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THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

JANUARY 2024

HAPPY
NEW YEAR
2024

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

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47th Residential Refresher Conference on Direct Taxes

Day & Date : Thursday, 29th February 2024 to Sunday, 3rd March 2024

Venue : Taj Hotel and Convention Center, Agra

Residential Refresher Course

Chairman : Ankit Sanghavi
Vice Chairmen : Darshak Shah, Vishal H. Shah
Convenor(s) : Bandish Hemani, Pratik Doshi
Advisor : Kishor Vanjara

**NRRC
Announcement
for Agra and
Mathura residents
only**



The Chamber of Tax Consultants

• 3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai-400 020
 • Tel.: 2200 1787 / 2209 0423 / 2200 2455
 • E-mail : office@ctconline.org • Visit us at : www.ctconline.org



Dear Colleagues,

Get ready to dive into the evolving world of tax laws at our upcoming 47th RRC at Agra from 29th February, 2024 to 3rd March, 2024. Join us for an enriching experience where we'll explore the intricacies of Investigation Proceedings, decode Business Deductions, and unravel the complexities of TDS and TCS provisions.

Topics	Speaker
Paper for Discussion:	
<ul style="list-style-type: none"> From Expense to Deduction A Comprehensive understanding of Business Deductions Covering Business Loss, Revenue and Capital Expenditure, Accrual of Expenditure, Interest, Depreciation, Proviso to Section 37, Section 43B, ICDS provisions, etc.) 	CA Ravikant Kamath
<ul style="list-style-type: none"> Intricacies in Investigation Proceedings under Tax Laws Search & Seizure • Survey • Enquiries • Other aspects Related assessments, reassessments, and Penalties & prosecutions (in Case Studies Format) 	CA Pradip Kapasi
<ul style="list-style-type: none"> Case Studies in Direct Taxation 	Devendra Jain, Advocate
Paper for Presentation:	
TeDiouS Provisions - TDS & TCS Decoded	CA Mahendra Sanghvi
Brains' Trust	S Ganesh, Senior Advocate CA Gautam Doshi

Registration fees for Non-residential participants (from Agra and Mathura only)

CTC Members	₹ 9,000/- + 18% GST = ₹ 10,620/-
Non-Members	₹ 10,000/- + 18% GST = ₹ 11,800/-

Notes:

- The fees includes course material, Lunch on 1st March, 2024 and 2nd March, 2024 and Dinner on 29th February, 2024, 1st March, 2024 and participation in Gala Night on 2nd March, 2024.
- The conference on 29th February, 2024 will start at 3.30pm.
- For enrolment and any other conference related enquiry, pl contact: Mr. Darshak Shah on 9920226360 or Mr. Vishal Shah on 9819593006 Conference Directors or Mr. Hitesh Shah, Chief Manager on 9821889249 / 7977258507**

This event isn't just about learning; it's an opportunity to reinvent your perspectives and connect with fellow professionals. Act quickly to secure your spots for this highly anticipated event by registering soon!



THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai 400 020
Tel.: 2200 1787 / 2209 0423 / 2200 2455
E-mail : ctcd Debatecompetition@gmail.com | Visit us at: www.ctconline.org



H. R. College of Commerce and Economics

Vidyasagar Principal K.M Kundnani Chowk,
123 Dinshaw Vaccha Road,
Churchgate, Mumbai 400 020



The 7th Dastur National Debate Competition

Tuesday, 16th January, 2024, Thursday, 18th January, 2024 & Saturday, 20th January, 2024

The Chamber of Tax Consultants in Association with H. R. College of Commerce and Economics is Pleased to Announce its Seventh Debate Competition.

Objective

Debate is the art of dialectic, that puts questioning, reasoning, critical thinking and logic at the heart of the trivium. These are all essential attributes of a great education and to be able to do them well can help ensure that young people perform well academically and, indeed, socially. The young students are the future of our nation. They have the potential to bring new ideas before society. The objective behind organising the 7th Dastur National Debate Competition is to ignite students' thought process and bring before us mint fresh thoughts.

