



**The Malad
Chamber of
Tax
Consultants**

MNW/I75/2021-23

Total Pages 20

Price ₹ 5/-

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 Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

Vol. 1, No. 4

For members & private circulation only

October, 2021



President's Communique

Dear Members

The IMF has predicted the GDP growth of India at 8.22 % for the fiscal year 2021-22, the highest in the world, surpassing giants like China and USA. Experts have credited this exciting prediction to the measures undertaken by the Indian Government for economic recovery. Easing of covid restrictions and receding fear of third wave of the pandemic have put confidence in the business community as a whole for speedy return to normal course of business and this prediction by IMF has further boosted their confidence.

The 03rd study circle meeting was held on 02nd October on the subject of Will, Nomination and Drafting of Will and was well attended. Advocate Sejal Shah put forth a very informative talk on the subject.

There lectures were held last month in the Allied Law series being jointly held in association with AIFTP- West Zone, GSTPAM, Maharashtra Tax Practitioners Association, Confederation of GST Professionals and Industries, The Southern Gujarat Commercial Tax Bar Association – Surat, Central Gujarat Chamber of the Tax Consultants – Baroda and The Sales Tax Tribunal Bar Association – Mumbai. The lectures were on faceless and re-opening of assessment, HUF Taxation and Constitutional issues in GST. All the 3 lectures were well attended. Out of the total of 11 lectures to be held in the series, 5 have been held till date.

The Chamber is hosting its 15th Dr. Bharat D. Vasani Saraswati Sanman Sabarambh on 21st November virtually on Zoom Platform to felicitate and inspire deserving candidates. Members are requested to kind send the details of qualifying candidates in the form printed elsewhere in this bulletin and also to attend the said program. Please note that students of last two years will be felicitated this year as the Samarambh could not be held last year due to the pandemic.

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.

"An investment in knowledge pays the best interest" – Benjamin Franklin

Last but not the least, please create awareness about eye donation – no one should miss the chance to see how beautiful the world is.

Wishing you and your family a very happy Diwali and a happy and prosperous new year.

May this Diwali Light up New Dreams, Fresh Hopes, Undiscovered Avenues, Different Perspectives, Everything Bright & Beautiful, And Fill Your Days with Pleasant Surprises & Moments. Happy Diwali!

Savor Diwali, but with proper safeguards of corona – remember, prevention is always better than cure.

Regards

CA Jignesh Savla
President

Do you know?



Only the cornea of the eye is used for transplantation

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

: Forthcoming Events :

SARASWATI SANMAN SAMARAMBH

Venue	Zoom Platform
Date	Sunday 21st November, 2021
Time	10.30 a.m. to 12 noon

We will award 15th Dr. Bhart D. Vasani Saraswati Sanman Trophies to the children of MCTC member for outstanding performance in passing exams of SSC/HSC with 75% marks & above, to the students who have cleared graduation and post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers for the years 2020 and 2021

Form for 15th Dr. Bharat D. Vasani Saraswati Sanman Trophies

Member's Name:-

Email ID:-

Mob.No.:-

Details of Student

FIRST NAME

MIDDELE NAME

SURNAME

Female:-

AGE:-

Name Of Exam Cleared:-

Year of Exam:-

Percentage:-

Name of School/

College/Institution:-

**Send it To Following address or else you can mail to maladchamber@gmail.com with scan copy of
marksheet on or before 15th November, 2021**

Please inform Mr. Jitendra Fulia 9820997205 or Mr. Rajen Vora 9819807824 once you send the details

NOTE :- Application should be complete in all respect and the Form with the marksheet and one passport size photograph should reach us before the due date.



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:
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)



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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
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



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

Dear Members,

With the festive seasons approaching, we are having our Saraswati Sanman Samarambh on Zoom Platform on 21st November 2021 from 10.30 am to 12 noon, in which we will be awarding the 15th Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC members for outstanding performance in passing exams of SSC/HSC with 75% marks & above & students who cleared post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers during the year 2020 and 2021 as the Samarambh could not be held last year due to the pandemic,

We request the members / their children to kindly submit the one passport size photo, mark sheet and details in the following form by 15th November, 2021.

You are requested to kindly inform either of the Jt. Secretaries once you send the email.

Form for 15th Dr. Bharat D. Vasani Saraswati Sanman Trophies

Member's Name:-

Email ID:-

Mob.No.:-

Details of Student

FIRST NAME

MIDDELE NAME

SURNAME

Female:-

AGE:-

Name Of Exam Cleared:-

Year of Exam:-

Percentage:-

Name of School/

College/Institution:-

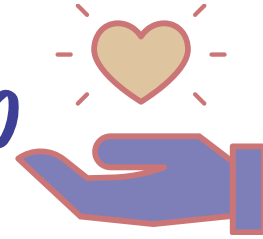
Send it To Following address or else you can mail to maladchamber@gmail.com with scan copy of marksheet on or before 15th November, 2021

Please inform Mr. Jitendra Fulia 9820997205 or Mr. Rajen Vora 9819807824 once you send the details

NOTE:- Application should be complete in all respect and the Form with the marksheet should reach us before the due date.



