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THE CTC NEWS

A Monthly Newsletter of The Chamber of Tax Consultants

(Private circulation for members only)

ज्ञानं परमं बलम्



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Vice President: **CA Anish M. Thacker**
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FORTHCOMING EVENTS

SR. NO.	DATE	COMMITTEE	PROGRAMME DESCRIPTION	VENUE	PG. NO.
1.	18-07-2019	Study Circle & Study Group	SC Meeting on Direct Tax Provisions of Finance Bill, 2019	Babubhai Chinai Hall, IMC, Churchgate	6
2.	20-07-2019	—	Shri Satyanarayan Puja	CTC Office	3
3.	23-07-2019	Indirect Taxes	IDT SC on Practical Issues regarding GST Annual Return and GST Audit	Jai Hind College, 4th Floor, Churchgate	6
4.	03-08-2019	International Taxation	Full Day Seminar on TDS U/s 195 on foreign remittances including procedural aspects	Hotel West End, New Marine Lines	7
5.	03-08-2019	Accounting & Auditing	Half Day Workshop on Amendments to SEBI Listing Regulations	Babubhai Chinai Hall, IMC, Churchgate	7
6.	09-08-2019	Study Circle & Study Group	SG Meeting on Recent Judgment under Direct Tax	Babubhai Chinai Hall, IMC, Churchgate	6
7.	10-08-2019	Student, Membership & Public Relations	5th CTC Football Cup	Dr. Antonio Da Silva High School, S. K. Bole Road, Opp. Kabutarkhana, Dadar (W)	8
8.	17-08-2019	Direct Taxes	Half Day Workshop on Practical & Legal Issues in Tax Audit	Walchand Hirachand Hall, IMC, Churchgate	6
9.	07-09-2019	Accounting & Auditing	Workshop on Assurances & Compliances	Babubhai Chinai Hall, IMC, Churchgate	9
10.	—	—	CTC Publications	—	9
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|| Shri Satyanarayana Puja ||

Dear Members,

We cordially invite you to grace **Shri Satyanarayana Puja** to be held on Saturday, 20th July, 2019 at CTC Office from 3 p.m. onwards for **Puja and Darshan**.

We earnestly request your presence on this occasion.

Interested members may enrol from the Chamber's website : www.ctconline.org to make the payment online. Outstation members are requested to make the payment online or send DD/at par Cheque in favour of The Chamber of Tax Consultants. Debit & Credit Cards are accepted.

BRIEF REPORT OF 92ND ANNUAL GENERAL MEETING

At the 92nd Annual General Meeting held on Thursday, 4th July, 2019, the following business was transacted:

- i) The Annual Report for the year 2018-19 was approved & adopted.
- ii) The Accounts for the year ended 31st March, 2019 were adopted.
- iii) Mr. J. L. Thakkar, Chartered Accountant, was appointed as Auditor for the year 2019-20 and will hold office up to the next AGM.
- iv) Results of the elections for the year 2019-20 were declared by the Election Officer, Shri Keshav Bhujle, Past President as follows:
 - CA Vipul K. Choksi was elected as President
 - The following fourteen members were elected to the Managing Council

1. Mr. Anish M. Thacker	8. Mr. Mehul R. Sheth
2. Mr. Bhadresh K. Doshi	9. Mr. Parag S. Ved
3. Mr. Devendra H. Jain	10. Mr. Pranav P. Kapadia
4. Mr. Haresh P. Kenia	11. Mr. Rahul K. Hakani
5. Mr. Heneel K. Patel	12. Mr. Rajesh L. Shah
6. Mr. Ketan L. Vajani	13. Mr. Rajesh P. Shah
7. Ms. Maitri P. Savla	14. Ms. Varsha Galvankar

THE DASTUR ESSAY COMPETITION:

Hon'ble Shri Justice D. S. Naidu, Bombay High Court was the Judge to decide the final winners of the Essay Competition.

The Top 3 Winners of the Essay Competition are:

Rank	Participant Name	Topic	Associates/College
1	Mr. Sushant Arsh Massey Khalkho	Trade wars or Territorial wars, the next global battle	National Law School of India University (NLSIU), Bangalore
2	Ms. Sanchi Dhamija	Feminism, a misunderstood concept today	Vivekananda Institute of Professional Studies, New Delhi
3	Ms. Hetvi Sanjay Valia	Feminism, a misunderstood concept today	HR College of Commerce and Economics, Mumbai

The winner of the Dastur Essay Competition viz Ms. Hetvi Sanjay Valia (3rd Winner) was felicitated by offering Trophy, Memento, Certificate and Cheque. Mr. Jagrat Bishan Shah (6th Winner), Mr. Ronak Chetan Thakker (7th Winner), Mr. Sayan Banerjee (8th Winner) & Ms. Joshita Chopra (10th Winner) were also felicitated by offering Appreciation Certificate and Mementos.

