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. 5 ***For members & private circulation only*** November, 2021

President's Communiqué

Dear Members

Our economy has seen phenomenal bounce back after grave pandemic situation. It was evident the way businesses have seen their sales steadily rising to the path of recovery in the recently concluded Diwali festival. With Diwali gone, season for weddings and influx of foreign visitors has started which in turn gives hope of further improvement in the economy.

We should however also not forget that the end of Diwali festival has also marked the beginning of our professional season for the year in the sense of due dates of filing income tax audit and returns fast approaching now. Its time for us to gear up for grueling times ahead.

The Chamber invites "suggestions for important amendments" as a part of its submission for Pre-Budget Memorandum 2022. The format is attached elsewhere in the bulletin, members are requested to send their suggestions by 10th December 2021.

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.

"Education is the passport to the future, for tomorrow belongs to those who prepare for it today."

— Malcolm X

Last but not the least, please create awareness about eye donation – let's do something for the society at large in turn of what we have received from it.

Happy Auditing!

Regards

CA Jignesh Savla
President

Do you know? **Corneal transplantation is effective in all eyes, if performed under optimal conditions**

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:

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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

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

MEMBERSHIP FORM

Date:..... /..... /.....

To,

The Hon. Joint Secretaries,
The Malad Chamber of Tax Consultants, Mumbai.

Dear Sirs,

Being eligible to practice under the Direct and/or Indirect Taxes Laws, I hereby apply for admission as a member of *The Malad Chamber of Tax Consultants with the following particulars:*

1. NAME OF MEMBER MR./MRS./MISS: .....
2. FATHER'S/HUSBAND'S NAME: .....
3. QUALIFICATIONS: .....
4. MEMBERSHIP NO., if any (with name of the association): .....
5. PERSONAL DATA:

   DATE OF BIRTH: ..... / ..... / ..... 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: .....
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   The amount of ₹ 2,500/- by Cheque/Draft No. ..... dated ..... / ..... / .....

   drawn on .....

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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

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FOR OFFICE USE ONLY FOR MEMBERSHIP APPLICATION

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

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

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

NOTES

1. Please attach educational qualification certificate for eligibility to practice 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
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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

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- Access to knowledgeable and insightful Study Circle meetings on Direct Tax, Indirect Tax and Allied Laws
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- 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.
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CA Kishor Thakrar | CA Pratik Satyuga
Convenors
Membership & Public Relation Committee

CA Jignesh Savla
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Chartered Accountants Shop No. 4,
2nd Floor, The Mall,
Station Road, Malad (West), Mumbai 400097

PRE-BUDGET MEMORANDUM 2022

INVITATION FOR SUGGESTIONS

The Malad Chamber invites "suggestions for important amendments" as a part of its submission for Pre-Budget Memorandum 2022.

We request members to E-Mail your suggestions as per attached format at maladchamber@gmail.com by 10th December 2021 to incorporate in our Memorandum.

FORMAT FOR SUGGESTIONS

FOR PRE-BUDGET MEMORANDUM 2022

*From .....

*Contact Details : Mobile No. ..... *Tele. .....

*E Mail ID. .....

1. Direct Tax

Sr. No.	Section	Existing Provision	Proposed Suggestions	Reasons

2. Indirect Tax

Sr. No.	Section	Existing Provision	Proposed Suggestions	Reasons

DIRECT TAX CASE LAWS

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

Pr. CIT vs. Ettumanoor Service Co-op Bank Ltd.

Citation: [2021] 132 taxmann.com 33, Kerala HC, 22 March 2021

Taxability of expense disallowed in case of Co-op Bank – whether eligible for deduction u/s. 80P(2)(i)(a)

Facts:

Assessee was a primary agricultural credit society. It claimed expenditure towards interest paid on various deposits accepted by it from its members. During the assessment Assessing Officer contended that the assessee could not be considered as a primary agricultural credit society and, accordingly, he disallowed five per cent of such interest expenditure claimed by the assessee and added same to the income of the assessee.

On first appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer. However, he included the said exclusion as deduction permissible under section 80P(2)(a).

The revenue contended that the 5 per cent expenditure excluded does not merit a deduction under Chapter VIA. The exclusion must be treated as an occasion falling under section 68. The 5 per cent now excluded by the Assessing Officer will have to be treated as income from other sources and liable to tax.