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:

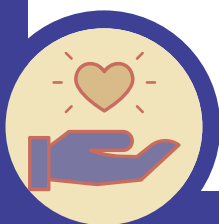
- Life Membership
- Access to knowledgeable and insightful Study Circle meetings on Direct Tax, Indirect Tax and Allied Laws
- Access to joint workshops on various topics held with WIRC, GSTPAM, CTC, and other associations.
- Access to RRC, IRR, Sports tournaments and other social and cultural events.
- 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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MARRIAGE ANNIVERSARY: / /
PROFESSION: ADVOCATE CA ITP ICWAI ICSI GSTP/STP
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OFFICE ADDRESS:
PIN CODE: STATE:..... TEL. NO: FAX NO:
MOBILE NO: EMAIL ID:
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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.

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(Signature)



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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

DIRECT TAXES - Law Update

Haresh P. Kenia



1. **CBDT NOTIFIES RULES FOR IMPLEMENTING AMENDMENTS MADE BY TAXATION LAWS (AMENDMENT) ACT, 2021**

PRESS RELEASE, DATED 2-10-2021

The Central Board of Direct Taxes (CBDT) publishes Rules for executing the Taxation Laws (Amendment) Act, 2021 dated 2nd October 2021. The Taxation Laws (Amendment) Act, 2021 (2021 Act), among other factors, adjusted the Income-tax Act, 1961 (Income-tax Act) to offer that no tax request will be raised in the future for any offshore indirect transfer of Indian assets if the transaction was completed before May 28, 2012, based on the amendment to section 9 of the Income-tax Act formed by Finance Act, 2012.

The 2021 Act also states that any demand for an offshore indirect transfer of Indian assets made before May 28, 2012 (including the validation of demand provided under Section 119 of the Finance Act 2012) will be negated if certain conditions are met, including the withdrawal or furnishing of an undertaking for the withdrawal of pending litigation and the furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc. shall be filed and such other conditions are fulfilled as may be prescribed. In these situations, the amount paid/collected will be reimbursed in full, with no interest, if the standards are fulfilled.

CBDT has said in a statement issued on 2nd October 2021 that "The draft rules, to amend the Income-tax Rules, 1962, prescribing the specified conditions as referred above and providing the form and manner for furnishing of undertaking for withdrawal of pending litigation, claiming no cost, damages, interest, etc. were circulated in public domain on 28th August, 2021, inviting suggestions/comments from all stakeholders by the 4th of September, 2021"

After examining the stakeholder comments and incorporating several suggestions contained therein, the rules for implementing the 2021 Act have been published in the Official Gazette vide Notification No. GSR 713(E) dated 1st October, 2021 wherein the following rules have been inserted to the Income-tax Rules, 1962:

- i. Rule 11UE which provides for the specified conditions in order to be eligible to claim relief under 2021 Act; and
- ii. Rule 11UF which provides the form and manner of furnishing the undertaking for withdrawal of pending litigation, claiming no cost, damages, etc.

2. **Notification regarding the Relaxation of Validation (Section 119 of the Finance Act, 2012) Rules, 2021 (dated – 14.10.2021) – Ministry of Finance.**

The Central Board of Direct Taxes hereby, vide notification no G.S.R. 713(E) [NO. 118/2021/F. NO. 370142/47/2021-TPL], dated 1-10-2021, in exercise of the powers conferred by clauses (i), (ii), (iii) and (iv) of the Explanation to fifth and sixth provisos to Explanation 5 to clause (i) of sub-section (1) of section 9 read with section 295 of the Income-tax Act, 1961, gives the Income-tax (31st Amendment) Rules, 2021. It inserts Rule 11UE and 11UF in the Income-tax Rules, 1962 under Part II as sub part named 'J - Indirect transfer prior to 28th May, 2012 of assets situate in India'

- Rule 11UE Prescribes *Specified conditions under Explanation to fifth and sixth proviso to Explanation 5 to section 9 (1)(i) of Income tax Act. It requires the declarant to furnish an undertaking in Form No. 1 and requires to append the undertakings from all the interested parties in Part M of the Annexure to the undertaking in Form No. 1 and furnish all the attachments required to be furnished under any clause or Part thereof. It prescribes certain conditions to be fulfilled*
- Rule 11UF provides for form, manner and procedure for furnishing undertaking under rule 11UE for withdrawal of pending litigation, claiming no cost, damages, etc.

Reader may refer to above notification for complete details

3. APPLICATIONS FOR SETTLEMENT BEFORE INTERIM BOARD FOR SETTLEMENT- INSTRUCTIONS TO SUBORDINATE AUTHORITIES - ORDER UNDER SECTION 119(2)(b) ORDER F. NO. 299/22/2021-DIR (INV. III)/174, DATED 28-9-2021

