



**THE CHAMBER OF
TAX CONSULTANTS**

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A Monthly Newsletter of The Chamber of Tax Consultants

THE CTC NEWS

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FORTHCOMING EVENTS

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HEARTY CONGRATULATIONS!

*Hearty Congratulations to the newly elected Office Bearers of **Bombay Chartered Accountants' Society**, Mumbai for the period 2017-18.*

President : CA Narayan R. Pasari

Vice-President : CA Sunil B. Gabhawalla

Hon. Jt. Secretaries : CA Manish P. Sampat & CA Abhay R. Mehta

Treasurer : CA Suhas S. Paranjpe

We wish them all the success.

90TH ANNUAL GENERAL MEETING

BRIEF REPORT ON 90TH ANNUAL GENERAL MEETING

At the 90th Annual General Meeting held on Tuesday, 4th July, 2017 the following business was transacted:

- i) The Annual Report for the year 2016-17 was approved & adopted.
- ii) The Accounts for the year ended 31st March, 2017 were adopted.
- iii) Mr. J. L. Thakkar, Chartered Accountant, was appointed as Auditor for the year 2017-18 and will hold office up to the next AGM.
- iv) Results of the elections for the year 2017-18 were declared as follows :
 - Mr. Ajay R. Singh, Advocate was elected as President
 - The following fourteen members were elected to the Managing Council
 1. Mr. Ashok D. Mehta
 2. Mr. Ashok Sharma
 3. Ms. Charu Ved
 4. Mr. Dinesh Tejwani
 5. Mr. Ganesh Rajgopalan
 6. Mr. Heneel Patel
 7. Mr. Hinesh Doshi
 8. Mr. Ketan Vajani
 9. Mr. Naresh K. Sheth
 10. Ms. Nishtha Pandya
 11. Mr. Parag Ved
 12. Mr. Rahul Hakani
 13. Mr. Rajesh P. Shah
 14. Mr. Sachin R. Gandhi

THE DASTUR ESSAY COMPETITION

The winners of the Dastur Essay Competition were announced and the winners present at the AGM were felicitated by offering memento and certificates by Past Presidents. The first three winners of the competition are as under.

THE DASTUR ESSAY COMPETITION 2017, MERIT LIST

Rank	Name	Office/ College	Topic
1	Mr. Rahul Singh	Chanakya National Law University, Patna, Bihar	Freedom of Expression and Action - Can it ever be curtailed?
2	Ms. Prerna Singh	Delhi University, Delhi	Demonetisation – Challenges in Cashless Economy
3	Ms. R. Harishni	Sastra University - School of Law, Thanjavur	Freedom of Expression and Action - Can it ever be curtailed?

RELEASE OF PUBLICATIONS

1. Mr. Anup Shah released the publication on “Director’s Responsibility”.
2. Mr. Sujal Shah, Past President released the publication on “Handbook on Valuation”.
3. Mr. Keshav Bhujle, Past President, released the publication on “FAQ on LLP”.
4. Mr. Mahendra Sanghvi, Past President, released the publication on “An Analysis of Income Computation & Disclosure Standards”.

5. Mr. Rutvik Sanghvi and Manoj Shah released the publication on “Tax Withholding from Payments to Non-Resident”.
6. Mr. Kishor Vanjara and Mr. Vipin Batavia Past Presidents, released the publication on “EPC Contracts - Compendium on Taxation and Regulatory Issues”.
7. Mr. Y. P. Trivedi released the publication of 90th Year Celebration “CTC History” and “Supreme Court Landmark Judgments” (Direct Taxes, Indirect Taxes & Allied Laws).

