format, data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (6), for verification of the person furnishing the said Form; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the Form No 5C so furnished.

Explanation 1: For the purposes of this rule, the amount chargeable to tax under sub-section (4) of section 45 shall relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, if the revaluation is based on a valuation report obtained from a registered valuer as defined in clause (g) of rule 11U.

Explanation 2: For the removal of doubt it is clarified that revaluation of an asset or valuation of self-generated asset or self-generated goodwill does not entitle the specified entity for the depreciation on the increase in value of that asset on account of its revaluation or recognition of the value of self-generated asset or self-generated goodwill due to its valuation.

Explanation 3: For the purposes of this rule, the expressions "self-generated asset" and "self-generated goodwill" shall have the same meaning as assigned to them in clause (ii) of Explanation 1 to sub-section (4) of section 45.".

4. In the principal rules, in Appendix II, after Form No. 5B, Form 5C shall be inserted.

INCOME TAX AMENDMENT (NINETEENTH AMENDMENT), RULES, 2021 - INSERTION OF RULE 8AC

NOTIFICATION G.S.R. 472(E) [NO. 77/2021/F. NO. 370142/23/2021-TPL], DATED 7-7-2021

In exercise of the powers conferred by proviso to section 50 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules,1962, namely:-

Short title

1. These rules may be called the Income-tax Amendment (19th Amendment), Rules, 2021.

2. In the Income-tax Rules, 1962, after rule 8AB, the following rules shall be inserted, namely:—

"*8AC. Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained.*

(1) For the purposes of proviso to section 50, the written down value of the block of the asset and short term capital gains, if any, for the previous year relevant to the assessment year commencing on the 1st day of April, 2021 shall be determined in accordance with this rule.

(2) Where the goodwill of the business or profession was the only asset or one of the assets in the block of asset "intangible" for which depreciation was obtained by the assessee in the assessment year beginning on the 1st day of April, 2020, the written down value of this block of asset for the previous year relevant to the assessment year commencing on the 1st day of April, 2021 shall be determined in accordance with the provisions of item (ii) of sub-clause (c) of clause (6) of section 43.

(3) Where the reduction under sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, for the previous year relevant to the assessment year commencing on the 1st day of April, 2021, exceeds the aggregate of the following amounts, namely:—

(i) the written down value of the block of assets at the beginning of the previous year relevant to the assessment year commencing on the 1st day of April, 2021 without giving effect to reduction under sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43; and

(ii) the actual cost of any asset falling within the block of assets "intangible", other than goodwill, acquired during the previous year relevant to the assessment year commencing on the 1st day of April, 2021, such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(4) Without prejudice to the provisions of sub-rule (3) and section 55, where the goodwill of the business or profession was the only asset in the block of asset "intangible" for which depreciation was obtained by the assessee in the assessment year beginning on the 1st day of April, 2020, and the block of asset ceases to exist on account of there being no further asset acquired during the previous year relevant to the assessment year commencing on the 1st day of April, 2021 in that block, there will not be any capital gains or loss on account of the block of asset having ceased to exist.

(5) The capital gains or loss on transfer of goodwill, during the previous years relevant to the assessment year 2021-22 or subsequent assessment years, shall be determined in accordance with the provisions of section 48, section 49 and clause (a) of sub-section (2) of section 55."

❑ CBDT GRANTS FURTHER RELAXATION IN ELECTRONIC FILING OF INCOME TAX FORMS 15CA/15CB

PRESS RELEASE, DATED 20-7-2021

In view of the difficulties reported by taxpayers in electronic filing of Income-tax Forms 15CA/15CB on the portal www.incometax.gov.in, it had earlier been decided by CBDT that taxpayers could submit Forms 15CA/15CB in manual format to the authorized dealer till 15th July, 2021.

It has now been decided to extend the aforesaid date to 15th August, 2021. In view thereof, taxpayers can now submit the said Forms in manual format to the authorized dealers till 15th August, 2021. Authorized dealers are advised to accept such Forms till 15th August, 2021 for the purpose of foreign remittances. A facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number.

