The Malad Chamber of Tax Consultants

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41 Years **MCTC Bulletin**

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

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President's Communiqué

My Dear Professional Colleagues,

The extension of the Tax Audit due date was a great sign of relief. Such extension was important for maintaining the quality of services rendered constantly over the years. It was a great relief, especially for MSME / SME businesses & small & medium-sized practitioners with the extension coming as a Dussehra bonanza / gift.

The Malad Chamber invites "suggestions for important amendments" as a part of its submission for Pre-Budget Memorandum 2021. The format is attached herewith, members are requested to send their suggestions by 7th December 2020.

As we had promised earlier, MCTC will not just focus on academic or intellectual study circles this year, but also organize events which tend to promote social well-being of the members. We are planning to organize virtual entertainment programme and Diwali Get Together. The details is mentioned below.

We just saw a further easing of restrictions of the lockdown announced. We are hopeful that we soon will see further easing. As the world as well as the Chamber take measured steps in rebuilding from the disruption caused by the pandemic, I am reminded of the following quote by Saint Francis of Assisi: "Start by doing what's necessary; then do what's possible; and suddenly you are doing the impossible."

We all have done the necessary by staying safe during the lockdown. Let's now start doing whatever we can to help our clients comply with their Tax Audit, GST Audit, Transfer Pricing and Income Tax and GST return filing requirements.

I take this opportunity to wish a happy, joyous & prosperous Diwali & New Year to you, your family & your friends. May the festival of lights shower upon each one of us super good health, lasting mental peace &, equally important, plentiful prosperity.

शुभं करोति कल्याणं आरोग्यम् धनसंपदा।
शत्रुबुद्धिविनाशाय दीपज्योतिर्नमोस्तुते॥

HAPPY DIWALI

WISH YOU ALL A HAPPY, BLISSFUL & PROSPEROUS NEW YEAR

With Warm Regards,

Thank You!

CA M. D. Prajapati
President

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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Life Membership Fees ₹ 2,500

Forthcoming Events

15th Dr. Bharat D. Vasani entertainment programme and Diwali get together : Virtual Musical evening.	
Day & Date	Sunday, 22nd November 2020
Time	7 p.m. onwards
Topic	15th Dr. Bharat D. Vasani entertainment programme and Diwali get together: **Virtual Musical evening .**
Venue	Zoom
Faculty	• Pankaj Kakkad - Singer • Subhash Thakker – Hasya Kalaakar • Aparna Nagarkati – Lady Singer

Webinar on Accounts, Audit and Meetings & amendments to Maharashtra Co-op societies Act 1960	
Day & Date	Saturday, 28th November 2020
Time	4:30 p.m. to 6:30 p.m.
Topic	Webinar on Accounts, Audit and Meetings & amendments to Maharashtra Coop societies Act 1960
Venue	Zoom
Faculty	CA Shilpa Shinagare

Webinar on Direct Tax Vivad se Vishwas Act, 2020	
Day & Date	Sunday, 29th November 2020
Time	11:00 a.m. to 1:00 p.m.
Topic	Webinar on **Direct Tax Vivad se Vishwas Act., 2020**
Venue	Zoom
Faculty	Advocate Mr. Dharan Gandhi

PRE-BUDGET MEMORANDUM 2021

INVITATION FOR SUGGESTIONS

The Malad Chamber invites "suggestions for important amendments" as a part of its submission for Pre-Budget Memorandum 2021.

We request members to E-Mail your suggestions as per attached format at maladchamber@gmail.com by 7th December 2020 to incorporate in our Memorandum.

FORMAT FOR SUGGESTIONS

FOR PRE-BUDGET MEMORANDUM 2021

*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 TAXES - Law Update

Compiled by Haresh P. Kenia

- **INCOME-TAX (TWENTY-FIRST AMENDMENT) RULES, 2020 - AMENDMENT IN RULE 29B AND SUBSTITUTION OF FORM NO. 15C**

NOTIFICATION G.S.R. 574(E) [NO. 75/2020/F. NO. 370142/8/2020-TPL], DATED 22-9-2020

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), in rule 29B,—

(a) for the words "banking company", wherever they occur, the words "banking company or an insurer" shall be substituted;

(b) after sub-rule (5), the following explanation shall be inserted, namely —

"*Explanation*.— for the purposes of this rule, "insurer" shall have the same meaning as assigned to it in sub-clause (d) of clause (9) of section 2 of the Insurance Act, 1939 (4 of 1938).".

Vide above notification, the existing Form 15C has been substituted for new Form 15C.

