



Estd. 1926

ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

NOVEMBER 2024



दीपज्योतिः परब्रह्म दीपज्योतिर्विनार्दनः, दीपो हरतु मे पापं दीपज्योतिर्नमोऽस्तुते ।

*The Light of the Lamp represents the Supreme Brahman, the
Light of the Lamp represents Janardhana, Let the Light of the
Lamp Remove My Sins, Salutations to the Light of the Lamp.*

HAPPY
Diwali

CONTENTS

Sr No.	Date	Committee	Programme Description	Pg. No.
1	20-2-2024 to 22-2-2024	International Taxation Committee	3rd Residential Refresher Course on the Foreign Exchange Management Act 1999	3
2	9-1-2025 to 12-1-2025	Indirect Taxes Committee	13th Residential Refresher Course on GST	4-5
3	14-11-2024	Direct Taxes Committee	Half Day Seminar on "Demystifying VSV 2.0" (Hybrid Mode)	6
4	8-11-2024	Indirect Taxes Committee	IDT SC Meeting on Issues related to Valuation aspects under GST including Related Party Transactions (Virtual Mode)	7
5	27-11-2024	Indirect Taxes Committee	IDT SC Meeting on GST Issues in Travel and Tourism Sector (Virtual Mode)	7
6	9-11-2024	Pune Study Group	Meeting on Life of Reassessments after Recent TOLA Decisions (Virtual Mode)	8
7	15 & 16-11-2024	Direct Taxes Committee	Taxcon 2024	9
8	—	—	Important Decisions under GST and Service Tax Laws	10
9	—	—	Unreported Tribunal Decisions	12

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

Hitesh G. Shah : *Chief Manager* - 9821889249 | Pradeep Nambiar - *Manager-Events & Journal* - 8080254129
Manisha Kasbe : *Manager-Accounts* - 8104816841

Helpdesk: (1) Events: Mr. Pradeep Nambiar / Mr. Anand Kadam / Mr. Rajesh Patil Email: events@ctconline.org
(2) Accounts: Ms. Manisha Kasbe / Ms. Vanita Subramanian Email: accounts@ctconline.org
(3) Journal: Mr. Pradeep Nambiar Email: jou@ctconline.org
(4) Membership: Ms. Neha Kadakia / Ms. Vanita Subramanian Email: member@ctconline.org

3rd Residential Refresher Course on Foreign Exchange Management Act at Novotel, Ahmedabad, Gujarat [20th to 22nd December 2024]

The Chamber of Tax Consultant is pleased to announce its 3rd Residential Refresher Course on the Foreign Exchange Management Act 1999 and its Rules / Regulations (FEMA) with focus on practical aspects.

In the past few years, FEMA has seen major changes in the law, procedures and approach of the regulators with two new path-breaking legal initiatives in the important areas of Foreign Investments and Overseas Investments. The Conference provides an opportunity to learn and interact with leading FEMA experts and AD Bankers on recent and major developments in the law and procedures of FEMA.

The Conference is designed to impart thorough knowledge on key issues and important topics under FEMA in an interactive mode through group discussions. In respect of the topics allotted, the experienced speakers and panelists would share their practical knowledge and insights including their experience of dealings with various AD Banks, which is an opportunity not to be missed.

The Conference aims to augment and enrich the knowledge of participants in FEMA for usage in not only day-to-day practice areas but also in critical and complicated situations faced by professionals.

The conference is of relevance to 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.

The conference topics and the galaxy of speaker faculty are given below.

Topics		Speaker/s
Group Discussions and Paper Presentation		
Paper I	International Migration – Implications under FEMA	CA Dr. Anup Shah
Paper II	Sectoral Analysis under FDI (select sectors), Nuances of FDI & Downstream Investment Issues and Reporting	Mr Moin Ladha, Solicitor
Presentations & Panel Discussions		
III	Cross-border Structures, M&A, Reverse Flipping & Swap – Issues under FEMA	CA Atul Mittal
IV	Brain Trust Session on various issues / case studies under FEMA.	Panelists: CA Pares P. Shah, CA Naresh Ajwani, CA Manoj Shah, Mr. Suhas Bendre, CA Atul Mittal and AD Banker
V	Q & A – Interactive session on Issues of FEMA practice, Guidance to practitioner & Role of AD-Bank under FEMA	

Fee structure is as under:

Residential participants – Double occupancy basis		
	Fees upto 18th November 2024	Fees from 19th November, 2024
Member	₹ 14,500/- + 18% GST	₹ 16,500/- + 18% GST
Non-members	₹ 16,500/- + 18% GST	₹ 18,500/- + 18% GST
Residential participants – Single occupancy basis		
	Fees upto 18th November 2024	Fees from 19th November, 2024
Members	₹ 25,000/- + 18% GST	₹ 27,000/- + 18% GST
Non-members	₹ 27,000/- + 18% GST	₹ 29,000/- + 18% GST

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

Notes:

- The fees for the conference include course material, accommodation, and all meals during the entire conference.
- The Check in Time at Hotel: Friday, 20th December, 2024 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 22nd December, 2024.
- Sessions on Day 1 (Friday, 20th December 2024) 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, 22nd December 2024) 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. Chintan Shah** - on +91 9819764475 and **Mrs. Tanvi Vora** on +91 9833801015 or **Mr. Hitesh Shah**, Chief Manager on +91 9821889249

13th Residential Refresher at Course on GST

Sheraton Grand Bengaluru Whitefield Hotel & Convention Center, Bengaluru
Prestige Shantiniketan, Hoodi, Thigalarapalya, Whitefield, Bengaluru, Karnataka-560048.

9th January to
12th January 2025

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



Indirect tax Committee of The Chamber of Tax Consultants is pleased to announce much awaited and a coveted indirect tax event – The 13th Residential Refresher Course (RRC) on GST, at Sheraton Grand Whitefield, Bengaluru from 09th January 2025 to 12th January 2025.

This event is not to be missed for any professional practicing in GST. The event is a blend of Intellectual Professionals, Guiding Mentors, Luxurious Locations, Amazing Networking and much more. The event is a platform for professionals to get in-depth knowledge on the subject, grow their network and exchange ideas on a PAN India level.

The venue is easily accessible by road from Bengaluru and is at a driving distance of approximately 45kms from Kempegowda International Airport, Bengaluru & approximately 25 kms from KSR Bengaluru City Junction. The city of Bengaluru has good connectivity be it via roads, railways, and air. It's well-connected to all major cities in India.

About Sheraton Grand Whitefield, Bengaluru

Located in Whitefield, Bangalore, this luxury hotel sits near many major corporations, IT parks and tourist attractions like Bangalore Palace and Phoenix Mall.

It has an awe-inspiring reception and offers transformative spa treatments and a round-the-clock fitness centre which is equipped with state-of-the-art equipment.

Participants may visit the resort website: <https://www.marriott.com/en-us/hotels/blrsw-sheraton-grand-bengaluru-whitefield-hotel-and-convention-center/overview/> for further details.

About Bengaluru.

Bangalore, officially called Bengaluru, is the capital of Karnataka. It is the second fastest growing metropolis of India and also the fourth highest GDP contributor after cities like Mumbai, Delhi, and Chennai. Bangalore is popularly known as the 'Silicon Valley' of India for being a major IT hub of the nation.

The bustling cosmopolitan city with an all-year-round pleasant climate has many cafes, shopping malls and restaurants for a luxurious and upscale lifestyle.

A hub of posh boutiques, enterprising micro-breweries and sprawling tech parks, Bangalore is also a city with many personalities, shaped over time due to its multi-layered history.

Salient features of the RRC:

- RRC is a 3 Nights-4 Days residential refresher course whose schedule focuses on relevant, conceptual and substantive topics on GST for learning and discussion, while also providing time to the delegates to enjoy the venue and places around. The relaxed schedule also helps in networking with professional colleagues coming from various parts of the country.
- The event shall commence with a Keynote Address by an Eminent Personality. There will be two discussion papers, two presentation papers and one panel discussion covering substantive and conceptual aspects of GST. The papers will be contributed by senior, expert and experienced faculties invited from different parts of the country.

RRC Itinerary:

Papers for Discussion		Faculties
KEYNOTE ADDRESS:		Eminent Personality
DISCUSSION PAPER I	Case Studies on Place of Supply for International Transactions, Zero-Rated supplies, Supply to SEZ, FTWZ, GIFT City and Refund related issues.	Adv. Nishant Shah, Mumbai
DISCUSSION PAPER II	Case Studies on Scope of Supply including Schedule I, II & III, Composite and Mixed Supply	Sr. Adv. V. Raghuraman, Bengaluru
Panel Discussion		
III	GST portal issues: Navigating challenges	Panelists: CA. Vinod Awtani, Mumbai Adv. K. Vaitheeswaran, Chennai Adv. Abhay Desai, Vadodara Moderator: CA. Sumit Jhunjhunwala, Mumbai
Presentation Paper		
IV	Input Service Distributor and Cross Charge- Challenges and Way Forward!	CA. Nilesh Vasa, Mumbai
V	Preparation for the upcoming GST Appellate Tribunal	Adv. K S Naveenkumar, Bengaluru

Day, Date, Venue & Fees

Date : Thursday, 9th January 2025 to Sunday 12th January 2025 **3 nights and 4 days**

Venue : Sheraton Grand Whitefield, Bengaluru **Fees** : Fees structure for residential participants is under.