THE NEW TEAM FOR 2017-18

- i) In the First Managing Council Meeting held on Tuesday, 4th July 2017, the following members were elected as Office Bearers

	Name	Designation
1.	Mr. Hinesh R. Doshi	Vice President
2.	Mr. Ketan Vajani	Hon. Jt. Secretary
3.	Ms. Nishtha Pandya	Hon. Jt. Secretary
4.	Mr. Parag S. Ved	Hon. Treasurer

- ii) The following Nine members were Co-opted to the Managing Council for the year 2017-18:

1. Mr. Kishor Vanjara
2. Mr. Vipul Joshi
3. Mr. Mahendra Sanghvi
4. Mr. Vipul Choksi
5. Mr. Paresh P. Shah
6. Mr. Sanjeev D. Lalan
7. Mr. Manoj C. Shah
8. Mr. Anish Thacker
9. Mr. Jayant Gokhale

iii) EDITOR & EDITORIAL BOARD OF THE CHAMBER'S JOURNAL

Mr. V. H. Patil was appointed as Chairman of Editorial Board and Mr. K. Gopal was appointed as Editor of “The Chamber's Journal”. Mr. Vikram Mehta, Mr. Paras K. Savla, Mr. Paras S. Savla, Mr. Yatin Vyavaharkar, Mr. Devendra Jain and Mr. Manoj Shah were appointed as Assistant Editors.

Following members were appointed to Editorial Board

1. Mr. Keshav Bhujle
2. Mr. Pradip Kapasi
3. Mr. Kishor Vanjara
4. Mr. Akbarali S. Merchant
5. Mr. Vipul Joshi

iv) COMMITTEES

The following Committees were formed and their Chairmen, Chairpersons, Co-Chairmen and Vice-Chairmen were appointed:

Committees	Chairman/Chairperson/Co-Chairman/Vice-Chairman
1. Accounts & Auditing Committee	Mr. Heneel Patel
2. Allied Laws Committee	Mr. Rahul Hakani
3. Corporate Members Committee	Mr. Anish Thacker
4. Direct Taxes Committee	Mr. Ashok D. Mehta
5. Indirect Taxes Committee	Mr. Naresh Sheth
6. International Taxation Committee	Mr. Rajesh P. Shah
7. I.T. Connect Committee	Mr. Dinesh Tejwani

Committees		Chairman/Chairperson/Co-Chairman/Vice-Chairman
8.	Journal Committee	Mr. Vipul Choksi
9.	Law & Representation Committee	Mr. Mahendra Sanghvi
10.	Membership & Public Relations Committee	Mr. Paresh P. Shah Mr. Sachin R. Gandhi Co-Chairman
11.	Research & Publication Committee	Mr. Ganesh Rajgopalan
12.	Residential Refresher Course & Skill Development Committee	Ms. Charu Ved
13.	Student Committee	Mr. Sanjeev Lalan
14.	Study Circle & Study Group Committee	Mr. Ashok Sharma

*It was decided to continue Office Premises & Finance Committee formed in the year 2016-17

DELHI CHAPTER

The following members were appointed as Chairman and Office Bearers of Delhi Chapter

1.	Mr. Suhit Agarwal	Chairman
2.	Mr. Vijay Gupta	Co-Chairman
3.	Mr. Deependar Kumar Agarwal	Jt. Hon. Secretary
4.	Mr. Harish Kumar	Jt. Hon. Secretary
5.	Mr. Prakash Sinha	Hon. Treasurer
6.	Mr. R. P. Garg	Immediate Past Chairman
7.	Mr. V. P. Verma	Advisor
8.	Mr. C. S. Mathur	Advisor

ALLIED LAWS COMMITTEE

Chairman : Rahul Hakani **Co-Chairman:** Paras S. Savla
Convenors: Nihar Mankad, Ranit Basu & Keerthiga Sharma **Advisor :** Pravin Veera

ALLIED LAWS STUDY CIRCLE MEETING

Insolvency and Bankruptcy Code, 2016 is one of the most progressive pieces of legislation, given that it promises to transform the manner in which affairs of Company litigation used to be conducted by consolidating the previous legislations related to Insolvency and also bringing a major shift in the existing scheme of things by fast tracking the entire process. As we usher in a new era of tribunalisation to curb pendency of cases, the IBC Code is ray of hope for speedy redressal of grievances by providing respite to the creditors within a stipulated time. It also enables the debtors to rebuild their business and devise a way to fulfil their liability effectively. Mr. Ranit Basu, Advocate who is the speaker was involved in filing of the first insolvency petition in NCLT.