The Debate Competition will be organised on **e-platform** which will enable a wider reach and participation from colleges/firms across India.

DETAILS OF THE COMPETITION:

A. Eligibility Criteria for Debate Competition:

- (1) Each team must comprise of two participants.
- (2) Student participants should be under the age of 24 years.
- (3) Participants must be enrolled as students in a law or commerce college.
- (4) Participants are eligible to represent their college or any CA, Law, or CS firm.
- (5) Participants must not hold any professional qualifications such as CA, LL.B., CS, ICWA, etc.

Note/ Clarification:

- (a) CA/CS Article Assistants are permitted to participate.
- (b) CA, CS, or Law Firm includes a proprietary concern or an individual professional, allowing any CA/CS/Law firm to send a team of 2 students for the competition.
- (c) **Enrolment is restricted on a First-Come-First-Served-Basis.**

B. Schedule of the Competition:

Tuesday, 16th January, 2024 : 12:00 noon

Pre-event / Orientation, etc. [to brief participants about the event and to assign the topics at 12 noon on a virtual e-platform.]

Thursday 18th January, 2024 : 9.00 am – 4.00 pm

Preliminary Rounds & Octo Finals

Saturday, 20th January, 2024 : 9.00 am – 5.00 pm

Quarter Final, Semi Final Round and Final Round

C. Registration details:

Interested students may send their enrolment by clicking on the link - <https://bit.ly/3TxRfiW> or send the participation details on ctcd Debatecompetition@gmail.com or before Sunday, 14th January, 2024

Awards

- Trophies, Certificates & Prize Vouchers shall be awarded to the winning team, 1st and 2nd runner up teams.
- Trophy & Certificate will also be presented to the Best and 2nd Best Speaker
- Physical Certificate of Participation will be presented to each of the participants.



For Rules & Regulations please visit our website www.ctconline.org or call on **CTC Office:** 2200 1787 / 2209 0423 / 2200 2455 or **HR College:** Ms. Trisha Dutta - 7738907722 or Ms. Diya Jain - +91 99308 62410

Commercial & Allied Laws Committee

Chairman: Dharan Gandhi

Co-Chairman: Rahul Sarda

Vice-Chairperson: Mallika Devendra

Convenors: Bhautik Shah,

Raj Kapadia, Ravi Sawana

Webinar on Tax, Accounting and Secretarial implications arising post-acquisition under IBC (Virtual Mode)

Day & Date: Friday, 2nd and Saturday, 3rd February, 2024

Insolvency and Bankruptcy Code, 2016 has turned out to be a game-changer which has been instrumental in resolving various disputes. The law has evolved a lot since its original avatar. However, there is still a lot of uncertainty in so far as the direct tax, indirect tax, accounting and secretarial implications are concerned post-acquisition under Insolvency proceedings. To understand the nitty-gritties, a detailed course is being organized by the Commercial and Allied Laws Committee of the Chamber of Tax Consultants.

The structure of the said course is designed in a comprehensive manner covering 5 presentations papers. The Course so designed will give participants a 360-degree view of the subject on the important and frequently visited topics. The sessions would be addressed by eminent faculties having in-depth knowledge and expertise on the subject.