RELEASE OF PUBLICATIONS:

Hon'ble Shri Justice D. S. Naidu, Bombay High Court released the publication "International Taxation – A Compendium" and Dr. Y. P. Trivedi, Past President released the publication "Rigors of Section 56(2)(X)".

THE NEW TEAM FOR 2019-20

- i) In the First Managing Council Meeting held on Thursday, 4th July, 2019, the following members were elected as Office Bearers:

Sr. No.	Name	Designation
1.	Mr. Anish M. Thacker	Vice President
2.	Mr. Ketan L. Vajani	Hon. Jt. Secretary
3.	Mr. Haresh P. Kenia	Hon. Jt. Secretary
4.	Mr. Parag S. Ved	Hon. Treasurer

ii) **The following nine members were Co-opted to the Managing Council for the year 2019-20:**

- | | |
|-------------------------|------------------------|
| 1. Mr. Ashok Sharma | 2. Mr. Hitesh R. Shah |
| 3. Mr. K. Gopal | 4. Mr. Kishor Vanjara |
| 5. Mr. Mahendra Sanghvi | 6. Mr. Nilesh Vikamsey |
| 7. Mr. Paras K. Savla | 8. Mr. Paresh P. Shah |
| 9. Mr. Yatin Desai | |

iii) **EDITOR & EDITORIAL BOARD OF THE CHAMBER'S JOURNAL:**

Mr. V. H. Patil was appointed as the Chairman of the Editorial Board and Mr. Vipul B. Joshi was appointed as the Editor of "The Chamber's Journal".

Asst. Editors

- | | |
|------------------------|---------------------------|
| 1. Mr. Ajay Singh | 2. Mr. Ameya Kunte |
| 3. Mr. Haresh Chedda | 4. Mr. Manoj Shah |
| 5. Mr. Nishit Gandhi | 6. Mr. Paras K. Savla |
| 7. Mr. Rakesh Upadhyay | 8. Mr. Sanjay Parikh |
| 9. Mr. Vikram Mehta | 10. Mr. Yatin Vyavaharkar |

Editorial Board Members:

- | | |
|-----------------------|-----------------------|
| 1. Mr. A. S. Merchant | 2. Mr. K. Gopal |
| 3. Mr. Keshav Bhujle | 4. Mr. Kishor Vanjara |
| 5. Mr. Pradip Kapasi | |

iv) **COMMITTEES**

The following Committees were formed and their Chairman, Chairperson were appointed:

Committees	Chairman/Chairperson
1. Accounting & Auditing	Mr. Hencel Patel
2. Commercial & Allied Laws	Mr. Rahul Hakani
3. Direct Taxes	Mr. Devendra Jain
4. Indirect Taxes	Mr. Pranav Kapadia
5. International Taxation	Mr. Rajesh L. Shah
6. I.T. Connect	Ms. Maitri Savla
7. Journal	Mr. Bhadresh Doshi
8. Law & Representation	Mr. Mahendra Sanghvi
9. Membership & Public Relations	Mr. Rajesh P. Shah
10. Office Premises	Mr. Kishor Vanjara
11. Research & Publication	Mr. Paras K. Savla
12. Residential Refresher Course	Mr. Mehul Sheth
13. Student	Ms. Varsha Galvankar
14. Study Circle & Study Group	Mr. Ashok Sharma
15. International Taxation Journal	Mr. Paresh P. Shah

DELHI CHAPTER

The following members were appointed as the Chairman, Vice-Chairman and Office Bearers of Delhi Chapter:

1. Mr. Vijay Gupta	<i>Chairman</i>
2. Mr. Sanjiv Chaudhary	<i>Vice Chairman</i>
3. Mr. Deepender Kumar	<i>Jt. Hon. Secretary</i>
4. Mr. Prakash Sinha	<i>Jt. Hon. Secretary</i>
5. Mr. Harpreet Singh	<i>Hon. Treasurer</i>



DIRECT TAXES COMMITTEE

Chairman: Devendra Jain | **Vice Chairman:** Dinesh Poddar, Abhitan Mehta
Convenors: Nimesh Chothani | Viraj Mehta | Dharan Gandhi | **Advisor:** Mahendra Sanghvi

Half Day Workshop on Practical & Legal Issues in Tax Audit

Venue: Walchand Hirachand Hall, 4th Floor, IMC, Churchgate

Day & Date:
Saturday, 17th August, 2019
Time:
9.30 a.m. to 1.30 p.m.