■■■

DIRECT TAX CASE LAWS

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

Ashok Kumar B. Chowatia vs. JCIT(TDS), Chennai
Citation: [2021] 128 taxmann.com 230, Madras HC, 16 April 2021
If TDS not reflecting in 26AS, assessee cannot be made liable to pay the tax.

Facts:

The Assessee, had given premises on rent to a Company. While making the payments to Assessee tennant Company had deducted TDS but the same was not deposited and therefore the same was not reflecting to the credit of assessee. Thus, a demand notice was sent to assessee for recovering of tax which was not reflecting in 26AS.

The department took a stand that since TDS was not deposited by the tenntant with the department assessee would also be liable to pay tax.

The assessee had filed a writ petition against the demand notices.

Held:

To the extent tax was deducted by the tennant and not remitted by tennant to the Income-tax Department, recovery can only be directed against the Company as the Company is the assessee in default. The petitioner cannot be made to pay tax twice.

If the Company fails to remit the tax to the credit of the Income-tax Department, it is open to the department to recover the same from defaulting company in the manner known to Law. Balance of tax if any, which has escaped payment alone can be recovered from the assessee, by issuing suitable notice under the provisions of the Income-tax Act, 1961.

Writ petition allowed.

Toyota Kirloskar Motor (P.) Ltd. vs. ITO(TDS)
Citation: [2021] 128 taxmann.com 266, Karnataka HC, 24 March 2021
TDS on provision of expenses where no income accrued to the deductee.

Facts:

Assessee is a Joint Venture and is a subsidiary of Toyota Motor Corporation, Japan. The assessee follows mercantile system of accounting and as per its accounting policies, the assessee at the end of the financial year i.e. 31st March of every year makes provision for marketing expenses, overseas expenses and general expenses on estimate basis in respect of works/contracts/services, which are in progress or completed but vendor is yet to submit bills to ascertain closest amount of profits/loss.

The assessee had made provision towards marketing, overseas and general expenses to the extent of Rs. 11,14,718,61/-. Subsequent to filing of the return, the assessee received invoices from the vendors for the Assessment Year 2012-13 and the amount mentioned in the invoices was debited to the provision already made with a corresponding credit to the respective vendor's account. The amount indicated in the invoices was utilized against the provision and the TDS along with interest was also discharged at the time of credit of the invoice amount to the account of the vendor. Subsequently, the amount which remained un-utilized in the provision account after completion of negotiation/finalization of services was reversed in the books of accounts of the assessee.

The Assessing Officer initiated the proceeding under section 201 and 201(1A) of the Act and treated theassessee as assessee in default in respect of the amount made in provision, which was reversed/unutilized.

Appeal before CIT(A) and consequently before ITAT were both dismissed against the assessee. Hence, the assessee filed its case before the Hon'ble High court.

Held:

Income tax is a levy on income and the Act considers two points of time at which the liability to tax is attracted i.e., accrual of income or its receipt but substance of the matter is the income. If the income does not result at all, there cannot be a levy of tax even though in book-keeping entry is made about a hypothetical income which does not materialize.

If the counterpart is not liable to pay tax on the reversed provision amount since that is not his income, the assessee cannot also be made liable to deduct tax on amount which was never credited / paid to the counterpart account.

Thus, the assessee's claim of non-deduction of TDS is allowed.

Decisions relied upon:

CIT v. Shoorji Vallabhdas & Co. [1962] 46 ITR 144 (SC)

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RETENTION OF BOOKING AMOUNT ON CANCELLATION OF BOOKING OF HOTEL ACCOMMODATION - TAXABILITY UNDER GST

Compiled by CA Bhavin Mehta

In this article I have tried to analysis the GST Rulings published by Australian Taxation Office ***GSTR 2006/2*** and European Court decision in ***Societe Thermale D'Eugenie-les-Bains, Case C-277/05*** vis-à-vis GST law in India with respect to the taxability of deposit retained by the service provider on cancellation of booking by the customer, say of hotel room.

