



ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

SEPTEMBER 2023



उद्धरेदात्मनात्मानं नात्मानमवसादयेत् ।

आत्मैव ह्यात्मनो बन्धुरात्मैव रिपुरात्मनः ॥ 6-5॥

Let a man lift himself by his own Self alone, and let him not lower himself; for, this Self alone is the friend of oneself, and this Self is the enemy of oneself.

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If members have any query, kindly contact the following staff members.

Hitesh G. Shah : *Chief Manager* - 9821889249 | Pradeep Nambiar - *Manager-Events* - 8080254129
Bindu Mistry : *Manager-Technical* - 9637692312 Manisha Kasbe : *Manager-Accounts* - 8104816841

Helpdesk: (1) Events: Mr. Pradeep Nambiar / Mr. Anand Kadam Email: events@ctconline.org
(2) Accounts: Ms. Manisha Kasbe Email: accounts@ctconline.org (3) Journal: Ms. Bindu Mistry Email: jou@ctconline.org
(4) Membership: Ms. Savita Mane Email: member@ctconline.org

THE CHAMBER OF TAX CONSULTANTS

Dear Member,

We intend to streamline the office administration by allocating different email ids for improvising our communication system. Instead of one email id for all the staff, we have assigned Email ids to the staff in work allocated to them. For ease of reference, a chart is prepared giving a list of email ids, area of work, and staff handling the said area of work. The same is listed as under:

Sr. No.	Email ID	Area of Work	Staff handling the area of work
1	manager@ctconline.org	General Queries	Mr. Hitesh Shah, Chief Manager
2	events@ctconline.org	All event-related issues like webinar, conference, study circle / group meeting, payment related to events	Mr. Pradeep Nambiar / Mr. Anand Kadam / Ms. Neha Kadakia
3	accounts@ctconline.org	accounts related issues	Ms. Manisha Kasbe / Ms. Savita Mane
4	jou@ctconline.org	Chambers Journal printing matter, newsletter matter and other related matters	Ms. Bindu Mistry / Ms. Neha Kadakia
5	member@ctconline.org	Members queries such as Renewals / journal not received / change of address etc.	Ms. Manisha Kasbe / Ms. Savita Mane
6	office@ctconline.org	Will be used parallelly for 3-6 months. Thereafter, it will be used for communication with members only.	Ms. Savita Mane / Ms. Neha Kadakia

The members are requested to send emails on the above mentioned emails for smooth functioning of Chambers.

We solicit your wholehearted co-operation for smooth functioning of the Chambers office.

Thanks and regards,

For The Chamber of Tax Consultants

Sd/-

(Neha Gada)

Sd/-

(Vitang Shah)

Hon. Joint Secretaries

Accounting & Auditing

Chairman: Tejas Parikh
Vice-Chairman: Yogesh Amal
Convenor(s): Deepak K. Shah,
 Prashant Daftary
Advisors: Nilesh Vikamsey

Webinar on Audit Documentation (Virtual Mode)

Speaker : CA Pankaj Tiwari

Friday, 1st September, 2023

5.00 p.m. to 7.00 p.m.

Standard on Auditing (SA 230) was issued by the Institute of Chartered Accountants of India (ICAI) in the year 2009 which deals with the auditor's responsibility to maintain audit documentation in the course of audit of financial statements. Recent NFRA orders has raised concerns about audit documentation maintained by auditing firms. To deal with these challenges and to enable to small & medium practicing firms (SMP's) to maintain audit documentation which will be able to meet the regulator's expectation, the Chamber of Tax Consultants has organised virtual program on audit documentation which shall cover the various facets of audit documentation like:

- Walkthrough of sample audit working papers including checklist.
- Audit documentation through use of technology- benefits & tools available in market.
- Observations highlighted by QRB and NFRA.
- Impact on the peer review process of the SMP's.

Key Takeways:

- Background about audit documentation – What to document, how to document, etc.
- Tools available for audit documentation
- Key learnings from NFRA orders
- Audit Documentation through use of Technology – benefits

Fees

CTC Members	₹ 100/- + ₹ 18/- (18% GST) = ₹ 118/-
Non-Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-

Direct Taxes

Chairman: Abhitan Mehta
Vice-Chairmen: Chirag Wadhwa,
 Viraj Mehta
Convenors: Chintan Gandhi, Ketki Mittal
 Radha Halbe
Advisor: Mahendra Sanghvi

Half-Day Seminar on Revised Format of Audit Report for Charitable Institutions (Hybrid Mode)

(Jointly with IMC's Direct Taxation Committee & Bombay Chartered Accountants' Society)

Saturday, 2nd September, 2023

10.00 a.m. to 1.30 p.m.