Day & Date	:	Thursday, 10th August, 2017
Time	:	5.45 p.m. to 6.15 p.m (Tea & Snacks) 6.15 p.m. to 8.00 p.m. (Discussion)
Venue	:	SNDT Committee Room, SNDT College, Churchgate, Mumbai-400 020
Topic	:	Insolvency and Bankruptcy Code, 2016
Topics to be covered	:	1. Overview of the IBC Code and how it is different from the previous legislations. 2. How we should adapt to the Code and the important changes. 3. Insolvency Resolution Plan process and mechanism 4. Practical difficulties eminent in the code and the rectification necessary from the NCLT. 5. Judicial Structure.
Speaker	:	Mr. Ranit Basu, <i>Advocate</i>
Fees	:	CTC Members but (Non-Members of Allied Laws Study Circle) ₹ 254 + 46 (18%GST) = ₹ 300 Non-Members - ₹ 424 + 76 (18% GST) = ₹ 500

NEW JOURNAL

Editor : CA Paresh P. Shah

CHAMBER'S NEW 'INTERNATIONAL TAX JOURNAL' – BOOK REVIEW

The Chamber of Tax Consultants has launched on 24th June, 2017 the International Tax Journal to be published quarterly at the 11th Residential Refresher Course on International Tax, 2017 held at the Taj, Nashik. This is a path breaking event in the CTC's history and such a Journal is a unique and the first of its kind in India. Its main focus is to equip professionals with complete International Tax updates on domestic as well as Global developments. It is the intention of the Editorial Team that the Journal may provide a one stop solution for the professionals to understand the nuances and issues in this field on a day-to-day basis.

The highlights of the International Tax Journal are as under:

Foreword to the Journal by Senior Advocate, Mr. Sohrab E. Dastur who has emphasised the need for such a Journal for tax professionals.

- Articles are written by thought leaders practising in the field of international tax with wide representation from the Indian revenue department as well as from international jurisdictions
- Articles are covered on the concept, historical developments and the present day status relevant to the International tax practice
- A 'one stop' solution for all the international tax practitioners as well as for the beginners who want to start practice in the field of international tax



SUBSCRIPTION CHARGES

Single copy ₹ 600 + ₹ 59 Courier Charges = ₹ 659. Overseas Subscription \$45 (including postage)

Full year Subscription (4 copies) = ₹ 2,000 + 236 (Including 18% GST & Courier Charges for Local Members) = ₹ 2,236/-

Full Year Subscription (4 copies) = ₹ 2,000 + 472 (Including 18% GST & Courier Charges for Outstation Members) = ₹ 2,472/-

***Overseas full year subscription \$100 + Postage \$100 = \$200 (4 Copies)**

Interested members may subscribe from the Chamber's website www.ctconline.org to make the payment online. Outstation members are requested to make the payment online or send DD/at par Cheque in favour of The Chamber of Tax Consultants.

STUDY CIRCLE & STUDY GROUP COMMITTEE

Chairman : Ashok Sharma

(FOR STUDY CIRCLE GROUP MEMBERS ONLY)

Day & Date	:	Tuesday, 18th July, 2017
Subject	:	Recent Judgments under Direct Taxes
Speaker	:	CA Pradip Kapasi
Time	:	5.45 p.m. to 6.15 p.m. (Tea & Snacks) 6.15 p.m. to 8.00 p.m (Discussion)
Venue	:	SNDT Committee Room, SNDT College, Churchgate, Mumbai-400 020

UNREPORTED DECISIONS (Direct Taxes)

Rahul R. Sarda, Advocate

1. S. 68: Cash credit – Public listed company – Filing with Ministry of Corporate Affairs – Payment through bank – Information from investigation wing

Assessee, a public listed company, was engaged in the business of building and developing various projects. It received share application money in respect of which the AO made addition on the ground that onus cast upon the assessee was not discharged and the necessary details were not filed.