Tax audit is something which is very close to a Chartered Accountant (‘CA’) as it remains in the exclusive domain of a CA. The Income-tax Department also heavily rely upon the information furnished by the CA in the tax-audit report. As a result, Form 3CD undergoes constant changes so as to get more and more relevant information for the Department.

It becomes imperative for a CA to understand the requirement of reporting under various clauses of the tax audit report in this increasing complex

environment involving ICDS, GST etc. Also, the law keeps on evolving with new judgments cropping up on various issues that are required to be reported in the tax audit report.

With a view to have a clause-by-clause analysis of the Tax audit report, the Direct Tax Committee has organised a Half-day Workshop on the subject. There shall be two sessions and both the speakers shall be allotted certain clauses of the tax audit report.

Sr. No.	Topics	Speakers
1.	Tax Audit - It would cover clause by clause analysis with reporting requirements under clause 1 to 12, 15 to 20 and 22 to 26 and clause 29A, 29B, 30A, 30B, 36A, 42, 43 of Form 3CD, legal issues in applicability of tax audit u/s 44AB, 44AD and 44ADA, in presumptive taxation cases and calculation of limits, e-filing issues, Tax Audit Documentation, and relevant recent judicial pronouncements dealing with the disclosure requirement of the Tax Audit Report.	CA Anil Sathe
2.	Tax Audit - It would cover clause by clause analysis with reporting requirements under clause 13 (ICDS), 14, 21 and 27 to 41(Except Clause 30A, 30B, 30C) of Form 3CD, Tax Audit Documentation and relevant recent judicial pronouncements dealing with the disclosure requirement of the Tax Audit Report.	CA Mahendra Sanghvi

Fees	
Member	₹ 800/- + ₹ 144 (18% GST) = ₹ 944/-
Non-Member	₹ 1,000/- + ₹ 180 (18% GST) = ₹ 1,180/-



STUDY CIRCLE & STUDY GROUP COMMITTEE

Chairman: Ashok Sharma | **Co-Chairman:** Dilip B. Sanghvi | **Vice Chairman:** Sanjay Choksi
Convenors: Dinesh R. Shah | Dipesh Vora | Dhaval Shah | **Advisor:** Vipul Joshi

Study Circle Meeting (For SC Members Only)

Venue: Babubhai Chinai Hall, 2nd Floor, IMC, Churchgate, Mumbai-400 020.

Subject : Direct Tax Provisions of Finance Bill, 2019 | **Group Leader :** CA Praful Poladia

Day & Date:
Thursday, 18th July, 2019
Time:
6.15 p.m. to 8.00 p.m.



STUDY CIRCLE & STUDY GROUP COMMITTEE

Chairman: Ashok Sharma | **Co-Chairman:** Dilip B. Sanghvi | **Vice Chairman:** Sanjay Choksi
Convenors: Dinesh R. Shah | Dipesh Vora | Dhaval Shah | **Advisor:** Vipul Joshi

Study Group Meeting (For SG Members Only)

Venue: Babubhai Chinai Hall, 2nd Floor, IMC, Churchgate, Mumbai-400 020.

Subject : Recent Judgments under Direct Taxes | **Group Leader :** Mr. Ajay R. Singh, *Advocate*

Day & Date:
Friday, 9th August, 2019
Time:
6.15 p.m. to 8.00 p.m.



INDIRECT TAXES COMMITTEE

Chairman: Pranav Kapadia | **Co-Chairman:** Atul Mehta | **Vice Chairman:** Sumit Jhunjhunwala
Convenors: Hemang Shah | Kush Vora | Keval Shah | **Advisors:** A. R. Krishnan, Rajiv Luthia

INDIRECT TAX STUDY CIRCLE MEETING (For IDT SC Members Only)

Venue: Jaihind College, A. V. Room, 4th Floor, A Road, Churchgate, Mumbai-400 020

Subject : Practical Issues regarding GST Annual Return and GST Audit

Group Leader : CA Vikram Mehta & CA Vasant Bhatt

Day & Date:
Tuesday, 23rd July, 2019
Time:
4.30 p.m. to 8.30 p.m.



