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ज्ञानं परमं बलम्

# THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

JANUARY 2025

# 2025

H A P P Y

# New Year

सूर्य संवेदना पुष्पे, दीप्ति कारुण्यगंधने।  
लब्ध्वा शुभं नववर्षेऽस्मिन् कुर्यात्सर्वस्य मंगलम्॥

*Just as the sun gives light, sensitivity gives birth to compassion, a flower always remains fragrant, in the same way may the new year be auspicious for you every day, every moment.*

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

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## 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)

**Tuesday, 7th January, 2025**

6.00 p.m. to 8.00 p.m.

**Speaker :** CA Nikhil Tiwari

The Study Circle and Study Group committee of The Chamber of Tax Consultants has organised a Study Group Meeting on **"Recent Judgements under Income Tax Act" (Virtual Mode)** is rescheduled on January 7, 2025. The details are as follows.

### Participation Fees

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

**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

**For Virtual:** Zoom link will be shared nearing to the event.

*Looking forward for your Active Participation.*

## Delhi Chapter

**Chairman:** Prakash Kumar Sinha  
**Vice Chairman:** Saurav Bhattacharya  
**Hon. Jt. Secretary:** Harpreet Singh, Ruchesh Sinha

## Webinar on Search & Seizure, related challenges in the Assessment and thereafter (Virtual Mode)

**Friday, 10th January, 2025**

5:30 p.m. - 7:30 p.m.

**Speaker :** Mr. Tushar Hemani, Sr. Advocate

**Moderator :** CA Manoj Kumar

The Delhi Chapter of The Chamber of Tax Consultants is organising a Webinar on the topic of **"Search & Seizure, related challenges in the Assessment and thereafter"** scheduled on 10th January, 2025.

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

Zoom Joining Link: [CLICK HERE](#)

**All are Cordially Invited to Attend the Meeting**

## Study Circle & Study Group Committee

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

## Study Circle Meeting on Reassessment u/s. 148 of under Income Tax Act (Hybrid Mode)

Thursday, 16th January, 2025

6.00 p.m. to 8.00 p.m.

Speaker : Mr. Dharan Gandhi, Advocate

The Study Circle and Study Group Committee of the Chamber of Tax Consultants is pleased to announce Study Circle Meeting on “**Reassessment u/s. 148 of under Income Tax Act**”. Eminent Speaker Mr. Dharan Gandhi, Advocate has agreed to lead the discussion.

### 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:

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

**For Virtual:** Zoom Link will be shared nearing to the event.

*Looking forward for your active participation.*

## Hyderabad Study Group

Convenors: Manindar Kakarla, Ravi Ladia

## Hyderabad Study Group Meeting Discussion on Section 128A of the CGST Act (Physical Mode)

Saturday, January 4, 2025

8:00 a.m. - 10:30 a.m.

Speaker : Adv. (CA) Ramachandra Murthy

Venue : Cafe Niloufer, 3-5-900, Old MLA Quarters Rd, Urdu Galli,  
Hyderguda Main Rd, Himayatnagar, Hyderabad,  
Telangana 500028

The Hyderabad Study Group of The Chamber of Tax Consultants has organised a Study Group Meeting on “**Discussion on Section 128A of the CGST Act**” (Physical Mode) which is scheduled on 4th January, 2025.

### Participation Fees

For Hyderabad Study Group Members	NIL
Other Members	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-

Looking Forward to Your Active Participation.

### International Taxation Committee

**Chairperson:** Karishma Phatarphekar  
**Co-Chairman:** Shabbir Motorwala  
**Vice-Chairman/Vice-Chairperson:**  
 Namrata Dedhia, Niraj Chheda  
**Convenors:** Chaitanya Maheshwari,  
 Monica Wadhani, Tanvi Vora,  
 Vishal D. Shah  
**Advisors:** Dilip Thakkar, Vispi Patel

### International Taxation Study Circle Meeting on TP Implications in Business Restructuring Transaction (*Virtual Mode*)

**Friday, 17th January, 2025**

6.00 pm to 8.00 pm

**Speaker :** CA Vaishali Amin

The International Taxation Committee of The Chamber of Tax Consultants has organised a Study Circle Meeting on "TP Implications in Business Restructuring Transaction" scheduled on 17th January, 2025