Fees

CTC Members

₹ 1,500/- + ₹ 270/- (18% GST) = ₹ 1,770/-

Non-Members

₹ 2,000/- + ₹ 360/- (18% GST) = ₹ 2,360/-

Sr. No.	Day, Date & Time	Topics	Speakers
1.	Friday 2.2.2024 4.30 p.m. to 6.00 p.m.	<p>Broad overview of IBC Provisions including process and time-lines from the perspective of a resolution applicant (bidder) etc.</p> <ul style="list-style-type: none"> – Drafting of plan – Flexibility in seeking reliefs in the resolution plan. – Key does and don'ts from tax and regulatory perspective – Key areas of concerns/litigation in the context of tax and regulatory laws – Grounds of which Form G can be challenged and who can challenge – Can RP be removed by NCLT and who can approach? – Grounds on which NCLT order approving plan can be challenged? Who can challenge? Implications on resolution applicant? 	CA Abizer Diwanji
2.	Friday 2.2.2024 6.00 p.m. to 7.30 p.m.	<p>Direct tax implications post-acquisition.</p> <ul style="list-style-type: none"> – Carry forward and set off of loss, depreciation and MAT credit – Implication of assignment/extinguishment of liabilities – loan, creditors, etc – Impact of corporate restructuring merger, demerger, capital reduction, etc. – Pending Proceedings, demands, refunds and rectification for prior year's. Initiation of new proceedings for prior year's – Effect of appeal pending before NCLAT 	CA Gautam Doshi

Sr. No.	Day, Date & Time	Topics	Speakers
3.	Saturday 3.2.2024 10.00 a.m. to 11.30 a.m.	Indirect tax implications post-acquisition <ul style="list-style-type: none"> – Proceedings and demands for prior years – Registration issues – Issues relating to ITC Credit etc. – Issues in relation to non-filing for past period – Online issues - including enabling filing of return, new place of business – Issues in relation to past proceedings and tax liability – Ability to file returns for past period – interest, penalty, fee, etc. – Effect of appeal pending before NCLAT 	Rohit Jain, Advocate
4.	Saturday 3.2.2024 11.30 a.m. to 1.00 p.m.	Accounting of acquisition <ul style="list-style-type: none"> – Treatment of recording of assets and liabilities – Treatment of reserves and surplus – impact of treatment being prescribed in the resolution plan, – accounting of business combination proposed in the resolution plan – Accounting for write off or extinguishment of liabilities, capital reduction, etc. – Effect of appeal pending before NCLAT 	CA Himanshu Kishnadwala
5.	Saturday 3.2.2024 2.00 p.m. to 3.30 p.m.	Companies Act and Secretarial Compliances post acquisition including, issues in relation to past non-compliance, accessing the online portal, change of directors, change of auditor, giving effect to merger / demerger, change in shareholding pattern, capital, issuance of fresh shares reduction, timelines involved etc.	CS Savithri Parekh

Indirect Taxes Committee**Chairman:** Hemang Shah**Vice Chairman:** Keval Shah**Convenor(S):** Raj Khona, Umang Talati,
Yash Parmar**Workshop on GST Law (Virtual Mode)***(Jointly with GSTPAM, AIFTP (WZ), BCAS, MCTC & WIRC of ICAI)*

We are happy to announce "Workshop on GST Law" jointly with AIFTP (WZ), BCAS, CTC, MCTC, and WIRC of ICAI to be held from 16th January 2024 to 27th February 2024. The GSTPAM has been organising this Joint Workshop from 2009, where all the above Associations have agreed & are continuing in the path of spreading knowledge to the professional community.

The object of Workshop is to share the essence of professional experience and expertise of the faculties which they have gained over the years. Here, the Delegates will get an opportunity to gain knowledge and wisdom by interacting with seniors.

The topics selected for Workshop will cover in-depth and practical understanding of GST Law and Challenges to be faced in GST Era. There will be 12 sessions on different topics of GST & a special Mega Brain Trust is arranged at end as 13th session, to seek views from seniors on issues faced by all members with regards to interpretation of law and practical difficulties. These topics are of immense importance and will be of enormous help and use to Professionals/Delegates handling Indirect Tax Matters.

