



RNI No. MAHENG/2015/67505 | Postal Reg. No. MCS/210/2019-21
Vol. VII Issue 10 | April 2020 | Total Pages -12 | Price ₹ 2/-

THE CTC NEWS

A Monthly Newsletter of The Chamber of Tax Consultants

(Private circulation for members only)

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FORTHCOMING EVENTS

SR. NO.	DATE	COMMITTEE	PROGRAMME DESCRIPTION	VENUE	PG. NO.
1.	18-06-2020 to 21-06-2020	International Taxation	14th Residential Conference on International Taxation	Alila Diwa Goa, 48/10, Adao Waddo, Majorda, Goa-403713	4-5
2.	—	—	Renewal Notice - 2020-21	—	6
3.	13-05-2020	—	Notice of Election	The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020	7
4.	—	—	Unreported Decisions - Service Tax	—	8-9
5.	—	—	Unreported Decisions - Tribunal	—	9-11

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

COVID-19, A MILLENIAL DOCTOR'S PERSPECTIVE

On a bright Saturday morning, I see my father get dressed. And as I ask him as to where he is off to on a Saturday, I hear these profound words “No matter what, everyday you must wear PANT, not PYJAMA.” Confused with this weird sentence regarding choice of garment, I ask him what it means. To this he says it means that one should not stop working and sit at home as an “idle mind is a devil's workshop”. Today, as we all are in the face of this pandemic, because of the outbreak of the novel strain of Corona Virus or **COVID-19**, it is time to bust the myths associated with **COVID-19** and talk about the right things to do. The biggest dilemma being, “How can I not go to work? Things can't stay shut forever, right?”

We, as responsible citizens and as educated individuals, should know what news and information to filter out and where to look for information that can be trusted. In my opinion, one of the biggest culprits and cause of panic are these frivolous WhatsApp forwards and clips. We need “Social Distancing” from Social media as well. We should stick to authentic sources of information like the World Health Organization (WHO) website to understand this disease better. Amidst this crisis, what can we do to be safe and keep our family safe?

Jumping to some quick facts: **COVID-19** is a novel strain of coronavirus. Novel strains are strains which have mutated and have never infected humans before. The origin of this virus is believed to be from bats and started in Wuhan district of China in 2019 and has erupted to become a Pandemic. **COVID-19** can affect individuals of all age groups with people suffering from immunocompromised states, diabetics and asthmatics being at a higher risk. It affects the geriatric population more as the immune system naturally, is not as strong as we grow older. The symptoms of infection with coronavirus are very similar to common cold, having flu like symptoms; making it difficult to screen all the people with such symptoms and are a major reason for social panic. We should see a doctor if we experience symptoms of high fever, cough, shortness of breath, fatigue or malaise. The most probable way of contracting this infection is by coming in contact with people who have been infected or have had recent travel history. As of today, 169 countries have been affected. Since 86% of people who have the infected virus, do not show symptoms, it is difficult to realize if we have been in contact with an infected person or no. But this is not a reason to panic, if you take the right precautions.

What precautions should we take to protect others and ourselves?

The virus is a respiratory virus. The biggest myth is that you should always wear a mask. As per WHO guidelines, wear a mask if you are infected, if you are coming in contact with infected people (like healthcare professionals) or as a safety tool in public places

like Airports where we don't know who is infected and who is not. Maintain a distance of 1 meter or 3 feet from people to avoid transmission. The virus is spread via droplet transmission that is if an infected person sneezes or coughs in the open, those droplets contain virus and can infect other people. Hence as a part of routine hygiene, we should always carry a handkerchief or tissue and cover our mouths when we cough or sneeze. Droplets can also be transmitted to your hands if and can reach your respiratory tract if we touch our mouth or nose with our hands. Hence it is of utmost importance to wash our hands at regular intervals, with soap and water preferably for at least 20 seconds. If soap and water is not available, use hand sanitizer containing alcohol. Wearing and taking off a mask also have its methods and the most important thing is that we do not touch the front of the mask at all times. On a regular basis, we do not realize how much we touch our face, and we should actively avoid that. These are simple sanitary measures that we need to incorporate in our daily lifestyle to stay away from a bunch of communicable diseases and cultivate as good habits. If there are outsiders visiting your house or office, if and if only it is completely important and necessary, make sure you make them wash their hands first and maintain a 1 meter distance from them. Avoid travelling until absolutely necessary and avoid any kind of public gatherings and public spaces. Self - quarantine and correct precautions are the need of the hour and a great opportunity to spend time at home with family.

Coming to a different tangent of how India needs to open more testing centres and screen more people, given our population of 130 crores, it is extremely sad that we devote one of the lowest percentages of our budget towards healthcare.