On the other hand, assessee contended that the society has accepted deposits on which interest is paid to the depositors. The society has advanced loans to its members and has earned interest therefrom. The disallowance of 5% comes back to the business carried on by the assessee as income and is entitled to deduction under section 80P(2)(i)(a).

Held:

The Hon'ble High court affirmed to the contentions of the assessee and held that for a reason recorded and accepted by all the authorities, the 5 per cent of the expenditure booked against interest paid to depositors is disallowed and once disallowed portion is accepted by all the authorities, the said disallowed portion forms part of the interest earned by the society on the amount lent by the society to its members, vis-a-vis in other words, income earned from business carried on by the society. Therefore, the society is entitled to deduction under section 80P(2)(i)(a). Section 68 is not applicable to an entry warranted consequent to the disallowed expenditure by the Assessing Authority.

Decisions relied upon:

Mavilayi Service Co-operative Bank Ltd. vs. CIT 2021 (1) KLT 485 (SC)

Bright Enterprises (P.) Ltd vs. DCIT.

Citation: [2021] 132 taxmann.com 32, ITAT Amritsar, 16 August 2021

Disallowance u/s. 40A(2) restricted to 10% of total expenses, since no comparable were taken on record to show that expenditure incurred by the assessee are excessive.

Facts:

During the relevant assessment year, The Company had filed its return of income and claimed professional expenditure incurred towards taking consultancy and technical services from its sister concern.

AO observed that the assessee has entered in a contract with the sister concern having no experience in the field which is clear from the comparison of the revenue from operation, employee benefit expenses and other expenses for the financial years 2012-13 and 2013-14. Thus, payment to sister concern were disallowed by invoking provisions of Section 40A(2)

On appeal before CIT(A), CIT(A) restricted the disallowance made by the Assessing Officer at 20% of total expenses.

On further appeal before ITAT,

Held:

From the reading of section 40A(2), it is clear that the assessee incurred any expenditure in respect of which the payment has been made and such expenditure is excessive or unreasonable having regard to the fair market value of goods, services or facilities. The Assessing Officer may disallow any such excessive or unreasonable expenditure.

It is essential for the Assessing Officer to brought on record that the expenditure incurred by the assessee was either excessive or unreasonable, having regard to the market value. No fair market value of the services or goods has been brought on record by the lower authorities.

AO had allowed the similar expenditure for the assessment years 2015-16, 2017-18 and 2018-19. Further, in the absence of any comparable instances of rendering the similar services/supply of goods, it would not be permissible to disallow the expenditure under section 40A(2).

Further, the benefit of another 10% was to be granted to the assessee. Thus, the disallowance is restricted upto 10 per cent of the expenditure claimed by the assessee by making the payment to sister concern for both the assessment years.

Thus, the appeal is partly allowed.

■■■

SUBSEQUENT TO FILING OF GSTR-3B RETURN, CAN THE TAXPAYER BE ENTITLED TO SWAP THE ENTRY IN THE ELECTRONIC CASH LEDGER WITH THE ENTRY IN THE ELECTRONIC CREDIT LEDGER OR VICE-VERSA? ON THIS ISSUE, THE SUPREME COURT DECISION IN THE CASE OF UOI vs BHARTI AIRTEL LTD & ORS REPORTED IN (2021) 131 TAXMANN.COM 319 (SC) DATED 28-10-2021 IS ANALSYED IN THIS ARTICLE.

Compiled by CA Bhavin Mehta

In this article I have tried to analysis the Hon'ble Supreme Court decision, wherein the facts of the case, the argument made by the revenue & assessee and the observation & conclusion arrived at by the Apex Court are briefly discussed below. My comments are offered at the end of this article.

Facts

1. The assessee Bharti Airtel Ltd. (hereinafter referred to as "Bharti") had filed writ petition before Delhi High Court and prayed to read down paragraph 4 of the circular No. 26/26/2017-GST dated 29-12-2017 and allow them to rectify GSTR-3Bs from July, 2017 to Sept, 2017. Para 4 of the said circular is reproduced below:

   > 4. It is clarified that as return in FORM GSTR-3B do not contain provisions for reporting of differential figures for past month(s), the said figures may be reported on net basis alongwith the values for current month itself in appropriate tables i.e., Table No. 3.1, 3.2,

4 and 5, as the case may be. It may be noted that while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the FORM GSTR-3B. The amount remaining for adjustment, if any, may be adjusted in the return(s) in FORM GSTR-3B of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed. Where adjustments have been made in FORM GSTR-3B of multiple months, corresponding adjustments in FORM GSTR-1 should also preferably be made in the corresponding months.

