



THE CTC NEWS

A Monthly Newsletter of
The Chamber of Tax Consultants
(Private circulation for members only)

Languages Link the World

“यथा चतुर्भिः कनकं परीक्ष्यते ननकर्भणछेदनतापताडनः ।
तथा चतुर्भिः पुरुषः परीक्ष्यते श्रुतेन शीरेन कुरेन कर्भणा॥”

Just as the purity of gold is tested by four means, namely
- rubbing, cutting, burning and beating so also man is tested
by four means, namely - learning, conduct, pedigree and action.

President: **Hinesh R. Doshi**
Vice President: **Vipul K. Choksi**
Hon. Jt. Secretaries: **Anish M. Thacker | Parag S. Ved**
Hon. Treasurer: **Ketan L. Vajani**

FORTHCOMING EVENTS

Sr. No.	Date	Committee	Programme Description	Venue	Pg. No.
1	01-09-2018	Indirect Taxes	Half-day Workshop: GST Amendment Bill, 2018 & some significant changes in rates & notifications since 1-7-2017	Walchand Hirachand Hall, 4th Floor, IMC	7
2	04-09-2018	Indirect Taxes	Indirect Tax Study Circle Meeting (Only for IDTSC Members)	A. V. Hall, 4th Floor, Jaihind College	7
3	05-09-2018	Direct Taxes	Intensive Study Group Meeting (Only for ISG Members)	CTC Conference Room, 3, Rewa Chambers, 31, New Marine Lines	6
4	07-09-2018	Membership & Public Relations	Full Day Seminar on Issues In Accounts Finalisation & Returns Reconciliation with Amendments in GST & Panel Discussion (Jointly with Goa Chamber of Commerce & Industry)	ESG Theatre, Maquinez Palace, Panaji, Goa	6
5	07-09-2018	IT Connect	IT Connect Study Circle Meeting (only for ITC SC Members)	CTC Conference Room, Gr. Floor, 3, Rewa Chambers, 31, New Marine Lines	9
6	15-09-2018	Direct Taxes	Webinar on Filing of Trust Returns with Income Tax and Charity Commissioners Office	-	6
7	18-09-2018	International Taxation	Intensive Study Group on International Taxation (Only for ISG on INT TAX Members)	CTC Conference Room, Gr. Floor, 3, Rewa Chambers, 31, New Marine Lines	8
8	04-10-2018	Direct Taxes	Direct Tax Update Series Lecture Meeting on "Alleged Suspicious Transactions in Shares"	Walchand Hirachand Hall, 4th Floor, IMC	7
9	05-10-2018	IT Connect	IT Connect Study Circle Meeting (only for ITC SC Members)	CTC Conference Room, Gr. Floor, 3, Rewa Chambers, 31, New Marine Lines	9
10	05, 06, 12 & 13-10-2018	International Taxation	Certificate Course on Multilateral Instruments	Hotel West End, Next to Bombay Hospital, New Marine Lines	3
11	14, 21 & 22-12-2018	International Taxation	Intensive Study Course On Fema	Hotel West End, Next to Bombay Hospital, New Marine Lines	8
12	24-01-2019 to 27-01-2019	Indirect Taxes	7th Residential Refresher Course on GST	Hotel Novotel, Hitec City, Hyderabad	5
13	28-02-2019 to 03-03-2019	Residential Refresher Course & Skill Development	42nd Residential Refresher Course	Hotel Ramada, Lucknow	4
14			Unreported Decisions - Direct Taxes		9-11
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INTERNATIONAL TAXATION COMMITTEE

Chairman: Rajesh P. Shah | **Co-Chairman:** Rajesh L. Shah | **Vice-Chairman:** Kartik Badiani

Convenors: Rakesh Upadhyaya, Shreyas Shah, Harshal Bhuta

Co-ordinators: Namrata Dedhia / Heena Khajanchi

CERTIFICATE COURSE ON MULTILATERAL INSTRUMENTS

5th | 6th | 12th | 13th
October, 2018

The field of International Taxation has witnessed rapid developments globally in recent past. Various BEPS action plans have been released by the OCED and the Multilateral Instruments (MLI) have been signed by several countries. Coupled with these global developments are the domestic tax changes to the Indian Income-tax Act which are also a result of these BEPS measures initiated by the OECD. With over 100 countries now part of the BEPS inclusive framework and 80+ countries signing on the MLI dotted line, need for learning through intensive study and analysis has become very necessary.

Considering the same, the Committee has decided to come out with a four day Study Course on various provisions of the Multilateral Instruments. The Study Course is designed to deal with understanding the BEPS Action Plans released by OECD, Articles of MLI signed by India and various countries and will also be covering the recent amendments to the Income-tax Act which originate from OCED's BEPS programme.