INTERNATIONAL TAXATION COMMITTEE

Chairman: Rajesh L Shah | **Vice Chairman:** Kirit Dedhia, Harshal Bhuta

Convenors: Isha A. Shekhri | Ronak Doshi | Kartik Mehta | **Advisor:** Dilip J. Thakkar

Full Day Seminar on TDS u/s. 195 on Foreign Remittances including Procedural Aspects

Venue: Hotel West End, Terrace Hall, New Marine Lines, Mumbai-400 020

Day & Date:

3rd August 2019

Time

9.30 a.m. to 5.30 p.m.

Dear Colleagues,

Withholding tax under section 195 is a topic which is dealt with very frequently by almost all tax professionals. With developments like BEPS / MLI, POEM and GAAR, the practice of international taxation in fields like advising on applicability of section 195 and issuing certificates under Form No. 15CB has undergone a qualitative change.

There are many issues surrounding the same which one needs to be abreast of. The International Tax Committee is therefore pleased to announce a seminar on section 195 to focus on key issues surrounding the advisory and certification under section 195.

The organizers of the seminar invite all lawyers, chartered accountants, tax professionals in industry to participate in high numbers and also encourage junior members to participate in this unique seminar.

Fees

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

Non-Members ₹ 1,750/- + ₹ 315/- (18% GST) = ₹ 2,065/-

Note: Fees are inclusive of course material, breakfast, lunch and afternoon tea / coffee.

Sr. No.	Topics	Speakers
1.	Overview of Section 195	CA Vispi T. Patel
2.	Recent Developments under Section 195, Section 195 versus Section 197, Issues of online application, Dependent Agent Permanent Establishments and Practical Problems in Issuing Form No. 15CB	CA N. C. Hegde
3.	Recent Developments and Controversial Issues in taxation of Interest, and Capital Gains (including gains on sale of immovable property) including Indirect Transfers and impact of Section 195	CA Vishal Gada
4.	Recent Developments and Controversial issues in taxation of Non-Residents on FTS & Royalty Income and TDS under Section 195, Reimbursements Agency Commission, e-Commerce and Digital Transactions, Payment to Professionals, Software Payments, Exhibitions etc.	CA Shabbir Motorwala
5.	Recent Developments and controversial issues in Taxation of Income of Non-Resident from Shipping & Aircraft (including Logistics & Transportation sector)	CA Vishal Shah
6.	Brains' Trust Session including Case Studies and Q & A under Section 195 of the Act	Chairman: CA T. P. Ostwal Panelists: CA Sushil Lakhani Shri M. P. Lohia, Ex-IRS



ACCOUNTING AND AUDITING COMMITTEE

Chairman: Heneel Patel | **Vice Chairman:** Tejas Parikh

Convenors: Arpita Desai | Deepak Shah | **Advisor:** Jayesh Gandhi

Half Day Workshop on Amendments to SEBI Listing Regulations

Venue: Babubhai Chinai Hall, 2nd Floor, IMC, Churchgate, Mumbai-400 020

Day & Date:

Saturday, 3rd August, 2019

Time:

9.30 a.m. to 1.30 p.m.

Pursuant to the Kotak Committee recommendations, the SEBI listing Regulations have been amended *vide* SEBI Circulars issued on 9th May 2018 and 10th May 2018. The amended Regulations are

applicable from 1st April, 2019. The Workshop is being organised to educate the members on the important aspects of the revised SEBI Listing Regulations

Fees:

Member ₹ 750/- + ₹ 135/- (18% GST) = ₹ 885/-

Non-Member ₹ 1,000/- + ₹ 180/- (18% GST) = ₹ 1,180/-

Sr. No.	Topics	Speakers
1	Overview of the Amendments to the Listing Regulations	CS Makarand Joshi
2	Accounting & Auditing related matters and disclosure requirements	CA Suresh Yadav



STUDENT COMMITTEE

Chairperson: Varsha Galvankar | **Vice Chairman:** Vitang Shah | **Vice Chairperson:** Niyati Mankad
Convenors: Sachin Maher | Charmi G. Shah | **Advisor:** Ajay R. Singh

MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Chairman: Rajesh P. Shah | **Co-Chairman:** Sachin Gandhi
Convenors: Premal Gandhi | Ashita Shah | **Advisor:** Bhavesh Vora

5th CTC Football Cup

Venue: Dr. Antonio Da Silva High School, S. K. Bole Road, Opp. Kabutarkhana, Dadar (W), Mumbai-400 028.

Day & Date:
Saturday, 10th August, 2019
Time:
2.30 p.m. to 8.00 p.m.