Residential participants – On Double occupancy basis

Particulars	Fees
Members	₹ 25,000/- + ₹ 4,500/- (18% GST) = ₹ 29,500/-
Non-Members	₹ 26,500/- + ₹ 4,770/- (18% GST) = ₹ 31,270/-

Residential participants – On Single occupancy basis

Particulars	Fees
Members	₹ 38,500/- + ₹ 6,930/- (18% GST) = ₹ 45,430/-
Non-Members	₹ 40,000/- + ₹ 7,200/- (18% GST) = ₹ 47,200/-

Registration fees for Non-residential participants (from Bengaluru only)

Particulars	Fees
Members	₹ 15,000/- + 18% GST = ₹ 17,700/-
Non-Members	₹ 16,500/- + 18% GST = ₹ 19,470/-

Other Relevant Information:

- The committee plans to restricts enrollment upto 250 delegates on first cum first serve basis. Members are requested to enroll at earliest, to avoid the disappointment.
- RRC will commence from Lunch at 12.30 p.m. on Thursday, 9th January 2025 and end at 12 PM (after lunch) on Sunday, 12th January, 2025.
- Check in time at Sheraton Grand Whitefield, Bengaluru is at 2.00 PM on 9th January 2025. Inaugural session will start at 3.00 PM on 9th January 2025. Participants are requested to plan accordingly.
- Participants have to make arrangements for reaching to Sheraton Grand Whitefield, Bengaluru.
- RRC fees includes course materials, stay and all meals.
- For NNRC – The fees includes course material, Lunch on 10th, 11th & 12th January, 2025 and Dinner on 9th, 10th & 11th January, 2025 including participation in Gala Night on 11th January, 2025.

Interested Members may enroll from the Chamber's Website www.ctconline.org to make online payment. Members can also download the "Form" from The Chamber's website www.ctconline.org or may collect it from The Chamber's office and send it along with the cheque/DD/Pay Order in favor of "The Chamber of Tax Consultants." Outstation members are requested to make the Online payment or by at par Cheque / Demand Draft only

For enrollment and any other conference related inquiries, please contact **Mr. Hitesh Shah** – Manager (Mob: 9821889249)

Organized by: CHAMBER OF TAX CONSULTANTS	
CA Vijay Bhatt - President	CA Jayant Gokhale - Vice-President

INDIRECT TAXES COMMITTEE				
CA Rajiv Luthia Advisor	CA Hemang Shah Chairman	Adv. Keval Shah Vice Chairman	CA Yash Parmar, CA Raj Khona, CA Umang Talati Convener	CA Ashit Shah RRC Director
Mobile 9820043524	Mobile 9223273189	Mobile 8850667258	Yash : 9167615445 Raj : 7208331470 Umang : 9987979436	Mobile 9820118763

Jointly with IMC Chamber of Commerce & Industry and Bombay Chartered Accountants Society

Half Day Seminar on “Demystifying VSV 2.0” (Hybrid Mode)

Thursday, 14th November, 2024

2.30 am to 7.00 pm

Venue : Babubhai Chinai Hall, IMC Building, IMC Marg, Near Churchgate, Mumbai-400 020

The Finance (No. 2) Act, 2024 enacted the Direct Tax Vivad Se Vishwas Scheme, 2024 (VSV 2.0) on similar lines of Direct Tax Vivad Se Vishwas Act, 2020. VSV 2.0 provides an opportunity to taxpayers to settle tax disputes pending as on 22 July 2024 at various appellate forums, in relation to tax, interest, penalty or fees payable under the Income-tax Act, 1961.

Further, on 19 September 2024, the Central Board of Direct Taxes (CBDT) issued Notification No. 103/2024 specifying 1 October 2024 as the date on which VSV 2.0 shall come into force. Accordingly, taxpayers can file declaration under VSV 2.0 on or after 1 October 2024, but before the sunset date (which is yet to be notified).

Also, on 20 September 2024, the CBDT has issued a Notification in relation to the “Direct Tax Vivad se Vishwas Rules, 2024 and vide circular no. 12 of 2024 dated 15th October 2024, CBDT has issued FAQs giving guidance in relation to certain queries raised by stakeholders in relation to VSV 2.0.

