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ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

DECEMBER 2024



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

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(4) Membership: Ms. Neha Kadakia / Ms. Vanita Subramanian Email: member@ctconline.org

Dear Members,

A big thank you
for the over-whelming response.

Registration
for All 3
RRCs are
closed

3rd

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

13th

Residential Refresher Course on GST

at

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

48th

Residential Refresher Course on Direct Taxes at

Mayfair Lake Resort – Raipur
[6th – 9th March, 2025]

Direct Taxes Committee

Chairman : Viraj Mehta

Vice-Chairman: Chirag Wadhwa

Advisor: Mahendra Sanghvi

Convenors: Ketki Mittal, Prasanna K.,

Viral Shah

Webinar Series on Understanding Capital Gains from a Tax Lens (Virtual Mode)

10, 14, 18, 19 December, 2024

Ever since the introduction of capital gains tax, the disputes and amendments are never-ending. Capital gains play a significant role in various financial transactions and have long-term implications for various stakeholders. This series aims to simplify the complexities surrounding capital gains, making it easier for participants to grasp their real-world applications. Whether you're a professional handling tax matters, a student of law, or someone curious about how capital gains work in different scenarios, this session offers clear and practical insights. By attending, you'll gain a better understanding of capital gains, their legal aspects, and their impact on everyday transactions. Join us to broaden your knowledge and enhance your financial literacy in an engaging and interactive way!

The brief program structure is as under.

Sr. No.	Date & Time	Topic	Speaker
1	Tuesday, 10.12.2024 5.30 p.m. – 7.30 p.m.	Controversies around the Joint Development Agreement, including issues under 45(5A)	CA Jagdish Punjabi
2	Saturday, 14.12.2024 10.00 a.m. – 12.00 Noon	Interplay of Sec. 45, 46(2), 47 and 56(2)(x)	CA Vishal Gada
3	Saturday, 14.12.2024 12.00 Noon – 02.00 p.m.	Issues in Exemptions under Sec 54, 54EC, 54F, 54G etc	CA Prachi Parekh
4	Wednesday, 18.12.2024 5.30 p.m. – 7.30 p.m.	Transfer of shares and Securities – Issues and intricacies of Sec. 112, 112A, Rule 115 and 115A	CA Binoy Parikh
5	Thursday, 19.12.2024 5.30 p.m. – 7.30 p.m.	Case Studies on 45(4) and 9B	Adv. Devendra Jain

Participation Fees

CTC Members ₹ 750/- + ₹ 135/- (GST) = ₹ 885/-

Non-Members ₹ 1,000/- + ₹ 180/- (GST) = ₹ 1,180/-

Participation Fees to be paid online on the website:

Indirect Taxes Committee

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

Amnesty Scheme Under GST with insights on section 16(5) and 16(6) of the CGST Act, 2017 Including Procedural Aspects

Thursday, 12th December, 2024

5.30 p.m. to 6.30 p.m.

Speaker : Adv. Jatin Harjai, Jaipur

Navigating the complexities of the GST regime can be challenging. This webinar is designed to provide a comprehensive understanding of the Amnesty Scheme under GST, with a focus on:

1. Section 128A: Waiver of interest and penalty or both relating to demands raised u/s. 73 for the FY. 2017-18, 2018-19 and 2019-20.
2. Section 16(5): Input tax credit restrictions on failure to pay supplier within 180 days.
3. Section 16(6): Rules governing reversal of input tax credit in case of cancellation of registration.

Who Should Attend?

- Tax professionals and consultants
- GST practitioners
- Legal and finance professionals
- Business owners and accountants

Key Takeaways:

- In-depth analysis of the Amnesty Scheme provision.
- Practical implications of Sections 128A, 16(5) and 16(6).
- Opportunities to regularize past non-compliances under GST.
- Expert insights and solutions to your GST challenges.

Zoom Joining Link : [CLICK HERE](#)

Click on the above Zoom joining link and register yourself, after that you will receive a confirmation email containing information about joining the meeting.

The Webinar is free for all.