The game of life is a lot like football. You have to tackle your problems, block your fears, and score your points when you get the opportunity - *Levis Grizzard*

Football is like our profession - it requires perseverance, self-denial, hard work, sacrifice, dedication and respect for authority. To continue the football fever, the Student Committee and Membership & Public Relations Committee has organised the 5th edition of the CTC Football Cup on special turf, the details of which are as under:



Duration of each match	25 minutes plus 5 minutes half time break
Each Team consist of	7 players plus 2 rolling substitutes
Participants allowed	Members of CTC, their friends, family members and Articled/Trainees
Participation Fees	<p>a. CA Firms ₹ 7,500/- + ₹ 1,350/- GST = ₹ 8,850/- (9 Members Team)</p> <p>b. CTC Members (Individual Player) ₹ 500/- + ₹ 90/- GST = ₹ 590/-</p> <p>c. CTC Student Members (Individual Player) ₹ 300/- + ₹ 54/- GST = ₹ 354/-</p> <p>d. Non-Members (Individual Player) ₹ 700/- + ₹ 126/- GST = ₹ 826/-</p> <p>e. Guest ₹ 200/- + ₹ 36/- GST = ₹ 236/-</p> <p>(Including Tea & Refreshments)</p>

You are invited to enroll as a team or individual player or be a spectator to cheer the players of the CTC.

Mandatory for players

- To wear T-shirt, shorts & sports shoes during the Tournament. (Stud Shoes shall not be allowed).
- To report at the venue on time.
- To be physically fit (the CTC or organisers shall be in no way responsible for any injury or health problems occurring to any member/guest.)

Prizes will be awarded to the Winning Team, Runner-up Team and for Overall Best Player. Participation Trophy/

Certificates will be given to all participants. The rules shall be intimated to the players in advance.

Kindly note

- Players' selection/allocation to a team for individual enrolments shall be done by the organisers, which shall be final & binding.
- Decisions of CTC, its Office Bearers and the Match Referee will be final and binding on all the participants and supporters.

Enrolment will be accepted on a 'first come first serve' basis.

Interested members/students may send their enrolment along with player's participation fee to the Chamber's office on or before 5th August, 2019 in the following format:

Name	Mobile No.	E-mail ID	Age	Level of experience, if any, of playing Football	Firm / Individual	Food preference (Veg / Jain)

(For Firm Entry – Please submit only one form with full details of players.

For further details you may please contact: **Mr. Bhavik Shah : 9833022289, Mr. Ankit Sanghvi-9820689003 Mr. Hitesh Shah-9821889249**

Soooooo Let's Football!!!



ACCOUNTING AND AUDITING COMMITTEE

Chairman: Heneel Patel | **Vice Chairman:** Tejas Parikh
Convenors: Arpita Desai | Deepak Shah | **Advisor:** Jayesh Gandhi

Workshop on Assurances & Compliances

Venue: Babubhai Chinai Hall, 2nd Floor, IMC, Churchgate, Mumbai-400 020

Day & Date:
Saturday 7th September, 2019
Time:
9.30 a.m. to 6.30 p.m.

ABOUT THE PROGRAMME

Auditing profession has continued to see unprecedented change. The accelerating pace of change in advancing technologies relating to data, process automation, advanced analytics, cognitive and emerging innovations will play a pivotal role. New technologies are important and need to be matched with the people who know how to effectively use these tools. Clients are increasingly expecting the auditor to provide a more forward looking view and insight that can add value to their organisations.

Companies Act has finally provided for an independent statutory regulator - 'NFRA' for matters relating to accounting and auditing standards. With effect from April 1, 2018, new audit reporting formats are applicable that have completely changed the manner of audit reporting. In view of the comprehensive changes which have been made by ICAI, there is a need to provide guidance to the members so that they can discharge their reporting responsibilities under these standards Effectively.

Accordingly, Accounting and Auditing Committee (A/A) of The Chamber of Tax Consultants is pleased to organize a workshop on Assurances & Compliances where you can interact with subject matter experts and deliberate on the key aspects.

The programme would facilitate understanding various recent developments in Companies Act and auditing of the financial statements including the changes in reporting requirement under SA 700, 701 & 720.

WHO SHOULD ATTEND

- i) Auditors involved in verification of financial statements prepared under applicable financial reporting framework.
- ii) Accountants department members involved in the daily operations.