- **FACELESS APPEAL SCHEME, 2020**

NOTIFICATION S.O. 3296(E) [NO. 76/2020/F.NO.370142/33/2020-TPL], DATED 25-9-2020

The Income-tax Department vide above notification has launched Faceless Income-tax Appeals. Under Faceless Appeals, all Income-tax appeals will be finalised in a faceless manner under the faceless ecosystem with the exception of appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act. It may be noted that Hon'ble PM on 13th August, 2020 while launching the Faceless Assessment and Taxpayers' Charter as part of "*Transparent Taxation - Honoring the Honest*" platform, had announced launching of Faceless Appeals on 25th September, 2020 on the birth anniversary of Pt. Deen Dayal Upadhayay.

- **NO REQUIREMENT OF SCRIP WISE REPORTING FOR DAY TRADING AND SHORT-TERM SALE OR PURCHASE OF LISTED SHARES**

PRESS RELEASE, DATED 26-9-2020

There was a report in certain section of media that stock traders/day traders are required to furnish scrip wise details in the return of income for AY 2020-21. The gain from share trading in case of stock traders or day traders is generally categorised as short-term capital gains or business income. This is because their holding period of shares/units in most of the cases is less than one year which is a prerequisite for the gains to be categorised as long-term capital gains. As there is no requirement in the return of income for scrip wise reporting in case of short-term/business income arising from share transactions, these reports are distorted and misleading.

The Finance Act, 2018 allowed exemption to the gains made on the listed shares/specified units up to 31-1-2018 by introducing grandfathering mechanism for computation of long-term capital gains for these shares. The scrip wise details in the return of income for AY 2020-21 is required to be filled up only for the reporting of the long-term capital gains for these shares/units which are eligible for the benefit of grandfathering.

As the grandfathering is to be allowed by comparing different values (such as cost, sale price and market price as on 31-1-2018) for each shares/units, there is a need to capture the scrip wise details for computing capital gains of these shares/units. The scrip wise details are not required in income tax return forms for AY 2020-21 for computation of capital gains/business income from shares/units which are not eligible for grandfathering.

- **GUIDELINES UNDER SECTION 194-O (4) AND SECTION 206C (1-I) OF THE INCOME-TAX ACT, 1961**

CIRCULAR NO. 17 OF 2020 [F. No.370133/22/2020-TPL], DATED 29-9-2020

Applicability on transactions carried through various Exchanges:

In order to remove difficulties, it is provided that the provisions of section 194-O, and sub-section (1H) of section 206C, of the Act shall not be applicable in relation to,—

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

For this purpose,—

(i) "recognized clearing corporation" shall have the meaning assigned to it in clause (i) of the Explanation to clause (23EE) of section 10 of the Act;

(ii) "recognized stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43 of the Act; and

(iii) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

Applicability on payment gateway:

In order to remove difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-O of the Act, on the same transaction.

Applicability of on insurance agent or insurance aggregator:

In order to remove difficulty, it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

Calculation of threshold for the financial year 2020-21:

It hereby clarified that,—

(i) Since the threshold of five lakh rupees for an individual/Hindu undivided family (being e-commerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-O of the Act shall be counted from 1st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/Hindu undivided family exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after 1st October, 2020.

(ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 1st October 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1st October 2020 even if the sale was carried out before 1st October 2020.

(iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 1st April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

Applicability to sale of motor vehicle:

The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F).

In this regard it may be noted that the scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold. Hence, in order to remove difficulty it is clarified that,—

(i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.

(ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value often lakh rupees or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.

(iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act.

Adjustment for sale return, discount or indirect taxes:

It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.

Fuel supplied to non-resident airlines:

To remove difficulties it is provided that the provisions of sub-section (1H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

- **CLARIFICATION OF DOUBTS ARISING ON ACCOUNT OF NEW TCS PROVISIONS**

PRESS RELEASE, DATED 30-9-2020

Finance Act, 2020 amended provisions relating to TCS with effect from 1st October, 2020 to provide that seller of goods shall collect tax @ 0.1 per cent (0.075% up to 31-3-2021) if the receipt of sale consideration from a buyer exceeds Rs. 50 lakh in the financial year. Further, to reduce the compliance burden, it has been provided that a seller would be required to collect tax only if his turnover exceeds Rs. 10 crore in the last financial year. Moreover, the export of goods has also been exempted from the applicability of these provisions.

It may be noted that this TCS shall be applicable only on the amount received on or after 1st October, 2020. For example, a seller who has received Rs. 1 crore before 1st October, 2020 from a particular buyer and receives Rs. 5 lakh after 1st October, 2020 would be required to collect tax on Rs. 5 lakh only and not on Rs. 55 lakh [i.e Rs. 1.05 crore - Rs. 50 lakh (threshold)] by including the amount received before 1st October, 2020.