#### Pointers:

- 1) Business Restructuring under Transfer pricing  
 | Understanding Business Restructuring | Types of Business Restructuring | ALP of Business Restructuring  
 | Exit Charge | Case studies

#### Participation Fees

<b>For International Taxation Study Circle Members</b>	NIL
<b>CTC Members</b>	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-
<b>Non-Members</b>	₹ 300/- + ₹ 54/- (GST) = ₹ 354/-

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

### Membership and Public Relations Committee

**Chairman:** Premal Gandhi  
**Vice-Chairperson:** Ashita Shah  
**Convenors:** Arpit Khandelwal,  
 Sagar mehta  
**Advisors:** Atul Bheda, Sujal Shah

### SAS lecture Meeting on Managing Challenges in Profession today: Gita's Perspective (*Virtual Mode*)

**Wednesday, 22nd January, 2025**

5.30 p.m. - 7.00 p.m.

**Speaker :** Swami Shri Swatmanandji of Chinmaya Mission

**Session Moderator :** CA Mukesh Trivedi

In today's fast-paced, complex world, professionals face various challenges—pressure to perform, the rapid evolution of technology, work-life balance, dealing with competition, uncertainty, and stress. Amidst these challenges, the Bhagavad Gita offers timeless wisdom that can guide individuals in managing their careers with poise, integrity and purpose. The teachings of the Gita can be applied to modern professional life, offering profound solutions for those seeking balance and success in their work. By practicing selfless action, maintaining a balance between work and personal life, mastering the mind and embracing change, professionals can cultivate resilience, creativity and peace in the face of modern challenges. The wisdom of the Gita allows individuals to not only excel in their professions but also lead a fulfilling purposeful life. Through its teachings, one can rise above the stress and pressures of today's professional world and achieve true success—one that is both material and spiritual.

The Membership and Public Relations Committee of The Chamber of Tax Consultants jointly with Human Resource Development committee of The Bombay Chartered Accountants' Society has therefore organised this very unique session focussed on Gita's teaching to act with courage and detachment allowing individuals to face situations with composure, clear thinking, and integrity, without being overwhelmed by emotions or external pressures.

#### What will you learn from the workshop:-

- Performing Duties Without Attachment (*Nishkama Karma*)
- Selfless Service (*Karma Yoga*)
- Balancing Work and Personal Life
- Facing Challenges with Courage and Detachment

**Registration Link : [CLICK HERE](#)**

After registering, you will receive a confirmation email containing information about joining the meeting.

*All are cordially invited to take benefit of this unique meeting.*

## Important Decisions under GST and Service Tax Laws

By Vinay Kumar Jain and Jay Chheda, *Advocates*

### Can outer time limited be imposed under section 16(4) of CGST Act 2017 for availment of Input Tax Credit?

#### Facts and Pleadings

Anand Steel ("assessee") had filed returns for the financial year 2018-19 in Form GSTR-3B along with payment of GST liability and late fees after the date prescribed under section 16(4) of the CGST Act 2017 and availed input tax credit (ITC) on their inward supplies during the period. A Show Cause Notice under section 73 of CGST Act, 2017 was issued wherein it was proposed to disallow the ITC for the tax period 2018-19 on the ground of late filing of return in Form GSTR-3B after the prescribed date under section 16(4) of CGST Act 2017. Further, the Department confirmed the denial of ITC under section 74 of CGST Act, 2017. The assessee challenged the aforesaid Order before the Hon'ble High Court.

The assessee contended that imposition of time limit for claiming ITC under Section 16(4) of the CGST Act violates Articles 14, 19(1)(g) and 300A of the Constitution of India and, therefore, liable to be declared as ultra vires. It was further contended that the assessee had already filed the returns along with the applicable late fees and interest. However, ITC was not allowed thereby resulting in the assessee being penalized twice.

The Department contended that controversy involved in the Petition stand resolved by way of amendment in Section 16 of GST Act, 2017 vide Section 118 of Finance Act, 2024 by incorporating sub-sections 5 and 6 in Section 16 of the CGST Act, 2017.

