



ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

SEPTEMBER 2021



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नैनं छिन्दन्ति शस्त्राणि नैनं दहति पावकः।
न चैनं क्लेदयन्त्यापो न शोषयति मारुतः॥

Weapons cannot shred the soul, nor can fire burn it.
Water cannot wet it, nor can the wind dry it.



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Note : All the events will be held through virtual platform (Zoom App)

Kindly enrol at the earliest to avoid disappointment. Participation Fees to be paid online on the website : www.ctconline.org

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

**Hitesh G. Shah : Chief Manager - 9821889249 | Pradeep Nambiar - Dy. Manager-Events - 8080254129
 Bindu Mistry : Dy. Manager-Technical - 9637692312 Manisha Kasbe : Dy. Manager-Accounts - 8104816841**

नैनं छिन्दन्ति शस्त्राणि नैनं दहति पावकः ।
न चैनं क्लेदयन्त्यापो न शोषयति मारुतः ॥



Shri Vijay H. Patil (Patil Saab)

Advocate, Supreme Court

15th July, 1937 - 20th August, 2021

Dear Member,

Our beloved Patil Saab, Past President of The Chamber of Tax Consultants ('CTC') and mentor to many, left for heavenly abode on Friday, 20th August, 2021.

The Chamber of Tax Consultants, jointly with the Income Tax Appellate Tribunal Bar Association, Bombay Chartered Accountants' Society and Goods & Services Tax Practitioners' Association of Maharashtra, Mumbai, has arranged a condolence meeting (Virtual) to pay tribute to the departed soul.

The details of the meeting are as under :

Day & Date	:	Friday, 3rd September, 2021
Time	:	5.00 p.m. to 6.30 p.m.
Venue	:	Virtual on Zoom Platform

Members are requested to take a note of this and join for the condolence meeting. Members can join the meeting on the following links :

Zoom Link : <https://bit.ly/3gF9mPI>
Passcode: 561343

YouTube Link : <https://www.youtube.com/c/ctconlineOrg>

Condolence messages can be conveyed at email ID : vhp.condolences@gmail.com

Regards

For The Chamber of Tax Consultants

Sd/-
Neha Gada

Sd/-
Mehul Sheth


Direct Taxes

Chairman: Dinesh Poddar; Co-Chairman: Ashok Mehta; Vice-Chairman: Abhitan Mehta;
 Convenors: Chintan Gandhi, Radha Halbe, Viraj Mehta; Advisor: Mahendra Sanghvi

Day & Date
 Friday, 24th September, 2021
 Time
 06.00 p.m. to 08.00 p.m.

ISG Meeting on Recent Important Decisions under Direct Tax

SPEAKER
 Fenil Bhatt, Advocate


Direct Taxes

Chairman: Dinesh Poddar; Co-Chairman: Ashok Mehta; Vice-Chairman: Abhitan Mehta;
 Convenors: Chintan Gandhi, Radha Halbe, Viraj Mehta; Advisor: Mahendra Sanghvi

Day & Date
 Thursday, 21st October, 2021
 Time
 06.00 p.m. to 08.00 p.m.

ISG Meeting on Recent Important Decisions under Direct Tax

SPEAKER
 Girish Agarwal, Advocate


Student

Chairman: Vitang Shah; Vice-Chairpersons: Niyati Mankad, Charmi G. Shah;
 Convenors: Charmi A. Shah, Priyanshi Chokshi; Advisor: Ajay Singh

Days & Dates
 Wednesday, 01st Sept., 2021 &
 Thursday, 02nd Sept., 2021
 Time
 05.00 p.m. to 07.00 p.m.