It may be noted that this TCS applies only in cases where receipt of sale consideration exceeds Rs. 50 lakh in a financial year. As the threshold is based on the yearly receipt, it may be noted that only for the purpose of calculation of this threshold of Rs. 50 lakh, the receipt from the beginning of the financial year i.e. from 1st April, 2020 shall be taken into account. For example, in the above illustration, the seller has to collect tax on receipt of Rs. 5 lakh after 1st October, 2020 because the receipts from 1st April, 2020 i.e. Rs. 1.05 crore exceeded the specified threshold of Rs. 50 lakh.

In order to simplify and ease the compliance of the collector, it may be noted that this TCS provision shall be applicable on the amount of all sale consideration received on or after 1st October, 2020 without making any adjustment for the amount received in respect of sales made before 1st October, 2020. Mandating the collector to identify and exclude the amount in respect of sales made up to 30th September, 2020 from the amount received on or after the 1st of October, 2020 would have resulted into undue compliance burden for the collector and also litigation.

- **SECTION 143, READ WITH SECTIONS 127 AND 153C OF INCOME-TAX ACT, 1961 - ASSESSMENT - ISSUE OF NOTICE - EXTENSION OF TIME-LIMIT FOR COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY DURING FINANCIAL YEAR 2020-21**

  CIRCULAR F. NO. 225/126/2020/ITA-II, DATED 30-9-2020

  Kindly refer to Board's letter dated 17-9-2020 regarding Guidelines for compulsory selection of returns for Complete Scrutiny during the Financial Year 2020-21.

  Vide the said letter, the following time-limits were prescribed for completion of certain actions:

  (a) Selection of cases for compulsory scrutiny on the basis of the prescribed parameters shall be completed by 30th September 2020.

  (b) The Survey Cases with impounded materials have to be transferred to the Central Charges under section 127 of the Income-tax Act, 1961 (Act) within 15 days of issue of notice under section 143(2) of the Act.

  (c) Search cases under section 153C of the Act, if lying outside the Central Charges, have to be transferred to the Central Charges under section 127 of the Act within 15 days of issue of notice under section 143(2) of the Act.

  Considering the difficulties faced by the field formation due to COVID-19 pandemic and PAN migration related issues, this matter has been reconsidered and it has been decided to extend the date for selection of cases for Compulsory Scrutiny on the basis of prescribed parameters, as communicated vide Board's letter dated 17-9-2020, from 30th September, 2020 to 31st October, 2020.

  It is clarified that even though the new statutory time-limit as per the Taxation and other laws (Relaxations and amendment of certain provisions) Act, 2020 for selection of cases for Compulsory Scrutiny on the basis of prescribed parameters was extended to 31st March, 2021, still for the purpose of timely allocation of cases to NeAC, the above time-limit will have to be strictly adhered to, otherwise, the allocation of cases to NeAC will get considerably delayed.

  Further, for the same reasons as above in para 4, the cases covered under the scenarios mentioned in Para 2(b) and 2(c) of this letter shall be transferred to the Central Charges by issue of orders under section 127 of the Act, immediately after service of notice under section 143(2) of the Act.

  This issue with the approval of Chairman (CBDT).

- **SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - REVISED RETURN - EXTENSION OF DUE DATE FOR FURNISHING OF BELATED AND REVISED RETURNS FOR ASSESSMENT YEAR 2019-20**

  CIRCULAR NO. F. NO. 225/150/2020-ITA-II, DATED 30-9-2020

  The CBDT has further extended the date for furnishing of belated and revised returns for the Assessment Year 2019-20 under sub-sections (4) and (5) of section 139 of the Act respectively from 30th September, 2020 to 30th November, 2020

- **INCOME-TAX (TWENTY SECOND AMENDMENT) RULES, 2020 - AMENDMENT IN RULE 5, FORM NO. 3CD, FORM NO. 3CEB AND FORM ITR-6; INSERTION OF RULES 21AG, 21AH, FORM NO. 10-IE AND FORM NO. 10-IF**

  NOTIFICATION G.S.R. 610(E) [NO. 82/2020/F.NO.370142/30/2020-TPL], DATED 1-10-2020

  CBDT vide above notification has notified changes in Form 3CD, Form 3CEB and Form ITR6. It has amended Rule 5 of the Income Tax Rules and inserted two new Rules: Rule 21AG – Exercise of option under Section 115BAC(5) and Rule 21AH – Exercise of option under Section 115BAD(5). Further following two new forms have also been inserted: Form No 10-IE – Application for exercise/withdrawal of option under Section 115BAC(5)(i) and Form No. 10-IF – Application for exercise of option under section 115BAD(5).