I took the liberty to express that out to the right people. And for now, you must wear PYJAMA, not PANT.

We should also respect and express our gratitude towards the healthcare professionals and the Government for giving their best to contain this pandemic. The “Janata Curfew” and the nationwide lockdown for 21 days as announced by PM Modi is a step in the right direction, laying emphasis on the concepts of Resolve and Restraint. The Maharashtra Government has also taken necessary measures by requesting all private offices to remain closed and that all Government Offices will run at 25% capacity. The Government is doing its best by providing essentials to the people and keeping grocery stores open 24/7, but we need to take our precautions the moment we leave our house. We should co-operate and contribute towards this situation by being responsible and obedient citizens, thus saving our lives and others.

— Dr. Harsh Thacker (M.B.B.S.)



INTERNATIONAL TAXATION COMMITTEE

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

Convenors: Isha Sekri, Kartik Mehta, Raunak Doshi **RRC Mentor:** Dilip J. Thakkar, T. P. Ostwal, Padamchand Khincha

Conference Directors: Shreyas Shah, Kartik Mehta

14th Residential Conference on International Taxation

Venue: Alila Diwa Goa, 48/10, Adao Waddo, Majorda, Goa-403713

Days & Dates:

Thursday, 18th June, 2020 to
Sunday, 21st June, 2020

Keeping in mind the words of Benjamin Franklin, “An investment in knowledge always pays the best interest”, along with the ever changing and dynamic web of international taxation, the 14th Residential Conference on International Taxation could not come at a better time. Year-after-year, the RRC helps bring together eclectic and experienced professionals as well as young and enthusiastic minds to trade thoughts and ideas, providing a retreat from the mundane lives to reflect upon the continually transforming policies in the tax arena.



In the 14th RRC, we plan to focus on the advanced principles on interpretation of the tax treaty and have revisited the relevance of nexus in terms of distribution rules and attribution rules, and the extent of its paradigm shift, in light of multi-fold developments that has taken place in international tax arena. We will also get an advanced glimpse of how Multinational Companies strategise and restructure their supply chain models, keeping in mind the cross border commercial and tax considerations. Also, special sessions are planned on the conceptual understanding of the arm’s length principle in comparison with the OECD Pillar 1 and Pillar 2 proposals; Combined analytical study on various economic laws in India, such as FEMA, PMLA, etc.; and Case-study and Research-study based discussion on international tax issues. Our aim is to

About Goa

From its gorgeous beaches and lush paddy fields to its rich heritage and traditions rooted in its colonial past, Goa offers a wondrous mix of nature, culture and lifestyle to take a much-needed breather and experience this unique conference.

About Hotel Alila Diwa Goa

Alila Diwa Goa, a five star resort and part of Hyatt Group offers a beautiful Balinese-style property set amongst coconut groves and surrounded by verdant rice paddies. Off-site meetings take on a whole new meaning with Alila Diwa Goa’s ‘Leisure Conferencing’ concept, with its magnificent meeting spaces and its detailed oriented service team.

have an analytical discussion on micro-level issues and further discussion on planning the way forward.

The 14th Residential Conference on International Taxation will be held from Thursday, 18th June, 2020 to Sunday, 21st June, 2020 at Alila Diwa Goa, and promises to be an exciting event for a thorough exchange of knowledge and ideas in this evolving field.

The outline of the topics to be discussed at the conference is as under:

Sr. No.	Group Discussion	Speakers
1.	<p>An Art yet to be Mastered: Advanced Principles on interpretation of key tax treaties in light of recent developments</p> <p>(i) To understand the approach to define the undefined terms (Art. 3(2) and its corresponding interpretation issues.</p> <p>(ii) Relevance of the OECD Commentary and the MLI explanatory statement from an Indian judiciary perspective; and interpretation issues in Triangular and Tax paring situations.</p>	CA Gautam Doshi
2.	<p>Emerging concept of nexus in the context of business and its paradigm shift, other than digital taxation</p> <p>(i) Changing concept of ‘operations in India’ from the perspective of business connection and permanent establishment.</p> <p>(ii) Relevance of ‘effectively connected’ to PE in terms of Royalties, FTS.</p> <p>(iii) To note the differences and similarities of nexus for each income under different classification rules.</p>	CA Padamchand Khincha