Workshop on Clause by Clause Analysis of Tax Audit

Sr. No.	Topic	Speakers
1.	Session on Tax Audit (Basics of Form 3CD, documentation, uploading and filing of Tax Audit Report)	CA Yogesh Amal, CA Chintan Gandhi

Fees	
For Student Member of the Chamber	Nil
For all other participants	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-


Commercial and Allied Laws

Chairman: Dharan Gandhi; Co-Chairman: Makarand Joshi; Vice-Chairperson: Mallika Devendra; Convenors: Gautam Mota, Ravi Sawana; Advisor: Anish Thacker, K. Gopal

Day & Date
 Saturday, 04th Sept., 2021
 Time
 04.00 p.m. to 06.00 p.m.

Lecture Meeting on Multidisciplinary Firm – Way Forward

SPEAKER
 CA Nihar Jambusaria

All are
 cordially
 invited



International Taxation

Chairman: Rajesh P. Shah; **Co-Chairperson:** Isha Sekhri; **Vice-Chairmen:** Kartik Badiani, Shabbir Motorwala, Kirit Dedhia; **Convenors:** Ronak Doshi, Kartik Mehta, Niraj Chheda, Monika Wadhani; **Advisors:** Dilip Thakkar, Rashmin Sanghvi, T. P. Ostwal;
Course Convenor: Monika Wadhani & Siddharth Parekh

Days & Dates

13, 14, 15, 16, 17, 20, 21, 22, 23,
24, 27, 28, 29, 30-09-2021 &
01, 04, 05, 06, 07, 08,
11, 12, 13, 14-10-2021

Time

06.00 p.m. to 08.00 p.m.

Comprehensive Course on Double Taxation Avoidance Agreement and Multilateral Instrument

International taxation is an extremely dynamic and constantly evolving subject which requires a detailed study. For beginners as well as the practicing professionals, the International Taxation Committee of the Chamber of Tax Consultants have organised a basic and refresher course in digital classroom mode on each of the Articles of Double

Taxation Avoidance Agreement ('DTAA') read with the Multilateral Instrument ('MLI').

This course is spread over 24 sessions and each of the session will be taken up by leading faculty who are experts on international taxation.

Sr. No.	Days, Dates & Time	Topics	Speakers
1.	Monday, 13th September, 2021	Overview of International Taxation and Double Taxation Avoidance Agreement (DTAA) including various type of Model Conventions (MC) DTAA Article 1, 2, 3 and 31	CA T. P. Ostwal CA Siddharth Banwat
2.	Tuesday, 14th September, 2021	Overview of BEPS, MLI and Interpretation of MLI MLI Article 1 and 2	CA Monika Wadhani
3.	Wednesday, 15th September, 2021	Concept of Residence and Transparent Entities DTAA Article 4; MLI Article 3 and 4	CA Prakash Sinha
4.	Thursday, 16th September, 2021	Taxation of Business Profits and Attribution Rules and Concept of Associated Enterprises DTAA Article 7, 9	CA Suchint Majmudar
5.	Friday, 17th September, 2021	Concept of Permanent Establishment – Fixed Place PE and Service PE DTAA Article 5	CA Anish Thacker
6.	Monday, 20th September, 2021	Concept of Permanent Establishment – Exemption for Preparatory and Auxiliary Services DTAA Article 5; MLI Article 13	CA Kartik Badiani
7.	Tuesday, 21st September, 2021	Concept of Permanent Establishment – Agency PE DTAA Article 5; MLI Article 12	CA Hemal Zobia
8.	Wednesday, 22nd September, 2021	Concept of Permanent Establishment–Construction / Installation PE DTAA Article 5; MLI Article 14	CA Jimit Devani
9.	Thursday, 23rd September, 2021	Anti-abuse rule for PEs in third states and Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents MLI Article 10 and 11	Narendra Jain, <i>Advocate</i>
10.	Friday, 24th September, 2021	Income from Immovable Property & Taxation of Capital DTAA Article 6 and 22	CA Kirit Dedhia
11.	Monday, 27th September, 2021	Income from Capital Gains DTAA Article 13; MLI Article 9	CA Ravikant Kamath
12.	Tuesday, 28th September, 2021	Taxation of Income from International Shipping and Air Transport DTAA Article 8	CA Natwar Thakrar