Time: 9.00 a.m. to 5.30 p.m.

Venue: Hotel West End, Next to Bombay Hospital, New Marine Lines, Mumbai-400 020

Topics	Speakers
1 Introduction to BEPS / MLI and Introduction to BEPS Action 1	CA Rashmin Sanghvi
2 Analysis of MLI and its operation	CA H. Padamchand Khincha
3 Transparent entities and elimination of double tax – Articles 3 and 5 of MLI (BEPS Action 2 Report)	CA Vispi T. Patel
4 Prevention of Treaty Abuse - Article 7 (SLOB) (BEPS Action 6 report)	CA Jiger Saiya
5 MLI Implementation in India and Global Trends- Key Issues and What Next?	Mr. Vinay Kumar Singh IRS*
6 Exchange of Information and Tax Transparency	Mr. Rahul Navin IRS*
7 Prevention of Treaty Abuse – Articles 6 and 7 (PPT) (BEPS Action 6 report)	CA Geeta Jani
8 Prevention of treaty abuse – Understanding India impact through Select Case Studies	CA Vishal Gada
9 Commissionaire and Agency PE, Amendment in Explanation 2 to Section 9(1) (I) – Analysis – Articles 12 and 15 of MLI (BEPS Action 7 Report)	Mr. Sanjay Sanghvi, Advocate
10 Preparatory and Auxiliary activity Exemption, Anti-fragmentation Rules and Splitting of contracts - Articles 13, 14 and 15 (BEPS Action 7 Report)	CA Yogesh Thar
11 Limitation on Interest expenditure - BEPS Action 4 and Section 94B of ITA	CA Bhaumik Goda
12 Transparency by Preferential tax regimes (BEPS Action 5 Report) and Transparency-Transfer Pricing documentation and Country-by-Country Reporting, Indian Rules (BEPS Action 13 Report)	CA Karishma Phatarphekar
13 Other anti-avoidance measures – Dividend and Capital Gains on immovable property – Articles 8 and 9 of MLI (BEPS Action 6 report)	Eminent Faculty
14 Other anti-avoidance measures – Dual resident Entities, PE in Third Jurisdictions and Jurisdiction's right to tax its own residents – Articles 4, 10 and 11 of MLI (BEPS Action 6 Report)	CA Shabbir Motorwala
15 Panel Discussion	Eminent Faculties

*subject to confirmation

Fees	Members	Non-Members
Up to 20th September, 2018	₹ 7,500/- + ₹ 1,350/- (18% GST) = ₹ 8,850/-	₹ 8,500/- + ₹ 1,530/- (18% GST) = ₹ 10,030/-
After 21st September, 2018	₹ 8,000/- + ₹ 1,440/- (18% GST) = ₹ 9,440/-	₹ 9,000/- + ₹ 1,620/- (18% GST) = ₹ 10,620/-

RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE

Chairman: Bhavesh Joshi | **Co-Chairman:** Vijay Bhatt | **Vice-Chairman:** Mehul Sheth & Bhavik Shah
Convenors: Ankit Sanghavi & Ryan Fernandes
Advisor: Kishor Vanjara

**Block Your
Dates**

**42nd RESIDENTIAL REFRESHER COURSE
AT HOTEL RAMADA, LUCKNOW**

**28th Feb to 3rd Mar
2019**



In its endeavour to explore new venues for the delegates, The Residential Refresher Course and Skill Development Committee is pleased to announce the Chamber's 42nd Residential Refresher Course (RRC) at Hotel Ramada, Lucknow, Uttar Pradesh (www.ramadalucknow.com).

Lucknow, the capital of Uttar Pradesh, carries a mix flavour of traditional North Indian & Mughal cultures. Popularly known as City of Nawabs, Lucknow is famous for its Architectural Monuments, huge & well planned gardens across the city and above all beautifully flowing Gomti river, which is now having a riverfront promenade on its side.

Lucknow has many places of interest like Gomti River front, Bada Imambara, Hazratganj, Dr. Ambedkar Memorial Park, Janeshwar Mishra Park (the largest park in Asia) and many more. Built in 1731, Bada Imambara has mesmerizing "Bhul-bhulaiya (the Labyrinth)", having 489 identical doorways, where you are not allowed to enter without a guide and "Shahi Bauli", which is a "well", accessible with steps going down below the ground level.

The RRC & SD Committee has ensured reasonable time for the RRC delegates to explore the above places of interest as well as for quick shopping of Lucknowi Chikan, which displays artistic embroidery work of chikankari, zari-zardozi etc. and also enjoy Lucknowi delicacies, chaat & sweets, which are presented with Lucknowi "Tehzib".