Study Circle & Study Group Committee

Chairman : Dipesh Vora
Vice-Chairman: Dinesh R. Shah
Convenors: Parth Sanghvi, Ritu Punjabi

Study Circle Meeting on Analysis of Vivad se Vishwas Scheme 2024 [Hybrid Mode]

Friday, 13th December, 2024

6.00 pm to 8.00 pm

Speaker : CA Ketan Vajani

Participation Fees

For 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:

Participation Fees to be paid online on the website.

Venue for Physical : Chamber office, 3, Rewa Chambers, Ground Floor, Behind Aayakar Bhavan, 31, New Marine Lines, Mumbai-400 020

Pune Study Group

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

Pune Study Group Meeting on Effective Strategies to handle TP assessments (Virtual Mode)

December 14, 2024

9:00 am - 10:30 am

Speaker : CA Tejas Dharwadkar & CA Meenal Sabnis Hardikar

The Pune Study Group of The Chamber of Tax Consultants (CTC) has organised a Study Group Meeting on “**Effective strategies to handle TP assessments**” scheduled on **14th December, 2024**.. The details of the meeting which will be held via Zoom are as follows:

Coverage – Since the introduction of transfer pricing regulations in India, the transfer pricing has been one of the highest litigative areas from tax assessment standpoint. Over the years, certain coherent objections, issues and principles are set by the assessing officer. The speaker shall cover the effective ways of handling the transfer pricing assessment and modus of dealing with the issues raised by tax department.

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.

Looking forward to your active participation.

Study Circle & Study Group Committee

Chairman : Dipesh Vora
Vice-Chairman: Dinesh R. Shah
Convenors: Parth Sanghvi, Ritu Punjabi

Study Group Meeting on Recent Judgements under Income Tax Act, 1961 (Hybrid Mode)

Monday, 16th December, 2024

6.00 pm to 8.00 pm

Speaker : CA Anish Thacker

Participation Fees

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

Participation Fees to be paid online on the website:

Participation Fees to be paid online on the website.

Venue for Physical : Chamber office, 3, Rewa Chambers, Ground Floor, Behind Aayakar Bhavan,
31, New Marine Lines, Mumbai – 400 020

Commercial & Allied Law Committee

Chairman : Mallika Devendra
Vice-Chairman: Raj Kapadia
Advisor: K. Gopal, Makarand Joshi
Convenors: Parth Patani, Rajen Gada
 Abhishek Tilak

Commercial & Allied Laws Study Circle meeting on Recent Judgments under Companies Law And SEBI Regulations (Virtual Mode)

Thursday, 5th December, 2024

5.00 pm to 7.00 pm

Speaker : CS Gaurav Pingle

There have been recent important and noteworthy judgments under the Companies Act, 2013 and the SEBI Regulations including the Listing Obligations and Disclosure Requirements (“LODR”). The session would be covering the recent Orders of the NCLT, NCLAT and important judgments of Hon’ble High Court, Mumbai and Hon’ble Supreme Court.

We would also be covering the recent trends in the judgments.

This virtual session is beneficial for Corporates, Officers, Top Managements and Professionals alike.

Participation Fees

For Commercial & Allied Laws Study Circle Members	NIL
CTC Members	₹ 150/- + ₹ 27/- (GST) = ₹ 177/-
Non-Members	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-

Participation Fees to be paid online on the website

Commercial & Allied Law Committee

Chairman : Mallika Devendra
Vice-Chairman: Raj Kapadia
Advisor: K. Gopal, Makarand Joshi
Convenors: Parth Patani, Rajen Gada
 Abhishek Tilak

Commercial & Allied Laws Study Circle meeting on Discussion on Benami Law including recent decisions (Virtual Mode)

Friday, 13th December, 2024

4.00 pm to 5.30 pm

Speaker : Advocate Rahul Sarma

The Commercial & Allied Laws committee of The Chamber of Tax Consultants has organised a Study Group Meeting on “Discussion on Benami Law including recent decisions” (Virtual Mode) scheduled on December 12, 2024. The details are as follows.