- **SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - DEEMED ARM'S LENGTH PRICE IN CASE OF VARIATION IN ARM'S LENGTH PRICE DETERMINED UNDER SAID SECTION AND PRICE AT WHICH INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION HAD ACTUALLY BEEN UNDERTAKEN**

  NOTIFICATION NO. S.O. 3660 (E) [NO. 83/2020/F. NO. 500/1/2014-APA-II], DATED 19-10-2020

  In exercise of the powers conferred by the third proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the 'said Act'), read with proviso to sub-rule (7) of rule 10CA of the Income-tax Rules, 1962, the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent of the latter in respect of wholesale trading and three per cent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2020-21.

  Explanation.— For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfills the following conditions, namely:—

  (i) Purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities; and

  (ii) average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

- **MINISTRY OF FINANCE EXTENDS THE DATE FOR SUBMISSION OF TAX AUDIT REPORTS AND INCOME TAX RETURNS**

  PRESS RELEASE, DATED 24-10-2020

  The new dates are as follows:

  1. ITR Filing due date for entities subject to Tax Audit (including partners of such entity) for Assessment Year 2020-21 extended to 31st January, 2021
  2. ITR Filing due date for International Transactions Tax Payers for AY 2020-21 extended to 31st January 2021
  3. ITR Filing due date for other tax payers extended to 31st December, 2020.
  4. Tax Audit Report Filing date extended to 31st December, 2020.

■■■

JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Nav Bharat Shiksha Samiti vs. CIT(E)

Citation: [2020] 120 taxmann.com 286, ITAT Delhi, 10 February 2020

Application for 12AA registration at a later date after filing previous returns as business entity.

Facts:

The assessee was engaged in the activity of education which qualified as 'charitable purpose' within the meaning of section 2(15) but filed initial returns as business entity and later applied for registration u/s 12A read with 12AA.

CIT(E) rejected the application quoting that salary was paid partly in cash and partly through bank and that TDS was not deducted from Salary Expenses and that application filed by the assessee for registration under section 12A read with section 12AA was a change of mind because for three preceding years before that, the assessee had filed return as a purely business entity.

Held:

For the purposes of registration u/s. 12A r.w.s. 12AA, it is not relevant whether salary was paid partly in cash and whether tax was deducted at source from salary of the staff. There is also nothing in law to prevent the assessee from applying for registration u/s 12A r.w.s. 12AA, at a later stage, if such registration was not sought for by the assessee in earlier years.

Any rejection of assessee's application for registration should be supported by a speaking order stating in clear terms in what manner the requirements under section 12A read with section 12AA have not been fulfilled by the assessee.

The order of CIT(E) is passed without deliberating on how the requirements u/s 12A r.w.s 12AA are not met, the impugned order cannot be upheld.

CIT(E) is directed to grant registration to the assessee under section 12A read with section 12AA.

Rajendra Kumar Jain vs. ITO, Non-Corporate Ward, 2(3), Chennai

Citation: [2020] 120 taxmann.com 293, Madra HC, 5 October 2020

Deduction claimed u/s 57(iii) on interest paid on loans from relatives

Facts:

Assessee is an individual who is partner in 5 family run partnership firms. Assessee had claimed deduction u/s 57(iii) on interest paid on loan from relatives.

The AO disallowed the interest deduction observing that the assessee did not furnish the details of dates of receipt of loans, copies of agreements, modes of receipt of loans and that the financial position and liquidity ratio of the assessee appeared to be sound.

Assessee contended that that the persons, from whom he had borrowed money were also income tax assessees and that the interest paid to them by the assessee were duly accounted for in their respective return of income filed by them.

On first appeal, CIT(A) on considering the facts noted by AO, dismissed the appeal primarily on the ground that the assessee failed to produce necessary evidence to establish his claim for interest payment.

ITAT also did not allow the deduction and noted that amounts were borrowed for the purpose of investment in other firms as capital and therefore, it could not be allowed as deduction and in this regard, following the decision of the Kerala High Court in the case of **CIT v. Popular Vehicles and Services Ltd. [2010] 325 ITR 523.** It also observed that earlier assessments were accepted by intimation given under section 143(1) of the Act and none of them was scrutiny assessment. Thus, department cannot be said to have not followed its own view consistently.

Held:

Interest paid were all loans, which were borrowed in the prior years and which had been allowed as deduction year on year. Also, statement of confirmations submitted substantiate that no new loan was taken during the year under consideration and that loans were availed through proper banking channels.

Also, even though the earlier assessments were competed u/s 143(1) and not a scrutiny assessment u/s 143(3), the assessments were not reopened by was of notice u/s 148. Thus the earlier assessments may said to have been accepted by the Revenue.

Accordingly, the above tax case appeal was allowed.