- The Finance Act, 2021 has amended the provisions of the Act to inter alia provide that the Income-tax Settlement Commission (ITSC) shall cease to operate with effect from 1-2-2021. Further, it has also been provided that no application for settlement can be filed on or after 1-2-2021, which was the date on which the Finance Bill, 2021 was laid before the Lok Sabha. In order to dispose off the pending settlement applications as on 31-1-2021, the Central Government has constituted Interim Board for Settlement (hereinafter referred to as the "Interim Board"), vide notification No. 91 of 2021 dated 10-8-2021.
- Meanwhile, in order to avoid genuine hardship to number of taxpayers who were in the advanced stages of filing their application for settlement before the ITSC as on 1-2-2021 and also due to the hardship faced during the covid pandemic by the tax payers, the Central Board of Direct Taxes (referred to as the "Board") had provided relief vide Press Release dated 7-9-2021 thereby allowing assessee eligible to file application for settlement on 31-1-2021 to file such applications till the extended period of 30-9-2021.
- In view of the above, the Board in exercise of its power under clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961 (the Act), in order to avoid genuine hardship to assessee authorizes the Commissioner of Income-tax, posted as Secretary to the Settlement Commission prior to 1-2-2021, to admit an application for settlement on behalf of the Interim Board filed after 31-1-2021, which is the date mentioned in sub-section (5) of section 245C of the Act for filing such application, and before 30-9-2021 and treat such applications as valid and process them as "pending applications" as defined in clause (eb) of section 245A of the Act.
- The above relaxation is available to the applications filed:—
 - (i) by the assessee who were eligible to file application for settlement on 31-1-2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and
 - (ii) where the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement.

4. CBDT exempts Non-Resident, Foreign Company from furnishing Income Tax Return under section 139(1) for Assessment year 2021-22 onwards

The Central Government, vide notification S.O. 4207(E) dated 11.10.2021, in exercise of the powers conferred by section 139(1C) of income tax Act, hereby exempted the class of persons namely a non-resident, not being a company; or a foreign company and non-resident, being an eligible foreign investor from the requirement of furnishing a return of income under section 139(1) from assessment year 2021-2022 onwards

1. The non-resident, not being a company; or a foreign company is exempted on the condition that the said class of persons does not earn any income in India, during the previous year, other than the income from investment in the specified fund referred to in sub-clause (i) of clause (c) of Explanation to clause (4D) of section 10 of the said Act; and the provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in sub-rule (1) of rule 114AAB of the Income-tax Rules, 1962.
2. The non-resident, being an eligible foreign investor is exempted on the condition that the said class of persons, during the previous year, has made transaction only in capital asset referred to in clause (viiab) of section 47 of the said Act, which is listed on a recognized

stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital asset is paid or payable in foreign currency. The said class of persons does not earn any income in India, during the previous year, other than the income from transfer of capital asset referred to in clause (viiab) of section 47 of the said Act. The provisions of section 139A of the said Act are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in sub-rule (2A) of rule 114AAB of the said rules.

Explanation.- For the purposes of this Notification. —

- (a) "eligible foreign investor" means a non-resident who operates in accordance with the Securities and Exchange Board of India, circular IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017;
 - (b) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);
 - (c) "recognised stock exchange" shall have the meaning as assigned to it in clause (ii) of Explanation 1 to sub-section (5) of section 43 of the said Act.
3. The above exemption from the requirement of furnishing a return of income shall not be available to such persons where a notice under sub-section (1) of section 142 or section 148 or section 153A or section 153C of the said Act has been issued for filing a return of income for the assessment year specified therein.

5. PROCESSING OF RETURN WITH REFUND CLAIMS UNDER SECTION 143(1) BEYOND PRESCRIBED TIME LIMITS IN NON-SCRUTINY - INSTRUCTIONS TO SUBORDINATE AUTHORITIES- Section 119 read with 143(1)

ORDER F. NO. 225/98/2020-ITA-II, DATED 30-9-2021

- Central Board of Direct Taxes (Board) vide its order under section 119 of the Income-tax Act, 1961 (Act) dated 5-7-2021 on the captioned subject relaxed the time-frame prescribed in second proviso to sub-section (1) of Section 143 of the Act. It was directed that all validly filed returns up to Assessment Year 2017-18 with refund claims, which could not be processed under sub-section (1) of the Section 143 of the Act and which had become time-barred, should be processed by 30-9-2021 subject to the conditions/exceptions specified therein.
- The matter has been re-considered by Board in view of pending taxpayer's grievances related to issue of refund. To mitigate the genuine hardship being faced by the taxpayers on this issue, Board, by virtue of its power under section 119 of the Act and in partial modification of its earlier order under section 119 of the Act dated 5-7-2021, supra, hereby further extends the time frame mentioned in the para no. 3 of the said order from 30-9-2021 to 30-11-2021. All other contents of the said order u/s 119 of the Act dated 5-7-2021 will remain unchanged.

6. ORDER UNDER SECTION 119 PROVIDING EXCLUSION TO SECTION 144B - CASES IN WHICH LIMITATION PERIOD EXPIRES ON 30-9-2021- INSTRUCTIONS TO SUBORDINATE AUTHORITIES -

ORDER F. NO. 187/3/2020-ITA-I, DATED 22-9-2021

- The Central Board of Direct Taxes (the Board) vide Order F.No. 187/3/2020-ITA-I dated 13th August, 2020 (the Order) read with order under section 119 of the Income-tax Act, 1961 (the Act) regarding mutatis mutandis application of Orders, Circulars etc. issued in order to implement the Scheme to Faceless Assessment u/s 144B of the Act, vide F.No.187/3/2020-ITA-I dated 31st March, 2021 directed that all the Assessment Orders shall be passed by the National Faceless Assessment Centre (NaFAC) u/s 144B of the Act except as under:—
 - i. Assessment orders in cases assigned to Central Charges.