The characteristics of a security deposit are analyzed below:

1. Meaning of a security deposit: An ordinary meaning of a 'security' is 'an assurance or guarantee'. The term deposit is not defined in the GST Act. However, judicial decisions have indicated that the term 'deposit' has particular meaning in a commercial context. The term deposit has several aspects which includes deposit towards the payment of the purchase price; be a token provided by the purchaser as 'an earnest to bind the bargain'; and provide a form of security for performance by the purchaser. A deposit paid under a standard land contract serves a number of purposes. If the contract goes through to completion, the deposit goes against the purchase price. But its initial purpose is as security for the performance of the contract.

   It must first be noted that 'deposit' mark the conclusion of a contract, since their payment implies a presumption that the contract exists. Secondly, a deposit encourages the parties to perform the contract, because otherwise the party who has paid it stands to lose the corresponding sum. Thirdly, the deposit constitutes fixed compensation, since its payment releases one of the parties from the need to prove the amount of the loss suffered if the other party goes back on the agreement.

   For payment to be considered a 'security deposit' it should be held as a security for performance of an obligation. In other words, it is held for the benefit of the supplier to secure the recipient's obligations. The nature of the obligations is usually dependent upon the intentions of the parties, as evidenced by the terms and conditions (express or implied) of a contract and the contract. The contract, conduct and intent of the parties to the contract must be consistent with the payment being a security deposit.

   In a purchase contract, the supplier ordinarily seeks to secure, by way of a security deposit, the recipient obligations to complete the contract and pay the contracted purchase price. Upon the recipient performing its obligations, the supplier is obliged either to apply the deposit for the recipient's benefit, usually by applying it towards the total purchase price of the supply, or by returning it to the recipient. An amount ceases to be security deposit when that amount is applied as consideration, or forfeited, regardless of whether it is held by the supplier or a third party at that time.

2. The difference between a security deposit and a part payment: A payment made as an earnest has been said to be 'a portion of something given or done in advance as a pledge of the remainder. This can be distinguished from paying the first instalment of the total price in a purchase contract, which is to be paid over a period of time that is, an instalment payment, or a part payment. In ***Howe v. Smith (1884) 27 Ch D 89*** described a deposit in the following terms:

   It is not merely a part payment, but is then also an earnest to bind the bargain so entered into, and creates by the fear of its forfeiture a motive in the payer to perform the rest of the contract.

   A payment that is not intended to act as an earnest to ensure the contract is completed is not a security deposit. Mere labeling as deposit does not make it a security deposit under the law. Example of part payment is given below.

   Mr. X purchases Television Set from a retailer for Rs.50,000. The retailer informs Mr. X that if he makes an initial instalment payment of Rs.10,000, and agrees to pay the balance amount in a month's time he can take the Television home that day. The payment does not act to secure the performance on any obligation and is not at risk of forfeiture. The initial payment of Rs.10,000 of the agreed purchase price of Rs.50,000 is part payment.

   A particular payment is a security deposit is a question of fact, determined by looking at the terms of the contract and the intention of the parties to the contract.

   Consideration for a promise is not a security deposit. For example Mr. A needs a business premises on lease but is unable to sign a lease agreement until his business plan is approved by his financier. He approaches the owner of suitable premises who agrees not to lease the property to anyone else for one week provided Mr. A pays Rs.10,000. The payment of Rs.10,000 is not a security deposit but a consideration for the taxable supply of a promise or undertaking of not leasing the property to anyone else.