Gnyan Dham Vapi Charitable Trust vs. DCIT(E)

Citation: [2020] 120 taxmann.com 281, ITAT Ahmedabad, 19 August 2020

Shortfall incurred due to its excess spending on objects of trust in one year can be allowed to be carried forward for set off against income generated in subsequent years

Facts:

The assessee is a public charitable trust engaged in educational activities and registered under s.12AA of the Act. It had deficit of Rs. 3.79 crores in aggregate which had arisen due to excess expenditure over voluntary contributions. During course of assessment for AY 2015-16, AO denied the carry forward of excess application for set off against the contributions to be received in the subsequent years.

On first appeal, CIT(A), in principle, allowed carry forward of excess expenses by relying on decision of Jurisdiction High court in ***CIT v. Shri Plot Shwetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (Guj).*** However, CIT(A) directed the AO to exclude 15% of income from the quantum of deficit observing the same to be not a real deficit but a notional deduction.

Held:

The question under consideration is whether where a trust has incurred shortfall due to its excess spending, such deficit or shortfall could be allowed to be carried forward in full or the quantum of carry forward of deficit should be restricted to an amount after deduction of 15% of receipts u/s. 11(1)(a) and section 11(1)(b).

On a combined reading of section 11(1)(a) and section 11(2) of the Act, the trust is allowed to accumulate 15% of its income without any time limit and balance 85% can be set apart for specified period to five years. The law applicable to accumulation of income cannot be extended to application thereof. Where an assessee trust has made excess application of its income, the option or entitlement vested upon an assessee to accumulate 15% for indefinite period cannot operate as an obligation enforceable against it in the absence of accumulation.

The method of computation of deficit to be truncated artificially 15% based on an entitlement (opposed to an obligation) as suggested by CIT(A) would tantamount to application of concession conferred on assessee in a reverse manner and thus put the assessee in a worser position in the event of accelerated application of receipts for salutary purposes.

Relying on the decision of co-ordinate bench in the case of in **Maharshi Karve Stree Shikshan Samstha Karvenagar v. ITO** [2019] 101 taxmann.com 175/174 ITD 591 (Pune - Trib), appeal is allowed in favour of assessee.

■■■

GST

Whether ITC can be claimed on goods and/or services used in the construction of factory building?

Compiled by CA Bhavin Mehta

Whether ITC can be claimed on goods and/or services used in the construction of factory building?

A.1 Clause (c) and clause (d) of section 17(5) of CGST Act, 2017 (provision of SGST Act is pari materia to CGST Act) restricts ITC on works contract services and goods or services or both received by taxable person for construction of an immovable property other than plant and machinery. The relevant provision of section 17(5) restricting the ITC on construction of an immovable property is reproduced below:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a) ……..

(b) ……..

(c) works contract services when supplied for construction of an immovable property (other than ***plant and machinery***) except where it is an input service for further supply of works contract service;

(d) goods or service or both received by a taxable person for construction of an immovable property (other than ***plant or machinery***) on his own account including when such goods or services or both are used in the course or furtherance of business"

.....

.....

(6) .....

Explanation. – For the purpose of this Chapter and Chapter VI, the expression "plant and machinery" means ***apparatus, equipment, and machinery*** fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes –

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises."

A.2 The explanation defines the expression "plant and machinery" means apparatus, equipment, and machinery. The meaning of plant is wide enough to cover every assets of business including land, building and machinery permanently employed. In this connection, the judgment of Supreme Court in ***Scientific Engineering House (P) Ltd. vs. Commissioner of Income Tax 1986 AIR 338*** needs to be referred to. The Hon'ble Supreme Court to the question as to whether technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature falls within the definition of plant, in its decision reproduce the passage from Lindley, L. J. in ***Yarmouth vs. France, [1887] 19 Q.B.D. 647*** "There is no definition of plant in the Act: but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business, not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business". The Hon'ble Supreme Court further observed:

"In other words, plant would include any article or object, fixed or movable, live or dead, used by businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant the article must have some degree of durability, as for instance, in ***Hinton vs. Maden & Ireland Ltd., 39 I.T.R. 357***, knives having an average life of three years used in manufacturing shoes were held to be plant. In ***C.I.T. Andhra Pradesh vs. Taj Mahal Hotel, 82 I.T.R. 44,*** the respondent, which ran a hotel installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipe-line fittings installed fell within the definition of plant given in sec. 10(5) of the 1922 Act which was similar to the definition given in Sec. 43(3) of the 1961 Act and this Court after approving the definition of plant given by Lindley L. J. in ***Yarmouth vs. France as expounded in Jarrold vs. John Good and sons Limited, 1962, 40 T.C. 681*** C.A., held that sanitary and pipe-line fittings fell within the definition of plant. In ***Inland Revenue Commissioner vs. Barly Curle & Co. Ltd., 76 I.T.R. 62,*** The House of Lords held that a dry dock since it fulfilled the function of a plant must be held to be a plant. Lord Reid considered the part which a dry dock played in the assessee company's operations and observed:

It seems to me that every part of this dry dock plays an essential part ….The whole of the dock is I think, the means by which, or plant with which, the operation is performed.