2. GSTR-2A become operational in Sept, 2018 and only after on GSTR-2A became operational; Bharti realized that it had sufficient amount of credit in the ITC ledger account. Due to non-functionality of GSTR-2A, Bharti had to discharge its output tax liability in cash; otherwise Bharti could have utilized the ITC of ₹ 923 crore for payment of output tax liability. Bharti prayed before High Court to allow them to rectify Form GSTR-3B, so as to avail the ITC (appearing in GSTR-2A but not claimed by them in the original GSTR-3B filed for the period from July, 2017 to Sept, 2017) and amount of ₹ 923 crore paid in cash towards the output tax liability would get credited to its electronic cash ledger, so that they can claim the refund of such amount. However, the above referred circular dated 29.12.2017 restricts such adjustment.

3. The Hon'ble Delhi High Court in its decision reported in ***(2020) 116 taxmann.com 416 (Delhi)*** held that paragraph 4 of the said circular dated 29-12-2017 has to be read down. The High Court observed that every registered person had right to correct the returns in very month to which they relate. The High Court held that CGST Act contemplated a self-policing system. Resultantly, the statutory provisions had provided for generation of auto-populated data of the stakeholders. That was a right and not a mere facility made available to registered persons. Thus, every registered person had a right to correct the returns in the very month to which they relate and not visited with any adverse consequences for uploading incorrect data. The High Court held that there was no mechanism of rectification to the returns of subsequent months. It held that said paragraph 4 of circular dated 29-12-2017 is not in consonance with the provisions of CGST Act, 2017. The High Court allowed the assessee to rectify Form GSTR-3B for the period from July, 2017 to Sept, 2017. The High Court directed that on filing the rectified Form GSTR-3B, the revenue shall verify the claim and give effect of the same.

   Revenue appealed the order passed by the Delhi High Court to Supreme Court.

   Arguments by Revenue, the appellant by learned Additional Solicitor General Shri N. Venkataraman

   1. The High Court had no territorial jurisdiction to entertain the writ petition filed by Bharti on the ground that the source of power to levy and collect GST under the Act vests both in the State and Centre. In the writ filed by Bharti they have chosen to only implead the Council which is a body created only to decide about the policy and is not a tax collector as such. Thus the Delhi High Court could not have decided the issues concerning other State(s) and that too without making the revenue as part respondent.

   2. The registered person under the law is obliged to do a self-assessment of its transactions and determine the output tax liability and exercise the option to avail of and utilize the ITC to the extent required or to pay the output tax liability by cash. The Authorities have no role to play whatsoever in that regard. It is an option to be exercised by the registered person and not by the Authorities. The common electronic portal or tax electronic portal, is only an enabler and a facilitator in bringing on board all the registered persons which include the supplier, recipient, registered person and other recipients. The efficacy of common electronic portal or so to say malfunctioning thereof, does not extricate the registered person from the primary obligation of self-assessment of output tax liability as predicated in Section 16 of the 2017 Act. The registered person is expected to exercise the option of utilizing ITC or to pay

by cash for discharging his output tax liability at the time of filing of return on the information gathered from the primary record in his possession. If the registered person intends to avail ITC, he can do so by paying the output tax liability from his electronic credit ledger referred to in Sections 2(46) and 49(2) of the 2017 Act.

3. As per section 59 of the Act, every registered person is required to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under section 39 of the Act. Thus it becomes amply clear that the obligation in the matter of deciding about the eligibility and mode of payment of output tax liability including self-assessment, is to be exercised by the registered person himself and the authorities have no role to play at that stage. The registered person cannot find fault with the deficiencies in the common electronic portal so as to extricate from this obligation.