3. The meaning of forfeiture of a security deposit: A fundamental requirement of a security deposit is that the parties to a contract clearly understand at its commencement, either through an express term, or by implication, that the deposit may be forfeited if the recipient fails to perform the secured contractual obligations. The recipient who is in default cannot recover the money at law at all. There must be a mutual intention by the contracting parties to make the deposit subject to forfeiture. If this intention is not present, the deposit is not a security deposit. If understanding exists between the parties at the commencement of the contract of forfeiture deposit, it is not relevant whether the forfeiture is actually enforced by the supplier upon the breach of some term or condition. In ***Workers Trust & Merchant Bank Ltd v. Dojap Investments Ltd [1993] AC 573,*** Lord Browne-Wilkinson distinguished between a deposit that acts as an earnest and deposits for which forfeiture will not be permitted as under:

   In general, a contractual provision which requires one party in the event of his breach of the contract to pay or forfeit a sum of money to the other party is unlawful as being a penalty, unless such provision can be justified as being a payment of liquidated damages being a genuine pre-estimate of the loss which the innocent party will incur by reason of the breach. One exception to this general rule is the provision for the payment of a deposit by the purchaser on a contract for the sale of land. Ancient law has established that the forfeiture of such a deposit (customarily 10 per cent. of the contract price) does not fall within the general rule and can be validly forfeited even though the amount of the deposit bears no reference to the anticipated loss to the vendor flowing from the breach of contract.

   In the CGST Act, 2017 deposit is excluded from the definition of consideration.

   Section 2(31) – "Consideration" in relation to the supply of goods or services or both includes-

   a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government :

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

The above definition provides that a payment is treated as consideration for a supply if it is in connection with, in response to, or for the inducement of the supply. However, when an amount is paid as a security deposit, it would be excluded from the definition of "consideration". The deposit is held as a security for performance of the obligation. At some point the deposit ceases to be held as a security deposit and is adjusted against the remaining consideration that is payable. GST would be chargeable on such deposits if they become part of the consideration for the taxable supply.

In the premises of above background, now let us analyze retention/forfeiture of booking amount by the supplier of service, like Hotels.

Booking amount – Advance payment or security deposit

The situation to be examined is that in which the party who has paid a deposit is free to go back on his undertaking, thereby forfeiting that deposit, while the other party may exercise the same option. If the understanding exists between the recipient and supplier of service at the commencement of the contract that booking amount may be forfeited, if the recipient fails to perform the secured contractual obligations, it would qualify as security deposit. The conclusion of a contract and the resulting existence of a legal link between the parties do not usually depend on the payment of a deposit. Therefore, where the booking amount can be forfeited by the supplier on the failure of the recipient to perform its obligation, it would be considered as security deposit and not advance payment. Generally, in the hotel bookings, if the client's does not occupy the room or exercise cancellation option made available to him, the booking amount is either forfeited or is partly retained by the hotelier.

Retention/Forfeiture of Security Deposit – Whether leviable to GST?

The conclusion of a contract and the resulting existence of a legal link between the parties do not usually depend on the payment of a deposit. Since a deposit is not a constituent element of a contract for accommodation in the hotel, it seems to be no more than an optional element within the parties' freedom of contract. 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 of full contractual performance does not depend on the possibility that otherwise compensation or a penalty for delay may be due, or on the lodging of security or a deposit. Thus when the hotelier reserves the room he does no more than honour the contract entered into with the client, in accordance with the principle that contracts must be performed. Accordingly, the fulfillment of that obligation cannot be classified as consideration for 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 the deposit is applied towards the price of the reserved room, if the client takes up occupancy, confirms that the deposit cannot constitute the consideration for the supply of an independent and identifiable service. Since the deposit does not constitute the consideration for the supply of an independent and identifiable service, it is necessary to examine whether the deposit constitutes a cancellation charges paid as compensation for the loss suffered as a result of the client's cancellation.

Where the performance of the contract follows its normal course, the deposit is applied towards the price of the services supplied by the hotelier and is therefore subject to GST. The retention/forfeiture of the deposit by contrast, triggered by the client's exercise of the cancellation option made available to him serves to compensate the hotelier following the cancellation. Such compensation does not constitute the fee for a service and forms no part of the taxable amount for GST purposes. The retention of the deposit

following the client's cancellation, is intended to offset the consequences of the non-performance of the contract, it must be held that neither the payment of the deposit, nor the retention of that deposit, shall be considered as supply under the GST law.