Situated a little away from city crowds, Hotel Ramada is well equipped with modern amenities. The Hotel has a beautiful surrounding of lush green gardens spread over 10 acres. The Hotel also boasts a Convention Centre, the biggest in the State of UP.



INDIRECT TAXES COMMITTEE

Chairman: Naresh Sheth | **Vice Chairman:** Atul Mehta
Convenors: Sumit Jhunjhunwala, Kush Vora, Hemang R. Shah | **Advisor:** A. R. Krishnan

Block Your
Dates

7th RESIDENTIAL REFRESHER COURSE ON GST
AT NOVOTEL, HYDERABAD

24th to 27rd Jan
2019



The Indirect Taxes Committee has planned its 7th Residential Refresher Course on GST at Hotel Novotel, Hitec City, Hyderabad from 24th January, (Thursday) to 27th January, 2019 (Sunday). Kindly block your diary for this most popular and eagerly awaited GST Conference.

Novotel Hitec City Hotel, a tranquil oasis next to HITEC City, the IT hub of Hyderabad, with 15 acres of sprawling landscaped gardens around a 287 room property. The hotel is also the ideal place to explore Hyderabad – the City of pearls and a great destination for conference delegates seeking a relaxing stay in a resort like ambience, with peaceful surroundings.

The Novotel Hyderabad International Convention Centre is a largest convention centre winning "Best Convention Centre" National Tourism Award for several years.

Visit iconic Charminar, Golkonda fortress, complex formed for an acoustic heart shaped Hussain Sagar lake with Buddha Statue, Chowmahalla Palace, Birla Mandir, Qutub Shah Tombs, Lumbini Park etc.



MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Chairman: Sanjeev Lalan | **Co-Chairman:** Sachin Gandhi | **Vice-Chairman:** Jatin Lodaya
Convenors: Premal Gandhi, Darshak Shah | **Advisor:** Yatin Desai

FULL DAY SEMINAR on Issues In Accounts Finalisation & Returns Reconciliation with Amendments in GST & Panel Discussion (Jointly with Goa Chamber of Commerce & Industry)

7th
September, 2018

GST transition is not only about a tax change but a complete business, finance, accounting and reporting overhaul. This being the first financial year closing since GST implementation, it becomes important to understand the implications of the provisions under GST law while finalising books of account. With the introduction of GST midway on 1st July, 2017- Reconciliation between Pre-GST and Post-GST regimes in the same financial year has raised a lot of issues for the trade and Industry and professionals.

To resolve these very practical issues, The Chamber of Tax Consultants (CTC), Mumbai in association with Goa Chamber of Commerce & Industry (GCCCI) is organising a full day seminar. The seminar will cover all issues related to finalisation of accounts and returns reconciliation with latest amendments proposed in the GST Act. We also bring to you a unique panel discussion between the faculty, professionals, GST officials (Centre and State) and trade representatives.

The seminar is for all those dealing with taxation, finance, accounts, audit and assessments like tax and accounts heads of every organisation, finance managers, tax managers, tax consultants, chartered accountants, company secretaries, cost accountants and business heads involved with taking tax related decisions.

Time: 9.30 a.m. to 5.30 p.m.

Venue: ESG Theatre, Maquinez Palace, Panaji, Goa

Fees	Register before 31st Aug, 2018	Register after 31st Aug, 2018
Members of GCCCI, CTC, ICAI, ICSI, ICMAI and AGTPA	₹ 1,500	₹ 1,600
Non Members	₹ 1,750	₹ 1,850

5 or more persons 10% discount. 10 or more persons 20% discount.

Please Note: Fees are excluding GST. Please provide your GST number at the time of registration to avail tax credit. Fees will include stationery, study material, tea, snacks & lunch.

**For registration, contact GCCCI Ms. Ambika T: 0832 2424252 | E-mail: ddg@goachamber.org.
 Register early to earn good discounts and avoid last minute disappointments!
 After all it's the first year end of GST and the country just celebrated its first birthday!!!**

DIRECT TAXES COMMITTEE

Chairman: Devendra Jain | **Vice-Chairman:** Dinesh Poddar, Abhitan Mehta
Convenors: Viraj Mehta, Dharan Gandhi, Nimesh Chothani | **Advisor:** K. Gopal

INTENSIVE STUDY GROUP MEETING (Only for ISG Members)

5th
September, 2018

Timing	Topic	Group Leader	Venue
6.00 p.m. to 8.00 p.m	Recent Important decisions under Direct Taxes	Mr. Mandar Vaidya, Advocate	CTC Conference Room, Gr Floor, 3, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020

WEBINAR

15th
September, 2018

Timing	Fees	Subject	Speaker
3.30 p.m. to 5.00 p.m.	₹ 200/- (inclusive of GST)	Filing of Trust Returns with Income Tax and Charity Commissioners Office	CA Apurva Shah

DIRECT TAXES COMMITTEE

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DIRECT TAX UPDATE SERIES LECTURE MEETING

**Rule of evidence in assessment, penalty and prosecution proceedings
(with special reference to alleged suspicious transactions in shares)**

**4th
October, 2018**

During the last decade, the interaction between various Government departments and also exchange of information across the globe has taken a paradigm shift. Earlier source of evidence was restricted to survey or search by the Income Tax Department. Now evidence is available from various sources like – SEBI crackdown on penny stocks, ROC striking off shell companies, FATCA, leak of confidential documents like Panama Papers, Paradise Papers etc.