Venue : Walchand Hirachand Hall, 4th floor, IMC Building, IMC Marg, near Churchgate, Mumbai, 400020

The Chamber of Tax Consultants jointly with IMC's Direct Taxation Committee & Bombay Chartered Accountants Society, is organizing a Half-day Hybrid seminar on "Revised format of Audit Report for Charitable Institutions". The new reporting requirements cast a much larger obligation on the auditor who is now required to report on the objects and operations of the institution, including detailed reporting on contributions, application of income, taxability under Section 115BBI of the Income-tax Act, 1961, capital asset transfers, transactions with specified persons and violations.

Sr. No.	Topic	Speakers
1	Explaining the Nuances of the Revised Audit Report	CA Sonalee Godbole
2	Issue & Complexities in relation to Revised Format of Audit Report	CA Gautam Nayak, CA Anil Sathe

Fees

Physical Mode : CTC Member & Non-Member	₹ 1,250/- + ₹ 225/- (18% GST) = ₹ 1,475/-
Virtual Mode : CTC Member & Non-Member	₹ 750/- + ₹ 135/- (18% GST) = ₹ 885/-

Commercial & Allied Laws**Chairman:** Dharan Gandhi**Co-Chairman:** Rahul Sarda**Vice-Chairperson:** Mallika Devendra**Convenors:** Bhautik Shah, Raj Kapadia & Ravi Sawana**Commercial & Allied Laws Study Circle meeting on Introduction of PMLA and overview of Obligations and Liabilities for Professionals under PMLA (Virtual Mode)****Speaker : Aditya Ajgaonkar, Advocate****Monday, 4th September, 2023****6.00 p.m. to 7.30 p.m.**

The Commercial & Allied Laws Committee of The Chamber of Tax Consultants are pleased to announce a Study Circle meeting on Introduction of PMLA and overview of Obligations and Liabilities for Professionals under PMLA. This is scheduled to be held on 4th September, 2023

Brief: PMLA has acquired new dimensions in today's sphere. There are various opportunities for professionals as well as obligations and risks. This talk seeks to address new questions that the PMLA throws up for professionals today in a discussion-based format.

Fees	
Commercial & Allied Laws Study Circle Members	NIL
CTC Member	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Member	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

Student Committee

Chairperson: Niyati Mankad

Vice-Chairperson: Charmi G. Shah

Convenors: Charmi A. Shah & Viral Shah

Advisor: Ajay Singh

E Certificate Course on Key Compliances under The Companies Act, 2013 (Virtual Mode)

Monday, 4th; Tuesday, 5th & Wednesday, 6th September, 2023

05.30 p.m. to 7.30 p.m.

Objective: Non-compliance of requirements under the Companies Act, 2013 can have a negative impact on a company's operations as well as on director's reputation.

Considering that the due dates of filing of Annual Return under the Companies Act, 2013 is fast approaching, we are pleased to announce an intensive workshop spread over 3 days, uniquely designed for students and young professionals. The Workshop will address key compliances under the Companies Act, 2013, important forms, practical difficulties and common errors that are faced while filing the Annual Returns under the Companies Act.

Who Should Attend: Newly qualified Company Secretaries, Lawyers, Chartered Accountants, Students doing their internships or articleships and any person keen to know more about the compliances required under the Companies Act, 2013.

Sr. No.	Topic	Speakers
1.	Key Note Address <ul style="list-style-type: none"> Overview of compliances under the Companies Act. Tips for ensuring timely compliance Role of inhouse counsel Dos and don'ts Consequences of noncompliance and/or belated compliance 	CS Meetal Sampat
2.	Compliances w.r.t. incorporation of various types of Companies (including subsidiary of foreign companies) and LLPs <ul style="list-style-type: none"> Types of companies and incorporation compliances w.r.t. the same Overview of documents required/ tentative checklist Dos and don'ts Certifications required Post-incorporation formalities (1st Board Meeting, geo tagging, etc.) 	CS Dipti Chheda
3	Annual Compliances under the Companies Act: <ul style="list-style-type: none"> AGM Appointment of director (DIR-12) MBP form Key disclosures required in the Director's Report Appointment of Auditor (ADT-1) Submitting E-form MGT-7 (Annual Return) Submitting E-form AOC-4 [BALANCE SHEET & PL] DPT-3 [Deposits] DIR KYC 	CS Raj Kapadia