#### **Order of the Hon'ble High Court:**

The High Court discussed the provisions of section 16 of the CGST Act, 2017 along with the amendment vide Finance Act, 2024. It observed that the interpretation of Section 16 of CGST Act which covers eligibility and conditions for taking ITC that a right on ITC is created when a taxpayer fulfills all the conditions specified in Section 16(2) of the CGST Act, 2017. Section 16(2) of the CGST Act, 2017 is a non-obstante provision.

However, imposition of a time limit through Section 16(4) would supersede or override this scheme of the statute and operation of Section 16(4) makes the non-obstante section 16(2) meaningless; Section 16(2) has overriding effect on Section 16(4) and Section 16(2) has been drafted in a manner which shows clear legislative intent that it is not subject to Section 16(4).

It was further held that allowing a taxpayer to file returns with payment of late fees and then disallow him the ITC, because the return was filed belatedly, is punishing him twice for a single default so committed.

It was observed that the payment of late fees and interest acts as a deterrent for the taxpayers which has been done by the assessee in the present case. Under such circumstances, saddling double payment of tax by way of Section 16(4) is arbitrary.

However the High Court concluded that it will not decide the constitutional validity of Section 16(4) since ITC is eligible to the Petitioner in view of the amendment via the Finance Act, 2024 where the time limit was further extended by introducing sections 16(5) and 16(6) to the CGST Act, 2017. The Hon'ble High Court accordingly set aside the Orders denying ITC.

*Anand Steel vs Union of India in Writ Petition No. 2164 of 2024 dated 22.11.2024 (Hon'ble Madhya Pradesh High Court)*

### Whether input tax credit on inputs and input services used for setting up of telecommunication towers and other passive infrastructure blocked under Section 17(5)(d) of the CGST Act, 2017?

#### Facts and Pleadings

The issue involved before the Hon'ble Delhi High Court was whether telecom companies and infrastructure companies can avail the ITC on the inputs and input services used for setting up mobile towers and prefabricated buildings and other passive infrastructure containing the DG Set and other technical equipment used for rendering telecom services?

Show cause notices were issued to various telecom companies and infrastructure companies proposing to deny ITC on inputs and input services used for setting up mobile towers and prefabricated buildings and other passive infrastructure on the ground that the same were

used in the construction of telecommunication towers and consequently falling within the ambit of clause (d) of Section 17(5) of the CGST Act, 2017.

The same were challenged by the telecom companies and infrastructure companies before the Hon'ble High Court. It was contended that the Hon'ble Supreme Court in *M/s. Bharti Airtel Ltd. Versus Commissioner of Central Excise, Pune- Civil Appeal Nos. 10409-10410 of 2014 (Supreme Court)*, has held that telecom towers were in the nature of a movable property and therefore CENVAT Credit in the erstwhile regime was allowed to the assessee. It was contended that the matter is squarely covered in their favour vide the said Supreme Court decision in the GST regime as well.

The Department contended that the expression "plant and machinery" has been defined by the Explanation appearing in Section 17(5) of CGST Act, 2017 to mean apparatus, equipment and machinery fixed to earth by foundation or structural support. However, it specifically excludes telecommunication towers from the ambit of the expression "plant and machinery".

#### Order of the Hon'ble High Court:

The Hon'ble High Court analyzed the decision of the Hon'ble Supreme Court in *M/s Bharti Airtel Ltd. Versus Commissioner of Central Excise, Pune- Civil Appeal Nos. 10409-10410 of 2014 (Supreme Court)* in detail and observed that it has been conclusively held in the Supreme Court decision that telecommunication

towers cannot be construed as being immovable property.

It was held that mobile towers could be dismantled and moved and that they were never erected with the intent of conferring permanence. Their placement on concrete bases was only to enable those towers to overcome the vagaries of nature. Therefore, there cannot be any doubt with respect to telecommunication towers are moveable property.

It was further held that the specific exclusion of telecommunication towers from the scope of the phrase "plant and machinery" would not lead one to conclude that the statute contemplates or envisages telecommunication towers to be immovable property. Telecommunication towers would in any event have to qualify as immovable property as a pre-condition to fall within the ambit of clause (d) of Section 17(5) of CGST Act, 2017. Their exclusion from the expression "plant and machinery" would not result in it being concomitantly held that they constitute articles which are immovable.