Held, the assessee filed details of share application money including names of allottees with the Ministry of Corporate Affairs. Bank statements of allottees were also submitted which showed payments were made by cheque. The AO merely relied upon the information received from the investigation wing and did not make any independent enquiry. AO failed to file any evidence on record that the amounts received. Hence, the addition was liable to be deleted.

Arceli Realty Ltd. vs. ITO, ITA No. 6492/M/2016 dt. 21/4/2017, (ITAT Mumbai)

2. S. 147: Reassessment – Beyond four years – All facts disclosed in original assessment proceedings – No new materiales.

The assessment of the assessee, a civil contractor/builder/developer, was reopened after four years when the original assessment was completed u/s. 143(3) of the Act.

During assessment proceedings, the assessee duly furnished the capital account of the firms, statement of affairs, income and expenditure account, statement of dividend and interest, bank statement and cash flow statement, etc. The assessee made full disclosure of the material facts, for making the assessment, and no new material can be said to have come to the possession/knowledge of the AO evidencing that income has escaped assessment. Hence, reopening of assessment was bad in law.

Crescent Construction Co. vs. ACIT, ITA No. 658/M/2014 dated 26/5/2017 (ITAT Mumbai)

3. S. 194H – Commission – Credit card service charges – Normal banking charges

The AO disallowed credit card charges paid by the assessee to banks on account of service fee charged by banks for processing assessee's receipts payment in respect of which is made by assessee's customers by credit cards on the ground that TDS was deducted u/s. 194H.

Held, credit card charges paid to the collecting banks would not fall within the meaning of the expressions 'commission or brokerage' as understood for the purposes of section 194H, and therefore, no amount of tax was deductible at source on such payments under section 194H since the commission retained by the credit card company was in the nature of normal bank charges and not in the nature of commission/brokerage for acting on behalf of the merchant establishment.

DCIT vs. Future Value Retail Ltd., ITA No. 3968/Mum/2015 dt. 31/5/2017 (ITAT Mumbai)

4. S. 154: Rectification – Meaning of "record" – Apparent from the record

During the course of assessment proceedings, the assessee filed a revised return and claimed therein that the capital gains shall not be assessable in AY 2002-03, i.e., the year under consideration, but assessable in A.Y. 2006-07 to 2008-09, i.e., the year in which sale consideration was received. The assessee was entitled (a) to receive a sum of ₹ 6.00 crores; (b) 40% of the sale proceeds from sale of units to be constructed by the developer and (c) 6 flats that were going to be constructed. The assessee, however, declared long-term capital gain by adopting the sale consideration as ₹ 14.01 crores, being the consideration shown in the certificate dated 26-11-2001 issued u/s. 269UL(3) of the Act.

In the assessment proceedings, since the AO has proposed to assess the capital gains arising on transfer of development rights during the year under consideration, he proceeded to ascertain the present value of the sale consideration received in subsequent years by applying the provisions of sec. 269UA(2) of the Act, which provides for determining the net present value of future payments by applying a discounting rate of 8% as provided in Rule 481 of the IT Rules. Accordingly, the present value of consideration was computed at ₹ 34.02 crores as against the receipts (including future year receipts and value of flats) of ₹ 43.88 crores.

Thereafter, the AO initiated rectification proceedings u/s. 154 of the Act, since the total amount payable to the assessee was shown by the developer M/s. Mythri Associates in its books of account at ₹ 54.22 crores, whereas the AO had taken the sale consideration as ₹ 43.88 crores. The AO explained the reasons for the difference and *inter alia* contended that the records of the developer could not be taken as assessee's records and since the view taken by the AO in the original assessment proceedings was a possible view, the same could not be considered as a mistake apparent from record.

Held, reference to outside documents would not be permissible for invocation of jurisdiction u/s. 154 of the Act. The AO could not go beyond the records and look into fresh evidence or materials which were not on record at the time of the order sought to be rectified was passed. Hence, the rectification was not justified.