- ii. Assessment orders in cases assigned to International Tax Charges.
- In partial modification of the Order vide Order F.No. 187/3/2020-ITA-I dated 6th September, 2021, in addition to the exceptions provided in the said Order, the following exception was also added:
 - iii. Assessment orders in cases where pendency could not be created on ITBA portal because of technical reasons or cases not having a PAN, as the case may be.
- In further modification of the above Order, the Board in exercise of powers under section 119 of the Act, hereby directs that in addition to the exceptions as provided in the said Orders, the following exception is hereby added as under:—
 - iv. Assessment orders in cases
 - (a) set aside to be done de novo
 - or
 - (b) to be done u/s 147 of the Act

for which the time limit for completion expires on 30-9-2021 pending with the jurisdictional Assessing Officer as on 11-9-2021 or thereafter, which cannot be completed as per the procedure laid down under section 144B of the Act due to technical/procedural constraints in the given period of limitation.
- Accordingly, the Board clarifies that assessment in cases at (iii) and (iv) above shall be completed by the jurisdictional Assessing Officer.
- The Board further reiterates that the exception at (iv) above is applicable only to the cases for which the time limit for completion expires on 30-9-2021.

7. CENTRAL GOVERNMENT RELAXES PROVISIONS OF TDS UNDER SECTION 194A OF THE INCOME-TAX ACT, 1961 IN VIEW OF SECTION 10(26) OF THE ACT

PRESS RELEASE, DATED 17-9-2021

The Central Board of Direct Taxes has clarified that, no TDS on Interest from Bank Deposit for Scheduled Tribe Category.

The CBDT in the exercise of the powers conferred by sub-section(1F) of section 197A of the Income Tax Act, 1961 notified that no deduction of tax shall be made on the following payment under section 194A of the Act, namely payment in the nature of interest, other than interest on securities, made by a Scheduled Bank (hereinafter the 'payer') located in a specified area to a member of Scheduled Tribe (hereinafter the 'receiver') residing in any specified area as referred to in s.10(26) of the Act, subject to the following conditions:

- The payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in section 10(26) of the Act, during the previous year relevant for the assessment year in which the payment is made, by obtaining necessary documentary evidences in support of the same;
- The payer reports the above payment in the statements of deduction of tax as referred to in sub-section (3) of section 200 of the Act;
- The payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees
- For the purposes of the said notification, 'Scheduled Bank' means a bank included in the Second Schedule of the Reserve Bank of India Act,1934.



DIRECT TAX CASE LAWS

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



Shri Lawrence Rebello vs. ITO-1(3), Indore

Citation: ITA No.132/Ind/2020, ITAT Indore, 29 September 2021

Capital receipt vs. Revenue receipt – Hardship compensation received on redevelopment projects

Facts:

The assessee filed its return of income declaring income of ₹ 6 Lakhs which was accepted by the revenue. Later the assessment was reopened, and the AO sought to tax the receipt of hardship compensation by the assessee of Rs 27,72,108 from one builder against his flat in a building which was under redevelopment.

Assessee submitted that the hardship compensation received was in the nature of capital receipt and thus not chargeable to tax.

However, AO did not agree to the contentions of the assessee and added the amount to his income. On first appeal, CIT(A) also confirmed the additions made by the AO.

Held:

In the case of Shri Devshi Lakhamshi Dedhia, Hon'ble Tribunal concluded that the amount received by the assessee as hardship compensation, rehabilitation compensation and for shifting are not liable to tax.

IN view of the above and other decisions stated hereinbelow, the Hon'ble Indore Tribunal held that the hardship compensation received by the assessee while his flat was under redevelopment, was a capital receipt and not to be treated as revenue receipt.

Decisions relied upon:

Jitendra Kumar Soneja Vs. ITO, [2016] 72 taxmann.com 318 (ITAT Mum)

Shri Devshi Lakhamshi Dedhia vs. ACIT in ITA No.5350/Mum/2012 (ITAT Mum)

Smt. Delilah Raj Mansukhani Vs. ITO, ITA No.3526/Mum/2017 (ITAT Mum)

Pr. CIT (Ajmer) vs. Nitin Spinners Ltd.

Citation: [2021] 130 taxmann.com 402, SC, 31 August 2021

Capital receipt vs. Revenue receipt – TUFs Subsidy, Export Incentives and Electricity Subsidy

Facts:

The assessee is a textile manufacturer, during the assessment year 2013-14, assessee received the following subsidies:

- a. **TUFs subsidy** of ₹ 7,08,60,525/- for repayment of loan taken for building and plant and machinery.
- b. **Export Subsidy** of ₹ 7,08,60,525/- under Focus Marketing Scheme to enhance Indian export potential in the international market.
- c. **Electricity Subsidy** of ₹ 26,52,890/- under the Rajasthan Investment Promotion Scheme.