4	Event Based Compliances: <ul style="list-style-type: none"> • Issue of securities (Rights Issue, Preferential Allotment, Private Placement, ESOPs, issue of shares with differential rights, sweat equity, issue of debentures, bonus issue) • Acceptance of deposits by Companies • Registration of Charges • Payment of Dividend • Related party transactions Sec 188 • Intercompany loans 185, 186 • SEBI's LODR • SEBI Insider Trading SDDs 	CS Deepti Jambigi Joshi
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Fees	
For Student Member of the Chamber	Free
For CTC Member	₹ 100/- + ₹ 18/- (18% GST) = ₹ 118/-
For Non-Member	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-

International Taxation Committee

Chairman: Kirit Dedhia

Co-Chairperson: Karishma Phatarphekar

Vice-Chairmen: Niraj Chheda & Shabbir Motorwala

Convenors: Tanvi Vora, Vishal D. Shah & Yash Bhatt

FEMA SC Meeting on Overview of External Commercial Borrowings (Virtual Mode)

Speaker : CA Aarti Karwande

**Wednesday,
06th September, 2023**

5.30 p.m to 7.30 p.m

The International Taxation Committee of The Chamber of Tax Consultants (CTC) has organized a FEMA Study Circle Meeting on "Overview of External Commercial Borrowings" which is scheduled on 06th September, 2023.

With India being the brightest markets for MNCs and Corporates, raising funds plays a crucial role for business growth. Hence, an understanding of the FEMA External Commercial Borrowing Regulations will have critical application for the practitioners. In this study circle meeting, the speaker will cover the basic aspects of External Commercial Borrowings Regulations under FEMA and give us practical insights. We are sure that the participants will gain guidance.

Fees	
For FEMA Study Circle Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

Direct Taxes

Chairman: Abhitan Mehta

Vice-Chairmen: Chirag Wadhwa,
Viraj Mehta

Convenors: Chintan Gandhi, Ketki Mittal
Radha Halbe

Advisor: Mahendra Sanghvi

Seminar on The Art of Representation before Appellate Authorities (Physical Mode)

*(Jointly with Bombay Chartered Accountants' Society &
Western India Regional Council of ICAI)*

Friday, 8th September, 2023

Saturday, 9th September, 2023

3.00 p.m. to 7.15 p.m.

10.00 a.m. to 5.30 p.m.

Venue : ICAI Tower, G Block, Opp. MCA Academy, Besides Standard Chartered Bank, Bandra Kurla Complex, Bandra (East), Plot no C-40, Avenue 3, Mumbai – 400051

Time	Topic	Speakers
Day 1 – Friday, 8th September 2023		
3.15 pm – 4.00 pm	Role of professionals in Tax Representation	Hiro Rai, Advocate
4.00 pm – 5.30 pm	Roadmap for Faceless Assessments and Appeals	Chairperson: CCIT Rupinder Brar Panellists: PCIT Vatsala Jha, CIT(A) Shailja Rai CA Yogesh Thar, Moderator: CA Anish Thacker
5.45 pm – 7.15 pm	Role of tax professionals and the tax department in effective dispensation of justice	Hon'ble Justice R.V. Easwar (Retired Judge, Delhi High Court)
Day 2 – Saturday, 9th September 2023		
10.00 am – 10.45 am	Keynote Address	Shri G.S. Pannu, President, Income-Tax Appellate Tribunal
10.45 am – 11.15 am	Expectations of the Bar from young professionals	Dr. K. Shivaram, Senior Advocate
11.30 am – 1.00 pm	Bench and Bar: Role and Responsibilities	Panellists: Shri Amit Shukla (Hon'ble Member, Income Tax Appellate Tribunal), Shri Prashant Maharishi (Hon'ble Member, Income Tax Appellate Tribunal), Sr. Advocate Saurabh Soparkar, CA Rajan Vora Moderator: CA Anil Sathe
2.00 pm – 5.00 pm	Moot Court	Bench 1: Shri B.R. Baskaran (Hon'ble Member, Income Tax Appellate Tribunal) Shri Vikas Awasthy (Hon'ble Member, Income Tax Appellate Tribunal) Bench 2: Shri Aby. T. Varkey (Hon'ble Member, Income Tax Appellate Tribunal) Shri Rifaur Rahman (Hon'ble Member, Income Tax Appellate Tribunal) Co-ordinator/ Moderator: CA Sanjiv Brahme *Assesses Representatives: Paras S. Savla, Advocate, CA Ketan Ved, CA Mahendra Sanghvi, CA Hiten Chande, CA Nikhil Tiwari CA Dhanesh Bafna, CA Ashok Mehta, CA Sukhsagar Syal, CA Chaitee Londe, CA Harsh Kapadia, CA Siddhesh Chaugule Advocate Ashish Mehta (CA) CA Hirali Desai, Dharan Gandhi, Advocate, Fenil Bhatt, Advocate (*to be finalized) CIT(DR)s – PCIT Vijay Shankar CIT Vinod Tanwani, CIT Ajay Sharma, CIT Manoj Kumar, Add'l CIT Manoj Kumar Sinha, Add'l CIT Soumendu Kumar Dash