Sr. No.	Group Discussion	Speakers
3.	Cross-border supply-chain strategies and restructuring options, focusing on prudent manufacturing & distribution practices (i) From the perspective of mitigating Permanent Establishment risks and other tax risks, considering PPT/GAAR (ii) From the perspective of multi-classification of income under the Act and under the Tax Treaty. (iii) From the perspective of Full-fledged business model, Outsourced Model, Franchise model or Licensed Model (including use of EULA for software sale).	Senior Eminent Faculty
Presentations		Speakers
1.	Finding the right balance: Tax transparency and Protection of taxpayers' rights (including those of consultants and non-executive directors) (i) Judicial precedents that protects Entrepreneurs' that rely on tax advisor's opinion; past decisions covering on similar matter. (ii) Judicial precedents on curtailing territorial nexus, from the perspective of digital business, etc. (iii) Noting risk factors when non-executive director is proposed to be the chairman (separate from CEO/MD) under the Listing Rules	Hon'ble Vice-President of ITAT Shri Pramod Kumar
2.	Discussion on the OECD Unified Approach (i) OECD Pillar 1 and Pillar 2 proposals (ii) Comparison with the emerging concept of ALP and nexus rules.	CA Shefali Goradia
3.	Use of data (including from CBCR, TIEA, use of technology, etc.) for determining evasion	Fire side chat by CA T. P. Ostwal with Mr. Akhilesh Ranjan, Ex-Member, CBDT
4.	Issues relating to Royalties - use of Patent, Software and Technology	CA Himanshu Parekh
Panel Discussion		Speakers
1.	Understanding actions across different economic laws: PMLA, Black Money, Benami, Corporate Laws	CA Dilip J. Thakkar CA Dr. Dilip K. Sheth Senior Eminent Faculty
2.	Case Studies on attribution of business profits, with DEMPE and FAR analysis and attribution data points (including digital taxation)	CA Vispi Patel & CA Shefali Goradia
3.	Case Studies on International Taxation (including issues on High Net Worth Individuals)	CA Pinakin Desai CA T. P. Ostwal CA Dileep Choksi Shri S. Ganesh, Senior Advocate*

*Subject to Confirmation

A host of entertainment activities have been planned as well.

Fees structure for residential participants is under:

Residential participants – Twin sharing room

Particulars	Fees up to 15th May, 2020	Fees from 16th May, 2020
Members	₹ 19,000/- + ₹ 3,420/- (18% GST) = ₹ 22,420/-	₹ 21,000/- + ₹ 3,780/- (18% GST) = ₹ 24,780/-
Non-Members	₹ 20,000/- + ₹ 3,600/- (18% GST) = ₹ 23,600/-	₹ 22,000/- + ₹ 3,960/- (18% GST) = ₹ 25,960/-

The fees include

• **Pick up and drop facility from airport/Madgaon Railway Station, subject to advance intimation • 3 Nights-4 days accommodation on double occupancy basis • All meals starting with lunch on 18th June 2020 and ending with lunch on 21st June, 2020. • Course Material**

NOTES:

- RRC will commence from lunch at 1.00 p.m. on Thursday, 18th June, 2020 and end by 2.00 p.m. (after lunch) on Sunday, 21st June, 2020.
- Check in time at hotel is 1.00 p.m. (subject to availability of rooms) on Thursday, 18th June, 2020. The sessions will start at 3.00 p.m. on Thursday, 18th June, 2020. Participants are requested to book tickets accordingly.
- Registration is on first-come-first basis and is restricted to 210 participants.
In case of cancellation, no refund request will be entertained, except under genuine unavoidable circumstances, subject to approval of the Managing Council of the Chamber.
- Interested members may enrol 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 favour of "The Chamber of Tax Consultants".
- Outstation members are requested to make the payment by at par Cheque / Demand Draft only or can make online payment through Chamber's website www.ctconline.org Delegates making online payment should ensure that their Enrolment forms reach CTC Office within 3 days of payment made
- For further details delegates may contact the following:

Shreyas Shah	9819885321	Kirit Dedhia	9833597056
Kartik Mehta	9833218700	Hitesh Shah (Chief Manager CTC)	9821889249

RENEWAL NOTICE – 2020-21

Dear Members,

SUB: PAYMENT OF ANNUAL MEMBERSHIP FEES FOR 2020-21

1st March, 2020

It's our privilege to have been of service to you over the years. We truly appreciate and value your association. It's time to renew annual membership and subscription of The Chamber's Journal, Study Group and Study Circle Meetings and other subscription of The Chamber of Tax Consultants ("The Chamber"). The renewal fees for Annual Membership, Study Group and Study Circle and other Subscription for the financial year 2020-21 falls due for payment on 1st April, 2020. We thank you for your subscription. Your involvement is important and very much appreciated. We hope you will always continue to support The Chamber in its activities and growth as done in the past.