During assessment the AO held that the above subsidies are taxable and added to the income of the assessee. On further appeal, and at ITAT stage after placing reliance on several judicial rulings already decided on similar matters, all the additions were deleted, and all subsidies were treated as capital receipt.

Held:

On further appeal before the Hon'ble High Court, the High Court affirmed the observations of the ITAT as below:

- a. **TUFs subsidy** were to be treated as non-interest-bearing term loans by the Bank and the repayment was to be worked out excluding the subsidy amount and the subsidy to be adjusted against the term loan account of the beneficiary after a lock in period of three years

- b. **Export Subsidy** was not granted to meet the cost of expenditure but to increase the competitiveness of the Indian textile market with the international markets.
- c. **Electricity Subsidy** was granted in larger public interest, and it was linked to capital interest, a similar scheme was that the amounts received in the similar scheme are capital receipt by a Division Bench of Rajasthan High Court in *CIT v. Shree Cement Ltd.*

On decision of the High Court, revenue filed a SLP before Supreme Court, which was dismissed, and the decision of the High Court was upheld.

Thus, all the subsidies were held to be capital receipts.

Decisions relied upon:

Pr. CIT (Ajmer) vs. Nitin Spinners Ltd., [2020] 116 taxmann.com 26, Rajasthan HC

CIT v. Ponni Sugars & Chemicals Ltd. & Ors . (2008) 306 ITR 392

Sahney Steel & Press Works Ltd. v. CIT [1997] 228 ITR 253

CIT v. Shree Cement Ltd. ITA No. 204 of 2010, dated 22-8-2017, ITAT Rajasthan



APPLICABILITY OF GST TO CO-OPERATIVE HOUSING SOCIETIES ON INCORPORATION OF DEEMING FICTION {CLAUSE (aa)} WITH RETROSPECTIVE EFFECT FROM 01.07.2017 IN SECTION 7 OF THE CGST ACT



Compiled by CA Bhavin Mehta

A perusal of the provisions of the Maharashtra Co-operative Societies Act, 1960 (MCS Act) would show that Co-operative society is a voluntary association of persons with objective of promoting their economic interest. It works on the principle of self-help as well as mutual help. Its objective is to provide support to the members. The co-operative principles are voluntary formation, democratic member-control, member-economic participation, autonomous functioning, education, training and information and concern for community. The provisions of the MCS Act ensure that a co-operative society always has these co-operative principles. If any society works in a manner contrary to these principles would face cancellation of registration. The various provisions of the MCS Act which govern co-operative society would show that its objective is not to make profit but to ensure collective living.

GST is applicable on supply of all goods and services in India. Chapter III of the Central Goods and Service Tax Act, 2017 (CGST Act) {State Goods and Service Tax Act, 2017 provisions are pari-materia to CGST Act} provides for levy and collection of CGST. Section 7 of CGST Act provides for the scope of supply. Section 9 is charging section, which provides for levy and collection of CGST on all intra-state supplies of goods or services or both. Section 2(17) of the CGST Act provides definition of "Business" and section 2(84) provides definition of "person". In a residential co-operative housing society all the member contributors to the common fund is entitled to participate in the surplus and that all the participators in the surplus are contributors to the common fund. Querist provides benefits/facilities to its own members.

1. GST is a tax on supply of goods or services or both. Levy of GST on co-operative societies is a contentious issue. Section 9 of the CGST Act deals with levy and collection of CGST, Section 9(1) of the CGST Act reads as under:
 9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
2. A perusal of section 9(1) would show that the levy CGST is on intra-State supply of goods or services or both. Therefore, the taxable event is supply. Section 7 of the CGST Act deals with scope of supply, which reads as under:
 - 7 (1) For the purposes of this Act, the expression "supply" includes—
 - (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

- ¹(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash or deferred payment or other valuable consideration.

Explanation. – For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

- (b) import of services for a consideration whether or not in the course or furtherance of business; and
 (c) the activities specified in Schedule I, made or agreed to be made without a consideration;
²(d)

- ³(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

3. The Society is formed or constituted and existed for the exclusive purpose of meeting to the requirements of its members, as per the laid down policy in the bye law, it cannot be said that there is involvement of two persons, one to be termed as the service provider and the other as the service receiver. One cannot provide service to himself. The members by virtue of their membership are entitled to avail of the benefits or facilities of their society as a right according to the bye-laws of the Society and MCS Act. What is paid by the members for their benefit or facilities cannot be treated as service. However, on insertion of clause (aa) in section 7 of CGST Act the principle of mutuality is superseded with retrospective effect from 01.07.2017. Activity or transaction by society (section 2(84) - person includes co-operative society) to its members for valuable consideration is considered as “supply”. By deeming fiction the society and its member is considered as two separate persons and the activities or transactions between them shall be deemed to take place from one person to another. Apparently, the contribution by member for maintenance, repairs, etc. is deemed as supply of service by society to such member.