Participation Fees

For Commercial & Allied Laws Study Circle Members	NIL
CTC Members	₹ 150/- + ₹ 27/- (GST) = ₹ 177/-
Non-Members	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-

Participation Fees to be paid online on the website

Student Committee

Chairperson: Niyati Mankad

Vice-Chairperson: Charmi A. Shah,
Charmi G. Shah

Convenors: Kimi Nagda, Shreyas Sanghavi

Udaan – EPISODE 9 ~ Learning Today Leading Tomorrow (Virtual Mode)

December 16, 2024

6:00 p.m. - 7:00 p.m.

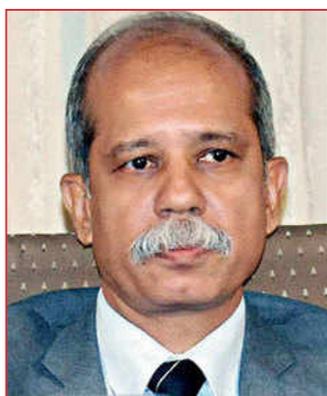
The Student Committee of the Chamber of Tax Consultants is thrilled to announce the Episode – 9 of our inspiring chat show, Udaan!

Udaan aims to bring together stalwarts of the any profession and share their journeys to inspire students and young professionals like you.

Dive into the inspiring life and illustrious career of Hon'ble Justice Akil Kureshi, a stalwart of the Indian judiciary who stood steadfast in the face of challenges. Justice Kurashi has also authored landmark judgments in tax especially during his tenure at the Bombay High Court.

Join us for this riveting episode, hosted by CA (LLB) Abhitan Mehta, where Justice Kureshi shares insights from his incredible journey and through his wisdom, would provide guidance and mentorship to law students and young professionals on various career paths and dilemma face during selecting a career and foundational years.

From serving as the Chief Justice of multiple High Courts to being a voice for judicial independence. Justice Kureshi's fearless judgments and commitment to constitutional values have left an indelible mark on the legal landscape.



Esteemed Guest

Hon'ble Shri. Justice Akil Kureshi,
(Retd. Chief Justice of
Rajasthan High Court)



Host

CA Abhitan Mehta

A must-attend for students, professionals, and anyone passionate about justice and law!
We look forward to your virtual presence at Udaan!



SVKM's Pravin Gandhi College of Law

CENTER FOR CORPORATE LAWS & IPR

In Collaboration With

THE CHAMBER OF TAX CONSULTANTS

presents

Value Added Certificate Course

UNLOCKING M&A: LEGAL, REGULATORY, AND PRACTICAL PERSPECTIVES



January 04 & 05, 2025
(Saturday-Sunday)



16 Hours



Offline/ Physical (On
Campus)



Pravin Gandhi College of Law,
8th Floor ,Mithibai campus bldg,
Vile Parle West, Mumbai



60 Seats on first come
first allotment basis

ELIGIBILITY :

Open to all – Law, Finance, Management,
CA, CS (Students and Professionals).

SCHEDULE

Day 1: January 04, 2025 (Saturday)

M&A Fundamentals and Legal Framework

TIMINGS	TOPIC	SPEAKERS
8:00am-8:30am	BREAKFAST	
8:30am-9:00am	Inauguration Ceremony	
9:00am-11:30am	Introduction to M&A & Overview <ul style="list-style-type: none"> • Overview and Importance of M&A in the Corporate World • Types of M&A structures: • Legal Eco System of M & A in India – Companies Act and Other Legislations 	Mr. Sanjay Ashar Senior Partner, Crawford Bayley & Co
BREAK		
11:45am-1:45pm	Due Diligence in M & A <ul style="list-style-type: none"> • Purpose, Importance & Essentials of legal due diligence in M&A • Important Indian laws: Companies Act, SEBI regulations, labor laws, tax laws • Common challenges and Best Practices in conducting due diligence . 	Mr. Mahesh Wasadikar Partner, Shardul Amarchand Mangaldas & Co
LUNCH BREAK		
2:45pm-5:45pm	Drafting and Negotiating M&A Agreements <ul style="list-style-type: none"> • Key agreements: NDA, Term Sheet, Letter of Intent, Share Purchase Agreement, Asset Purchase Agreement, Shareholders' Agreement • Negotiating Strategies • Step-by-step guide to drafting term sheets, LOIs, and definitive agreements 	Mr. Sharad Abhyankar Partner, Khaitan & Co
5:45PM-6:00PM	Q&A	