Sr. No.	Days, Dates & Time	Topics	Speakers
13	Wednesday, 29th September, 2021	Taxation of Dividend Income DTAA Article 10 MLI Article 8	CA Vishal Shah
14	Thursday, 30th September, 2021	Taxation of Interest Income DTAA Article 11	CA Bhaumik Goda
15	Friday, 1st October, 2021	Taxation of Royalty DTAA Art 12	CA Ganesh Rajgopalan
16	Monday, 4th October, 2021	Taxation of Fees for Technical Services DTAA Art 12A of UN MC	CA Shabbir Motorwala
17	Tuesday, 5th October, 2021	Taxation of income from employment and Other Income DTAA Art 15 and 21	CA Vishal Gada
18	Wednesday, 6th October, 2021	Taxations of income of entertainers and sportspersons, director fees, government service, pension, students. etc DTAA 16, 17, 18 and 19	CA Isha Sekhri
19	Thursday, 7th October, 2021	Method of Elimination of Double Taxation DTAA Article 23; MLI Article 5	CA S. Krishnan
20	Friday, 8th October, 2021	Purpose / Preamble of DTAA and Covered Tax Agreement; Prevention of Treaty Abuse, Overview of PPT, GAAR, SLOB, LOB and interplay amongst these provisions and entitlement to treaty benefits. DTAA Article 29; MLI Article 6 and 7	K. K. Chythanya, <i>Advocate</i>
21	Monday, 11th October, 2021	Mutual Agreement Procedure and Dispute Resolution DTAA Article 25, MLI Article 16 and 17	S. P. Singh, IRS, Ex-DIT (Mumbai)
22	Tuesday, 12th October, 2021	Non Discrimination and Exchange of Information & Assistance in Collection of Taxes DTAA Article 24, 26 and 27	CA Shreyas Shah
23	Wednesday, 13th October, 2021	Overview of FEMA and its relevance to International Taxation	CA Paresh P. Shah
24	Thursday, 14th October, 2021	TDS on Payment to Non-Residents – law and procedure	CA Rutvik Sanghvi

Fees (For all sessions)	
CTC Members	₹ 2,000/- + 360/- (18% GST) = ₹ 2,360/-
Non-Members	₹ 3,000/- + 540/- (18% GST) = ₹ 3,540/-
Student Members	₹ 1,000/- + 180/- (18% GST) = ₹ 1,180/-
Student Non-Members	₹ 1,500/- + 270/- (18% GST) = ₹ 1,770/- (including ₹ 500/- towards Membership Fees)

Note: - Please fill Student Membership Form: - ([Click Here](#)) and payment through NEFT ([Click Here](#))



**Hyderabad
Study Group**

Convenors: Ravi Ladia, Radhika Verma

Day & Date
Thursday, 2nd September, 2021
Time
05.30 p.m. to 07.30 p.m.

GST Implications on Crypto Currency

SPEAKER
CA Hanish Jain, Bangalore



Delhi Chapter

Chairman: Sanjiv Chaudhary; **Vice-Chairman:** Prakash Sinha;
Advisor: C. S. Mathur, Suhit Agarwal, V. P. Verma

Day & Date

Tuesday, 7th September, 2021

Time

05.30 p.m. to 07.30 p.m.

Study Circle Meeting on Case Law Discussion

The Delhi Chapter Committee of the Chamber of Tax Consultants is organising a Study Circle Meeting on the

topic of "Case Law Discussion". It is scheduled on 7th September, 2021.