4. The functions or features provided in the common electronic portal of auto matching and auto populating of the record of the supplier and the recipient and vice versa are only a facility made available to the registered person. The features provided in the context of Sections 42 and 43 of the 2017 Act relating to ITC and output tax liability are dynamic and seamless processes of matching of invoices of the supplier and the recipient.

5. GSTR-3B is always treated as return within the meaning of section 39 of the Act. Any rectification regarding omission or incorrect particulars referred to therein, could be furnished in the month or quarter during which such omission or incorrect particulars came to be noticed. Taking any other view would result in ushering in inconsistency and uncertainty not only to the concerned registered person, but also to his recipient and supplier and other records not directly connected with the registered person.

6. The obligation to do self-assessment of ITC and of output tax liability and to pay the self-assessed output tax liability by using the ITC or by cash payment, is a matter of exercising option for electing the mode of discharge of output tax liability. The option so exercised by the registered person is his own volition and the authorities have no concern or any role to play at that stage. Effecting correction/rectification in the returns for the month or quarter, during which such omission or incorrect particulars have been noticed, does not any way result in denying the right to avail ITC. For doing the self-assessment, the registered person is fully equipped with accounts and records maintained by him as per the statutory requirement, which are in his complete control and knowledge.

7. The fact that registered person would not be eligible to get refund of cash also, cannot be the basis to permit the registered person to swap the entry in the electronic cash ledger with the entry in the electronic credit ledger or vice versa. If permitted, even as one of the cases, it may result in chaotic situation and collapse the tax administration of the Union, States and the Union territories.

Arguments on behalf of Bharti by senior counsels, Mr. Harish Salve and Mr. Tarun Gulati

1. Form GSTR-3B is only a stop gap arrangement to overcome the technical glitches in the common electronic portal and non-operability of the concerned statutory forms enabling auto-populating of relevant entries and records. The authorities cannot deny the taxpayers, their right to revise their returns and avail the ITC. Not permitting rectification of the return is conceptually flawed and not consistent with the legislative intent and the provisions of the Act and the Rules framed thereunder.

2. It denies the taxpayer his statutory right to utilize credits, due to technical problems in not putting the electronic platform in place. Permitting the registered person to avail of the excess ITC in its electronic credit ledger, cannot be considered to be unfair advantage taken by the taxpayer.

3. The mechanism for rectification has been envisaged in Section 39(9) of the 2017 Act, which is subject to the steps to be taken under Sections 37 and 38 regarding matching and verification. The return to be filed in Form GSTR-3B had no such features and was only a stop-gap arrangement, as the mechanism provided in Sections 37 and 38 was not put in place. The provision regarding rectification under Section 39(9), therefore, had no application to the stop-gap arrangement of filing return in Form GSTR-3B, much less for the relevant period (July to September 2017). Hence, reliance placed on Section 39(9) of the 2017 Act to justify the stipulations specified in the impugned Circular dated 29.12.2017, cannot be countenanced.

4. The High Court rightly read down paragraph 4 of the impugned Circular dated 29.12.2017 and also issued direction to allow the respondent to rectify Form GSTR-3B for the period to which error relates i.e., July to September 2017, subject to verification by the authorities concerned. This was obviously an equitable arrangement and not opposed to any provision of the Act or the Rules. This direction would enable the respondent to avail of the ITC from the surplus shown in his account of electronic credit ledger and the excess amount paid in cash would correspondingly be reinstated in electronic cash ledger of the respondent, which is to the tune of Rs.923 crores. As a matter of fact, the impugned Circular dated 29.12.2017 is wholly without jurisdiction as it arbitrarily alters the statutory framework. It is also inconsistent with the return filing system under previous tax regime, such as Service Tax Rules, Central Excise Tax Rules, Delhi Value Added Tax Act, Income Tax Act etc. In all these legislations, it would have been open to the assessee to rectify the original self-assessed return at a later point of time. It is urged that the High Court was competent to issue writ of mandamus as it has been done in the present case.

The Hon'ble Supreme Court Observations

1. As regards the jurisdiction of Delhi High Court, the registered office of Bharti is in Delhi and the appellant (revenue) also has its office in Delhi. Hence, the jurisdiction of the Delhi High Court cannot be a matter of doubt. Bharti was not challenging the individual action of the States or the Union territories, but a policy decision of the Central authority who had issued the subject circular dated 29.12.2017. Non-impleadment of respective States/Union Territories would not come in the way of the writ petitioner to pursue the cause brought before the High Court. Accordingly, the preliminary objects regarding the maintainability of the writ petition and the jurisdiction of the Delhi High Court deserve to be rejected.