Accordingly, the Hon'ble High Court allowed the Petitions and held that ITC on the inputs and input services used for setting up mobile towers and prefabricated buildings and other passive infrastructure containing the DG Set and other technical equipment will not sustain.

*Bharti Airtel Ltd. & Anr. Versus Union of India W.P.(C) 13211/2024 dated 12.12.2024 (Delhi High Court)*



Note : THE FULL DECISIONS CAN BE DOWNLOADED FROM THE WEBSITE [WWW.CTCONLINE.ORG](http://WWW.CTCONLINE.ORG) UNDER SEMINAR PRESENTATIONS - UNREPORTED DECISIONS

## Unreported Tribunal Decisions

By Ajay R. Singh Advocate and CA Rohit Shah

### 1. 271D - Order passed after expiry of 6 months

Facts:

Assessee challenged imposition of penalty under section 271D on the ground that the same was barred by limitation. CIT(A) deleted the penalty. Revenue contended that the penalty was rightly imposed upon assessee for clear violation of provisions of section 269T by him.

Held:

As per section 275(1)(c), limitation period for completion of penalty proceedings expires in six

months from the end of month in which action for imposition of penalty has been initiated. In the present case, initiation of penalty was recommended by AO to Jt. CIT on 08-12-2017, thus, it was starting point to initiate penalty proceedings. Accordingly, limitation period was expiring on 30-06-2018. However, Addl. CIT initiated penalty on 07-07-2018 whereas same had been referred to him on 08-12-2017 i.e. more than six months before. Hence, the same was barred by limitation.

**DCIT v. Mohd. Shahnawaz [ITA No. 9051/DEL/2019 dated 11/09/2024] [AY 2008-09]**

## 2. S. 153A - Approval granted under section 153D in contravention of the requirement of law

### Facts:

Assessee challenged validity of the assessment framed under section 153A on the ground that approval granted under section 153D did not meet the requirement of law. Revenue's case was that the approval was only an internal arrangement and was granted by Jt. CIT by following proper approval process.

### Held:

Section 153D bestows a supervisory onus on the designated authority in respect of search related assessment and thus enjoins a salutary duty of statutory nature. The designated superior authority is thus expected to confirm to the statutory requirements in letter and spirit. In the instant case, Jt. CIT received the draft assessment order from AO on 31-12-2016 and he granted the approval on the same day that too in case of eighteen assessees including the case of assessee. Thus, it could be safely concluded that the approval granted was merely technical and without appraisal of evidences or enquiries. As approval by Jt. CIT under section 153D was invalid, therefore, assessment order passed in consequence thereto was liable to be quashed.

**M.G. Metalloy (P) Ltd. v. Dy. CIT [ITA No. 648/DEL/2022 dated 02/09/2024] AY 2011-12**

## 3. S. 90 - Double taxation relief - Agreement between India and Singapore - Denial of benefit of tax treaty on long term capital gain and interest receipts

### Facts:

Assessee-company declared long-term capital gain on sale of shares and interest receipts claiming benefit of India-Singapore DTAA on the same. AO denied the benefit alleging that the assessee was not tax resident of Singapore. The assessee furnished Tax Residency Certificate (TRC) and previous returns of income to substantiate its claim, which were rejected on the ground that the assessee did not prove that it had real and continuous business activities in Singapore.

### Held:

In view of decision of High Court in case of Tiger Global Eight Holdings, Mauritius, TRC, even if TRC is not conclusive evidence of a tax residency of an entity, it certainly is statutory evidence. Since the assessee discharged initial burden to prove its tax residency, the burden was on AO to establish that the assessee was formed only to take benefit of the tax treaty without there being actual economic activity. Further, no enquiry was conducted with regard to assessee's long-term investments. Since assessee was consistently availing such benefit by filing its returns of income, which was not denied for any of the previous years, denial of such benefit without assigning any reason was not sustainable.

**Tyco Electronics Singapore Pte Ltd. v. DCIT [ITA No. 1760/Del/2022 dated 05/09/2024]**

Note : THE FULL DECISIONS CAN BE DOWNLOADED FROM THE WEBSITE [WWW.CTCONLINE.ORG](http://WWW.CTCONLINE.ORG) UNDER SEMINAR PRESENTATIONS - UNREPORTED DECISIONS





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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



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**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 January, 2025

If undelivered, please return to :



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