Day 2: January 05, 2025 (Sunday)

Advanced M&A Concepts and Practical Case Studies

TIMINGS	TOPIC	PEAKERS
8:30am-9:00am	BREAKFAST	
9:00am-11:15am	<p>Negotiating and Closing the Deal</p> <ul style="list-style-type: none"> • Price: Fixed vs. contingent pricing (earnouts, deferred payments) • Valuation techniques Legal protections and risk allocation (escrow, holdbacks) • Liabilities, indemnities, and warranties: Legal protections and risk allocation (escrow, holdbacks) • Legal and cultural considerations in Indian negotiations 	<p>Mr Vinay Butani Partner, Economic Laws Practice (ELP)</p> <p>Mr Dipesh Jain Partner, Economic Laws Practice (ELP)</p>
BREAK		
11:30am-1:30pm	<p>Regulatory Considerations in M&A</p> <ul style="list-style-type: none"> • Indian regulatory nuances (RBI, SEBI, CCI) • Managing regulatory approvals (RBI, SEBI, FDI, CCI) to close the deal • Cross-border M&A: Additional considerations for Indian companies. 	<p>Ms Manjushree Somasundara Partner, Aarna Law</p>
LUNCH BREAK		
2:30pm-5:00pm	<p>Successful Completion of M&A Transaction</p> <ul style="list-style-type: none"> • Pre-closing and closing processes: Handling last minute legal issues • Post-closing integration: People, processes, Employee Transition • Common post-closing challenges in the Indian context and mitigation strategies. 	<p>Ms. Rashna Jehani Founder, Jehani Legal</p>
5:00pm-6:00pm	<p>Analysis of Real-Life M&A Cases</p> <ul style="list-style-type: none"> • Group exercise: Analyzing key legal issues in real Indian M&A cases 	<p>Ms. Rashna Jehani Founder, Jehani Legal</p>
6:00 pm	Feedback and Valedictory	

LEARNING OBJECTIVES

- Understand the conceptual framework of M&A
- Learn the Indian legal and regulatory landscape
- Understand the compliances required in M&A
- Analyze real-world M&A cases to apply theoretical knowledge

LEARNING OUTCOMES

- Ability to identify types of mergers.
- Analyze M&A laws and regulatory frameworks.
- Apply insights to real-life M&A scenarios

EVALUATION:-

- On the basis of Case Study discussion and MCQ test
- Certificates will be given to participants who attend all the sessions and submit MCQ Test

COURSE FEES : (Inclusive of GST)

PGCL & CTC Students : INR 2500 /-

Other Students : INR 2950 /-

Professionals : INR 4200/-



Name of Account :

SVKM'S PRAVIN GANDHI COLLEGE OF LAW

Name of Bank : HDFC Bank

A/C NO : 03210330000171

Branch : JVPD SCHEME, M-56

Type of Account : Current Account

IFSC Code : HDFC0000321

REGISTRATION LINK:- <https://forms.gle/mnsYJeFRNXgs3gch8>

FOR ANY QUERIES

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9867011447

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9819838286

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Student Coordinators

Email: clipcentre@gmail.com

CTC

Nishtha Gada: 98198 23723
Akash shire: 8087473338

Important Decisions under GST and Service Tax Laws

By Vinay Kumar Jain and Jay Chheda, *Advocates*

Whether CENVAT credit on goods used for towers and shelters i.e. prefabricated buildings fall within the scope of “capital goods” or “inputs” under the CENVAT Credit Rules, 2004 and accordingly Cenvat credit can be availed?