In order understand the nitty-gritties of the provisions of the VSV 2.0 and procedures thereunder as well as to deep dive into issues clarified in FAQs and debate on other unresolved issues, we have organised a half day Hybrid Seminar on “Demystifying VSV 2.0” on **Thursday, 14 November 2024, 2.30 pm to 7.00 pm.**

We have invited experienced faculty including Departmental representatives to explain the scheme and to clarify the issues arising on implementation of the scheme. This program is organised jointly with other organisations.

Participation Fees

Physical & Virtual

CTC Members & Non-Members

₹ 1000/- + ₹ 180/- (GST) = ₹ 1180/-

You may register and make payment online at the following link: <https://www.imcnet.org/events-2393>.

Sr. No.	Time	Topics	Speakers
1	2.30 p.m. - 2.40 p.m.	Inaugural address	President / Vice President and Chairman of associations
2	2.40 p.m. - 3.10 p.m.	Keynote address	Shri Raj Tandon, Pr. CCIT, Mumbai
3	3.10 p.m. - 4.15 p.m.	Outline of provisions of Direct Tax Vivad Se Vishwas Scheme, 2024 (VSV 2.0)	Chairman & Moderator: CA Ravikant Kamat Panel Speakers: 1) CA Bhadresh Doshi 2) CA Jimit Devani
TEA BREAK			
4	4.30 p.m. - 6.15 p.m.	Panel discussion demystifying key critical & practical issues under VSV 2.0	Chairman Shri R S Syal, Vice-President, Income-tax Appellate Tribunal (Retd) Panel Speakers: 1) Mr. Ashish Kumar, Ex-IRS 2) Adv.Dharan Gandhi
5	6.15 p.m. - 6.45 p.m.	Q & A from participants	Panel Speakers
6	6.45 p.m. - 7.00 p.m.	Concluding Remarks & Vote of Thanks	CA Rajan Vora

The speakers will also reply/ clarify the questions received from the participants during the session.

The questions to be posted to the Speakers can be sent in advance.

For any query regarding this event or to share your questions for the speakers of this event in advance please write to upendra@imcnet.org / lucy.thomas@imcnet.org or contact at 022-71226644/022-71226704.

Indirect Taxes Committee

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

IDT SC Meeting on Issues related to Valuation aspects under GST including Related Party Transactions (Virtual Mode)

Friday November 8, 2024	5:00 p.m. - 7:00 p.m.
--------------------------------	-----------------------

Group Leader : CA Aditya Surte
Chairman : CA Vasant Bhat

Every fiscal statute makes provision for determination of value to charge tax. 7 Years ago – GST subsumed all Indirect Taxes bringing the “One Nation One Tax” regime. There continue to arise several questions in the minds of the stakeholders regarding valuation of supply in GST. There are number of transactions where determination of value of supply is one of the biggest challenge faced by the supplier. What is to be included or excluded in the value of taxable supply on which GST is calculated? – Especially in the case of related party transactions.

To understand these Valuation Issues under GST, the Indirect Taxes Committee of the Chamber of Tax Consultants has planned a study circle meeting on the said topic.

Participation Fees

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

**Participation Fees to be paid online on the website.
 Zoom link will be shared nearing to the event.**

Indirect Taxes Committee

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

IDT SC Meeting on GST Issues in Travel and Tourism Sector (Virtual Mode)

Wednesday November 27, 2024	5:00 p.m. - 7:00 p.m.
------------------------------------	-----------------------

Group Leader : CA Jinit Shah
Chairman : Adv. (CA) Kalpesh Shah

The travel and tourism sector is integral to the Indian economy, but it grapples with numerous GST-related challenges that can hinder its growth and profitability. Addressing these issues requires a collaborative approach among stakeholders, tax consultants, and industry representatives. The IDT Committee of The Chamber of Tax Consultants has organized a Study Circle Meeting on “GST issues in Travel and Tourism Sector” to discuss these challenges in detail –

Participation Fees

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

**Participation Fees to be paid online on the website.
 Zoom link will be shared nearing to the event.**

Pune Study Group

CONVENOR(S): Dhiraj Dandgaval, Mehul Shah, Pratik Sandbhor

Meeting on Life of Reassessments after Recent TOLA Decisions (*Virtual Mode*)

Saturday, 9th November, 2024

11.30 am to 1.00 pm

Speaker : CA & Advocate Dharan Gandhi

The Pune Study Group of The Chamber of Tax Consultants (CTC) has organised a Study Group Meeting on "**Life of Reassessments after Recent TOLA Decisions**" scheduled on **9th November, 2024**. The details of the meeting which will be held via Zoom are as follows:

Coverage - Recent Decisions Hon'ble Supreme Court have tried to settle or unsettle the new Reassessment Provisions. This session will try to cover and uncover the result of these Judgements and what could be the future of Reassessment Proceedings henceforth.