Fees

Members ₹ 2,000/- + GST

Non-Members ₹ 2,000/- + GST

Student / Youth Under Age 30 ₹ 1,500/- + GST

(Fees Includes Dinner on First Day and Lunch on Second Day)

Indirect Taxes**Chairman:** Hemang Shah**Vice-Chairman:** Keval Shah**Convenors:** Raj Khona, Umang Talati, Yash Parmar**Advisor:** Rajiv Luthia**Workshop on Department Interactions & Litigation Under GST (Physical Mode)****Venue :** Walchand Hirachand Hall, 4th Floor, IMC, Churchgate, Mumbai-20**Saturday, 9th September 2023****9.00 a.m. to 04.45 p.m.**

Fees	
Member	Non-Member
₹ 1,800/- + (18% GST) = ₹ 2,124/-	₹ 2,000/- + (18% GST) = ₹ 2,360/-
(Fees includes Tea Cofee, Snacks & Lunch)	

Objective of the Workshop: Many Tax Professionals deal with GST compliance and litigation, but they often struggle when faced with tax department officials or revenue authorities in different cases. To help with this, a workshop has been designed to provide guidance on both legal and practical aspects of dealing with these authorities by eminent faculties having vast experience in the field of search, investigation, etc and representing the said matters with various authorities and courts. The workshop will cover topics such as scrutiny of returns, GST audit, various notices issued by the Department, inspection - anti-evasion/DGGI, search, seizure, arrest, etc. Participants will gain valuable insights to help them navigate these complex situations, as well as tactics and remedies that are at their disposal.

Sr. No	Topic	Speakers
1	<ul style="list-style-type: none"> What are the possible touchpoints with Revenue Authorities & implications of each touchpoint? What are the rights of the revenue authorities? Responding to routine queries from the Officers (ASMT – 10/ DRC-01A/ Audit Objections or Observations) 	CA Vikram Mehta
2	<ul style="list-style-type: none"> How to Respond to Show Cause Notices issued u/s. 73, and 122 (DRC-01) Legal aspects w.r.t. Appeal before First Appellate Authority How to handle cases where Second Appeal is to be filed How to handle recovery proceedings initiated by the Department? 	CA Vinod Awtani
3	Brain Trust Session and Panel Discussion on Practical issues in dealing with Revenue Authorities: <ul style="list-style-type: none"> How to face matters involving Search, Seizure, Investigations by Anti-Evasion, DGGI Power to Summons What if the goods are intercepted in transit? When can prosecution proceedings be initiated and against whom? (Questions to be invited from the participants)	Panelist: Dr. Sujay Kantawala, Advocate Bharat Raichandani, Advocate Moderator: CA Rajiv Luthia

Study Circle and Study Group

Chairman: Ashok Sharma
Vice-Chairman: Dipesh Vora
Convenors: Dinesh R. Shah,
 Parth Sanghvi

Study Group Meeting on Recent Judgements under Income Tax Act (Hybrid Mode)

Speaker : Ajay Singh, Advocate

Monday, 11th September, 2023

6.00 p.m. to 8.00 p.m.