The new avenues of information have resulted in targeted scrutiny by the Tax Department and have also led to reopening of assessment. For tax practitioners, it is important to understand which of the information is legally admissible as evidence and would have a bearing on the assessment, penalty and prosecution proceedings.

With a view to have broad guidance on the above developments, the Direct Tax Committee of the Chamber of Tax Consultants has organized a Direct Tax Update Series Lecture Meeting. The meeting aims to understand Rule of evidence in assessment, penalty and prosecution proceedings (with special reference to alleged suspicious transactions in shares).

Time: 6.00 p.m. to 8.00 p.m.

Venue: Walchand Hirachand Hall, 4th Floor, IMC, Churchgate, Mumbai-400 020

Speaker: Dr. K. Shivaram, Senior Advocate

All members are cordially invited.

INDIRECT TAXES COMMITTEE

Chairman: Naresh Sheth | **Vice Chairman:** Atul Mehta
Convenors: Sumit Jhunjhunwala, Kush Vora, Hemang R. Shah | **Advisor:** A. R. Krishnan

**HALF-DAY WORKSHOP: GST Amendment Bill, 2018 &
Some Significant Changes in Rates & Notifications since 1-7-2017**

**1st
September, 2018**

Based on the recommendation of the GST Council, GST Amendment Bill, 2018 was introduced in the Lok Sabha and passed by it. There are some significant changes in the Bill having some far reaching ramifications. As part of its various initiatives in the area of academics, the Indirect Taxes Committee of the Chamber has organised a Half-day Workshop on "GST Amendment Bill, 2018 and some significant changes in rates and notifications since 1-7-2017" comprising of four distinguished faculties, who have extensive experience and expertise in Indirect Tax laws.

Time: 9.00 a.m. to 1.30 p.m.

Venue: Walchand Hirachand Hall, 4th Floor, IMC, Churchgate, Mumbai – 400 020

<u>Topics</u>	<u>Speakers</u>	<u>Technical Chairman</u>	<u>Fees</u>
Analysis of GST Amendment Bill, 2018	CA S. S. Gupta	CA Jayraj Sheth	₹ 767/- inclusive of GST
Some Significant Changes in Rates and Notifications since 1-7-2017	CA Rajiv Luthia, CA Deepak Thakkar		

INDIRECT TAX STUDY CIRCLE MEETING (Only for IDTSC Members)

**4th
September, 2018**

<u>Timing</u>	<u>Chairman</u>	<u>Group Leader</u>	<u>Topic</u>	<u>Venue</u>
9.00 a.m. to 1.30 p.m.	CA A. R. Krishnan	CA Shraddha Mehta	Sector Specific Issues under Place of Supply under GST	A. V. Hall, 4th Floor, Jaihind College, Churchgate, Mumbai-20

INTERNATIONAL TAXATION COMMITTEE

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Convenors: Rakesh Upadhyaya, Shreyas Shah, Harshal Bhuta
Co-ordinators: Namrata Dedhia / Heena Khajanchi

INTENSIVE STUDY COURSE ON FEMA

**14th | 21st | 22nd
December, 2018**

CTC is pleased to announce the Intensive Study Course on FEMA to understand the subject in detail and handle various day-to-day transactions in practice.

Course is also targeted for the professionals who wish to consider the subject as an aid to the Global Transaction practice as well as for those who want to consider the subject as a New Practice area.

The course is carefully designed to achieve the objectives and is spread over three days – 14th, 21st, and 22nd December 2018, to be addressed by eminent Professionals in the field including Brains' Trust Session where most of the questions will be replied by the eminent Brains' Trustees.

Time: 9.00 a.m. to 5.30 p.m.