Metal Rolling Works Ltd. vs. DCIT, ITA No. 1857/Mum/2015 dt. 31/5/2017 (ITAT Mumbai)

NOTE : THE WHOLE DECISIONS CAN BE DOWNLOADED FROM THE CHAMBER'S WEBSITE WWW.CTCONLINE.ORG UNDER KNOWLEDGE CENTRE.

UNREPORTED DECISIONS (Service Tax)

Vinay Jain, Chartered Accountant, & Sachin Mishra, Advocate

1. Whether a show cause notice can be issued to Input Service Distributor for recovery of CENVAT credit distributed to manufacturing units?

Facts & pleadings: Mahindra & Mahindra Ltd. (hereinafter referred to as 'Appellant') is a head office of various manufacturing units and also registered as Input Service Distributor (herein after referred to as 'ISD'). Input service credit was distributed to all the registered units by the Appellants including credit pertaining to Haridwar unit which was engaged in manufacturing of exempted goods.

The case of the department is that the total credit was distributed to all the registered units whereas the Haridwar unit is exempted from payment of excise duty. Therefore, the credit attributed to the Haridwar unit is not admissible and should not have been distributed. Accordingly, the demand was raised under Rule 14 from the appellant, who is Input Service Distributor.

The appellant submitted that they are only an Input Service Distributor in the terms of Rule 7 of CENVAT Credit Rules, 2004. The appellant referred to Central Board of Excise and Customs (CBEC) Clarification issued *vide* F. No. 137/68/2013-ST dated 10-3-2014 wherein it was clarified that recovery under Rule 14 can only be from the manufacturer or Service Provider and that there is no provision for issuing a show cause notice to Input Service Distributor. In the present case, the appellant is neither availing the CENVAT credit, nor utilised the same. Therefore, the recovery of wrong availment of credit if any cannot be made against the Appellant i.e. ISD.

Judgment: - The Hon'ble CESTAT was of considered view that the Appellants as an ISD have not taken/utilised any credit. The Appellants has merely distributed the input service credit. The credit was taken by various manufacturing units of the appellants. Further, Rule 14 of CCR, 2004 can be made applicable only on the person who avails the CENVAT wrongly and utilizes the same. The Hon'ble CESTAT has held that the demand raised on appellant being an Input Service Distributor is not sustainable in law.

M/s. Mahindra & Mahindra Ltd. vs. CST, Mumbai; CESTAT, Mumbai decided on 29-5-2017 vide Final Order No. A/87950-87957/17/STB

2. Whether turnover of onsite services provided by the overseas branches will form part of the export turnover/total turnover for the purpose of calculation of refund under Rule 5 of the CCR, 2004?

Facts & pleadings: Zensar Technologies Ltd. (hereinafter referred to as 'respondent') has numerous overseas branches. These overseas branches are *inter alia* engaged in providing services to foreign clients of the Respondents. While applying for refund under Rule 5 of the CCR, 2004, the respondents had not included the value of such services provided by these overseas branches in the value of their export turnover as well as in their total turnover.

During adjudication of the said refund under Rule 5 of the CCR, 2004, the Adjudicating Authority excluded the said turnover of the services provided by the overseas branches in the export turnover and then added the same in the total turnover of the respondent. Subsequently, the Commissioner (Appeals) set aside the said findings of the Adjudicating Authority and held that once the value of services provided by a foreign branch is found liable to be excluded from 'export turnover' of the appellant, the said value will have to be excluded from the value of 'total turnover' also.

Judgment: The Hon'ble CESTAT concurred with the findings of the Commissioner (Appeals) and held that once the revenue itself has admitted that service provided from the branch office of overseas is not includible in the export turnover on the footing that the services are provided by branches, the same principle has to be applied with regard to total turnover. Accordingly, the value of the services provided by the branch offices cannot be added in the total turnover under Rule 5 of the CCR, 2004.

CCE, Pune vs. Zensar Technologies Ltd.; CESTAT, Mumbai decided on 30-5-2017 vide Final Order No. A/87576-87580/17/EB.

3. Whether service tax can be levied in respect of consideration received for putting up machinery/storage facilities in furtherance of manufacture and sale of various types of industrial gases?