Fees:	
Member	₹ 1,250/- + ₹ 225/- (18% GST) = ₹ 1,475/-
Non-Member	₹ 1,500/- + ₹ 270/- (18% GST) = ₹ 1,770/-

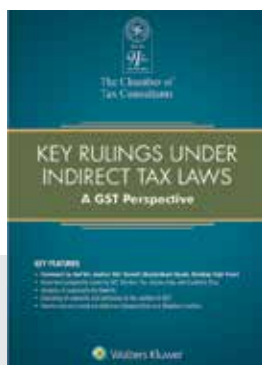
Sr. No.	Topics	Speakers
1.	Recent Amendments under the Companies Act and Auditors Responsibilities	Eminent faculties will address the Workshop
2.	Audit Approach – Small & Medium Enterprises	
3.	Audit Evidence & Written Representations	
4.	Audit Conclusions — Forming Opinion & Reporting on Financial Statements — Communicating Key Audit Matters [in the context of small and medium enterprises] — Responsibilities relating to other information	

CTC PUBLICATIONS

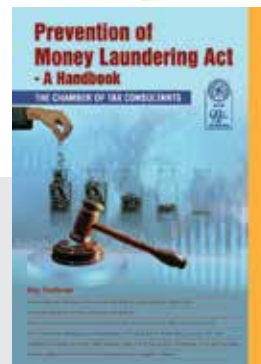
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UNREPORTED DECISIONS OF TRIBUNAL

By **Ajay R. Singh**, Advocate

1. **S 263 - Revision – Merger - The taxability of the rental income was subject matter of appeal before Commissioner (Appeals) - Commissioner could not exercise powers u/s. 263.**

The assessee company is engaged in property development. During assessment proceeding the assessing officer while passing the assessment order treated the lease rental income of Rs.11,78,29,224/- as income from 'other sources'.

On appeal before CIT(A), the lease rental income was allowed as 'business income'. No further appeal before Tribunal was filed by revenue. Subsequently, the Id. Pr. Commissioner issued a show cause notice u/s. 263.

In the show cause notice the Id. Pr. Commissioner show caused as to why the assessment order passed under section 143(3) be not set aside directing the AO to pass the assessment order afresh *qua* the treatment given to lease rental income. As per the Id. Pr. Commissioner, the lease income was liable to be assessed under the head "Income from House Property". The assessee filed its reply stating that as per the doctrine of the merger the assessment order passed u/s. 143(3) dated 19.01.2015 merged with the order of appellate authority.

On appeal the Tribunal held that the Commissioner (Appeals) examined the taxability of the rental income after deep analysis of the facts. Factually, the appraisal shows that the issue regarding the nature of lease income was the subject matter of assessment by the AO and also the adjudication by the Id. CIT(A) thereafter. The Id. Pr Commissioner issued show cause notice u/s. 263 for proposed revision of the assessment order on the ground that the lease income be assessed as income under the head as "House Property". In reply to the show cause notice the assessee specifically stated that the subject matter of proposed revision was considered in the appeal by Id. Commissioner (A) while deciding the appeal of the assessee, therefore, as per doctrine of merger the assessment is merged with the order of Id. Commissioner (A). The taxability of the lease rental income was examined and considered by Id. Commissioner (A) and thereby considering the doctrine of merger, once the issue has been examined and decided by Id. Commissioner (A), the revision order u/s. 263 cannot be made.

Thus, in the present case, the Id. Pr Commissioner was wrong in revising the assessment order on the taxability of rental income as income from house property. Therefore, the order passed by him is not valid.

M/s. Amazia Developers Pvt vs. DCIT-1(1)(1), ITA No.2499/Mum/2017, DOH: 08/05/2019 (Mum.)Trib.)

2. **S 79 - Losses - Set-off and carry-forward of loss- in applying section 79 only business loss should be taken into account and not unabsorbed depreciation.**

The assessee claim carry forward of business losses on account of set off of brought forward business losses including unabsorbed depreciation which was not allowed by the AO for the reason that the share holding pattern of the assessee company has changed up to 99.99% of the shares which was originally held by Abener Engineering & Construction, LLC it transferred to its 100% holding company Abener Energia, S.A. thus although transfer of shares during the year there was no change in the ultimate beneficiary shareholder which continue to be ultimate holding of Abener Energia, SA. The AO therefore, disallowed the carry forward of business losses of ₹ 10,90,40,397/- including the unabsorbed depreciation of ₹ 59,26,702/-.

The CIT(A) held that in this case, the shareholding of the assessee has changed entirely to the extent of 99.99% and hence, the provisions of section 79 of the Act are squarely applicable. The AO has rightly not allowed the carry forward of the losses. The assessee has raised a without prejudice ground that the unabsorbed depreciation should be allowed as the same is not covered within the purview of section 79 of the Act. The Hon'ble Apex Court in the case of *CIT vs. Subbulaxmi Mills Ltd. [249 ITR 795]* has held that section 79 of the Act applied only to business loss and not to unabsorbed depreciation. This principle has been subsequently followed in plethora of decisions. The assessee has submitted that of the loss disallowed to be carried forward of ₹ 10,90,40,397, unabsorbed depreciation was ₹ 59,26,702. CIT(A) was of the view that unabsorbed depreciation is not a loss but allowance u/s 32 of the Act. Accordingly, directed that the assessee be allowed the carry forward of losses to the extent of unabsorbed depreciation after due verification is made by the AO.