Participation Fees

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

Participation Fees to be paid online.

The Zoom link for joining the webinar will be shared prior to the session.

Looking forward to your active participation.



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Western India Regional Council

Jointly with,

All India Federation of Tax Practitioner's (Western Zone) (AIFTP,WZ)

Bombay Chartered Accountant Society (BCAS)

The Chamber of Tax Consultants (CTC)

Malad Chamber of Tax Consultants (MCTC)

The Goods and Services Tax Practitioners' Association of Maharashtra (GSTPAM)



TAXCON 2024



15 & 16 November, 2024
10.00 AM to 6.00 PM



ICAI Tower, Bandra Kurla Complex, Mumbai



Participation Fees :
Rs. 2300/- (Excl. GST) Till 30th October
(Includes B/F, Lunch & Tea)
Includes Conference Kit.

Participation Fees :
Rs. 2500/- (Excl. GST) After 30th October
(Includes B/F, Lunch & Tea)
Includes Conference Kit.

Registration & Breakfast : 9.00 AM to 10.00 AM

SCHEDULE DAY 1

Keynote Address

Dr. Subramanian Swamy

Critical Issues Under GST

Sr. Adv. V. Sridharan

Case Studies on Post Search Issues in GST & Income Tax

Sr. Adv. Rohan Shah

Panel Discussion on Related Party Transactions – Impacts Under DT/IDT

Moderator :

CA. A. R. Krishnan

Panelists :

CA. Yogesh Thar
 Adv. Vipin Jain

SCHEDULE DAY 2

BEPS 2.0 : A Global Response to Tax Heaven Exploitation and Profit Shifting and its Relevance for Indian Corporates

CA. Geeta Jani

Critical Issues in TDS Under Income Tax

CA. Avinash Rawani

AI's Impact – Redefining the Future of Tax Practice

CA. Dinesh Tejwani

Panel Discussion on Income Tax and GST issues – Joint Development Agreements/ Joint Ventures

Moderator :

CA. Rajat Talati

Panelists :

CA. Jagdish Punjabi
 CA. S. S. Gupta



Register Now

<https://wirc-icai.org/members/members-events-details/Hm2nTmbn/Taxcon-2024>

FOLLOW US ON



@WIRC_ICAI

For Issues related to Online Payments: Kindly use below Contact Nos. - 022-33671421 / 424

Email: wircevents@icai.in - **Whatsapp No.** 86578 93943

To Register – WIRC member – **CLICK HERE**

To Register – Other Member – **CLICK HERE**

Important Decisions under GST and Service Tax Laws

By Vinay Kumar Jain and Jay Chheda, *Advocates*

Is Input tax credit on the construction of immovable property intended for leasing eligible or the same is blocked ITC in the light of section 17(5)(d) of CGST Act, 2017?

Facts and Pleadings

Safari Retreats Pvt. Ltd (“assessee”) was engaged in the construction of a shopping mall for the purpose of letting out premises in the malls to different tenants. Raw materials, other goods and various services were used for the construction of the mall on which GST was levied by suppliers. The assessee had availed and accumulated Input tax credit (ITC) of GST from the purchase/supply of goods and services consumed and used in the construction of the shopping mall.

The Department disallowed the ITC on goods and services used for construction of mall on the ground that the same was blocked under section 17(5)(d) of the CGST Act, 2017. The assessee challenged the proceedings before the Hon’ble Orrisa High Court, challenging the constitutional validity of Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017. The Hon’ble Orrisa High Court inter alia read down the provisions of Section 17(5)(d) of the CGST Act, 2017 and allowed the ITC to the assessee.

The Department challenged the decision of Hon’ble Orrisa High Court before the Hon’ble Supreme Court.

The assessee contended that section 17(5)(d) of CGST Act, 2017 classifies the assessee engaged in the business of constructing immovable properties and then renting/leasing and the assessee engaged in business of constructing immovable properties and reselling on the same footing.

It was contended that while the sale of immovable property after completion certificate is GST-exempt, leasing the property is subject to GST, causing an unjust break in the tax chain and violating the GST principle of preventing tax cascading through seamless ITC. The assessee further contended that Section 17(5)(c) unfairly blocks ITC on works contracts for constructing immovable property, even when used for taxable activities like leasing.