Thanking You,

For The Chamber of Tax Consultants

CA Parag S. Ved

Hon. Treasurer

Sr. No.	Particulars	Fees	GST @18%	Total
I	MEMBERSHIP			
1.	LIFE MEMBERSHIP FEES	15,000	2,700	17,700
2.	ORDINARY MEMBERSHIP FEES - YEARLY (APRIL TO MARCH)	2,500	450	2,950
3.	ADMISSION FEES - ORDINARY MEMBERSHIP	750	135	885
4.	ASSOCIATE MEMBERSHIP - YEARLY (APRIL TO MARCH)	7,500	1,350	8,850
5.	ADMISSION FEES - ASSOCIATE MEMBERSHIP	1,000	180	1,180
6.	STUDENT MEMBERSHIP - INCLUDING E-JOURNAL (APRIL TO MARCH)	500	90	590
II	CHAMBER'S JOURNAL SUBSCRIPTION - YEARLY (HARD COPIES)			
1.	JOURNAL SUBSCRIPTION - LIFE MEMBER	1,350	0	1,350
2.	JOURNAL SUBSCRIPTION - NON MEMBER	2,500	0	2,500
3.	JOURNAL SUBSCRIPTION - STUDENT MEMBER	1,000	0	1,000
III	CHAMBER'S E-JOURNAL SUBSCRIPTION (SOFT COPIES)			
1.	E-JOURNAL SUBSCRIPTION - LIFE MEMBERS (YEARLY)	700	126	826
2.	E-JOURNAL SUBSCRIPTION - NON MEMBERS (YEARLY)	1,000	180	1,180
3.	E-JOURNAL SUBSCRIPTION - SINGLE JOURNAL	200	36	236
IV	ITJ SUBSCRIPTION			
1.	INTERNATIONAL TAX JOURNAL SUBSCRIPTION	1,400	0	1,400
V	STUDY CIRCLES & STUDY GROUPS (RENEWAL)			
1.	STUDY GROUP (DIRECT TAXES)	2,400	432	2,832
2.	STUDY CIRCLE (DIRECT TAXES)	2,000	360	2,360
3.	STUDY CIRCLE (INTERNATIONAL TAXATION)	1,800	324	2,124
4.	STUDY CIRCLE (INDIRECT TAXES)	2,250	405	2,655
5.	STUDY CIRCLE (ALLIED LAWS) (REFER NOTE 1 BELOW)	1,500	270	1,770
6.	SELF AWARENESS SERIES	1,000	180	1,180
7.	INTENSIVE STUDY GROUP ON DIRECT TAX	2,000	360	2,360
8.	FEMA STUDY CIRCLE	1,800	324	2,124
9.	PUNE STUDY GROUP	3,500	630	4,130
10.	BENGALURU STUDY GROUP	4,200	756	4,956
11.	HYDERABAD STUDY GROUP	11,000	1,980	12,980

(Note: 10% Discount applicable for the registration of 3 or more Study Circles & Study Groups)

Notes:

1. **The Managing Council has decided to extend rollover benefit for one year to the Members of the Allied Laws Study Circle. (Accordingly those Members who have enrolled for this Study Circle in F.Y. 2019-20, need not renew their subscription for F.Y. 2020-21)**
2. **10% Discount applicable for the registration of 3 or more Study Circles & Study Groups.**
3. Members are request to visit website www.ctconline.org for online payment.
4. Payments should be made by Account Payee Cheque/Demand Draft in favour of "THE CHAMBER OF TAX CONSULTANTS". Outstation members are requested to send payments only by "Demand Draft or At Par Cheque".
5. A consolidated Cheque/Draft may be sent for all payments.
6. Please also update your Mobile number & e-mail address to ensure receipt of regular updates on activities of The Chamber.
7. Please write your full name on the reverse of Cheque/DD.
8. Kindly pay your membership fees by 30th April, 2020 for uninterrupted service of the Chamber's Journal.
9. Members are requested to download the Renewal Form from Chamber's website www.ctconline.org
10. Renewal Notices are also sent separately and members are requested to fill up the same and send it to The Chamber's office along with the cheque.
11. Renewal Notice contains entire information of Members as per CTC database. In case of any change in information of Member as shown in form, kindly provide updated information along with the form.

NOTICE OF ELECTION

To
The Members,
The Chamber of Tax Consultants,

The election of the President and fourteen Members of the Managing Council for the ensuing year 2020-21 shall take place on **Wednesday, May 13th, 2020** at the **Office of The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020.**

Nominations in the prescribed form should be filed so as to reach the office of the CTC not later than **6.00 p.m. on Saturday, May 2nd, 2020.** The nomination forms shall be available at the CTC office from Saturday, April 25th, 2020.