Sr. No.	Topics	Chairmen / Speakers
1.	Case Law Discussion a) Concentrix Services Netherlands BV (Delhi High Court) b) Asia Today Ltd (Mumbai Tribunal) c) Engineering Analysis (Supreme Court) d) Nandi Steels Ltd (Karnataka High Court)	Mr. Prashant Maharishi - Hon'ble Member ITAT, New Delhi CA Saurav Bhattacharya & CA Richa Sahwney



Study Circle & Study Group

Chairman: Ashok Sharma; **Vice-Chairman:** Sanjay Chokshi;
Convenors: Dinesh R. Shah, Dipesh Vora, Dhaval Shah; **Advisor:** Keshav Bhujle

Day & Date

Saturday, 18th Sept., 2021

Time

11.00 a.m. to 01.15 p.m.

Study Group Meeting on Recent Judgements on Direct Taxes

Group Leader

Kavita Jha, Advocate - New Delhi

The Study Circle and Study Group committee of The Chamber of Tax Consultants has organised a Study Group meeting on "Recent

Judgments on Direct Taxes" scheduled on 18th September, 2021.

Fees	
For Study Circle Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-



Direct Taxes

Chairman: Dinesh Poddar; **Co-Chairman:** Ashok Mehta; **Vice-Chairman:** Abhitan Mehta;
Convenors: Chintan Gandhi, Radha Halbe, Viraj Mehta; **Advisor:** Mahendra Sanghvi

Day & Date

Thursday, 16th Sept., 2021

Time

05.00 p.m. to 07.30 p.m.

Income Tax Return Filing for AY 2021-22

SPEAKER

CA Mitesh Katira

Income tax department has launched a New ITR portal .The new income tax portal is completely in a new avatar. The new portal has come up with a lot of new features and information.

Filing of Income Tax return on time on or before the due date is most important task for any tax payer. Late filing of the return takes away many benefits from the tax payer. There are also certain compliances ,which should be completed before filing of the returns.

Although some teething issues in new portal are being addressed on priority by the IT Department, the assessee and their tax consultants are up against the challenges of filing the income tax returns in time.

With a view to enable the tax consultants to understand the new features and new utility for filing the Return of income on the new portal, Direct Tax Committee of CTC has organized a webinar on the said topic which shall act as a useful guide in filling the return of income proficiently.



THE CHAMBER OF TAX CONSULTANTS

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WhatsApp No.: 9004945579 FB Page: https://www.facebook.com/ctcconnect

RENEWAL NOTICE – 2021-22

Dear Members,

SUB: PAYMENT OF ANNUAL MEMBERSHIP FEES FOR 2021-22

1st March, 2021

It is our privilege to have been of service to you over the years. We truly appreciate and value your association. It is 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 2021-2022. 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	15000	2700	17700
2	ORDINARY MEMBERSHIP FEES - YEARLY (APRIL '21 TO MARCH '22)	2500	450	2950
3	ADMISSION FEES - ORDINARY MEMBERSHIP	750	135	885
4	ASSOCIATE MEMBERSHIP - YEARLY (APRIL '21 TO MARCH '22)	7500	1350	8850
5	ADMISSION FEES - ASSOCIATE MEMBERSHIP	1000	180	1180
6	STUDENT MEMBERSHIP - INCLUDING E JOURNAL (APRIL '21 TO MARCH '22)	500	90	590
II	CHAMBER'S JOURNAL SUBSCRIPTION - YEARLY (HARD COPIES)			
1	JOURNAL SUBSCRIPTION - LIFE MEMBERS	1350	0	1350
2	JOURNAL SUBSCRIPTION - NON-MEMBERS	2500	0	2500
3	JOURNAL SUBSCRIPTION - STUDENT MEMBERS	1000	0	1000
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)	1000	180	1180
IV	ITJ SUBSCRIPTION			
1	INTERNATIONAL TAX JOURNAL SUBSCRIPTION (QTRLY)	1400	0	1400
V	STUDY CIRCLES & STUDY GROUPS (RENEWAL)			
1	STUDY GROUP (DIRECT TAXES)	2400	432	2832
2	STUDY CIRCLE (DIRECT TAXES)	2000	360	2360
3	STUDY CIRCLE (INTERNATIONAL TAXATION)	1800	324	2124
4	STUDY CIRCLE (INDIRECT TAXES)	2250	405	2655
5	COMMERCIAL AND ALLIED LAW STUDY CIRCLE	1500	270	1770
6	INTENSIVE STUDY GROUP ON DIRECT TAX	2000	360	2360
7	FEMA STUDY CIRCLE	1800	324	2124
8	PUNE STUDY GROUP + MUMBAI STUDY CIRCLES	3500	630	4130
9	PUNE STUDY GROUP ONLY	2000	360	2360
10	BENGALURU STUDY GROUP	1600	288	1888
11	HYDERABAD STUDY GROUP	2000	360	2360