Lord Guest indicated a functional test in these words:

In order to decide whether a particular subject is an ***'apparatus'*** it seems obvious that an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary –

In other words the test would be: Does the article fulfil the function of a plant in the assessee's trading activity. Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative it will be plant."

A.3 From the above observation made by Hon'ble Supreme, it becomes clear that factory building qualifies as plant. The explanation specifically provides for what qualifies as plant and machinery, which includes apparatus. In relation to House of Lords observation in ***Inland Revenue Commissioner vs. Barly Curle &***

Co. Ltd. (supra) that functional test is essential to determine the apparatus, the Hon'ble Supreme Court observed "Is it a tool of his trade with which he carries on his business? If the answer is in affirmative it will be plant". In the case of factory building, it may satisfy the essential test of apparatus as it can be considered as tool of trade for carrying out the business. Therefore, it is possible to argue that factory building being tool to carry the business would qualify as apparatus, though it may not qualify as equipment and machinery, and accordingly restriction imposed in clause (c) and (d) will not apply to factory building.

B.1 In the alternative whether it can be argued that the expression used in clause (d) is ***'plant or machinery'*** as opposed to the words ***'plant and machinery'*** used in clause (c).

B.2 The literal meaning of the word "and" in the expression "plant and machinery" used in clause (c) would suggest the restriction on ITC will not be applicable, provided the resultant immovable property should qualify as plant as well as machinery. Machinery is one of the specie/genus of Plant. This means, unless the immovable property qualifies as machinery, ITC would not be entitled under clause (c).

B.3 Similarly, the literal meaning of the word "or" in the expression "plant or machinery" in clause (d) above would suggest the resultant immovable property have to qualify either as plant or machinery. This means factory building can be considered as plant as examined by Supreme Court in ***Scientific Engineering House (P) Ltd. (supra),*** though it may not qualify as machinery. This also means the explanation to section 17(5) specifying plant and machinery would not apply to stand alone meaning of plant as provided in clause (d).

B.4 However, the moot point is whether the word ***"or"*** has read and applied literally? In this regard some of the relevant observations made in the book "Principles of Statutory Interpretation by Justice G. P. Singh" have been reproduced below:

> The function of the courts is only to expound and not to legislate. The words are to be understood first in their natural, ordinary or popular sense, what is meant is that the words must ascribed that natural, ordinary or popular meaning which they have in relation to the subject matter with reference to which and the context in which they have been used in statute. The intention of the legislature thus assimilates two aspects: In one aspect it carries the concept of 'meaning' i.e., what the words mean and another aspect, it conveys the concept of 'purpose and object' or the 'reason and spirit' pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words, the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mis-chief and its remedy to which the enactment is directed. This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction" ***{Union of India vs. Elphinstone Spinning and Weaving Co. Ltd., JT 2001 (1) SC 536, Pg. 563}.*** Each word, phrase or sentence is to be construed in the light of general purpose of the Act itself. A bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. To be literal in meaning is to see the skin and miss the soul.

B.5 Keeping the above principles of interpretation in mind, now let us examine clause (d) of section 17(5) of CGST Act. Under clause (d) ITC is not allowed on goods or services or both used in the ***course or furtherance of business*** for construction of an ***immovable property*** (other than plant or machinery) on his own account. In clause (d) the word used is "or" in the expression "other than plant or machinery", whereas in the explanation the term used is "plant ***and*** machinery". In the circumstances, the issue arises is whether meaning of plant and machinery ascribed in the said explanation would not apply to clause (d) of section 17(5).

B.6 If the word "or" in the phrase 'plant or machinery' is ascribed literally, it will not fall under the said explanation and the structure or building, can considered as plant as examined above. This would result into direct conflict with the main provision of clause (d), which disallows ITC in respect of immovable property, i.e., structure or building.

B.7 The word "or" in relation to plant or machinery cannot be read in vacuum. It should be ascribed to the context in which they have been used in clause (d). Justice G. P. Singh in his book Principles of Statutory

Interpretation refers to BRET, M. R., who called it a "cardinal rule" that "Whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used". "No word", say Profession H. A SMITH "has an absolute meaning, for no words can be defined in vacuo, or without reference to some context". In the words of JUSTICE HOLMES: "A word is not a crystal transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used."