Facts and Pleadings

The issue involved before the Hon'ble Supreme Court was whether telecom and infrastructure companies can avail the CENVAT Credit of the excise duty paid towards the goods used for erection of mobile towers and prefabricated buildings (“PFBs”) containing the DG Set and other technical equipments.

The Hon'ble Bombay High Court in **Bharti Airtel Limited v CCE, Pune 2014 (35) S.T.R. 865 (Bom.)** held that mobile towers and other components like PFBs do not fall within the definition of “capital goods” or “inputs” and hence CENVAT credit is ineligible.

Subsequently, the Hon'ble Delhi High Court in the case of **Vodafone Mobile Services Limited v. CST [(27) G.S.T.L. 481 (Del.)** distinguished the Bombay High Court decision and held that mobile towers and other associated structures PFBs are covered within the scope of “capital goods” as well as “inputs” as defined under CENVAT Rules.

In view of two conflicting judgments, the respective aggrieved parties challenged the orders before the Hon'ble Supreme Court.

Order of the Hon'ble Supreme Court:

The Hon'ble Supreme Court observed that for classifying a particular item as ‘goods’, the same ought to be classified as ‘movable property’ or ‘immovable property’ respectively. The definition of ‘immovable property’ under the Transfer of Property Act, 1882 states that an immovable property includes “*land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to earth*”.

Mobile towers and PFBs were fixed and attached to earth primarily to ensure their wobble-free operation and not with the intention to affix into the earth to create a immovable structure. If required the mobile

towers and PFBs could be dismantled and relocated to other location without any damage to the mobile towers. Thus, the relocation does not cause an impediment to the marketability of the mobile towers.

Accordingly, it was held that the mobile towers and PFBs were not intended to be permanently fastened to the ground and therefore cannot be considered as immovable properties. Since the same are movable, the mobile towers and PFBs are ‘goods’. Further, applying the functionality test, it was held that the attachment of the mobile tower to the earth or building is not for the benefit of the land or the building but for better functioning of the antenna which is fixed on the tower.

The Supreme Court held that towers and PFBs qualify as ‘capital goods’ as defined under Rule 2(a) of CCR, 2004. The mobile towers and PFBs are components & accessories of Base Transmission Station and antennas which are admittedly ‘capital goods’ falling under Chapter 85 within sub-clause (i) of Rule 2(a)(A) of CENVAT Rules.

The Hon'ble Supreme Court while determining whether towers and PFBs qualify as ‘inputs’ observed that as per Rule 2(k), all goods used for providing any output services are eligible as inputs. Having already classified Tower and PFBs as Capital Goods, the Court observed that the Mobile towers provide the necessary height and stability for antennas to transmit signal, while PFBs house critical equipment, ensuring uninterpreted operation. These functions are essential for delivering telecom services and infrastructure support services. Consequently, it was held that towers and PFBs qualify as ‘inputs’ under Rule 2(k), enabling service providers to claim CENVAT credit for the excise duty paid on these items as ‘inputs’ as well.

The Hon'ble Supreme Court concurred with the conclusions of the Delhi High Court, declaring that Towers and PFBs qualify as both ‘capital goods’ and ‘inputs’ under the CENVAT Credit Rules and set aside the order of the Hon'ble Bombay High Court.

M/s Bharti Airtel Ltd. Versus Commissioner of Central Excise, Pune- Civil Appeal Nos. 10409-10410 of 2014 (Supreme Court)

Whether Input Tax Credit (ITC) can be denied under GST on the advances paid to the service provider on the basis of receipt vouchers?

Facts and Pleadings

The Assessee, a Consortium of two constituent entities (Larsen & Turbo Ltd and IHI Infrastructure Systems Co. Ltd), was awarded a Contract by the Mumbai Metropolitan Development Authority (MMRDA), which involved construction of a bridge of 22 kms on the ocean connecting South Mumbai and Navi Mumbai.