Tribunal held that the CIT(A) has rightly directed the AO to delete the disallowance of unabsorbed depreciation and hence, the appeal of Revenue was dismissed.

DCIT-15(1)(1). vs. Abeinsa Business Development Pvt. Ltd, ITA No. 1183/Mum/2018, DOH: 08/05/2019 (Mum)Trib)

3. **S.271(1)(c) - Penalty - Penalty is not to be imposed if there is no conscious breach of law.**

The levy of penalty was on two counts. One issue was the claim of depreciation on the premises which was let out. Assessee's submission in this regard was that the said premises was also partly used by the assessee for godown. This was rejected by the assessing officer, and assessee's appeal against the above was sustained by the CIT-A. Another issue was claim of the assessee that it was not liable to taxation under MAT provisions u/s. 115JA was rejected on the ground that assessee's case was falling u/s. 115 JB. Inasmuch as assessee was not situated in a notified Special Economic Zone. Penalty u/s 271(1)(c) was also levied on the above issues. The CIT-A also sustained the penalty on the ground that the claim of the assessee was patently dubious.

The Tribunal held that as regards the claim of depreciation on which penalty has been levied, the assessee's claim, was that it was also using the said let out premises as godown has been rejected. This aspect has to be looked from the point of view that the said prices was let out to the assessee's wife itself. Hence the assessee claim that the said prices was also being partly used for godown purposes cannot be said to be ex facie bogus. It was observed that assessee's conduct in this regard cannot be said to be contumacious warranting levy of penalty.

As regards the levy of penalty on account of tax u/s. 115 JB under MAT is concerned, the assessee's claim was that it was falling under 115 JA. This claim was also supported by the certificate of the auditors. In this view of the matter assessee's conduct cannot be said to be contumacious warranting levy of penalty. If the claim was wrong the responsibility was that of the auditor who duly certified the same. Hence it was a mistake on the part of the auditor and the assessee cannot be visited with penalty for the mistake of its consultant. In this regard reliance was placed on the case of *Hindustan Steel vs. State of Orissa 83 ITR 26*, wherein it was held that the authorities may not levy the penalty if the conduct of the assessee was not contumacious. The levy of penalty was deleted.

M/s. Kamdar Private Ltd. v DCIT 1(2), ITA No. 6589/Mum/2017, DOH: 03/06/2019 (Mum)Trib)

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

UNREPORTED DECISIONS (SERVICE TAX)

By Vinay Jain & Sachin Mishra, *Advocates*

1. **Whether the service tax paid on commission paid to insurance agents under “Insurance Auxiliary Service” under reverse charge mechanism and then recovered from insurance agents is required to be deposited to the government as per Section 73A(2) of Finance Act, 1994? Whether pre-recruitment training and post-recruitment training expenses should be included in the taxable value of commission paid to the insurance agents for the purposes of discharging service tax?**

Facts and Pleading: The appellants are *inter-alia* engaged in the business of providing life insurance services. The appellants appointed various individuals as insurance agents for selling life insurance products. The appellants were discharging service tax on the commission paid to such insurance agents under reverse charge mechanism. As per terms of agreement, the appellant recovered a portion of the aforesaid service tax paid by them from such insurance agents. Further, the Appellants also incurred certain expenditure on pre-recruitment training and post-licence training on insurance agents. These expenses were in the nature of booking of conference hall, arranging of faculties, travelling, etc.