Fees**Members**

₹ 1,600/- + ₹ 288/- (18% GST) = ₹ 1,888/-

Non-Members

₹ 21,00/- + ₹ 378/- (18% GST) = ₹ 2,478/-

Sr. No.	Day & Date	Time	Topics	Speakers
1	Tuesday, 16.01.2024	2.30 p.m.- 5.45 p.m.	Legal Issues in Input Tax Credit & Apportionment	CA Sujata Rangnekar
2	Friday, 19.01.2024	2.30 p.m.- 5.45 p.m.	Procedural issues in Input Tax Credit	CA Vivek Laddha
3	Tuesday, 23.01.2024	2.30 p.m.- 4.30 p.m.	Issues In E-Way bills, E-Invoicing & Way Forward	CA Sumit Jhunjunwala
4	Tuesday, 23.01.2024	4.45 p.m.- 5.45 p.m.	Issues in claiming Exemptions	CA S. S. Gupta
5	Tuesday, 30.01.2024	2.30 p.m.- 5.45 p.m.	GST on deemed Sales	CA Rajat Talati
6	Tuesday, 6.02.2024	2.30 p.m.- 5.45 p.m.	Provisions Related To Summons, Inspections, Search, Seizure, Bail, Prosecution	Nikita Badheka, Advocate
7	Friday, 9.02.2024	2.30 p.m.- 4.00 p.m.	Important Circulars & Clarifications	CA (Dr.) Shailendra Saxena
8	Friday, 9.02.2024	4.15 p.m.- 5.45 p.m.	Issues in Intermediary Services.	CA Pauloma Dalal
9	Tuesday, 13.02.2024	2.30 p.m.- 5.45 p.m.	Departmental Audit, Assessment, Recovery	CA Pritam Mahure
10	Friday, 16.02.2024	2.30 p.m.- 5.30 p.m.	Issues related to JDA, Redevelopment, Builders & Developers.	CA Jayesh Gogri
11	Wednesday, 21.02.2024	2.30 p.m.- 5.45 p.m.	Issues related to Liquidated Damages, Actionable Claims, Lottery, Gaming, etc	Ishaan Patkar, Advocate
12	Friday, 23.02.2024	2.30 p.m.- 5.45 p.m.	Provisions related to Appeals, Interest & Penalty	CA Rajiv Luthia
13	Tuesday, 27.02.2024	2.30 p.m.- 5.45 p.m.	Mega Brain Trust Session	CA Deepak Thakkar CA Ashit Shah, Dinesh Tambde, Advocate, Deepak Bapat, Advocate

Pune Study Group

Convenor(s): Dhiraj Dandgaval,
Mehul Shah, Pratik Sandbhor

Pune Study Group Meeting on Taxation of Restructuring of Partnership Firms (Virtual Mode)

Friday, 5th January, 2024

6.00 p.m. to 7.30 p.m.

Speaker : CA Kishor Phadke

The Pune Study Group of The Chamber of Tax Consultants (CTC) has organised a Study Group Meeting on "Taxation of Restructuring of Partnership Firms" scheduled on 5th January, 2024. The details of the meeting which will be held via Zoom are as follows:

Coverage - Scenario under the light of Sec. 9B and 45(4) of the Income Tax Act, 1961 and Analysis of Supreme Court Decision in case of Mansukh Dyeing and Printing Mills TS-904-SC-2022

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

Pune Study Group

Convenor(s): Dhiraj Dandgaval,
Mehul Shah, Pratik Sandbhor

Pune Study Group Meeting on Analysis of Recent Judgements of Supreme Court on Income Tax Issues (Virtual Mode)

Friday, 12th January, 2024

6.00 p.m. to 7.30 p.m.

Speaker : CA Rajendra Agiwal

The Pune Study Group of The Chamber of Tax Consultants (CTC) has organised a Study Group Meeting on "Analysis of Recent Judgements of Supreme Court on Income Tax Issues" scheduled on 12th January, 2024. The details of the meeting which will be held via Zoom are as follows:

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

Commercial & Allied Laws Committee

Chairman: Dharan Gandhi
Co-Chairman: Rahul Sarda
Vice-Chairperson: Mallika Devendra
Convenors: Bhautik Shah, Raj Kapadia
Ravi Sawana
Advisors: K. Gopal, Makarand Joshi

Lecture Meeting on Amnesty Scheme under the Stamps Act in Maharashtra [Virtual Mode]

Monday, 22nd January, 2024

5.30 p.m. to 7.30 p.m.