Facts & pleadings: Air Liquide North India Pvt. Ltd. (hereinafter referred to as 'Appellants') are engaged in the manufacture and sale of various types of industrial gases. In respect of some of the clients they have also entered separate agreements to provide certain plant and machinery or mostly, gas storage facilities along with necessary accessories. For providing such supply and installations, the appellants are getting consideration termed as 'facilities service charges'/'rental charges'/'facility fees'.

The Revenue was of the view that such charges collected by the appellant shall be liable to service tax as the said activity amounts to Infrastructural Support Services covered under tax entry 'Business Support Service' brought w.e.f. 1-5-2006.

The appellant submitted that the scope of Infrastructure Support Service as mentioned under tax entry 'Business Support Service' will not cover the present case. Firstly, the appellants are paying VAT on such transaction treating the same as 'transfer of right to use goods' i.e. deemed sale. Secondly, the category of 'Infrastructure Support Service' cannot be read in isolation to the main category of 'Business Support Services'. Infrastructural support service is used along with various other types of activities like telemarketing, processing of purchase orders, etc. These are basically in the nature of outsourced services. Further, the explanation in the tax entry clearly stipulates that nature of activities which are generally considered as 'infrastructural support service' are mainly administrative and office related support. The types of activities undertaken by the appellants like putting up and managing gas storage facility in industrial unit are not fitting into overall scope of 'Infrastructural Support Services'. Therefore, the demand under 'Business Support Services' is not sustainable.

Judgment: The Hon'ble CESTAT agreeing with the contention of the appellants held that though the activities of the appellant, can be brought under very generic understanding of infrastructure support, when examined with statutory scope as per explanation indicating nature of services which are to be brought under tax net then it would appear that the present activity will not get covered under the 'Infrastructural Support Services'. Further, as the appellants have already discharged sales tax on the said transaction, Hon'ble CESTAT has set aside the said impugned orders.

M/s. Air Liquide North India Pvt. Ltd. vs. C.C.E. Jaipur; CESTAT New Delhi, decided on 8-6-2017 in Final Order No. 53734-53737/2017.

NOTE : THE WHOLE DECISIONS CAN BE DOWNLOADED FROM THE CHAMBER'S WEBSITE WWW.CTCONLINE.ORG UNDER KNOWLEDGE CENTRE.

INDIRECT TAX COMMITTEE

Chairman: Naresh Sheth **Vice-Chairman:** Atul Mehta
Convenors: Sumit Jhunjhunwala, Hemang Shah, Bharat Oza **Advisor:** A. R. Krishnan

(ONLY FOR ITDSC MEMBERS) INDIRECT TAX STUDY CIRCLE MEETING

Day & Date	:	Tuesday 25th July, 2017
Time	:	5.30 p.m. to 6.00 p.m. (Tea & Snacks) 6.00 p.m. to 8.00 p.m. (Discussion)
Venue	:	SNDT Committee Room, SNDT College, Churchgate, Mumbai-400 020
Topic	:	Issues Regarding Transitional Provisions under GST
Chairman	:	Mr. Vinod Avtani, Advocate
Group Leader	:	CA Shrenik Shah

DIRECT TAX COMMITTEE

Chairman: Ashok Mehta **Vice-Chairman:** Abhitan Mehta
Convenors: Dinesh Poddar, Neelam Jadhav, Dharan Gandhi **Advisor:** K. Gopal

**WEBINAR ON INCOME TAX AMENDMENTS &
RETURN FILING FOR AY 2017-18 – PROVISIONS AND ISSUES**

Day & Date	:	Saturday, 15th July, 2017
Time	:	3.30 p.m. to 5.30 p.m.
Speaker	:	CA Mahendra Sanghvi
Fees	:	₹ 200 (Inclusive of GST)
Topic	:	Income Tax Amendments related to Return filing for AY 2017-18 (Provisions & Issues)

Non-receipt of the CTC News must be notified within one month from the date of publication, which is 1st of Every Month.

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