Similarly, Section 17(5)(d) disallows ITC for properties used to generate taxable income, such as renting or leasing. The assessee contended that the phrase “on

his own account” in Section 17(5)(d) should apply only to properties built for personal use, such as offices. Since the mall was constructed for leasing, it is a taxable activity and not services on own account.

It was further contended that the distinction between “plant and machinery” in Section 17(5)(c) and “plant or machinery” in Section 17(5)(d) was critical. It states that the distinction in the wording indicates a clear intention of the legislature to assign it a unique interpretation which is separate from the ordinary meaning of “plant or machinery” found in other places of the Act.

The Department contended that restriction of ITC under section 17(5)(d) aligns with the legislative intent to prevent tax credit misuse in the cases where immovable property is constructed. It was further contended that ITC is a statutory concession and not a fundamental right, and its denial is within the government’s discretion to formulate tax laws, thus not violating Articles 14 or 19(1)(g) of the Constitution of India.

It was contended that the term “on his own account” includes all construction, which also encompasses leasing as well and it was contended that ITC was intended for goods and services used directly in further production of goods and service not for immovable property.

The Department further contended that the phrase “plant or machinery” is ought to be read as “plant and machinery” in section 17(5)(d) of CGST Act, 2017. The legislature’s intent was to refer both ‘plant’ and ‘machinery’ together rather than interpreting them as separate entities. Thus, interpreting them otherwise would create inconsistencies with other sections of CGST Act, 2017.

Order of the Hon’ble Supreme Court:

The Hon’ble Supreme Court held that ITC, being a statutory concession, the legislature is well within its powers to carve out exceptions. The cases covered under section 17(5)(c) and 17(5)(d) of CGST Act, 2017 constitute separate classes of transactions pertaining to immovable properties and therefore existence of a differentia cannot be disputed. Accordingly, sections section 17(5)(c) and 17(5)(d) of CGST Act, 2017 were held as constitutionally valid.

It was observed that the explanation to Section 17 defines “plant and machinery”. However, the expression used in Section 17(5)(d) is “plant or machinery”. If the legislature

intended to give the expression “plant or machinery” the same meaning as “plant and machinery” as defined in the explanation, the legislature would not have specifically used the expression “plant or machinery” in Section 17(5) (d). The legislature has made this distinction consciously. Therefore, the expression “plant and machinery” and “plant or machinery” cannot be given the same meaning.

The question whether a mall, warehouse or any building can be classified as a plant within the meaning of the expression “plant or machinery” used in Section 17(5)(d) is a factual exercise to be done on a case-to-case basis. The Hon’ble Supreme Court referred to the ‘functionality test’ for such factual determination. It was held that ‘plant’ in Section 17(5)(d) should not strictly be limited to typical definition excluding building and the classification should be fact specific and would depend on the building’s functional role in the business.

The Hon’ble Supreme Court also interpreted the term “on his own account”. It was held that the construction is considered “own account” if it is for personal use rather than for providing a service or it serves as the premises for conducting business. It was also held that a construction cannot be termed as “on his own account” if the property is intended for sale, lease, or license to others. In these cases, construction would be considered for commercial purposes and the provisions regarding disallowance of ITC under section 17(5)(d) would not be applicable.

The Hon’ble Supreme Court accordingly disposed off the Petition by upholding the constitutional validity of sections 17(5)(c) and 17(5)(d) of the CGST Act, 2017 and remanded the matter to the Hon’ble Orissa High Court for limited purposes of deciding whether the shopping mall in the given set of facts was a “plant” in terms of Section 17(5)(d) of the CGST Act, 2017.

Chief Commissioner of Central Goods and Service Tax Vs Safari Retreats Private Ltd in Civil Appeal No. 2948 of 2023 dated 3.10.2024 (Hon’ble Supreme Court)

Is a Writ challenging a Show Cause Notice on grounds of vagueness and violation of natural justice maintainable before the High Court if the Petitioner has an alternate statutory remedy?

Facts and Pleadings:

Viswaat Chemicals Ltd (“assessee”) filed a Writ Petition before the Hon’ble Bombay High Court challenging the Show Cause Notice issued to it on the ground that the same was vague and lacked specific details, thereby depriving the assessee of a fair opportunity of being heard.

The Revenue denied that the allegations of the notice being vague and lacked clarity. It was contented that all necessary materials, giving the Petitioner a clear understanding of the allegations.

Order of the Hon’ble Supreme Court:

On the perusal of the show cause notice, the Hon’ble High Court observed that the show cause notice was having all the material particulars, giving the assessee a very clear idea about the case that were required to be met with.