**FOR AND ON BEHALF OF THE MANAGING COUNCIL
OF The Chamber of Tax Consultants**

Sd/- Sd/-

KETAN L. VAJANI / HARESH P. KENIA

Hon. Jt. Secretaries

Place: Mumbai

Dated: 25th March, 2020

Office: 3, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020.

Notes:

1. Only Ordinary and Life Members are eligible to vote at the election.
2. A Member who has completed at least two full years as a member shall be entitled to contest for the post of Managing Council member or to propose or second a candidate for the election. Each such member can propose not more than three candidates. The candidate for the post of President should have completed ten years of post qualification experience relating to tax laws or any branch of accountancy or company secretarial practice.
3. Members whose membership subscription is in arrears shall not be entitled to contest any election or to propose or second any candidate for the election or to vote at the election.
4. Withdrawal of nomination for the elections can be made by the candidate on or before 6.00 p.m. on **Friday, May 08th, 2020.**
5. If elections are required to be held, the names of the valid candidates shall be intimated through the website of the Chamber as well as through a circular. The Members are requested to check through these mediums.
6. If elections are not required to be held, due to any reason whatsoever, the same shall be intimated through the website of the Chamber as well as through the Notice Board at the Chamber's office. The Members are requested to check through these mediums.
7. The voting, if required, will commence at 11.00 a.m. and shall end at 5.00 p.m.
8. The above is only a gist of the Elections Rules. Please read Election Rules of the Chamber carefully on the website www.ctconline.org
9. Please note that the Election Committee comprising of the following persons is constituted for this purpose.

(1) Mr. Keshav Bhujle

(2) Mr. Ajit Rohira

(3) Mr. Bhavesh Vora

UNREPORTED DECISIONS (SERVICE TAX)

By Vinay Jain & Sachin Mishra, *Advocates*

- 1. Whether offsite IT services wherein such services are rendered from service providers premises was taxable under the category of ‘man-power supply or recruitment services’? Whether services provided to a client through an Offshore Development Centre developed by the service provider exclusively for such client at its premises is taxable under the head of ‘Infrastructural Support Services’ under the category of ‘support services to business or commerce’?**

Facts and Pleadings: M/s. Cybage Software Pvt. Ltd. (hereinafter referred to as Respondents) are engaged in providing software development services to its clients located both in India and outside India. The Respondents have entered into agreements with various clients for providing Onshore & Offshore IT services. In offsite site IT services, the Respondent was rendering IT services from its own location and in onsite services, the Respondent was rendering IT services at client’s location. The Respondents were paying service tax on onsite services but not on offsite services. Further, the Respondents have also entered into agreement with HSBC to provide IT Services through Offshore Development Centre (ODC) developed by the Respondents.

The Department alleged that in case of the offsite services, the Respondents have rendered ‘man-power supply or recruitment services’ as the Respondents have computed consideration for the said offsite services in terms of the software engineers deployed at the premises of the client and have thus, supplied manpower in the form of Software Engineers with specific skills. In case of services rendered to HSBC, the department has demanded service tax under the category ‘Support Service to Business or Commerce service’ on the allegation that the Respondents have provided infrastructural facilities in the form of Offshore Development Centre (ODC) to HSBC.

The Appellant contended that that in case of the offsite services, the services rendered in all of the agreements concerned was for ownership of work and not for mere supply of manpower. As the risk and obligations undertaken were far greater than those assumed under supply of manpower and hence the same cannot be taxable under the head of ‘man-power supply or recruitment services’. In case of services rendered to HSBC, the Respondents submitted that ‘Infrastructural Support Services’ under ‘support services to business or commerce’ covers only providing passive

infrastructure to the client, it would not cover a case where the software company itself uses the ODC to provide software development service to the client.

Judgment: The Hon’ble CESTAT agreed with the submission of the Respondents and relied upon held that the Respondents have the decision of Chennai CESTAT in Cognizant technology - 2010-TIOL-698-CESTAT-Madras to held that the Respondents have entered into agreement with such clients to render IT services and software engineers deployed at the clients’ premises are under the management and supervision of Respondents to provide such IT Services. The Hon’ble CESTAT also held that the deployment of engineers at client’s premises is a normal practice in IT industry and the same cannot be considered as ‘man-power supply or recruitment services’ merely because the Respondents have received consideration by monetising the time spent by such engineers for rendition of IT services under the contract. In case of services rendered to HSBC, the Hon’ble CESTAT held that the services rendered at ODC are mere extension of the offsite service rendered to the clients and hence, ‘information technology software service’ which was not excisable to tax at that point of time.

M/s. CCE vs. M/s. Cybage Software Pvt. Ltd., CESTAT, Mumbai, decided on 21.1.2020 in the Final Order No. A/85484-85485/2020.