Speaker : Sharad Wakchoure, Advocate

The Maharashtra Government has introduced an amnesty scheme under the framework of Stamp Duty to remit or reduce the stamp duty and penalties on specified instruments.

According to the notification, instruments executed between January 1, 1980, and December 31, 2000, fall under Phase 1 of the scheme, running from December 1, 2023, to January 31, 2024. Likewise, the second phase, spanning from February 1 to March 31, 2024, offers reduced benefits.

A lecture Meeting has been planned on the aforesaid topics which will be immensely beneficial to the various stakeholders and the professionals.

Study Circle & Study Group Committee

Chairman: Ashok Sharma
Vice Chairman: Dipesh Vora
Convenor(s): Dinesh R. Shah, Parth Sanghvi

Study Circle Meeting on Select Issues with Reference to Taxation of Transactions in Immovable Property (Hybrid Mode)

Monday, 15th January, 2024

6.00 p.m. to 8.00 p.m.

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

Speaker : CA Jagdish Punjabi

The Study Circle and Study Group committee of The Chamber of Tax Consultants has organised a Study Circle Meeting on "Select Issues with Reference to Taxation of Transactions in Immovable Property" (Hybrid Mode) which is scheduled on January 15, 2024.

Fees

For Study Circle Members

NIL

CTC Members

₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-

Non-Members

₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-

Accounting & Auditing

Chairman: Tejas Parikh
Vice-Chairman: Yogesh Amal
Convenors: Deepak K. Shah, Prashant Daftary
Advisor: Nilesh Vikamsey

Internal Audit Series Lecture Meeting on "Changing Landscape of Internal Audit" [Virtual Mode]

Wednesday, 17th January, 2024

4.30 p.m. to 6.30 p.m.

Speaker : CA Satish Shenoy

Accounting & Auditing committee of CTC is coming up with Internal Audit series which will cover Modern Era Internal Audit. The series aims at providing overview on various key aspects of internal audit starting with very important topic on "Changing Landscapes of Internal Audit" from the desk of Veteran Speaker Mr. Satish Shenoy, who is pioneer in the field of Internal Audit.

This topic aims to enlighten existing and new practitioners about the paradigm shift in Internal Audit practice. It comprehensively covers importance and need for Agility in the practice of IA, Traditional vs Modern Approach in IA, Risk based audit, In time assessment Vs Continuous Risk Sensing, Technology Driven Audits etc.

The session will benefit to all the Internal auditors, existing internal audit practitioners, practitioners who wants to start with Internal Audit practice and students who wants to set the career goal.

Important Decisions under GST and Service Tax Laws

By Vinay Kumar Jain and Jay Chheda, Advocates

1. Whether time limit prescribed for availing Input Tax Credit under Section 16(4) of CGST Act is illegal and violative of Articles 14, 19(1)(g) & 300A of the Constitution of India?

Facts and Pleadings: The Petitioner was issued show cause notice demanding ineligible ITC on the ground that ITC has been availed beyond the time limit prescribed under section 16(4) of CGST Act, 2017. The Petitioner challenged the constitutional validity of Section 16(4) of CGST Act as violative of article 14, 19, 300A of the Constitution of India.

The Petitioner contended that once the conditions of Section 16(2) are fulfilled, ITC becomes a vested right and cannot be denied due to the time limit in Section 16(4). Section 16(4) contradicts the GST law's objective of seamless ITC flow and violates Articles 14 and 19(1)(g) of the Constitution by being an unreasonable restriction.