2. The subject circular has been issued to notify the clarification given by the Board in order to consolidate the information in various notifications and circulars regarding return filing and to ensure uniformity in implementation across field formations. In strict sense, it is not the direction issued by the Commissioner (GST) as such, but it is notifying the decision(s) of the Board. It is a different matter that a circular is issued under the signatures of Commissioner (GST), but in essence, it is notifying the decision(s) of the Board, which has had authority and power to issue directions. Accordingly, the argument that the subject Circular dated 29.12.2017 has been issued without authority of law, needs to be rejected.

3. The primary focused on the grievance of Bharti that due to non-operability of Form GSTR-2A at the relevant time (July to Sept, 2017), it had been denied of access to the information about its electronic credit ledger account and consequently, availing of ITC for the relevant period and instead to discharge the output tax liability by paying cash to its vendors. Thus, it has resulted in payment of double tax and unfair advantage to the tax authorities because of their failure to operationalize the statutory forms enabling auto-populating statement of inward supplies of the recipient and outward supplies including facility of matching and correcting the discrepancies electronically. The High Court, however, did not

enquire into the cardinal question as to whether the writ petitioner was required to be fully or wholly dependent on the auto generated information in the electronic common platform for discharging its obligation to pay output tax liability for the relevant period between July and September 2017. The answer is - an emphatic No. In that, the writ petitioner being a registered person, was under a legal obligation to maintain books of accounts and records as per the provisions of the 2017 Act and Chapter VII of the 2017 Rules regarding the transactions in respect of which the output tax liability would occur. Even in the past (till recently upto the 2017 Act came into force), during the pre-GST regime, the writ petitioner (being registered person/assessee) had been maintaining such books of accounts and records and submitting returns on its own. No such auto-populated electronic data was in vogue. It is the same pattern which had to be followed by the registered person in the post-GST regime.

4. As per the scheme of the 2017 Act, it is noticed that registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of output tax liability including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of accounts required to be statutorily preserved and updated from time to time. That he could do even without the common electronic portal as was being done in the past till recently pre-GST regime. As regards liability to pay output tax liability that is on the basis of the transactions effected during the relevant period giving rise to taxable event. The supply of goods and services becomes taxable in respect of which the registered person is obliged to maintain agreement, invoices/challans and books of accounts, which can be maintained manually/electronically. The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment. The primary source is in the form of agreements, invoices/challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually/electronically. These are not within the control of the tax authorities. This was the arrangement even in the pre-GST regime whilst discharging the obligation under the concerned legislations(s). Indeed, that self-assessment and declarations would be any way subject to verification by the tax authorities.

5. The “electronic credit ledger” is defined in Section 2(46) and is referred to in Section 49(2) of the 2017 Act, which provides for the manner in which ITC may be availed. Section 41(1) envisages that every registered person shall be entitled to take credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

6. As aforesaid, every assessee is under obligation to self-assess. Only thereafter, section 59 steps in, where under the registered person is obliged to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under section 39 of the Act. Section 59 does make reference to Section 39, which deals with furnishing of returns, but the fact remains that for furnishing of returns, preparatory work has to be done by the assessee himself and is not fully or wholly dependent on the common electronic portal for that purpose. The factum of non-operability of Form GSTR-2A, therefore, is flimsy plea taken by Bharti. Indeed, if the stated form was operational, the same would have come handy to the writ petitioner for doing self-assessment regarding eligibility of ITC and availing thereof. But it is a feeble excuse given by the writ petitioner/respondent No. 1 to assail the condition specified in impugned Circular dated 29.12.2017 regarding the rectification of the return submitted manually in Form GSTR-3B for the relevant period (July to September 2017).

7. The question of reading down paragraph 4 of the said Circular would have arisen only if the same was to be in conflict with the express provision in the 2017 Act and the Rules framed thereunder. The express provision in the form of Section 39(9) clearly posits that omission or incorrect particulars furnished in the return in Form GSTR-3B can be corrected in the return to be furnished in the month or quarter during which such omission or incorrect particulars

are noticed. This very position has been restated in the impugned Circular. It is, therefore, not contrary to the statutory dispensation specified in Section 39(9) of the Act.