Principal – Agent relationship

4. The members have provided for themselves these facilities through the instrumentality or agency of the AOP (society). Society exists for its members. The society acts as agent, trustee and servant of the members. The society organizes the amenities and facilities exclusively as agent for all its members. Each member would contribute for its share of benefit by this arrangement. Therefore, there is no service, contract or consideration in the relationship between the society and its members. The Supreme Court in **CTO v. Young Men's India Assn., (1970) 1 SCC 462** after considering the nature of the transaction between the club and the members, the court held as follows:

The essential question, in the present case, is whether the supply of the various preparations by each club to its members involved a transaction of sale within the meaning of the Sale of Goods Act, 1930. The State Legislature being competent to legislate only under Entry 54, List II, of the 7th Schedule to the Constitution the expression “sale of goods” bears the same meaning which it has in the aforesaid Act. Thus in spite of the definition contained in Section 2(n) read with Explanation I of the Act if there is no transfer of property from one to another there is no sale which would be exigible to tax. If the club even though a distinct legal entity is only acting as an agent for its members in matter of supply of various preparations to them no sale would be involved as the element of transfer would be completely absent. This position has been rightly accepted even in the previous decision of this Court.

[Emphasis Added]

5. The Hon'ble Supreme Court held that in spite of definition contained in Section 2(n) of Sale of Goods Act, 1930 read with Explanation I, if there is no transfer of property from one to another, there is no sale, which would be exigible to tax. The Hon'ble Supreme Court observed that if the club, even though a distinct legal entity, is only acting as an agent for its members in matter of, supply of various preparations to them, no sale would be involved as the element of transfer would be completely absent.
6. Chapter X of the Indian Contract Act, consisting of section 182 to 238, deals with the law of agency. Sections 182, 212, 213 222, 223 and 226 of the said Act throw light on the relationship between the principal and his agent. The principal always indemnifies the agent for the loss incurred in the course

of the business. The agent is required to act in the interest of the principal with due diligence. He is to give accounts of dealings with other parties to his principal. The agent is not to make any profit from the dealings except the remuneration received from the principal. Society always acts in the interest of its members and gives accounts of its dealing to its members. Society never makes profit from the dealing with the suppliers of goods and services. Society is a common agent of all its members.

7. The Supreme Court examined the concept of contract of agency and explained how it is different from contract of sale in **Sri Tirumala Venkateswara Timber & Bamboo Firm vs. CTO, (1968) 21 STC 312** as under:

As a matter of law there is a distinction between a contract of sale and a contract of agency by which the agent is authorized to sell or buy on behalf of the principal and make over either the sale proceeds or the goods to the principal. The essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid. The transferee in such a case is liable to the transferor as a debtor for the price to be paid and not as agent for the proceeds of the sale. The essence of agency to sell is the delivery of the goods to a person who is to sell them, not as his own property but as the property of the principal who continues to be the owner of the goods and will therefore be liable to account for the sale proceeds. The true relationship of the parties in each case has to be gathered from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the legal relationship. For instance, in *W.T. Lamb and Sons vs. Goring Brick Company Limited, (1932) KB 710* there was an agreement in writing by which certain manufacturers of bricks and other building materials appointed a firm of builders merchants "sole selling agents of all bricks and other materials manufactured at their works". The agreement was expressed to be for three years and afterwards continuous subject to twelve months' notice by either party. While the agreement was in force the manufacturers informed the merchants that they intended in the future to sell their goods themselves without the intervention of any agent, and thereafter they effected sales to customers directly. It was held by the court of appeal that the agreement was one of vendor and purchaser and not one of principal and agent. The same principle is enunciated in *Hutton vs. Lippert, (1883) 8 AC 309* in which there was a contract between the defendant and E, which in its terms purported to be one of guarantee or agency; that is to say, the defendant guaranteed the sale of E's property in whole or by lots at a fixed price, E giving the defendant a power of attorney to deal with the property as he thought fit, and agreeing that he should receive any surplus over and above the fixed price as his commission on and recompense for the said guarantee. It was held by the Judicial Committee, upon a construction of the agreement, that the transaction was really a sale and that the defendant was liable to pay duty on his purchase-money under Act 2 of 1863. At p. 313 of the report, Sir Robert P. Collier, who delivered the opinion of the Board, stated as follows:

"Under these circumstances it appears to Their Lordships that the Chief Justice was justified in saying that *the effect of the transaction was to give Ekstein every right which a vendor could legally claim, and to confer upon the defendant every right which a purchaser could legally demand.* Does it make any difference that the parties have called this transaction by the name of a guarantee? It appears to Their Lordships that because the parties have used this term 'guarantee' in a sense which is unusual and not applicable to this case, for Lippert really guaranteed nothing, the nature of the transaction is not thereby changed; and because they have said that Lippert was to be entitled to whatever surplus or balance shall remain on the resale of portions of the property, if any were resold, 'as commission and recompense for the said guarantee', this expression does not convert him from a purchaser into an agent.

[Emphasis added]

8. The Supreme Court in ***Khedut Sahakari Ginning & Pressing Society Ltd. v. State of Gujarat, (1971) 3 SCC 480***, has held that there can be a common agent working on behalf of several principals for a common objective:
18. This bye-law refers to the goods of the members of the society and not the goods of the society. Because of that bye-law the members of the society, who are bound by that bye-law must be deemed to have authorised the society to pool their goods, grade them, if necessary and sell them either after ginning or without ginning. That bye-law also prescribes the mode in which the price fetched should be distributed amongst the persons whose goods are sold. The society is the agent of all its members. Its principals are many. Because of the various bye-laws, the several principals must be deemed to have appointed a common agent the society

for disposing of their goods in the manner most advantageous to them. To achieve that object they must be held to have empowered the society to pool their goods, grade them if necessary, and sell them either after ginning or without ginning. Such an authority in our opinion does not violate the law of agency.