- (i) The department alleged that appellants have wrongly collected the said service tax from the insurance agents and have not deposited the same with government exchequer. Thus, appellants are liable to deposit the said amount to Government exchequer under Section 73A(2) of the Finance Act, 1994. (ii) Further, the department alleged that the aforesaid pre-recruitment training and post-licence training expenses incurred by Appellants on the insurance agents should be included in the gross taxable value of the services rendered by such insurance agents.
- (ii) The Appellants argued that Section 73A(2) of the Finance Act, 1994 will apply only in cases wherein the person is not liable to pay service tax. When the person is liable to pay service tax, the same is covered under Section 73A(1) of the Finance Act, 1994. The Appellants are covered under Section 73A(1) and not under Section 73A(2). However, present demand is under Section 73A(2) and therefore, not sustainable. Otherwise also, whatever amount was collected from the insurance agents the same has been paid to the government exchequer. Therefore, the second recovery will not lie. Reliance was also placed upon *Mafatal Industries Ltd & Ors. vs. UOI*, (1997)5 SCC 536 to contend that that once the excise duty is paid on clearance, it will not be payable again on collection from the buyers. Further, the Appellants contended that contractually tax liability can be shifted from one person to another and relied upon decision of Supreme Court in the case of *Rashtriya Ispat Nigam Limited vs. Dewan Chand Ram Saran*, 2012 (26) STR 289 (SC).
- (iii) The appellants also argued that there was no bar under the law to recover tax paid by assessee from any other person. Further, the appellants argued that the pre-recruitment expenses were not liable to be included in the taxable value of the services rendered by the insurance agents on the count that the persons who received such pre-recruitment training were not registered as insurance agents under Insurance Act. Further, on post-licence training expenses, the appellants submitted that these expenses incurred by the appellant in providing training facilities to the Insurance Agents are in fact used by the appellant itself in furtherance of their own routine insurance business. The appellants also relied upon decision in *Bhayana Builders Case*, 2018-TIOL-66-SC-ST and *Intercontinental Consultants & Technocrats Pvt. Ltd.*, 2018-TIOL-76-SC-ST to submit that whatever has been agreed between the parties can only form part of taxable value and in any case reimbursement of expenditure cannot form part of taxable value.

Judgment: (i) The Hon’ble Appellate Tribunal accepted the submissions of the appellants and relied upon the decision of *HDFC Standard Life Insurance Co. Ltd. Vs. Commr. C.E, Mumbai-II 2017 (49) STR 301(Tri-Mum.)* to grant relief to assessee. The Appellate Tribunal after extensive analysis of Section 73A(1) and (2) of the Finance Act, 1994 held in favour of assessee that once the tax has been discharged, no further liability will arise. (ii) Further, the Hon’ble appellate Tribunal agreed with the submission of the appellant that expenses incurred in pre-recruitment training and post-licence training of insurance agents by the Appellants cannot form part of the gross taxable value of commission paid to the Insurance Agents in determining the service tax liability as reimbursement of expenditure cannot form part of taxable value.

Bajaj Allianz Life Insurance Co. Ltd. vs. CST, CESTAT, Mumbai, decided on 31.05.2019 in the Final Order No. A/86013-86023/2019.

2. **Whether the activity of operating power plants can be equated to “Management of Immovable Property” for the purpose of the definition of “Maintenance or Repair Service” under Section 65(64)? Whether operation fees and maintenance fees charged for operating and managing power plants is thus taxable under the Finance Act, 1994?**

Facts and Pleading: Wartsila India Ltd., (hereinafter referred to as the ‘Appellant’) is engaged in the business of operation of power plants and generation of electricity therefrom. The appellants have entered into operation and maintenance agreements with various customers at various locations, most of whom belong to the steel and automobile industry. As per the said agreements, the appellants have undertaken the primary activity of running the power plant for generation of electricity for which operation fee and maintenance fee is charged to the customer. The appellants were paying service tax on the maintenance fee so collected.

The case of the department was that the power plant is an immovable property and the operation thereof amounted to “management of immovable property”. Thus, the department contended that the “operation fee” so charged is liable to service tax under the category “Maintenance or Repair Service”.

The Appellant submitted that the principle of **Noscitur A Sociis** would apply to construe the term “management” as mentioned in the definition of “Maintenance or Repair Service” under Section 65(64) and would not include in its ambit operational activities. The Appellant further submitted that management and operation are distinct functions of an organization. Where the former is associated with overall superintendence of work, the latter is concerned with actual execution of daily functions. Since the Appellants were directly involved in running the power plant for the generation of electricity themselves, any maintenance work done was merely incidental to the generation of electricity. Hence, the scope of their operations could not be covered under “management of immovable property” and was thus outside the purview of being taxable under the head of “Maintenance or Repair Services”.

Judgment: The Hon’ble Appellate Tribunal held that management of immovable property does not include operation activities. The Hon’ble Appellate Tribunal held that since the sole purpose of the Appellant was the actual task of generating electricity and not the management of the power plant, any maintenance done would be incidental to the generation of electricity. Hence, the Hon’ble Appellate Tribunal held that neither is taxable under the head of “Maintenance or Repair Services”.

Wartsila India Ltd. vs. CST, CESTAT, Mumbai, decided on 14.06.2019 in the Final Order No. A/86114/2019.

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