Venue: Hotel West End, Next to Bombay Hospital, New Marine Lines, Mumbai-400 020

Topics

- Inauguration and Keynote address
- Overview of FEMA, Important definitions, Structure of the Act, Rules & Regulations, Capital & Current Account/ Bank accounts & Deposits of Non-Residents in India & Bank accounts overseas by residents in India
- Liaison office / Branch office / Project office
- FDI – Schedule 1 & FDI Policy
- FDI – Schedules 2 to 10 & Investment in Partnership & Proprietary Concern
- Immovable Properties in India and Outside India
- Borrowings and Lending in Foreign Currency and Indian Rupees
- Outbound Investments
- Exports of Goods and Services and Imports
- Compounding of Offences
- PMLA
- Brains' Trust Session/Panel Discussion

<u>Fees</u>	<u>Members</u>	<u>Non-Members</u>
Early Bird for Enrolment up to 31st October, 2018	₹ 5,500/- + ₹ 990/- (18% GST) = ₹ 6,490/-	₹ 5,900/- + ₹ 1,062/- (18% GST) = ₹ 6,962/-
Enrolment after 31st October, 2018	₹ 6,000/- + ₹ 1,080/- (18% GST) = ₹ 7,080/-	₹ 6,500/- + ₹ 1,170/- (18% GST) = ₹ 7,670/-

Restricted to 75 participants only

INTENSIVE STUDY GROUP ON INTERNATIONAL TAXATION (Only for ISG ON INT TAX Members)

**18th
September, 2018**

<u>Timing</u>	<u>Venue</u>	<u>Topic</u>	<u>Group Leader</u>
6.00 p.m. to 8.00 p.m.	CTC Conference Room, Gr Floor, 3, Rewa Chambers, 31, New Marine Lines, Mumbai- 400 020	E-Commerce Taxation – Key Considerations The discussion will cover BEPS Action 1 and recent amendments of Sec 9(1) (I) in relation to SEP. Request the participants to please read the relevant provisions for a healthy discussion.	CA Jasdeep Sahani

IT CONNECT COMMITTEE

Chairman: Dinesh Tejwani | **Vice-Chairperson:** Maitri Savla
Convenors: Uday Shah, Amit Salla

IT CONNECT STUDY CIRCLE MEETING (ONLY FOR IT CONNECT SC MEMBERS)

7th
September, 2018

How Artificial Intelligence is Changing Accounting and Auditing

Although Artificial Intelligence Techniques such as machine learning are not new, and the pace of change is fast, widespread adoption in business and accounting is still in early stages. To build a positive vision of the future, we need to develop a deep understanding of how artificial intelligence can solve accounting and business problems, the practical challenges and the skills accountants need to work alongside intelligent systems.

Drawing on the experience across many aspects of business, finance and accounting, the session will focus on building understanding of the practical use of artificial intelligence across business and accounting activities today and in the near future.

Time: 6:00 pm to 8.00 pm

Venue: CTC Conference Room, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020

Speaker: Mr. Malvik Majithia [Founder, Hans Infotech and Director, SearchTrade.com]

IT CONNECT STUDY CIRCLE MEETING (ONLY FOR IT CONNECT SC MEMBERS)

5th
October, 2018

How Technology is Changing Gig Economy (Freelance work)

Over a period, we have seen major disruption in the way business is conducted and services are consumed. Gig Economy is basically an environment in which temporary positions are common and organisations contract with independent workers for short-term engagements.

In this digital age, the workforce is increasingly mobile and work can increasingly be done from anywhere, so that job and location are decoupled. That means freelancers can select among temporary jobs and projects around the world, while employers can select the best individuals for specific projects from a larger pool than that available in any given area.

This session will cover ways in which Technology will change the Gig Economy in 2018.

Time: 6:00 pm to 8.00 pm

Venue: CTC Conference Room, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020

Speaker: CA Dinesh Tejwani [Director, Tech Ideas; Chairman, IT Connect Committee]

UNREPORTED DECISIONS – DIRECT TAXES

By Ajay R. Singh , Advocate

1. S.68: Cash credits - Subscriptions of share premium done through banks and recorded in books of account - Genuineness of transaction, identity of subscribers and capacity of subscribers proved - Addition was held to be not justified.

The assessee is a company engaged in the business of builders, contractors and developers. During the year under consideration, assessee made a preferential issue of equity capital of 2,62,500 equity shares of face value of ₹ 10/- each at a premium of ₹ 190 per share. Thus, it raised Equity Capital of ₹ 26,25,000/- and Share Premium of ₹ 4,98,75,000/- aggregating to ₹ 5,25,00,000/-.

In the course of assessment proceedings, the AO required the assessee to furnish details of the source of Share Capital raised and the Share Premium and confirmation of the receipts supported by the relevant documentary evidence. The notice u/s. 133(6) of the Act was also issued by the AO to M/s. Sumit Infotech Pvt. Ltd. requiring it to furnish details of its income-tax particulars, PAN, copy of financial statements of the relevant period, copy of application for share allotment, copy of bank statement, etc. Before the A. O assessee furnished the requisite details and also justified the Share Premium charged @ ₹ 190/- per share.