The Department argued that ITC under Section 16 is not a vested right but a concession that can be restricted by the legislature. The Petitioner has misinterpreted the sections and economic regulations by the state are not subject to judicial review for lack of wisdom or effectiveness.

Chhattisgarh High Court Judgment:

The High Court held that ITC is a statutory concession or benefit granted to a dealer. It can only be availed in accordance with the specific conditions laid out in the statute. The Supreme Court in the case of Godrej & Boyce Mfg. Co (1992) 3 SCC 624 has held that legislature can impose certain conditions or minor restrictions when extending concessions. In the case of India Agencies (2005) 2 SCC 129, the Supreme Court held that requirement to furnish original Form C to claim a concessional rate of tax was mandatory and without the necessary documents, the dealer cannot claim the benefits.

The Supreme Court has also emphasized that ITC is provided at the legislature's discretion, and the conditions under which they are granted are not to be interfered with by the courts. In the case of M. K. Agro Tech. Private Limited, the Supreme Court stated that tax statutes should be interpreted literally and it is up to the legislature to decide the conditions for tax credit.

Accordingly, the High Court held that ITC is a benefit extended to dealers under the statutory scheme and it must be claimed in compliance with the conditions

set by the statute. Section 16(4) of the CGST Act, which lays down conditions for availing ITC, is not in violation of Article 14 of the Constitution as it is part of the statutory scheme that governs the concession.

Article 19 of the Constitution lists fundamental rights as clauses (a) to (g) conferred on citizens, and the Petitioner, a proprietorship firm, filed a writ petition and not an individual citizen. The High Court held that Supreme court thorough various decisions have laid down that a company being juristic person cannot be a citizen for the purpose of Article 19 of the Constitution. i.e.,

- Indian Social Action Forum (INSAF) v. Union of India (2021) 15 SCC 60
- Shree Sidhballi Steels Ltd. v. State of U.P. (2011) 3 SCC 193
- Bennett Coleman & Co. v. Union of India (1972) 2 SCC 788

Article 300A, which pertains to the constitutional right to property, states that it cannot be taken away except in accordance with law. Hence, section 16(4) is not violative of Article 300A.

In view of the aforesaid, the High Court held that the provision in Section 16(4) of the CGST Act is not violative of Article 14 of the Constitution nor Articles 19(1)(g) & 300A of the Constitution.

M/s. Jain brothers, vs. UOI – Judgment dated 11.12 in Chhattisgarh High Court Judgment (Writ Petition (T) No.191 of 2022)

2. Whether a refund order passed under Section 142 of the Central Goods and Services Tax Act, 2017 is appealable before the Customs, Excise and Service Tax Appellate Tribunal 'CESTAT'?

Facts and pleadings: Post 1.7.2017, the Appellant was served with an audit objection for short payment of service tax under reverse charge. The Appellant paid service tax along with interest and claimed it was eligible to take Cenvat credit. However the Appellant couldn't claim credit due to CENVAT Credit Rules being repealed and CGST Act came into force from 1.7.2017.

The Appellant filed refund claim under Section 142(3) of the CGST Act read with section 11B of Central Excise Act, 1944 and argued that the refund claim of amount paid under the existing law has to be considered in accordance with the existing law. The

refund claim of the Appellant was rejected by the department and Appellant preferred an appeal before CESTAT against the same.

In view of conflicting decisions of CESTAT, the Single Member bench in Appellant's case referred the case to Larger Bench of CESTAT to decide whether the CESTAT has the jurisdiction to decide on the refund order passed under section 142 of the CGST Act.

Larger Bench judgment: The Larger Bench observed that Section 112 of the CGST Act provides for appeals before the GST Appellate Tribunal against orders passed under Section 107 or 108, while orders passed under sub-section (3) of section 142 does not allow appeals before GST Appellate Tribunal.