NOTES:

- 10% Discount applicable for the registration of 3 or more Study Circles & Study Groups
- Members are requested to visit website www.ctconline.org for online payment.
- 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". Members who are paying by NEFT are requested to share the UTR NO for the payment done.
- A consolidated Cheque/Draft may be sent for all payments.
- Please also update your Mobile number & e-mail address to ensure receipt of regular updates on activities of The Chamber.
- Please write your full name on the reverse of Cheque/DD.
- Kindly pay your membership fees by 30th September, 2021 for uninterrupted service of the Chamber's Journal.
- Members are requested to download the Renewal Form from Chamber's website www.ctconline.org
- 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.
- 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.

IMPORTANT DECISIONS UNDER GST AND SERVICE TAX LAWS

By Vinay Kumar Jain and Sachin Mishra, Advocates

1. **Whether tax along with interest and penalty be demanded without the issuance of a show cause notice under Section 74(1), while the investigation is still pending?**

Facts & Pleadings: M/s. Deem Distributors Pvt. Ltd. (hereinafter "Petitioner") is a partnership firm engaged in the dealing of goods and services related to ferrous waste and scrap, re-melting scrap ingots of iron or steel, etc. The Department vide letter dated 25.04.2019 requested the Petitioners for a reversal of ₹ 1,52,35,820/- alleging that the Petitioner had fraudulently availed input tax credit on the basis of fake invoices issued by certain fictitious suppliers/firms. The Department further sent an intimation to the Petitioner 'advising' them to pay ₹ 1,17,35,822 for the period February 2018 to March 2018, on the failure of which a show cause notice under Section 74(1) would be issued. The Petitioners assailed the conduct of the Department and filed a writ petition on 23-03-2021, in I.A.No. 1 of 2021 in W.P.No.7063 of 2021, wherein the Court had initially granted an interim stay on all further proceedings pursuant to demand dated 25.04.2019 and said order was also extended on 06.04.2021 and 19.07.2021. The present appeal has been filed to vacate the said order.

The Petitioners assailed the conduct of the Respondents in directing them to remit the amount without following due procedure under Section 74(1). The Petitioners argued that the liability cannot be determined before conducting enquiry especially when even the investigation is incomplete, and that any demand or advise can at best be a provisional one. They further argued that when no enquiry has been initiated, they cannot be compelled coercively to pay the amounts as doing so would amount to violation of Article 14 and 300A.

The Respondents admitted that the investigation proceedings were still on-going and had not reached finality, however it was on the basis of the intelligence passed on to them, that they issued the summons and the statement to the Petitioner. They further argued that they had not served or raised any notice under Section 74(1) in view of the investigation being in progress, however, they had only advised the Petitioner to pay the tax along with applicable interest and penalty under Section 74(5) before the issuance of show cause notice.