For the execution of the contract, purchase orders were raised by the Assessee on its constituent entities. The constituent entities would raise bills on the Assessee for the portion of the work executed by them each month. In turn, the Assessee would raise a back-to-back single consolidated invoice on MMRDA.

As per the terms of the Contract, MMRDA was to make an advance payment to the Assessee. The Assessee received such advance from MMRDA, on which GST was discharged and an Advance receipt voucher was issued to MMRDA. The Assessee transferred the advance amount including GST, to its constituent entities and the constituent entities in turn issued receipt vouchers to the Assessee for the same.

The Assessee claimed ITC of the taxes paid which was denied under section 16(2)(b) of the CGST Act, 2017 on the ground that Advance receipt vouchers are not recognized as tax-paying documents under Section 31(3)(d) of the CGST Act, 2017.

The Assessee filed Writ Petition before Hon'ble Bombay High Court and challenged the validity of Sections 7, 12, 13, and 16(2)(b) of the CGST Act in pursuant to Article 246A and 366(12A) of the Constitution on the ground that GST should apply only to actual supplies and not to supplies agreed to be made. It was contended that the legal fiction applied under Section 13(2)(b) deeming services provided to the extent of advance payment should also extend to Section 16(2)(b) to enable ITC claims on such advance payments. Further, it was contended that receipt vouchers issued for GST paid on advances are not recognized under Rule 36 of the CGST Rules as a valid document for ITC claim. This creates financial hardship which is contrary to the principles which have been laid down in law.

Order of the Hon'ble High Court:

It was held that the Assessee issued advance receipt vouchers to MMRDA for the advances received and they voluntarily remitted GST on the mobilization

advances and they themselves treated them as taxable supply.

The court held that the interpretation of "in the course or furtherance of business" under Section 7(1)(a) includes supplies connected to or integral to contractual activities. Advances received under such contracts are treated as "supply," attracting GST. The insertion of Section 7(1A) (retrospective from July 1, 2017) and Section 7(1)(aa) (effective January 1, 2022) further clarifies legislative intent. These provisions affirm that activities or transactions for consideration, including those involving deferred payment or between an entity and its members, constitute "supply."

The court rejected the claim that advance payments should not be taxable, emphasizing that Section 7 must be holistically read, and the definition of supply includes "goods or services agreed to be made for consideration," even if deferred. Therefore, advance payments under the contract are taxable as part of the consideration.

The Court rejected the challenge to Section 12 and 13 of CGST Act by stating that to determine the time of supply, it is consistent with Section 7 and the constitutional framework. It emphasized that the provisions allow for tax liability to arise not only on the issuance of an invoice but also on the receipt of payment or provision of services, whichever is earlier. It was observed that the mobilization advances received by the Assessee under the contract constituted "supply" as defined under Section 7, read with Section 2(31) (consideration), and therefore attracted GST. The voluntary deposit of GST by the assessee further reinforced this interpretation. Consequently, the court upheld the constitutionality of Sections 12 and 13, finding them in compliance with Articles 246A, 366(12A), 14, 19(1)(g), and 300A of the Constitution

The Court addressed the Assessee's challenge to the denial of Input Tax Credit (ITC) under Section 16(2)(b) of the CGST Act, which requires the receipt of goods or services for ITC eligibility. It emphasized a harmonious interpretation of Sections 13(2) and 16(2)(b) to prevent inconsistencies, noting that advances received under contractual obligations, like mobilization advances, are integral to business. Denying ITC despite tax payment on such advances would undermine

the GST framework. Accordingly, it was held that ITC should be granted when the supply is intended for business purposes, aligning with the legislative intent and ensuring the smooth operation of GST provisions.

The Court also examined the application of Section 31 of CGST Act and Rule 36 CGST Rules concerning the Assessee's claim for Input Tax Credit (ITC). It observed that the "Receipt Voucher" issued under Section 31(3)(d) qualifies as a tax-paying document. Section 31(3) operates independently with a non-obstante clause, recognizing tax-paying documents even for advance payments. It was emphasized that

a holistic interpretation of Section 31, concluding that ITC cannot be denied merely due to non-compliance with other subsections when the Assessee satisfied the requirements of Section 31(3)(d). Rule 36 cannot override the substantive statutory provisions of Section 31.