19. A person can be an agent for more than one principal and if all his principals jointly authorise him to pool their goods and sell them and pay the sale price to them in the manner prescribed by them, he does not cease to be an agent. The question whether when an agent with the authority of his principals pools together the goods of its principals, grades them and sells them, ceases to be an agent and becomes a purchaser was considered by the **Mysore High Court in Sherule Fazle and Co. v. Commercial Tax Officer, Additional Circle S. Kanara, Mangalore (14 STC 4)**. Therein the High Court held that he does not cease to be an agent. We agree with the ratio of that decision.
9. In **Reliance ADA Group Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai IV, reported in 2016 (43) S.T.R. 372 (Tri.- Mumbai)**, Reliance ADA Group Private Limited had entered into contractual agreements with its participating Group Companies to procure certain services on their behalf so as to share the cost among the participating group companies. Such procurement inter alia included provision of aircraft hiring services, branding services, professional services, custodian services, etc. The CESTAT held that the object of entering into such cost sharing arrangement is to reduce the cost of operation of the participating group companies by sharing the common services, the best available talent and resources required for carrying out their business activities. It held that no taxable service was provided by the appellants.
10. In **Gujarat State Fertilizers & Chemicals Ltd. vs. Commissioner of Central Excise, (2016) 76 taxmann.com 357 (SC)**, the Supreme Court considered a cost sharing arrangement between GSFC and GACL for receiving and sharing Hydro Cynic Acid (HCN) through common pipeline from Reliance Industries. Once HCN is received through the said common pipeline, it comes first to the premises of GSFC and from there it is diverted in the ratio of 60:40, meaning thereby that GSFC receives 60 per cent of the HCN, whereas GACL receives 40 per cent of the supply in accordance with their respective requirement. To enable GACL to receive this HCN through common pipeline, arrangement/agreement was entered into between these two parties. For this purpose, handling facilities were installed in the premises of GSFC, for which both the parties had contributed towards the investment. Since the said handling facilities are in the premises of GSFC, incineration also takes place at the said premises. Handling facilities expenditure thereof is shared equally by both the parties. The Supreme Court found that handling portion and maintenance including incineration facilities is joint venture between two of them and the parties have simply agreed to share the expenditure. In the arrangement, the amount collected by GSFC from GACL is not for any service rendered by the former to the latter. Hence, service tax was not payable by GSFC.
11. In the light of above it can be safely derived that society acts as an agent without any remuneration. The contribution or payment made by members to society is for the purpose of procuring goods and services for its own benefit, wherein society is merely a pass through or intermediary. It is clear that a society working on the principle of mutuality does not enter into business transaction with the members but merely acts as an agent for and on behalf of its members. Society per se does not provide any service on its own. The amounts collected by the society from its members for organizing the facilities and amenities are not in the nature of consideration for any transaction. The society works as agent of each of its member. Society does not collect agency fees from members. In the other words, when the consideration is zero the tax would be zero. There cannot be any commercial transaction between the principal and his agent, ruling out application of both service tax and GST to the relationship between the society and its members.
12. Further the expenditure or cost incurred by Society on behalf of its members is generally subject to GST levy. Levy of GST on maintenance charges would result into double taxation. It is true that there can be double taxation, but it is equally true that it should be clearly provided for and intended; at any rate, double taxation cannot be enforced by implication.

Conclusion

In the view of foregoing, in the humble opinion of author, insertion of deeming fiction (society and its members as separate persons) in the scope of supply, will not have overriding effect of the principal-agent relationship. Society would continue to be agent of its members. Therefore, the contribution collected by society from its members would be in the capacity of agent and would not be liable to levy of GST.



STUDENTS' CORNER**SECTION 80JJAA***Compiled by Neel Randeria*

Not many people are aware of this deduction offered by the Income Tax Act, hence to bring this to everyone's notice- here is a simplified explanation of section 80JJAA. Section 80JJAA deduction is aimed at generating employment in all sectors of the Indian economy. It is a facility for claiming a deduction for the recruitment of new or additional employees.

Q1. Who can claim this deduction?

Any person who-

- Is earning income from business head
- Is liable for tax audit u/s 44AB
- Files income tax return before due date
- Along with ITR, he also submits report of CA in Form 10DA

Also,

- The business should not have been formed by splitting up, or the reconstruction of an existing business. However, a business could have been formed as a result of re-establishment, reconstruction or revival.
- The business should not have been acquired by the taxpayer by way of transfer from any other person or as a result of business reorganisation.

Once you satisfy the conditions of Q1, then, you are an eligible assessee. Thus, an eligible assessee u/s 80JJAA, **can claim a deduction equal to 30% of the amount of additional employee cost for three assessment years.**

Q2. Who are additional employees?