It was further observed that the show cause notice was issued based on intelligence and had detailed reference to several factual aspects and the legal provisions, notifications and circulars proposed to be relied upon. This was validated by observing the detailed reply filed by the assessee against the Show Cause Notice.

The High Court held that there was no violation of Natural Justice since the show notice contained specific information and the assessee had the opportunity to address all the allegations in their response.

The High Court gave clear directions and discouraged the filling of Writ Petition against the validity of Show Cause Notice, unless the challenged Show Cause Notice clearly lacks jurisdiction or grossly violated Natural Justice.

The High Court dismissed the Petition thereby giving a finding that the grounds for claiming vagueness in the Show Cause Notice were unfounded and raised belatedly. The petition was deemed an attempt to circumvent alternate statutory remedies available under the CGST Act. Consequently, the High Court also imposed exemplary costs of ₹ 5,00,000/-.

Viswaat Chemicals Ltd. & Anr. Versus Union of India Writ Petition (L) No. 27725 of 2024 dated 14.10.2024 (Bombay High Court)

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. 153C - Search and seizure - Assessment under section 153C - No incriminating seized material

Facts:

AO initiated proceedings under section 153C and made addition to income of assessee-company. CIT(A) held that AO was not justified in assuming jurisdiction under section 153C and making the impugned addition without reference to any incriminating seized material.

Held:

AO nowhere in his order, specified that seized documents belonged to assessment year under consideration and transactions reflected in seized documents were not recorded in books of account of assessee. It is settled position of law that provisions of section 153C can be invoked only if any incriminating material seized during the course of search action pertains to that particular assessment year. Hence, CIT(A) rightly deleted the impugned addition.

Income Tax Officer, Ward-5(2) v. Sanchit Counsultants Pvt. Ltd.

[ITA No. 8198/DEL/2019 dated 20/06/2024] [AY 2008-09]

2. S. 270 - Penalty under section 270A - AO failed to pinpoint corresponding default on assessee's part

Facts:

AO levied penalty under section 270A. CIT(A) sustained the penalty. Assessee contended that show cause notice nowhere specified corresponding limbs in clauses (a) to (f) of section 270A (9) read with section 270A(8). Therefore, AO failed to comply with rigour of sections 270A(8) and 270(9) before concluding that he committed default of under-reporting of income as a consequence to mis-reporting.

Held:

While initiating penalty proceedings under section 270A(8), thereby alleging under-reporting of income as a consequence of mis-reporting, the AO failed to pinpoint relevant clauses (a) to (f) of section 270A(9). Thus, AO's failure to pinpoint corresponding default on assessee's part, vitiated the entire penalty proceedings and hence, the impugned penalty under section 270A was not sustainable.

Deepak Bhika Suryawanshi v. ITO [ITA No. 98/PUN/2024 dated 19/06/2024] AY 2018-19

3. S. 44AD - Presumptive income under section 44AD - Estimation of profit - Profit estimated without assigning any reason

Facts:

Assessee declared income from transactions in derivatives and offered income under section 44AD @8%. AO noted that there was system information pertaining to share transactions under assessee's PAN, which worked out to Rs. 5,24,27,992 and based on such information, he applied 8% and worked out profit of Rs. 41,94,239. CIT(A) estimated profit @50% on total turnover declared by assessee.

Held:

AO made addition without sharing any information about alleged transactions available on system. CIT(A) on the other hand accepted total turnover as disclosed by assessee, however, without assigning any reason, estimated profit rate of 50%. When turnover was accepted by CIT(A), then there was no justification of applying such huge profit rate of 50%. Since assessee opted for presumptive taxation under section 44AD, income offered @8% as provided in statute was liable to be accepted.

Krimesh Ramesh Divecha v. Dy. CIT [ITA No. 473/MUM/2024 dated 29/05/2024] AY 2015-16