The Court rejected the Assessee's constitutional challenges and upheld the GST provisions' applicability to mobilization advances. It ruled in favor of granting ITC for advances paid under contractual obligations.

L&T IHI Consortium v. UOI & Ors Writ Petition No. 2980 of 2019 (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. Addition to income - Assessee received advance rent from the Government Agencies which was not accrued to assessee

Facts:

Assessee was wholly owned State Govt. Company (PSU) under Govt. of NCT of Delhi engaged in the business of development of tourism, upgrading transportation infrastructure public utilities in and around Delhi, etc. received upfront money from various Ministries and its authorized agencies for allotment of stalls of Delhi Haat Pitampura in different assessment years. AO added the same to the income of assessee for the year under consideration.

Held:

Assessee had been following mercantile system of accounting and this being so, income accrued and received relating to the year under consideration had to be taxed. Assessee received advance rent from the Government Agencies which was not accrued to assessee and the same had to be taxed in the assessment year for which the same was related. The said advance rent was subject to taxation in the subsequent assessment year, this being so, the same could not be taxed in the year under consideration.

- S. 43B - Deduction on actual payment - Advance Excise Duty paid

Facts:

Assessee paid Advance Excise Duty and claimed deduction. AO made disallowance invoking section 43B.

Held:

Section 43B in clear terms provides that the deduction claimed by assessee in respect of any sum paid by way of tax, duty, cess or fee, shall be allowed only in computing the income referred to in section 28 of that previous year in which it was actually paid, irrespective of the previous year in which the liability was incurred for the payment of such sum as per the method of accounting regularly employed by the assessee. For the purpose of claiming benefit of deduction of the sum paid against the liability of tax, duty, cess, fee, etc., the year of payment is relevant and is only to be taken into account. The year in which the assessee incurred liability to pay such tax, duty, etc., has no relevance and cannot be linked with the matter of giving benefit of deduction under section 43B. In this view of the matter, advance Excise Duty. paid by assessee during the relevant year was deductible.

S 37(1)- Business expenditure- Prior period expenses- Bills received during the concerned year

Facts:

Assessee claimed deduction of prior period expenses AO disallowed deduction on the ground that assessee was following mercantile system of accounting.

Held:

Since some of the expenses which could not be booked or provided for in the books of account on 31st March of the preceding financial year, due to non-receipt of vouchers/bills, etc., which were received after 31st March of the financial year. Those expenses as per the routine procedure were recorded in the later year as prior period expenses which deserved to be allowed as liability which was crystallized and quantified during the year under consideration.

Delhi Tourism & Transportation Development Corpn. Ltd. v. Addl. CIT [ITA No. 5167/DEL/2019 dated 14/08/2023] [AY 2015-16]

2. S. 80P(2)(a)(i) - Co-operative society - Interest earned on FDs with nationalized banks

Facts:

Assessee-society was engaged in business of collecting deposits and lending money to its members. AO disallowed assessee's claim of deduction under section 80P(2)(a)(i) in respect of interest earned on FDs with nationalized banks. CIT(A) confirmed the action of AO.

Held:

Interest income earned on FDs with nationalized banks partakes character of business income, which is eligible for deduction under section 80P(2)(a)(i).

Sharadchandrika Nagari Sahakari Patsanstha Maryadit v. ITO [ITA No. 1767/PUN/2024 dated 10/10/2024] AY 2017-18

3. S. 17(3) - Severance compensation received due to termination of employment

Facts:

Assessee was employed with a company named 'Y', which was subsequently acquired by a company named 'E'. Following the said acquisition, the assessee's employment was terminated and he received severance compensation, which was claimed as capital receipt not chargeable to tax. AO treated the said compensation as 'profits in lieu of salary' under section 17(3) and made addition. CIT(A) confirmed the addition. Assessee contended that the said compensation was voluntary and due to termination of employment for redundancy, therefore, it was capital receipt not chargeable to tax.