Even the language of Paragraph 5(e) of Schedule II to the CGST Act will not result the retention of deposit on cancellation of booking to be a supply. Paragraph 5(e) of Schedule II to the CGST Act provides:

SCHEDULE II

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. […]

5. Supply of services

The following shall be treated as supply of services, namely:— […]

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and […]"

Thus, an activity will be a supply if it is agreeing to the obligation to:

i. refrain from an act, or

ii. to tolerate an act or a situation, or

iii. to do an act.

The agreement is not to cancel the booking but avail hotel accommodation service. Compensation in the form of retention of security deposit is for breach of contract and not for fulfilment of contract, which is not a supply. Non-performance of obligation by the client being the substance of the dispute cannot in itself be characterized as a supply. The compensatory damages, the payment is for loss suffered and not supply effected. An award of breach of contract in the form of retention or forfeiture of security deposit is not an agreement to the obligation to refrain from an act, to tolerate an act or situation, or to do an act as contemplated by Paragraph 5(e) of Schedule II of CGST Act.

In the premises of above, the sum paid as a deposit, in the context of a contract relating to the supply of hotel services which is subject to GST, is to be regarded where the client exercises the cancellation option available to him or no show (client does not come for stay) and that sum is retained by the hotelier, as fixed cancellation charge paid as compensation for the loss suffered as a result of client default and which has no direct connection with the supply of any service for consideration and, as such, is not subject to levy of GST. The client pays booking amount to hotelier 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.

In the above context, the Judiciary in India has consistently held that retention/forfeiture of security deposit amount on the cancellation of booking does not undergo a change after receipt. The enforceable reciprocal obligations are essential to a supply. The receipt of payment is not premised on the enforcement of reciprocal obligations between parties and cannot be linked to a supply for levying GST. Such a payment is compensatory. The forfeiture or retention of booking amount is related to infringement and will not constitute a consideration for any supply made but it will be in nature of damages for the alleged wrong. The liability to pay GST would arise only where the payment received can be linked to a supply.

The Hon'ble Bombay High Court in the case of ***Bai Mamubai Trust vs. Suchitra (2019) taxmann.com 300 (Bombay),*** observed "The Learned Amicus Curiae correctly submits that enforceable reciprocal obligations are essential to a supply. The supply doctrine does not contemplate or encompass a wrongful unilateral act or any resulting payment of damages. For example, in a money suit where the plaintiff seeks a money decree for unpaid consideration for letting out the premises to the defendant, the reciprocity

of the enforceable obligations is present. The plaintiff in such a situation has permitted the defendant to occupy the premises for consideration which is not paid. The monies are payable as consideration towards an earlier taxable supply. However, in a suit, where the cause of action involves illegal occupation of immovable property or trespass (either by a party who was never authorised to occupy the premises or by a party whose authorization to occupy the premises is determined) the plaintiff's claim is one in damages."

The Delhi Tribunal in the case of ***Lemon Tree Hotel vs. CGST, C.E. & Customs, Indore, 2020 (34) G.S.T.L. 200 (Tri.-Del.)*** held as under:

"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."

In ***K. N. Food Industries Pvt. Ltd. 2020 (38) G.S.T.L. 60 (Tri.-All)*** Allahabad Tribunal held as under:

4. After hearing both the sides duly represented by Shri H.P. Kanade, Learned Advocate appearing for the appellant and Shri Shiv Pratap Singh, Learned AR appearing for the Revenue, we find that the short issue required to be decided in the present appeal is as to whether the receipt of ex-gratia job charges amount by the appellant amounts to providing any services so as to attract the Service Tax on the same. We find that appellant is admittedly manufacturing confectionaries for and on behalf of the M/s. Parle and is clearing the same upon payment of Central Excise duty on the basis of MRP declared by M/s. Parle. It is only in situation when the appellant's capacity, as a manufacturer, is not being fully utilized by M/s. Parle, their claim of ex-gratia charges arises so as to compensate them from the financial damage/injury. As such, ex-gratia amount is not fixed and is mutually decided between the two, based upon the terms and conditions of the agreement and is in the nature of compensation in case of low/less utilization of the production capacity of the assessee.