- 2. Whether keeping of gold in the vault of a Bank after importing the gold into India from foreign supplier till the time a domestic customer for the said gold is identified amounts to rendition of Safe Vault Service to such foreign supplier and hence taxable under Banking and other Financial Services? Whether profit earned by the Bank which is a difference between the sale price of gold to their domestic customers and purchase price of gold from foreign suppliers can be considered as consideration for rendition of the aforesaid Banking and other Financial Services? Whether interest charged by the Bank for lending metal to the customers is leviable to service tax?**

Facts and Pleadings: M/s. Indian Overseas Bank (hereinafter referred to as ‘The Appellant’) is a banking company and is inter alia involved in sale and purchase of gold. The appellant imports gold from Union Bank of Switzerland and MKS

Finance, Geneva ("foreign suppliers"). The Appellant holds the said gold in its vault till such time the Appellant finds a suitable customer. After the customer is identified and the price of the gold is confirmed, the Appellant collects money from such customer. After retaining its mark up, the Appellant sends the money to the suppliers such as foreign suppliers. At this point of time, the Appellant purchases the gold which is already in their physical custody. Immediately on purchase of the gold, the same is delivered to the customers. Further, the Appellant also lends metals to its customers and charges interest as consideration for such lending of metals. Further, eventually such metal is required to be returned to the Appellant by its customers.

The department demanded Service tax on the alleged storage services rendered to the foreign supplier under 'Banking and Financial service'. Department was of the view that till the time of price fixation the Appellant was holding the stock with them, thus rendering storage services to foreign supplier. The consideration for the storage service was considered as margin i.e. difference between the purchase price and sale price. Further, the Department also demanded services tax on the interest earned by the Appellant for lending of metal to its customers on the count that only if the loan is in the form of Indian rupee and interest is earned on that, then alone under the provisions of Valuation Rules or Section 66D of Finance Act, 1994 interest is not to be treated as part of consideration for determination of service tax.

The Appellant contended that there is no consideration charged by the Appellant for rendition of the alleged safe vault service to foreign suppliers as the profit earned by the Appellant is received from the customer and not the foreign suppliers. The Appellant also contended that there is no allegation in the show cause notice that Appellant had received any consideration from foreign supplier for providing safe vault service. The Appellant also contended that the case of the department that the only interest earned on loans granted in cash is excluded from the ambit of service tax is incorrect on the count that there is no such distinction in the provisions of the law.

Judgment: The Hon'ble CESTAT set aside the demand on the storage services only on the ground that as there is no separate consideration for safe vault service. In absence of any consideration, service tax cannot be levied. The Hon'ble CESTAT also noted that the onus is on revenue to prove there is consideration, which revenue failed to do so in the present case. The Hon'ble CESTAT set aside the demand of Service Tax on interest earned on metal loan on the footing that Rule 6 (2) (iv) of the Determination of Value, Rules 2006 do not make any distinction between the interest on cash loan or metal loan. In other words, all interests are excluded from the value of the service whether it cash loan or any other loan.

M/s Indian Overseas Bank vs. CCE, CESTAT, Chennai, decided on 10.2.2020 in Final Order Final Order Nos. 40243-40249/2020.

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

UNREPORTED DECISIONS OF TRIBUNAL

By **Ajay R. Singh**, *Advocate*

- Section 271(1)(c) - Penalty - For concealment of income – the timing difference in offering income to taxes cannot be considered as concealment of particulars of income or furnishing inaccurate particulars of income, thus no penalty was leviable u/s. 271(1)(c) of the Act.**

The assessment for was completed u/s 143(3) of the Act, by making additions towards income from other sources being interest received on income tax refund u/s 244A amounting to Rs. 4,91,513/-. Thereafter, A.O imposed the penalty u/s 271(1)(c) of the Act on the basis that the assessee has deliberately concealed particulars of income by not disclosing interest received on income tax refund, though it has received interest on income tax refund during the relevant period and accordingly, levied penalty of Rs.3,03,756/-, being 200% of tax sought to be evaded.

The Id.CIT(A) relied upon various judicial precedents, including the decision of Hon'ble Delhi High Court, in the case of CIT vs Zoom Communication Pvt. Ltd (2010) 327 ITR 510 and confirmed the penalty on the ground that the assessee has failed to explain the accounting of interest on refund on receipt basis, when the details of refund issued were available to it and when, it was following mercantile system of accounting.