In support, assessee referred to a Valuation Report, which was obtained by it prior to issuance of fresh Share Capital, which showed the book value of the Equity shares at ₹ 27/- per share and Earnings Per Share (EPS) ratio of 2.43. The assessee justified the Share Premium by future projections and comparing the PE ratios of other companies in the same business.

The AO treated the entire sum of ₹ 5,25,00,000/- inclusive of Equity Share Capital and Share Premium as the 'unexplained cash credit' within the meaning of Sec. 68 of the Act.

The CIT(A) noted that the investor in question, i.e. M/s. Sumit Infotech Pvt. Ltd., was identified and that the payment has been received through banking channels. The CIT(A) also noted that M/s. Sumit Infotech Pvt. Ltd. was an existing assessee who was being subjected to tax. The investment was made by a group concern and that it could have been also made at the face value; that subscription to the Share Capital made at a premium led to savings on stamp duty on raising of Authorised Share Capital by the assessee-company and it made no difference in the control held by the promoters or the investment brought in. The CIT(A) also examined the provisions of Sec. 56(2)(viib) of the Act which according to him would apply in such a situation. However, the CIT(A) noted that the said section was applicable w.e.f.

1-4-2013 and thus it was not applicable for the assessment year under consideration.

The Tribunal held that the A.O merely went by surmises and conjectures without establishing any infirmity. In fact, the financial statements of the investor, M/s. Sumit Infotech Pvt. Ltd. itself show that it had raised Share Capital of ₹ 5,24,00,000/- being Equity Share Capital of ₹ 49,00,000/- and Share Premium of ₹ 4,75,00,000/- which it has used to subscribe to assessee company's Share Capital. All said aspects were very much before the AO, who has merely disbelieved the same without establishing any infirmity therein. Thus, the Revenue appeal is dismissed.

DCIT vs. M/s. Sumit Woods Pvt. Ltd, ITA No.3195/Mum/2016, Bench: J , AY: 2011-12 DOH: 13/07/2018 (Mum)(Trib)

2. S. 271(1)©: Penalty – in absence of any concrete material which could disprove and dislodge the claim - no penalty under Sec. 271(1)(c) could be imposed u/s. 40A(3)

The assessee is engaged in the business of purchase and sale of textiles goods.

The AO being of the view that as the assessee had not produced any documentary evidence in support of the purchase and sale transactions, therefore, taking support of the cash transactions as had emerged from the documents seized in the course of the search & seizure proceedings conducted on Jhunjhunwala Group, thus concluded that the respective purchases aggregating to ₹ 1,87,774/- made by the assessee during the year under consideration were in excess of ₹ 20,000/- and had been made in cash.

The AO on the basis of his aforesaid conviction disallowed 20% of the purchase of ₹ 1,87,774/- by invoking the provisions of Sec. 40A(3) and made a consequential addition of ₹ 37,553/- in the hands of the assessee.

The CIT(A) not finding favour with the contentions of the assessee dismissed the appeal. The assessee did not carry the matter any further in appeal before the Tribunal, therefore, the order of the CIT(A) attained finality.

The AO while culminating the assessment proceedings initiated penalty u/s. 271(1)(c) and issued a show cause notice to the assessee. The AO being of the view that as the assessee had furnished inaccurate particulars of income leading to concealment of income as envisaged in Sec. 271(1)(c) of the Act, therefore, imposed a penalty of ₹ 7,466/- in the hands of the assessee.

The CIT(A) dismissed appeal on *ex parte*.

The Tribunal found that neither the AO had referred to any material which would irrefutably prove that the assessee had made cash purchases in contravention of Sec. 40A(3), which would conclusively evidence the same. The Tribunal observed that though the failure on the part of the assessee to produce the bills/invoices supporting the purchases made by him during the year under consideration would have justified making of disallowance by the AO under Sec. 40A(3) in the course of the assessment proceedings, but however, in the absence of any concrete material which could disprove and dislodge the claim of the assessee that he had not made any payments in excess of ₹ 20,000/- for making of purchases in contravention of the provisions of Sec. 40A(3), no penalty under Sec. 271(1)(c) could validly be imposed in his hands.

Shushil S. Jhujhunwala (HUF) vs. ITO-19(1)(4), ITA No.3001 to 3007/Mum/2015, DOH: 21/03/2018 (Mum)(Trib)

3. S. 80P : Co-operative societies - Providing credit facilities to members - Cannot be considered to be co-operative Bank for the purpose of section 80P(4)–Entitled to the benefit of deduction under section 80P(2)(a)(I)

The assessee a cooperative credit society engaged in providing credit facilities to its members, filed its return of income after claiming deduction of ₹ 2,29,20,225/- u/s. 80P(2) of the Act. The assessee has been collecting membership fees accepting deposits and providing credit facilities to the members. The assessee had kept fixed deposit with Mumbai District Central Co-operative (MDCC) Bank.