The Lower Authorities have invoked the provision of the Section 66E(e) of the Act which relates to the definition of the declared services. The same is to the effect that "(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act". Provisions of Section 65B(44) of the Act refers to the process amounting to manufacture or production of goods on which the duty is leviable under Section 3 of the Central Excise Act, 1944 as on service. However no Service Tax is leviable on such services, as the same is covered under the negative list. Further, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is a declared service on which the Service Tax is leviable under Section 66B of the Act.

In the present case apart from manufacturing and receiving the cost of the same, the appellants were also receiving the compensation charges under the head ex-gratia job charges. The same are not covered by any of the Acts as described under Section 66E(e) of the Finance Act, 1994. The said sub-clause proceeds to state various active and passive actions or reactions which are declared to be a service namely; to refrain from an act, or to tolerate an act or a situation, or to do an act. As such for invocation of the said clause, there has to be first a concurrence to assume an obligation to refrain from an act or tolerate an act etc. which are clearly absent in the present case. In the instant case, if the delivery of project gets delayed, or any other terms of the contract gests breached, which were expected to cause some damage or loss to the appellant, the contract itself provides for compensation to make good the possible damages owning to delay, or breach, as the case may be, by way of payment of liquidated damages by the contractor to the appellant. As such, the contracts provide for an eventuality which was uncertain and also corresponding consequence or remedy if that eventuality occurs. As such the present ex-gratia charges made by M/s. Parle to the appellant were towards making good the damages, losses or injuries arising from "unintended" events and does not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and cannot be considered to be the payments for any services.

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STUDENTS' CORNER

INDIA'S MOST PRESSING CHALLENGE

Compiled by Neel Randeria

To fulfill the aspirations of its people, Indians will need to match the very best of their own skills and creativity with the right technologies, whether developed at home and creativity with the right technologies, whether developed at home or adapted abroad. The scale of the economic and societal transformation required is staggering: India's middle class is expected to double to 575 million by 2025, with a similar number of Indians living in the cities by then. Those city dwellers, with an average age of under thirty, will be educated, ambitious and mobile-providing India with pre-requisites for a thriving consumption-driven economy. But these newly empowered twenty first century Indians deserve and are sure to demand a modern and sustainable infrastructure?

Can India meet the challenge? The answer to that question remains to be seen. The average infrastructure investment in countries across Southeast Asia is about 12 percent of GDP. India's current infrastructure expenditure amount to less than 8 percent.

Energy consumption is likely to double by 2030. Given India's lack of indigenous energy sources and local concerns about the social impact of exploiting those resources, most promising solution is energy efficiency.

In the medium to long term, India must focus on ensuring that the places where people live, work and socialize, are not only safe and affordable but also smart and sustainable. Technologies integrating automation with other functions shall become a norm offering a high degree of convenience. Most importantly, Indian policy makers should lend their support by creating and enforcing strict energy-efficiency codes and regularly scheduled energy audits, hardly any of which exist today

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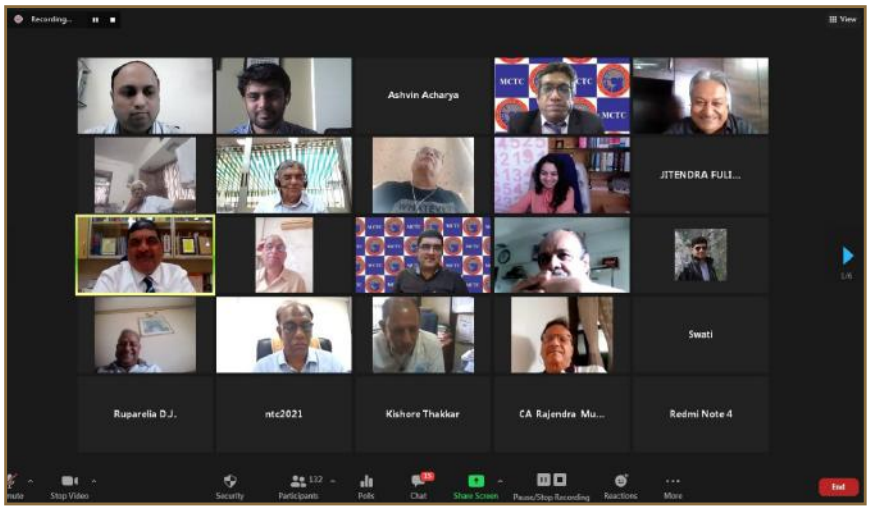
GLIMPSES OF 1ST STUDY CIRCLE MCTC