All employees employed during the previous year **other than-**

- Employees whose total salary is more than ₹ 25,000/- per month.
- Employees who were employed for less than 240 days in the previous year (150 days in case of manufacture of apparel or footwear or leather products)
- Employees who do not participate in Recognised Provident Fund like casual workers etc.
- Employees whose entire contribution is paid by the Government, under the Employees' Pension scheme

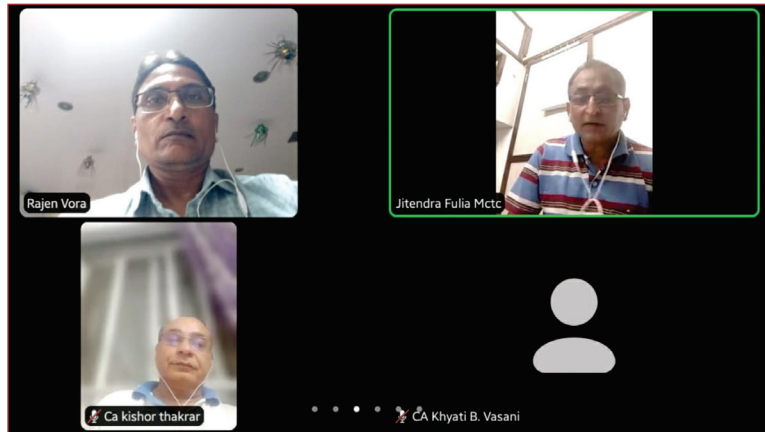
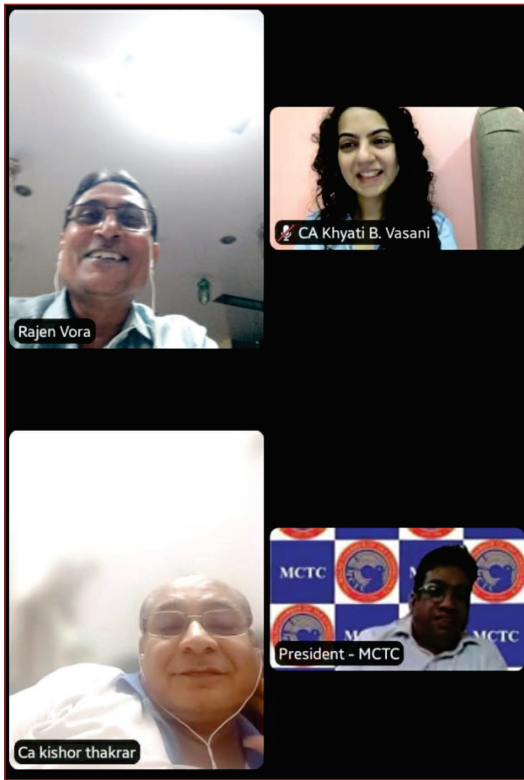
Q3. What is additional employee cost?

It means salary paid/payable to additional employees. Here, salary means any sum paid/payable to employees **other than-**

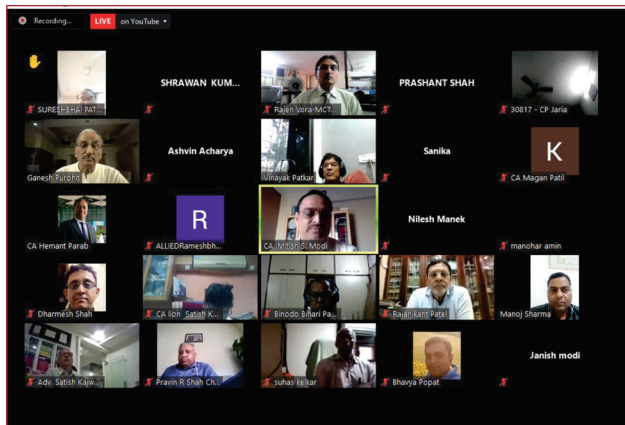
- Employer's Contribution to statutory funds
- Lump sum payment at the time of termination or voluntary retirement or superannuation such as gratuity, leave encashment etc.



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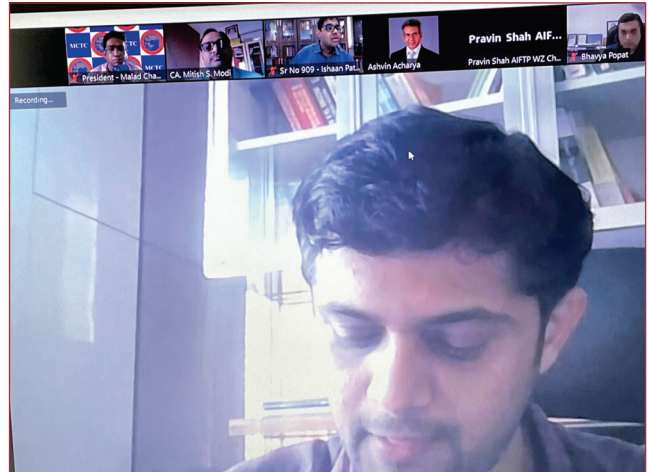


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Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400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

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

**Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st October, 2021**

To

If undelivered, please return to :

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