The AO asked the assessee to show cause as to why the disallowance claimed u/s. 80P should not be disallowed under the provisions of Sec. 80P (4) applicable with effect from 01-04-2007. The assessee contended that the assessee being cooperative credit society is entitled for deduction u/s. 80(2)(d) of the Act.

The AO disallowed the claim u/s. 80P of the Act, holding that since the assessee fulfils the condition laid down u/s. 56 (c)(ccv) of part-V of the Banking Regulation Act, 1949 and being cooperative bank, not entitled for deduction u/s. 80P (2)(a)(i) of the Act.

The CIT(A) allowed the appeal on the basis that the AO in the present AY has not demonstrated as to how the assessee qualifies to be a bank. It held that the assessee is a cooperative society and not a cooperative bank and is therefore eligible for deduction u/s. 80P(2)(a)(i).

On appeal by the revenue the Tribunal held that the assessee co-operative society is not licensed from the Reserve Bank of India to act as co-operative bank. Hence, as per the ratio emanating from the Hon'ble Apex Court judgment in case of *Citizen Co-operative Society Ltd. vs. ACIT vide order dated 8-8-2017.*, the assessee is not affected by the provisions of section 80P (4). Accordingly, the assessee is entitled to deduction u/s. 80P(2)(a)(I).

M/s. Mumbai Sales Tax Staff Co-Op Credit Society Ltd vs. ITO-20(2)(1), ITA No.1820/Mum/2017, Bench :I, AY 2013-14, dated: 08/08/2018 (Mum)(Trib)

4. S. 271(1)©: Penalty - Mere disallowance of Legal claim - does not amount to furnishing inaccurate particulars of income

The assessee company is engaged in the business of running motor lorries and motor taxis. The AO noted that the assessee has diverted the interest bearing funds to make investment in shares/securities. Hence the AO held that the interest expenditure cannot be held to be incurred wholly and exclusively for the purpose of business of the assessee, the entire interest expenses was disallowed u/s. 36(1)(iii) of the Act. Without prejudice the AO further held that the interest expenditure was directly attributable towards investment activity and, therefore, it was also liable for disallowance u/s. 14A. Hence, the entire interest expenditure is hereby disallowed u/s. 14A of the Act. Assessee had not preferred any appeal.

The AO levied penalty u/s. 271(1)(c) of the Act on the above said disallowance for filing of inaccurate particulars of income leading to concealment of income.

Before the CIT(A) the assessee contended that the issue of genuineness of the expenditure on interest is not in dispute. That it was only by applying a legal fiction that a part of the interest expenditure has been disallowed. That there was no deliberate and *malafide* misconduct on the part of the assessee. Hence, it was submitted that no penalty is leviable in its case. However the CIT(A) confirmed the penalty.

The Tribunal found that all the particulars of interest were duly disclosed. The veracity of the expenditure claimed has not been doubted by the authorities below. The assessee has explained that it has claimed the expenditure as in the opinion of the assessee it has set up the business which mandates the allowance of claim of expenditure. It was the assessee's opinion that it was not necessary to carry on the business. This explanation has not been accepted by the authorities below. The explanation by the assessee is a plausible one. The assessee's admission that it was not carrying on business was admittedly with respect to the transport business inasmuch as A.O. had himself admitted that the assessee was making huge investment by diverting interest bearing funds. In this view of the matter, the very

premise that the assessee was not carrying on 'any' business fails. By no stretch of imagination, that assessee's explanation can be said to be spurious, vexatious, mere bluster or frivolous. In similar situation, the Hon'ble Apex Court in the case of Reliance Petroproducts (P.) Ltd. (supra) has held that disallowance of a claim made by the assessee or a wrong claim by the assessee cannot by itself lead to levy of penalty u/s. 271(1)(c) of the Act.

M/s. Robust Transportation Private Limited vs. DCIT-3(3)(1), ITA No.3195/Mum/2018, Bench D, AY: 2014-15 dated: 23/08/2018 (Mum)(Trib)

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

UNREPORTED DECISIONS ON SERVICE TAX

By Vinay Jain & Sachin Mishra, Advocates

1. Whether the 'Registrar Accreditation Agreement' between National Institute Exchange of India (Appellants) and its registrars to register '.in' domain names is an agreement for rendering 'Franchise Services' by the Appellants to its registrars?

Facts and Pleadings: National Institute Exchange of India (hereinafter referred to as the 'Appellants') has been entrusted with the responsibility of setting up the registry for '.in' domain name, and for operating as registry for '.in' domain name in India. The Appellants in turn have entered into agreements with certain registrars to register '.in' domain names known as 'accreditation agreements'. The Appellants are receiving certain amounts from their registrars as accreditation fees.