Held:

It had been consistently held by various High Courts and Tribunals that voluntary severance payments made without contractual obligation are capital receipts, and not subject to tax as profits in lieu of salary. In the instant case, severance payment received by assessee was due to redundancy and job termination. The compensation was paid for loss of employment and not for past services. Therefore, the same could not be taxable as profits in lieu of salary under section 17(3). Further, it had been consistently held that payments, when not tied to services rendered, are capital in nature and not taxable as salary income. Since employer had no obligation to pay further amounts upon termination, the compensation should be deemed to be capital receipt. Hence, severance compensation received by assessee was capital receipt, not chargeable to tax under section 17(3).

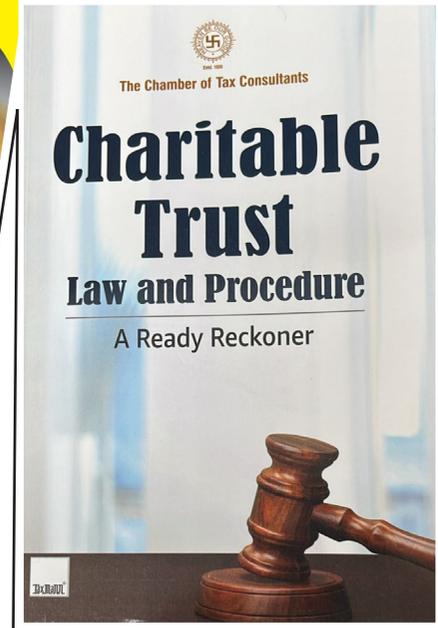
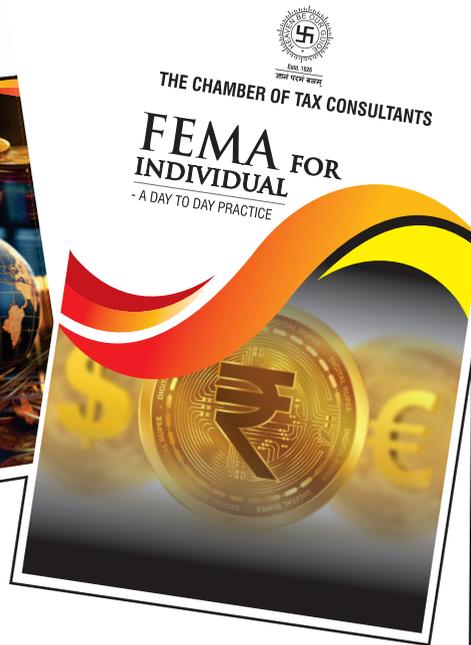
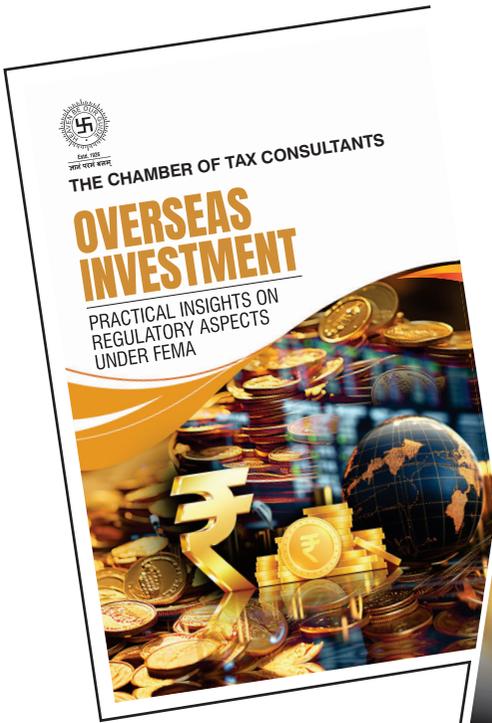
Sudhakar Ratan Shanker Gautam v. ITO [ITA No. 1033/AHD/2024 dated 03/10/2024] AY 2018-19

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