Venue : Chamber Office, 3, Rewa Chambers, Ground Floor,
 31, New Marine Lines, Mumbai-400 020

Fees

For Study Group Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-

Indirect Taxes

Chairman: Hemang Shah
Vice-Chairman: Keval Shah
Convenors: Raj Khona, Umang Talati,
 Yash Parmar
Advisor: Rajiv Luthia

IDT Study Circle Meeting on Issues in Composite and Mixed Supply (Virtual Mode)

Group Leader: CA Ramandeep Bhatia

Chairman : CA Mandar Telang

Tuesday, 12th September, 2023

5.00 p.m. to 7.00 p.m.

It has already been 6 years since the implementation of GST. Business is growing in leaps and bounds with new innovations, technology and offerings of goods and services and their combinations. In such a vibrant and evolving environment, issues in classification of such combination of goods and/or services as a composite or mixed supply and determination of GST rate thereof are bound to be raised.

To discuss and deal with the issues impacting this, the IDT Committee of The Chamber of Tax Consultants has organized a virtual Study Circle Meeting on "Issues in Composite and Mixed Supply". The details of the study circle meeting are as under:

Fees

For IDT Study Circle Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-

International Taxation Committee

Chairman: Kirit Dedhia

Co-Chairperson: Karishma Phatarphekar

Vice-Chairmen: Niraj Chheda & Shabbir Motorwala

Convenors: Tanvi Vora, Vishal D. Shah & Yash Bhatt

2nd Residential Conference on Foreign Exchange Management Act at Double Tree by Hilton, Ahmedabad, Gujarat [15th to 17th December 2023]



International Taxation Committee of the Chamber of Tax Consultant is pleased to announce **2nd, 3 Day Residential Refresher Course on the Foreign Exchange Management Act 1999 and its Rules / Regulations ('FEMA')** with focus on practical aspects.

FEMA is an evolving law with lot of changes and developments making it difficult to keep abreast of the prevailing provisions and their interpretation.

This is a unique Conference where various provisions of the law, its practice and procedures will be discussed in detail by experienced speakers / faculties.

The Conference is designed to comprehensively deal with recent developments as well as key issues on important topics of FEMA in an enclosed, peaceful and conducive learning environment. Apart from the topic allotted, the experienced speakers have been requested to share their knowledge and approach to the practice of FEMA including experience of dealings with various AD Banks which is an opportunity not to be

missed.

The conference is of relevance to all lawyers, chartered accountants, and professionals both in practice and in industry, including young and freshly qualified professionals.

We look forward to welcoming you at the conference for an active participation.

We would like you to mark your calendars today and look forward to welcoming you at **Double Tree by Hilton, Ahmedabad**, Gujarat in December 2023. Registration for conference program will commence from Tuesday, 5th September, 2023.

The conference schedule along with topics and the galaxy of speakers/faculties will be released shortly.

Fees structure is as under:

Residential Participants – Double Occupancy basis		
	Fees upto 10th October 2023	Fees from 11th October, 2023
Member	₹ 14,000/- + 18% GST	₹ 16,000/- + 18% GST
Non-members	₹ 16,000/- + 18% GST	₹ 18,000/- + 18% GST
Residential Participants – Single Occupancy basis		
	Fees upto 10th October 2023	Fees from 11th October, 2023
Members	₹ 24,000/- + 18% GST	₹ 26,000/- + 18% GST
Non-members	₹ 26,000/- + 18% GST	₹ 28,000/- + 18% GST
Non Residential Participants		
	Fees upto 10th October 2023	Fees from 11th October, 2023
Member	₹ 7,500/- + 18% GST	₹ 9,500/- + 18% GST
Non-members	₹ 9,500/- + 18% GST	₹ 11,500/- + 18% GST

Participation Fees to be paid online on the website: www.ctconline.org

Notes:

- For Residential Participants, fees for the conference includes course material, accommodation, and all meals during the entire conference.
- For Non Residential Participants, fees for the Conference includes course materials, lunch on 16th and 17th December & dinner on 15th December.
- The Check in Time at Hotel: Friday, 15th December, 2023 at 2.00 p.m. The members who reach early can proceed for lunch to be served from 12 noon onwards and then proceed for check-in.
- Check out time will be 12 pm on 17th December, 2023.
- Sessions on Day 1 (Friday, 15th December 2023) will start at 3.00 pm. Participants are requested to make their own travel arrangements accordingly. Airport pick up and drop facilities are NOT available.
- The conference will conclude on Day 3 (Sunday, 17 December 2023) at 12.30 p.m. Lunch has been arranged on Day 3 for the participants.
- In case of cancellation, member is requested to nominate someone to attend the RRC, no refund request shall be entertained, except under genuine unavoidable circumstances, subject to the approval of International taxation committee and Managing Council.
- For enrolment and any other conference related enquiry, please contact the Conference Directors - Mr. Yash Bhatt - on +91 9924388339 and Mr. Chintan Vajani on +91 9327624759 or Mr. Hitesh Shah, Chief Manager on +91 9821889249/+91 7977258507