The assessee submitted that it has offered interest received of income tax refund u/s 244A of the Act, in the subsequent AY 2013-14, when the actual refund was credited to the account of the assessee. The Assessee, further submitted that interest on income tax refund was very much available with the department in Form No. 26AS and there is no possibility of non disclosure of said interest income for taxation. The

assessee has not offered interest income for the year under consideration, because the major portion of interest was credited to assessee account in subsequent financial year and also the fact that when, refund advise was issued to the assessee, there is no breakup, in respect of refund of taxes and interest. In this regard, he relied upon by the decision of Hon'ble Punjab & Haryana High court, in the case of CIT vs SSP Pvt.Ltd. 302 ITR 436

The Tribunal held that the AO has levied penalty only on the ground that the assessee is following mercantile system of accounting, it has not offered interest income for tax for the year under consideration. Otherwise, there is no dispute with regard to the fact that said interest income has been offered to tax in subsequent financial year. Therefore, once, the fact with regard to taxability of interest income in AY 2013-14 was not disputed by the Ld. AO, then he erred in levying penalty u/s 271(1)(c) of the Act for not offering interest income to tax for the year under consideration, more particularly when, the assessee has explained the reasons for not accounting and considering interest income to tax for the year under consideration. When, the assessee has offered to tax interest income in subsequent financial year, there is no reason for the Ld. AO to levy penalty on the same income for the year under consideration for not offering to tax said income, because the timing difference in offering income to taxes cannot be considered as concealment of particulars of income or furnishing inaccurate particulars of income. Therefore, the Ld. AO, as well as the Ld.CIT(A) erred in levying penalty u/s 271(1)(c) of the Act in respect of additions towards interest on income tax refund. Hence, penalty levied u/s 271(1)(c) of the Act is deleted.

Steelfab Building System v. ACIT 31(3), ITA No. 6509/Mum/2018, A.Y. 2012-13, Bench. "SMC", dt :04/03/2020 (Mum)(Trib)

- 2. Section 68 rws 263 of the Act - Share premium – Where Assessing Officer after making proper and detailed enquiries, took a view that amount received by assessee as share premium was a genuine transaction - revisional order passed by CIT directing Assessing Officer to enquire into in light of proviso inserted to section 68 of the Act and to decide about genuineness of share premium afresh, was not sustainable.**

The law as was there at the prevailing time, when the assessment was completed by the Ld. AO was supported by certain judicial precedents - on day when Commissioner passed his order that two views were inherently possible – Revision not justified.

The assessee is engaged in the business of financing, investments, consultancy and share related activities. The

assessment has been completed u/s 143(3) of the Act, determining the total income at Rs.29,80,924/- by making additions towards disallowances u/s 14A of the Act.

Subsequently, the Ld.CIT-1, Mumbai, passed the revision order u/s 263 of the Act on the basis that the assessment order passed by the Ld. AO is erroneous insofar as, it is prejudicial to the interest of the revenue, in respect of share premium collected on issue of shares and issue of disallowances of expenditure u/s 14A of the Act, on the ground that although, the Ld. AO has examined both the issues, but failed to appreciate the facts and relevant provision of the Act, even though the assessee has issued shares at huge premium, which is not supported by necessary evidences. Further, although the Ld. AO has determined disallowances u/s 4A r.w.Rule 8D, but excluded shares held as stock in trade for the purpose of determination of disallowances, even though shares held as stock in trade needs to be considered for the purpose of computation of average value of investments. Therefore, he opined that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue and accordingly, set aside the assessment order passed by the Ld. AO with a direction to reframe the assessment afresh taking into account, the observation made in his order.

The Tribunal held that the provisions of section 263 provides an inherent power to the CIT to revise the assessment order, if he is satisfied that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue. In order to invoke jurisdiction u/s 263, the Ld.CIT should satisfy himself that the Ld. AO has passed erroneous order, which caused prejudice to the interest of the revenue. Unless, the Ld. CIT satisfied twin condition provided u/s 263, he cannot assume jurisdiction to revise the assessment order.

The Ld.CIT has questioned two issues in his show cause notice. Insofar as, issue of shares at premium, there is no doubt, the Ld. AO has called for necessary details by issuing a specific notice u/s 142(1), for which the assessee has filed a detailed reply, vide its letter date 29/10/2012, which is part of paper book, where it has furnished complete details, including issue of share at premium. The assessee has also filed necessary details with regard to expenses incurred in relation to exempt income and also claimed that it has made suo-moto disallowances of Rs.7,81,161/-. The Ld. AO has determined disallowances u/s 14A by invoking Rule 8D and made further additions, over and above disallowances made by the assessee. These are undisputed facts. The Ld.CIT, although accepted fact that the Ld. AO has examined the issue of shares at premium, but questioned premium collected on issue of shares, in light of provisions of section 68 of the Act.