B.8 In the present case, the context demand that goods or services used for construction of immovable property (structure or building though may be considered as plant) credit is not allowed unless it satisfies conditions prescribed in said explanation. The exclusion of plant under clause (d) cannot be read standalone; otherwise clause (d) would become inconsequential. Therefore, the meaning of phrase "plant and machinery" ascribed in the Explanation would be applicable to clause (d) also.

B.9 In the premises of above, the word "or" appearing in clause (d) in respect of plant or machinery has to read as "and" to give it the true or legal meaning by considering the context in which it is used.

In the author's opinion the first argument of factory building qualifying as apparatus is highly litigative and based on one's appetite for litigation may claim the ITC but not utilise it.

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GST PE CHARCHA

Compiled by Monarch Bhatt, Advocate
(Partner at FairLaw Consultancy)

PART A - GST CHARCHA OF THE MONTH

We have come across many principal issues pertaining to the Input Tax Credit, where professionals are having difference of opinion. Some of the selected issues are taken in my *"GST charcha of the month".*

A.1 Assessee has taken the credit, while filing GSTR 3B during the period April 2019 to March 2020. Thereafter, while filing GSTR 3B for the month of September 2020 assessee noticed that many of such invoices on which they have taken ITC does not get reflected in GSTR 2A report. Therefore, assessee reversed such credit while filing GSTR 3B for the month of September 2020. Subsequently, such invoices of 2019-2020 got reflected in GSTR 2A report. The point arising for consideration is whether assessee can avail such credit which is pertaining to 2019-2020 after filing GSTR 3B for the month of September 2020?

It is to be noted that there is a difference between "taking of ITC" and "reclaiming of ITC". As per section 16 (4) time limit has been provided for taking of input tax credit and section is restricting taking of input tax credit after the due date of filing of September return after completion of Financial year. However, there is no time limit prescribed under the statute for reclaiming of input tax credit. Therefore, credit which has already been availed by the assessee during the period 2019-2020 and reversed subsequently due to any reason such as payment has not been made to the supplier within the period of 180 days or it is not getting reflected in GSTR 2A report, etc. does not deprive the assessee from reclaiming the same. The department may object on such reclaiming of credit which needs to be contested and argued before the authority.

A.2 Another controversary is with respect to the assessee who has not filed GSTR 3B for the month of September 2020 within the prescribed due date and it came to the knowledge that some of the input tax credit pertaining to 2019-2020 which was not taken previously to be claimed while filing GSTR 3B for the month of September 2020. Therefore, issue arising for the consideration is whether by delayed filing of GSTR 3B for the month of September 2020, can assessee take the credit of 2019-2020 which was never taken by them?

As per the plain reading of section 16 (4), one can say that credit for the period 2019-2020 can be taken only till the due date of filing of GSTR 3B for the month of September 2020. However, intention of the legislature shall be taken into consideration where the vary purpose of introduction of GST is to reduce the cascading effect of taxes; by disallowing the input tax credit merely on delayed filing of September 2020 return it is depriving the assessee from taking the input tax credit which is otherwise eligible to the

assessee. Further assessee is paying late fees for delayed filling of return and therefore once he has been penalized for the delayed filing of return and once it has been paid by the assessee, legitimately he becomes entitled for all the benefits which were available to him otherwise. Hence, in my view assessee can take the input tax credit of 2019-2020, while filling GSTR 3B for the month of September 2020, even if it has not been taken previously and return for the month of September 2020 has been filed after due date with late fees. The department may object on taking of such credit as return was not filed within the due dates which needs to be contested and argued by the assessee.

PART B - GST UPDATE

B.1. Due date for filing of GSTR 1 for the period October 2020 to March 2021:

Registered persons having an aggregate turnover ABOVE 1.5 Crore in preceding Financial Year or the current Financial Year						
Particulars	**Oct 2020**	**Nov 2020**	**Dec 2020**	**Jan 2021**	**Feb 2021**	**Mar 2021**
All States & Union Territory	11.11.20	11.12.20	11.01.21	11.02.21	11.03.21	11.04.21

(Reference Notification Number 75/2020 – Central Tax dated 15.10.2020)

Registered persons having an aggregate turnover UPTO 1.5 Crore in preceding Financial Year or the current Financial Year		
Particulars	**Oct 2020 to Dec 20**	**Jan 2021 to Mar 2021**
All States & Union Territory	13.01.2021	13.04.2021

(Reference Notification Number 74/2020 – Central Tax dated 15.10.2020)

B.2. Due date for filing of GSTR 3B for the period October 2020 to March 2021:

Taxpayer having aggregate turnover ABOVE 5 Crore in previous Financial Year						
Particulars	**Oct 2020**	**Nov 2020**	**Dec 2020**	**Jan 2021**	**Feb 2021**	**Mar 2021**
All States & Union Territory	20.11.20	20.12.20	20.01.21	20.02.21	20.03.21	20.04.21