8. If there is no provision regarding refund of surplus or excess ITC in the electronic credit ledger, it does not follow that the assessee concerned who has discharged output tax liability by paying cash (which he is free to pay in cash in spite of the surplus or excess electronic credit ledger account), can later on ask for swapping of the entries, so as to show the corresponding output tax liability amount in the electronic cash ledger from where he can take refund. Payment for discharge of output tax liability by cash or by way of availing of ITC, is a matter of option, which having been exercised by the assessee, cannot be reversed unless the Act and the Rules permit such reversal or swapping of the entries. As a matter of fact, Section 39(9) provides for an express mechanism to correct the error in returns for the month or quarter during which such omission or incorrect particulars have been noticed. It is not open for Bharti to now abandon the position from the legal option already exercised.

9. Form GSTR-3B is prescribed as a "return" to be furnished by the registered person and by the subsequent amendment of Rule 61(5) brought into force with effect from 01.01.2017, it has been clarified that such person need not furnish return in Form GSTR-3 later on. Notably, the validity of that amendment including that of Notification dated 09.10.2019 bearing No. 49/2019, is not put in issue before us. The efficacy of Form GSTR-3B being a stop gap arrangement for furnishing of return, as was required under Section 39 read with Rule 61, would not stand whittled down in any manner. It would still be considered as a return for all purposes though filled manually electronically.

10. The Gujarat High Court in the case of ***AAP & Co., Chartered Accountants through Authorized Partner vs. Union of India & Ors. (2019-TIOL-1422-HC-AHM-GST),*** was called upon to consider the question whether the return in Form GSTR-3B is the return required to be filed under Section 39 of the 2017 Act. Although, at the outset it noted that the concerned writ petition had been rendered infructuous but, went on to answer the question raised therein. It took the view that Form GSTR-3B was only a temporary stop-gap arrangement till due date of filing of return Form GSTR-3 is notified. We do not subscribe to that view. Our view stands reinforced by the subsequent amendment to Rule 61(5), restating and clarifying the position that where return in Form GSTR-3B has been furnished by the registered person, he shall not be required to furnish the return in Form GSTR-3. This amendment was notified and came into effect from 01.07.2017 retrospectively.

11. The Delhi High Court relied on the decision of the Gujarat High Court in ***Siddharth Enterprises vs. The Nodal Officer (2019-TIOL-2068-HC-AHM-GST).*** The Hon'ble Supreme Court in regard to this decision observed that the Court noted that denial of credit of tax/duty paid under existing Acts would amount to violation of Article 14 and 300A of the Constitution of India. It noted that unutilized credit has been recognized as vested right and property in terms of Article 300A of the Constitution. This decision was on facts of that case concerning erroneous entry recorded in Form GSTR-3B and not regarding right asserted to swap the mode of payment of output tax liability in cash to be adjusted against electronic credit ledger as in the present case in the guise of rectification of return filed in Form GSTR-3B for the earlier period.

12. The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigor to the returns filed by the registered person in Form GSTR-3B. Significantly, the registered person is not denied of the

13. Significantly, the registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Thus, it is not a case of denial of availment of ITC as such. If at all, it is only a postponement of availment of ITC. The ITC amount remains intact in the electronic credit ledger, which can be availed in the subsequent returns including the next financial year.

14. There is no express provision permitting swapping of entries effected in the electronic cash ledger vis-à-vis the electronic credit ledger or vice versa. Any unilateral change in such return as per the present dispensation, would have cascading effect on the recipients and suppliers associated with the concerned transactions. There would be complete uncertainty and no finality could ever be attached to the self-assessment return filed electronically. We agree with the submission of the appellant that any indulgence shown contrary to the statutory mandate would not only be an illegality but in reality, would simply lead to chaotic situation and collapse of tax administration of Union, States and Union Territories.

15. The law permits rectification of errors and omissions only at the initial stages of Forms GSTR-1 and GSTR-3, but in the specified manner. It is a different dispensation provided than the one in pre-GST period, which did not have the provision of auto-populated records and entries. The challenge to the subject circular dated 29.12.2017 is unsustainable.