It is the case of the department that the Appellants were rendering franchise services to the accredited registrars which is taxable under Section 65(105)(z) of the Act. The Appellants were collecting charges from the accredited registrars for every domain name registered by the said accredited registrar per year as registration charges, transfer charges, renewal charges etc. These charges were in fact consideration for the franchise services rendered by the Appellants to the registrars.

The Appellants have on the other hand contended that the Appellants and the appointed registrars are two independent entities, and cannot be referred to as franchisor and franchisee. Further, the sum as received by the Appellants from the registrars is a mandatory accreditation fee as per the policy framework of Government of India. This is no consideration received by the Appellants from the registrars for any services provided by the latter to the former.

Judgment: The Hon'ble CESTAT noted that a franchise is said to exist only when an entity (franchisor) grants a representational right to another entity (franchisee). The right means the entity (franchisee) must surrender his own identity, and in addition must step into the shoes of the franchisor.

The Hon'ble CESTAT held that the registrar is not representing the Appellants in any manner. The accreditation agreement gives the registrar no right, power or authority to operate or manage '.in' registry. The agreement further permits each party to independently own its intellectual property, and none shall have any right, title or interest over the others' intellectual property. Besides, the registrar collects registration data about registered name holders and submits the same to the Appellants for entering in the database maintained by the Appellants.

The Hon'ble CESTAT therefore concluded that the Appellants and registrars are independent entities operating on principal-to-principal basis and have been erroneously termed as franchisor-franchisee. The Appellants are not rendering any services to the registrars to be liable to pay service tax.

National Internet Exchange of India vs. C.S.T., Service Tax, Delhi, CESTAT New Delhi decided on 27-7-2018 in Appeal No. ST/52214/2014 [DB]

2. Whether a credit card 'Issuing Bank' is liable to pay service tax on the amount received from the bank of the merchant (Accruing Bank) under 'Credit Card Services'?

Facts and Pleadings: M/s ABN Amro Bank NV (hereinafter referred to as the 'Appellants') is a banking company which is engaged in the business of issuance of 'credit cards' to their customers. Credit card issuing banks are known as 'Issuing Banks'. Normally, when the customers swipe their credit cards while making payment to merchants, the amount goes to the 'Acquiring Bank' (bank of the merchant). The Acquiring Bank makes necessary payment to the merchants after deducting service charges from the total amount. Also, the Acquiring Bank pays service tax on the amount retained. After payment of service tax, it transfers a portion of the amount to the Issuing Bank i.e. the Appellants in the instant case.

It is the case of the department that the Appellants have in fact rendered 'Credit Card Services' to the Accruing Banks, and have received consideration for the same in terms of the amount transferred by the Acquiring Bank as aforementioned— which is taxable under Section 65(105) (zzuu) of the Act.

The Appellants contended that the Acquiring Bank has already paid service tax on the total amount out of which a certain amount is transferred to the Appellants. Therefore, no service tax liability arises on the Appellants.

Judgment: The Hon'ble CESTAT held that no service tax is payable by the Appellants when the same has been paid at highest level by the Acquiring Banks relying on the judgment of the Allahabad High Court in the case of *CCE vs. Chotey Lal Radhey Shyam, 2018 (8) GSTL 225 (All)*.

The Hon'ble CESTAT also noted that 'Credit Card Services' *inter alia* means settlement of any amount transacted through the credit card. According to the Hon'ble CESTAT, in the instant case, the Appellants are not undertaking settlement of any amount, it is merely the bank which has issued the credit cards. The Hon'ble CESTAT thus upheld that the Appellants are not rendering 'Credit Card Services', and the demand against the Appellants is not sustainable.

M/s. ABN Amro Bank NV (Presently known as Royal Bank of Scotland NV) vs. Commissioner, Central Excise, Customs & Service Tax, Noida, CESTAT, Allahabad decided on 23.7.2018 in Appeal No. ST/1921/2012-CU[DB]

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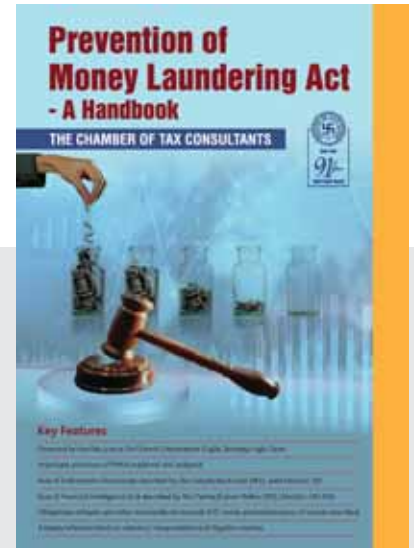
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