Taxpayer having aggregate turnover UPTO 5 Crore in previous Financial Year						
Particulars	**Oct 2020**	**Nov 2020**	**Dec 2020**	**Jan 2021**	**Feb 2021**	**Mar 2021**
Class I States & Union Territory	22.11.20	22.12.20	22.01.21	22.02.21	22.03.21	22.04.21
Class II States & Union Territory	24.11.20	24.12.20	24.01.21	24.02.21	24.03.21	24.04.21

Class I States and Union Territory includes Tax Payer having an aggregate turnover Upto 5 Crore in the preceding financial year whose principal place of business is in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman & Nicobar Islands or Lakshadweep.

Class II States and Union Territory includes Tax Payer having an aggregate turnover Upto 5 Crore in the preceding financial year whose principal place of business is in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

(Reference Notification Number 76/2020 – Central Tax dated 15.10.2020)

B.3. GSTR 9 & GSTR 9C:

The due date for filing of GSTR-9 and GSTR-9C for the financial year 2018-2019 has been extended to 31.12.2020 from 31.10.2020.

(Reference Notification Number 80/2020 – Central Tax dated 28.10.2020)

Assessee required to file GSTR-9 and GSTR-9C for the period 2018-2019 as per the provisions are mentioned below for ready reference:

Aggregate Turnover of the assessee	Filing of Annual Return in Form GSTR-9	Filing of Reconciliation Statement in Form GSTR-9C
Aggregate Turnover is upto 2 Crore	Optional	Optional
Aggregate Turnover is more than 2 Crore and upto 5 Crore	Mandatory	Optional
Aggregate Turnover is more than 5 Crore	Mandatory	Mandatory

However, in my view, in spite of making GSTR-9 optional for the assessee having turnover below 2 crore, all the assessee shall file the annual return under form GSTR-9 irrespective of their turnover as this is the opportunity under GST to rectify any errors occurred while filling the returns during the year.

■■■

STUDENTS' CORNER

MONEY OR WISDOM? BE LIKE VISHNU!

Compiled by Neel Randeria

There have been debates and discussions revolving around this topic since ages. Agreeing to the fact that I would not be able to offer anything new to this topic, I would like to write about this topic from- mythological point of view. This topic is actually not much discussed using Hindu Mythology. The fundamental viewpoint is to look at this title as Lakshmi vs Saraswati. Let us dip into our cultural teachings right away-

As per Hindu mythology, there are three primary manifestations of God. They are- Brahma, Vishnu, Shiva. Brahma creates, Vishnu sustains and Shiva destroys.

The Hindu Trinity

Brahma	Vishu	Shiva
Creates	Sustains	Destroys
Priest	King	Ascetic
Chases the Goddess	loves, marries and protects the Goddess	Wrthdraws from the Goddess
Associated with Saraswati, Goddess as knowledge	Associated with Lakshmi, Goddess as wealth	Associated with Shakb Goddes as power

Talking about Vishnu, he resides in Vaikuntha, located in the middle of the ocean. He reclines on the coils of Sesha, a serpent. Saraswati resides on his tongue, and Lakshmi at his feet. These two wives constantly quarrel with each other. Knowledge and Wealth, both feel they are superior than the other.

Knowledge- It is a faithful wife. It is very difficult to acquire it. But once it comes into our life, it won't leave.

Wealth- It is a demanding wife. It comes and goes. We need keep on striving to make her stay.

Other differences in the very essence of it are- Knowledge is enhanced if it is distributed, but money gets depleted if it is distributed. Knowledge sustains till we are alive, not after our life. Wealth outlives death.

Lakshmi and Saraswati

Lakshmi	Saraswati
She is bejewelled, as a bride	She wears no jewels, like a widow
Wears red sari, associated with fertility	Wears white sari, associated with spirituality
Holds in her hands pots, pans and lotus flowers, indicative of household chores	Holds in her hands books and musica1 instruments, indicative of intellectual pursuits
Rides an elephant, symbol of royal power	Rides a heron, symbol of concentration
Associated with gold, symbol of affluence	Associated with crystal, symbol of clarity

At the end of the article, I tend to summarize the discussion and give a proper conclusion. But, this topic has no conclusion. The most what can be said is- The ultimate goal of every individual is to be happy. Knowledge is extremely important in life, and we know this. But what about money? The availability of money does not guarantee happiness but its non-availability guarantees unhappiness. Thus, we need to be like Lord Vishnu. Just the way he does not decide between the two, we should also strive for both and be the happiest!

Note: The author Devdutt Pattanaik's book "Myth=Mythia" published in 2006 has been of great help for this article.

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