Section 142(3) states that refund claims for CENVAT credit or other paid amounts will be processed according to existing law and any money that may eventually become due to assessee will be paid in cash. However, if the specified amount is carried forward under the CGST Act, no refund is allowed.

If an application for refund of CENVAT credit had been filed at a point of time when the CGST Act had not been enacted, an appeal would lie before the CESTAT against an order passed on the application filed for refund of CENVAT credit. In view of the specific provisions of sub-section (3) of section 142 of the CGST Act, every claim for refund has to be disposed of in accordance with the provisions of the existing law i.e. Chapter V of the Finance Act and the Central Excise Act.

This position is also explicit from the provisions of sub-section (6)(b) of section 142 of the CGST Act, wherein it has been provided that every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated under existing law shall be disposed of in accordance with the provisions of the existing law.

Section 174(2)(f) of the CGST Act states that the repeal of the Central Excise Act and amendment of the Finance Act will not affect any proceedings, including appeals. This view also gains support from the fact the legislative intent could not have been to deprive either an assessee or the Revenue from the right of an appeal.

In the present case, the service tax was paid and refund was claimed under which the claim was required to be disposed off in accordance with the provisions of the existing law. Therefore, even if the service tax had been deposited by the appellant after 01.07.2017, the refund of any amount of the CENVAT credit could be claimed only under sub-section (3) of section 142 of the CGST Act and against this order an appeal will lie to the CESTAT.

M/s. Bosch Electrical Drive India Private Limited v. Commissioner of Central Tax – Judgment dated 21.12.2023 in Customs, excise & service tax appellate tribunal (Service tax appeal no. 40010 of 2020)



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. 11- Charitable trust--Exemption under section 11--Allowability- Audit Report in Form No. 10B not filed along with return

Facts:

Assessee-trust filed its return of income for relevant assessment year. CPC processed the return under section 143(1) denying exemption under section 11 due to the fact that Audit Report in Form No. 10B was not filed by the assessee along with the return. Aggrieved, the assessee filed rectification application under section 154, which did not yield any result. Assessee challenged rectification intimation before CIT (A) and submitted that exemption under section 11 could not be denied even if the Audit Report

was filed beyond due date as per CBDT Circular No. 10/2019 dated 22-5-2019. Assessee further submitted that the Audit Report was filed on 1-3-2017, which was much before the issuance of intimation by the CPC on 2-1-2018. However, the CIT (A) held that power under section 154 could be invoked only to correct an error and not to disturb a concluded finding.

Held:

Audit Report was very much available at the time of processing of return of income, however, CPC did not take the same into account, while processing the return as well as while dealing with rectification application filed by assessee. Further, CIT (A) merely

upheld the rectification intimation on the ground that rectification application filed by the assessee, would not fall within the ambit of section 154 overlooking the fact that grievance of the assessee was not even looked into by the CPC in the rectification application. In view of various judicial pronouncements, filing of Form No. 10B, would be directory in nature, as such, the AO is not powerless to allow an assessee to file Audit Report, if not filed along with return, at any time before completion of assessment. Further, filing of Form No. 10B beyond the due date, could not disentitle the trust from exemption claimed under section 11. Accordingly, AO was directed to verify the Form No. 10B filed by the assessee and allow the claim of exemption under section 11.

Sri Vetri Vinayagar Educational Trust vs. ITO, Exemptions, Trichy [ITA No.903/Chny/2023, dated 13/12/2023] [AY 2016-17]

2. S. 143(3)- Assessment--Validity--Addition on account of bogus LTCG- Addition based on some incriminating material found in a search at premises of third parties

Facts:

Assessee filed his return of income for relevant assessment year, which was processed under section 143(1). Subsequently, the return was selected for scrutiny and assessment was framed under section 143(3) making addition on account of bogus LTCG. Assessee challenged the said assessment order on the ground that the same was bad in law in as much as it should have been framed under section 153A read with section 153C as entire assessment was based on outcome of search and seizure proceedings conducted at premises of several stock brokers, whereby it was found that he was also one of the beneficiaries of LTCG earned through manipulation of shares.