Judgment: The Hon'ble High Court of Telangana held that the conclusion derived by the Respondents appeared to have been drawn on basis of an incomplete investigation, and therefore no tax demand can be raised without there being a determination of liability of the Petitioner in any enquiry conducted under the Act. The Hon'ble High Court observed that Section 74(5) gives a choice to the tax payer to make any payment, *if he is so chooses*, but it does not confer any power on the Respondents to make a demand in a manner where there had been a determination of liability of the assessee. The Court also observed that the letter 'advising' the Petitioners to pay the tax was without any jurisdiction, and that Respondents cannot be allowed to collect any tax, interest or penalty before the same is determined, in an enquiry, after putting the Petitioner on notice. The Hon'ble Court stated that the Respondent's action was wholly arbitrary and without jurisdiction, thus restraining them from coercing the Petitioner to make any payment without issuing notice under Section 74(1) of the Act. Therefore, the Hon'ble Court directed a refund of ₹ 35 Lakhs along with interest to the Petitioner, while also making it clear that the Respondents could proceed with the investigation and enquiry before dismissing the writ petition.

M/s. Deem Distributors Private Ltd. vs. Union of India, High Court of Telangana, decided on 03.08.2021, in I.A.No.2 of 2021 in/and Writ Petition No.7063 of 2021.

2. **Whether, under Section 6(2)(b), summons issued by Central Authorities be held in abeyance when an investigation/proceeding has already been initiated by the State Authorities?**

Facts & Pleadings: Kuppan Gounder P.G. Natarajan (hereinafter "Petitioner") was issued a notice dated 17.12.2020 by the State Authorities intimating certain discrepancies in the returns filed by the Petitioner. The proceedings for the same were in progress. While so, the Central Authorities issued summons to the Petitioner stating that, an enquiry was being made in connection with the Petitioner's company – M/s. KPN Travels India Ltd. The summons directed the Petitioner to give evidence or produce documents of the description mentioned in the summons. Thus, the Petitioners have filed the present writ petition challenging the issuance of the impugned summons.

The Petitioners submitted that as per Section 6(2) (b) the impugned summons issued by the Senior Intelligence Officer be held in abeyance on the ground that a proceeding initiated by the State Authority was already under way. The Petitioner was of the view that the summons issued were without jurisdiction, and the Central authorities were bound to wait till the conclusion of the proceedings initiated by the State officials under the SGST Act. They also submitted that the earlier summon issued by the Respondent had also been kept in abeyance in W.P. No. 2723 of 2021.

The Respondent contended that the Petitioners had already filed four writ petitions stalling the entire investigation process, thereby not co-operating for the continuance and completion of the same in respect of IGST. They further submitted that the State action against the Petitioners was with regards to the scrutiny proceedings of return, whereas the summons issued by the Central Authorities was under Section 70, and therefore, since both the subject matters were unconnected, the proceedings cannot be held in abeyance.

Judgment: The Hon'ble High Court of Madras observed that the object of Section 6(2)(b) was to avoid parallel proceedings, and the benefit of the same can only be claimed when the subjects proposed to be dealt with by the State and Central authorities are one and the same, wherein the burden to the prove the similarity, before the competent authority, is on the Petitioner. The Court observed that the department authorities are best suited for elaborately scrutinizing such an adjudication in detail, since such an adjudication in detail cannot be conducted by the High Court under Article 226, as there is a possibility of error, commission or omission at the instance of either party, and an intervention during the intermittent period by the High Court could paralyze the entire proceedings which is not desirable. The Hon'ble Court further opined that in the instant case the State Authority had issued a notice for intimating discrepancies in the return after scrutiny, and the same was pending adjudication, whereas, the Central Authority had issued the impugned summons under Section 70. Therefore, the Court observed that mere pendency of the proceedings before the State authorities was not a ground to restrain Central authorities from issuing summons and conducting investigation, and that the subject matter is one and the same is to be established. Thus, in light of the above, the Hon'ble High Court of Madras

dismissed the writ petition and stated that Petitioner was at liberty to respond to summons by producing all evidence and documents to defend his case, and Respondent was at liberty to proceed with the investigation by following the procedures mentioned in the Statute.