Important Decisions under GST and Service Tax Laws

By Vinay Kumar Jain and Jay Chheda, Advocates

Whether a purchasing dealer can be denied the benefit of Input Tax Credit in cases where the selling dealer has collected tax but not deposited with the government?

Facts and Pleadings: The Petitioner is a registered dealer who has claimed Input Tax Credit (ITC) on invoices for which payment has been made through banking channels. The Petitioner is denied ITC for the said invoices as the seller has not deposited the collected tax to the Government.

The Petitioner filed a writ petition to contend that ITC should be available to the purchasing dealer and its recovery from the purchasing dealer would lead to double taxation. Further, it is the obligation of the state to initiate proceedings against the seller who has defaulted on the payment of collected tax to the State.

The Revenue relied on Section 16 of the CGST Act and argued that ITC is tied to certain conditions stipulated under the provisions and non-fulfilment of the same would result in denial of such credit.

Judgment passed by the High Court of Patna:

The High Court held that ITC can be availed only when all the conditions stipulated in clause (a), (b) and (c) of Section 16(2) are satisfied together. The burden of proof to avail ITC is on the purchasing dealer to substantiate that the tax collected has indeed been paid to the government by the supplier. The purchasing dealer cannot merely produce invoices, account details and documents evidencing transportation of goods and absolve itself from sub-clause (c) of Section 16(2) of the CGST Act.

The remedy available to the purchaser is only to proceed for recovery against the seller. The Government can, however, use its machinery to recover the amounts from the seller and if such amounts are recovered at a later point of time, the purchaser who paid the tax to its supplier can seek refund. Therefore, the purchaser cannot raise a claim of ITC under the statute if the collected tax by the seller is not paid to the government and therefore writ filed by the Petitioner was dismissed.

Aastha Enterprises vs. State of Bihar & Others -2023-VIL-546-PAT

Whether voluntary deposit of GST under protest during investigation can be considered for pre-deposit requirement for filing an appeal?

Facts and Pleadings: The Petitioner is engaged in the business of trading of steel goods. The Petitioner filed a

writ petition to challenge the absence of functionality in the GSTN Portal to the extent the portal does not allow for adjustment of voluntary deposit made during investigation against the mandatory pre-deposit required under the provisions of Section 107 of the CGST Act, 2017 ("the Act").

The Petitioner contended that an assessee should be allowed for adjustment of voluntary pre-deposit under protest against mandatory pre-deposit of tax dues. The technicalities embedded in the electronic system governing filing of appeals should not defeat a statutory remedy and render the assessee remediless.

The Revenue argued that provisions of Section 73(5) and Section 107 (6) are distinct and operate differently. Therefore, such an adjustment cannot be permitted and the petition should be dismissed as allowance of such an adjustment will disturb the electronic portal system prevalent throughout the country.

Judgment passed by the High Court of Bombay:

The High Court after a holistic reading of Section 73 held that the amount deposited under sub-section (5) of Section 73 of the Act is a voluntary deposit and not an amount deposited in pursuance of any demand or assessment order. Further, the court held that any procedural rule or technical requirement cannot defeat the availability of a remedy available under a substantive statutory provision nor can such remedy be rendered illusory. The interpretation of provisions should be done keeping in mind the intent of the legislature and should not be frustrated by complex procedural formalities.

The court relied on the principle laid down by the Hon'ble Supreme Court in VVF (India) Ltd. vs. State of Maharashtra, 2021-VIL-92-SC and held that the amount deposited by an assessee prior to the order of assessment cannot be excluded from consideration towards mandatory deposit required for filing of an appeal. Considering the same, the Appellate Authority was directed to register compliance of the provisions of sub-section (6) of Section 107 of the CGST Act by taking into consideration the voluntary deposit made under protest by the Petitioner.