Held:

There was no dispute that entire addition in instant case, was based upon incriminating material/information detected out of search proceedings under section 132 conducted at premises of stock brokers. Therefore, assessment order should have been framed as per provisions of section 153C. Hence, assessment

order passed under section 143(3) was set aside being bad in law.

Shri Rajender Agarwal vs. The A.C.I.T. Central Circle – 5, New Delhi [ITA No.2631/Del/2019, dated 05/12/2023] [AY 2014-15]

3. S. 271(1)(c)- Addition on account of unexplained investment in property - Addition being sustained on estimated basis

Facts:

A survey under section 133A was conducted in case of assessee, wherein huge investment was found that was not disclosed by assessee while filing return of income. The case was reopened under section 147 and assessment order was passed under section 143(3) read with section 147. CIT(A) sustained certain additions made by the AO. Subsequently, the AO levied penalty under section 271(1)(c) on the ground that the CIT(A) sustained the addition towards unexplained investment in property. CIT(A) confirmed the penalty. Assessee submitted that since the CIT(A) estimated the sources of funds, therefore it could not be a ground to levy penalty under section 271(1)(c).

Held:

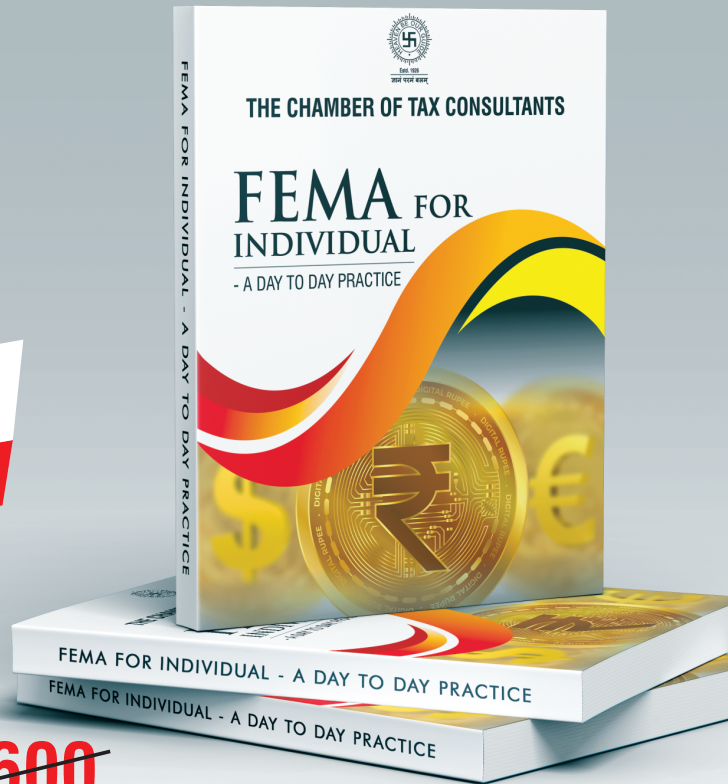
Admittedly, assessee did not furnish investment details while filing return of income. However, the assessee only after survey operation under section 133A, admitted income on account of investment in property. Further, CIT (A) accepted claim of the assessee regarding sources of income and estimated certain amount as available with the assessee for the purpose of investment based on returns filed by the assessee and his wife. In view of various judicial pronouncements, penalty cannot be levied when addition is estimated. In instant case, since addition on account of unexplained investment in property was sustained by the CIT (A) on estimated basis; penalty levied under section 271(1)(c) on the basis of such estimated addition, would not survive and the same was deleted accordingly.

Potluri Phanendra Babu vs. ITO- 3(2), Visakhapatnam [ITA No. 241/Viz/2022; dated 10/08/2023] [A.Y.: 2007-08]

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