Further Tribunal find that once necessary ingredients provided u/s 68 i.e identify, genuineness of transactions and creditworthiness of the parties are proved, then the share premium collected on issue of shares cannot be questioned, because the proviso inserted to section 68 of the Act was effective from AY 2013-14 and which is not applicable for the year under consideration as held by the Hon'ble Bombay High Court, in the case of CIT vs Green Infra Ltd. [2017] 392 ITR 7.

Insofar as, disallowances of u/s 14A of the Act, the law as was there at the prevailing time, when the assessment was completed by the Ld. AO was supported by certain judicial precedents, as per which share hold as stock in trade was not necessarily to be included for the purpose of determination of average value of investments. The Ld. AO on the basis of law prevailing at that time has considered the issue and determined disallowances applying the prescribed procedure provided u/s 14A r.w.Rule 8D of act. Therefore, the Ld.CIT was erred in, coming to the conclusion that the Ld. AO has not examined the issue, in light of provisions of the Act.

Further, when a issue has been considered by A.O and has taken one of the possible views, then the Ld.CIT cannot assume jurisdiction to revise assessment order, on the ground that the enquiries conducted by the Ld. AO is inadequate. This legal principle is supported by the decision of Hon'ble Bombay High court, in the case of CIT vs Neerav Modi (2016) 241 taxmann 245. This legal principle is further supported by the decision of Hon'ble Supreme Court, in the case of CIT vs Max India Ltd.(2007) 295 ITR 282, where it was held that where, two views inherently possible and when, one view had to be taken into account by considering position of law, as it stood on day, when the commissioner passed order in purportedly exercises of his power u/s 263 of the Act, then view taken by the Ld. AO cannot be called erroneous and the Ld.CIT is incorrect in assuming jurisdiction u/s 263 of the Act.

Therefore, the Ld.CIT was incorrect in assuming jurisdiction to revise the assessment order u/s 263 of the Act on both issues.

KSM Securities & Finance Private Limited v CIT-1, ITA NO.: 2980/M/2015, A.Y. 2010-11, Bench. "H", date : 04/03/2020 (Mum)(Trib)

3. **Section 50C - Capital gains - Reference to DVO - Assessing Officer computed long-term capital gain on basis of valuation made by Stamp valuation authority without reference to DVO – It is irrespective of the fact**

whether the assessee objects to the stamp duty valuation or not, the A.O has to get the valuation done through the DVO in terms of section 50C(2) of the Act.

The assessee is an individual. In the course of assessment proceedings, the A.O noticing that the assessee has declared long term capital gain of Rs. 2,23,544, on sale of flat called upon the assessee to furnish the working of long term capital gain as well as the sale deed. On perusing the sale deed, he found that the stamp duty authority has valued the property for stamp duty purpose at Rs. 37,80,000, as against the declared sale consideration of Rs. 30 lakh. Though, the assessee objected to the proposed addition, however, the A.O rejecting the submissions of the assessee proceeded to treat the value determined for stamp duty purpose as the deemed sale consideration and computed long term capital gain accordingly.

The CIT(A) upheld the A.O order. The assessee submitted that the A.O without referring the valuation of the property to the District Valuation Officer (DVO) has straight away adopted stamp duty value for determining the long term capital gain. As per section 50C(2) of the Act, the A.O has to refer valuation of the property to DVO irrespective of the fact whether the assessee objects or not to the stamp duty valuation.

The Tribunal held that, the A.O has invoked the provisions of section 50C(1) of the Act to determine the long term capital gain by adopting the value determined by the stamp valuation authority as the deemed sale consideration. However, before doing so, he has not made any reference to the DVO to determine the value of the property in terms of section 50C(2) of the Act. The Hon'ble Calcutta High Court in Sunil Kumar Agarwal v/s CIT, [2014] 225 taxman 211 (Cal.) has held that irrespective of the fact whether the assessee objects to the stamp duty valuation or not, the A.O has to get the valuation done through the DVO in terms of section 50C(2) of the Act. The assessee has filed the valuation report obtained from a registered valuer valuing the property at Rs. 27,20,000/-. Admittedly, the aforesaid valuation was not before the Departmental Authorities. Therefore, admitting the valuation report as additional evidence, matter was restore to the file of the A.O for fresh adjudication after complying to the provisions of section 50C(2) of the Act by referring the valuation of the property to the DVO.

Nafisa Abizar Banatwala v. I.T.O Ward – 17(2)(4), ITA No.974/Mum/2019, A.Y. 2013-14, Bench. "SMC", DOH: 04/03/2020 (Mum)(Trib)

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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 & 2nd April, 2020**

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If undelivered, please return to :



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