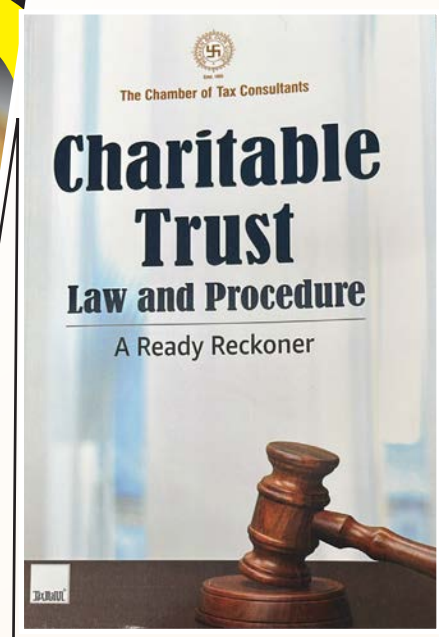
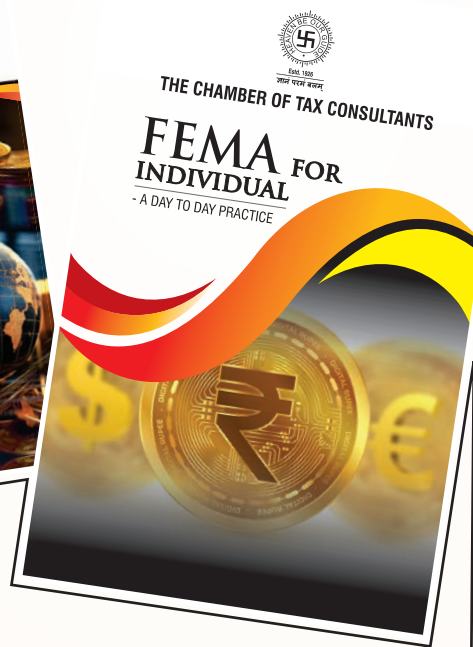
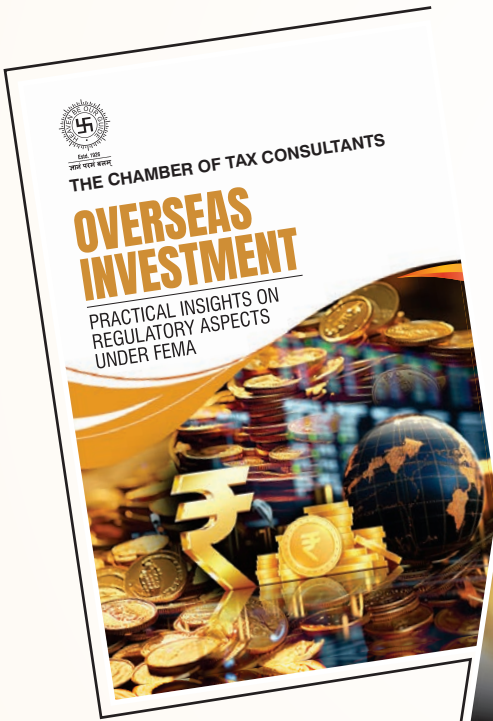
Note : THE FULL DECISIONS CAN BE DOWNLOADED FROM THE WEBSITE WWW.CTCONLINE.ORG UNDER SEMINAR PRESENTATIONS - UNREPORTED DECISIONS



Publications By The Chamber

BUY PUBLICATION

Sr. No	Publication	Price
1	Overseas Investment - (Practical Insights on Regulatory Aspects Under FEMA)	₹ 600/- + ₹ 50/- (Courier charges)
2	FEMA for Individual	₹ 600/- + ₹ 50/- (Courier charges)
3	Combo Offer - FEMA for Individual & Overseas Investment	₹ 900/- + ₹ 100/- (courier charges)
4	Charitable Trust - Law and Procedure	₹ 800/-



Registered with Registrar of Newspapers for India under R. NO. MAHENG/2015/67505

Posted at Mumbai Patrika Channel
 Sorting Office, Mumbai-400 001.
 Date of Posting : 1st or 2nd of every month

Postal Registration No. MCS/210/2019-21
 Date of Publishing : 1st of Every Month

the only constant AMID THE constant change

As amended by Finance (No.2) Act 2024 & Covering Recommendations of 54th GST Council Meeting held on 09-09-2024

Trusted by 3 Million+ Tax Professionals

MUMBAI: 35, Bodke Building, Ground Floor, M.G. Road, Opp. Mulund Railway Station, Mulund (W), Mumbai - 400080
 Tel.: +91-022-25934806/07/09, 25644807 | Mobile: +91 9322247686, 9619668669 | Email: sales.mumbai@taxmann.com

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

Printed by Shri Kishor Dwarkadas Vanjara and published by him on behalf of **The Chamber of Tax Consultants (owners)**, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020 and Printed at **The Great Art Printers**, 25, S. A. Brelvi Road, Unique House Opp, Apurva Restaurant, Next to Poddar Chambers, Ground Floor, Fort, Mumbai-400 001. and published at **The Chamber of Tax Consultants (owners)**, 3, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020.

Editor : Shri Kishor Dwarkadas Vanjara

Posted at Mumbai Patrika Channel Sorting
 Office-Mumbai 400 001.

Date of Publishing 1st of Every Month
 Date of Posting : 1st or 2nd November, 2024

If undelivered, please return to :

To