MY COMMENTS

1. The Hon'ble Supreme Court did not approve the Gujarat High Court decision in the case of ***AAP & Co., Chartered Accountants through Authorized Partner vs. Union of India & Ors. Reported in 2019-TIOL-1422-HC-AHM-GST,*** where the High Court took the view that Form GSTR-3B was only a temporary stop-gap arrangement and not a return.

2. Presently, the revenue officers are raising demand on taxpayers on account of mis-match of ITC as per the GSTR-3B filed by the taxpayer and ITC as per GSTR-2A. The Hon'ble Supreme Court has held that GSTIN portal, including generating GSTR-2A, is merely a facilitator. The taxpayer is not required to depend on the auto generated information in the electronic common platform for discharging its obligation to pay output tax liability. The GSTIN portal being merely a facilitator, the revenue cannot deny the credit on account of mis-match of ITC with GSTR-2A generated from the portal.

3. The taxpayer is not entitled to swap the entry in the electronic cash ledger with the entry in the electronic credit ledger. The GST Act and the Rules does not permit such reversal or swapping of the entries.

4. Rectification would include rectification of any omission or incorrect particular. However, the rectification would not include change of opinion. Discharge of tax by cash instead of ITC is matter of option exercised by the taxpayer and cannot be considered as omission or incorrect particular. In the opinion of author the present case of Bharti appears to be change of opinion rather than rectification of mistake or omission, therefore, the Apex Court has rightly denied them to rectify their GSTR-3B returns.

5. **Issue:** The taxpayer has recorded the ITC in its books of account but has not shown the same in its GSTR-3B within the stipulated time limit in section 16(4) of the CGST Act, 2017. The issue here is whether the taxpayer can discharge its output tax liability in the GSTR-3B return filed after the time limit stipulated in section 16(4).

   The Hon'ble Supreme Court in the subject Bharti decision held that the registered person is under legal obligation to maintain books of accounts and records as per the provisions of Act with regard to its output tax liability and ITC. He is obliged to do self-assessment of ITC, its eligibility and output tax liability including the balance amount lying in cash or credit ledger on the basis of his record and books of accounts required to be statutorily preserved and updated from time to time. It can be interpreted to say discharging the output tax liability and taking ITC, maintaining proper books of accounts is mandatory, whereas filing of return may be considered as directory in nature. Procedural provision may be construed as directory if no prejudice is caused. The compliance time limit prescribed in section 16(4) is a matter of convenience rather than a substance and therefore could be considered as directory. The time limit specified in section 16(4) can be considered as administrative.

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STUDENTS' CORNER

WHAT ARE NFTS?

Compiled by Neel Randeria

Keeping up with the trend, this article is about a term which is being extensively discussed nowadays - NFT i.e., *Non-fungible token*. To understand this, we'll go word by word. Non-fungible means something that cannot be duplicated [which is unique]. Token means it is created on blockchain. Thus, NFTs are tokens that represent ownership of unique items.

In simple words, NFTs allow us to tokenize things like arts, collectibles, etc. Cash, Crypto-currencies are fungible; but NFTs are not. The biggest benefit of this concept is "market efficiency". NFT has been around since 2014, but they are gaining popularity in recent times due to usage of the same by many celebrities.

Salman Khan has stated that he will come out with some items as NFTs. Also, Amitabh Bachchan sold items as NFTs. The list does not end here, there are many other celebrities willing to join this.

NFTs gives us access to markets that would otherwise not been discovered or monetized. It also benefits art creators to get varied kinds of compensation on subsequent sales. A person who buys NFT can brag about the ownership of that piece of art. Other reasons of buying include- predictions of its value going up in future.

To get into the technical aspects, NFTs are a part of the Ethereum blockchain. Ethereum is a cryptocurrency just like bitcoin. Thus, other blockchains can also implement their own versions of NFTs.

In conclusion, NFTs are designed to give you ownership of the digital work but the artist can retain the copyright and reproduction rights. Also, anyone can download a copy of the digital work who is actually owned by someone as NFT.

In my opinion, if you are an artist-*good news*! You have a new market where you can sell your art works. But, if you are a collector/buyer, unless you want to flex your ownership, this thing makes no utility-sense.

What do you feel?

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