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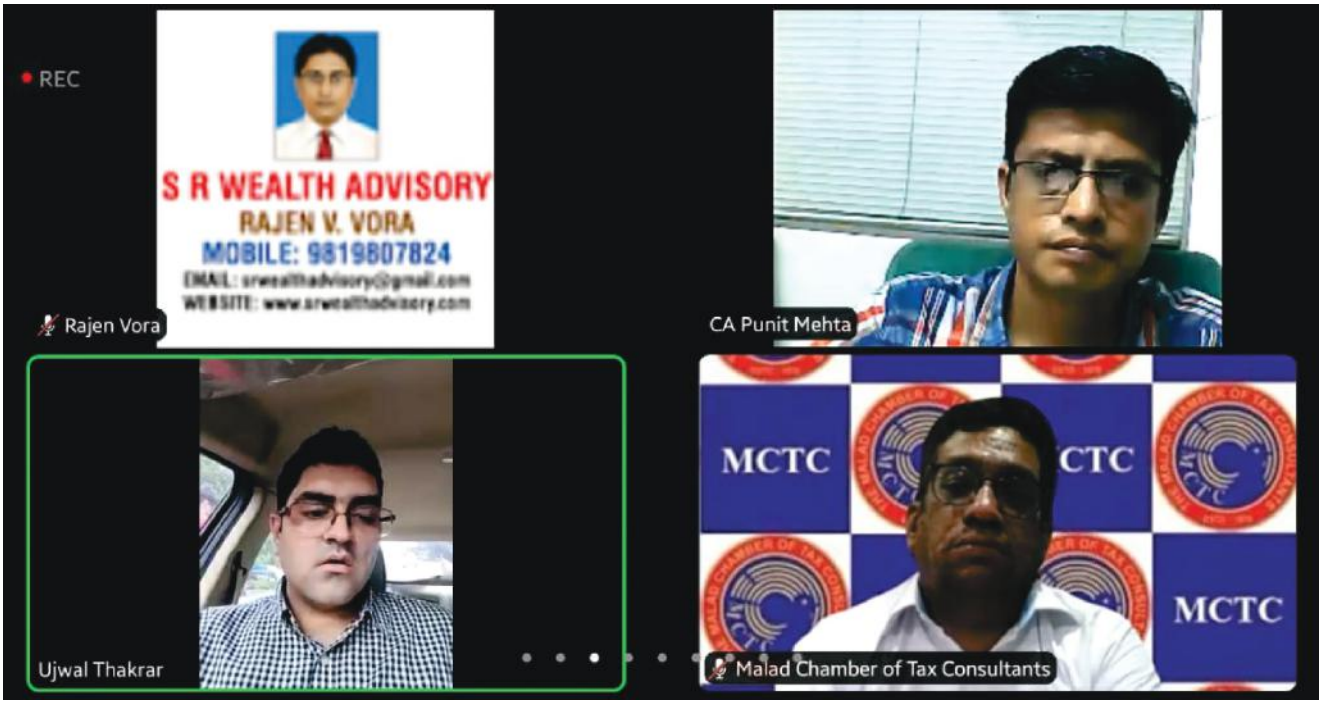

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• **Editor : Shri Kishor Vanjara**

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