The Hon'ble High Court allowed the Petition and permitted the Petitioner to file an appeal under Section 107 either by electronic mode or by way of manual.

M/s. Vinod Metal vs. The State of Maharashtra & Others -2023-VIL-546-PAT

Note : THE FULL DECISIONS CAN BE DOWNLOADED FROM THE WEBSITE WWW.CTCONLINE.ORG UNDER SEMINAR PRESENTATIONS - UNREPORTED DECISIONS

Unreported Tribunal Decisions

By Ajay R. Singh Advocate and CA Rohit Shah

1. S. 69A-Income from undisclosed sources-Addition under section 69A-Deposits into bank account made out of earlier withdrawals

Facts:

AO noticed that assessee had deposited Rs. 11,16,590 in her bank account. Assessee explained that Rs. 4,48,270 has already been offered as income, Rs. 2,90,320 was on account of sales and Rs. 3,83,000 was cash deposited by assessee from her own fund which was available with assessee on account of her withdrawal from bank account. AO denied set off of Rs. 3,83,000 holding that assessee was to explain the reason for withdrawal from the bank account as well as its redeposit.

Held:

There was no evidence with revenue that earlier cash withdrawal from bank account by assessee had been used for any other purpose, other than re-depositing it in the bank account of assessee. In absence of any contrary finding, merely because assessee did not submit reason for withdrawal of cash and its redeposit, addition could not have been made. This was also so, because withdrawal from bank account was of small sum and redeposit was also of small sum. Accordingly, AO was directed to delete addition of Rs. 3,83,000 under section 69A.

Mrs. Supreet Kaur Negi vs. The ACIT, CC – 20, Mumbai

[ITA No.5940 to 5944/Mum/2019, dated 31/05/2022]
[AY 2003-04 to AY 2007-08]

2. Capital gains-Year of taxability-Execution of supplementary deed subsequent to entering into JDA-Supplementary deed was an extension of the original development agreement

Facts:

Assessee entered into a development agreement on 14-3-2016. Further, 209 sq. yds. of land was gifted to mother of assessee on 5-3-2016 before entering into the development with the Developer. However, the gift deed was revoked on 18-5-2016 thereby requiring assessee to enter into a supplementary development agreement with the Developer on 18-5-2016 including this 209 sq. yds. arising out of the revocation of the gift deed. Therefore assessee pleaded that capital gains was taxable only in the assessment year 2017-18 as agreement became final on 18-5-2016 only. AO

held that capital gain was taxable in the concerned assessment year 2016-17.

Held:

Development agreement was originally entered into by assessee on 14-3-2016 in the ratio of 46:54 with the Developer. Consequently, additional 209 sq. yds. acquired subsequent to execution of the development agreement by way of revocation deed dated 18-5-2016 and added in the supplementary deed date 18-5-2016 during assessment year 2017-18. Supplementary deed was an extension of the original development agreement with the same terms and conditions only with an addition of 209 sq. yds. Since possession of the land had already been granted to the Developer vide the original development agreement entered into on 14-3-2016, the year of chargeability of capital gains in the hands of assessee was assessment year 2016-17, and not assessment year 2017-18.

Smt. Yalamanchili Neelima vs. ITO Ward 2(2), Guntur
[ITA No.506/Viz/2019, dated 15/12/2022] [AY 2016-17]

3. Tax deduction at source-TDS credit-Denial on the ground of deductor not having deposited the tax deducted by him to the credit of Central Govt.

Facts:

Assessee, sold his immovable property for a consideration of Rs. 10,11,00,000 and while making the payment of sale consideration, the vendee/agreement holder Pardeep Ramrakhyani deducted TDS of Rs. 10,11,000 under section 194-IA, but the same was not deposited by the vendee into Central Government account and no Form 26B was uploaded by him. Accordingly, AO did not accord TDS credit to assessee. Assessee challenged this.

Held:

Once deductor had deducted the tax out of payments due/paid to the assessee, but did not deposit the tax withheld by him, assessee should not suffer for the same and due credit of TDS was to be given to assessee and action under the provisions of the Act could be taken against the deductor who after deducting the tax had not deposited the same to the credit of Central Govt.

Rajesh Dadu v. DCIT, Circle -4(1), Hyderabad


[ITA No. 34/Hyd/2023; dated 31/03/2023] [A.Y.: 2019-20]

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