Kuppan Gounder P. G. Natarajan vs. Directorate General of GST Intelligence, Madras High Court, decided on 29.07.2021, in W.P.No.15708 of 2021 and W.M.P.Nos.16604 & 16605 of 2021.

3. **Whether Rule 86A of the CGST Rules 2017 is a recovery provision? Whether the input tax credit earned in future can be appropriated under the Rule 86A?**

Facts & Pleadings: M/s. R. M. Dairy Products (hereinafter "Petitioner") filed a writ petition against an order dated 25.06.2021 passed by the Respondents under Rule 86A(1)(a)(i) of the CGST Rules, 2017.

The Petitioners submitted that the order passed by the Respondents by relying upon Rule 86A(1) was without jurisdiction. They submitted that Rule 86A obliges the Respondents to record a positive 'reason to believe' that the credit of input tax had been fraudulently availed. The Petitioners argued that the input tax credit in dispute, arose on account of purchases made from M/s. Darsh Dairy & Food Products Agra, with respect to which, adjudication proceedings under Section 74 of the UP GST Act, 2017 (hereinafter "the Act") was already underway against the Petitioner. Therefore, the Petitioners submitted that till those proceedings are concluded, no amount would become recoverable and hence the order passed by the Respondents was wholly premature. Furthermore, the Petitioner contended that Act clearly provides for the manner and mode of recovery under Section 78, wherein an amount could only be recovered after the lapse of three months from the date of the adjudication order. Lastly, it was contended that the when the Act clearly provides for the manner in which the amount may be determined and recoverable from the Petitioner, no other procedure may be adopted, as the same would violate the settled principles of law.

The Respondents vehemently opposed the contentions of the Petitioner. The Respondents submitted that the Petitioner had fraudulently utilised input tax credit, as M/s. Darsh Dairy & Food products, Agra was non-existent at the disclosed place of business. The Respondents alleged that the 'reason to believe' was contained in the impugned order, as the same was

based on the material available, demonstrating that the seller M/s Darsh Dairy was a non-existent dealer.

Judgment: The Hon'ble High Court of Allahabad held that Rule 86-A did not contemplate any recovery of tax due from an assessee, and that it only provided for the creation of a lien without actual recovery being made. The Hon'ble High Court observed that the words "input tax available" in Rule 86A(1), cannot be read as actual input tax available as on the date of the order passed. The Court stated that the said phrase was relevant for laying down the first condition for exercise of power by the Commissioner/Authorised Officer – who must have "reason to believe" that any "input tax available" had been fraudulently availed or assessee was not eligible for the same. The Court further stated that the word "available" relates to the time when the assessee allegedly availed input tax credit either fraudulently or availment dehors eligibility and does not relate to input tax credit available on date when Rule 86-A was invoked. It was further observed that Rule 86-A was not a recovery provision and was at the most a provision to secure the interest of the Revenue to be exercised in the presence of relevant 'reason to believe', wherein the Rule only enables the authorised officer to not allow debit of an amount equivalent to 'such credit'. The Court further stated that Legislature has purposely chosen the words "not allow debit", wherein to 'not allow debit' and 'to appropriate the same' were two different things. The former only created a lien by blocking utilization of the amount, and the latter would necessarily involve transfer of title over the money, which cannot be contemplated as a consequence from the Rule. Thus, the Court held that if the Petitioner were to earn any further input tax credit to the tune of ₹ 7,06,66,700/- the same would be retained by way of lien, however the Revenue may not appropriate it. The Court stated that adjustment of appropriation may arise only on order attaining finality or on the lapse of three months from the date of passing, and that too as a consequence of recovery provisions but not under Rule 86-A. Therefore, the Hon'ble High Court dismissed the writ petition of the Petitioner and stated that any further credit above that amount could be allowed to be utilized without objection by the Revenue.

M/s. R. M. Dairy Products vs State of Uttar Pradesh & Ors, High Court of Allahabad, decided on 15.07.2021, in Writ Tax No. 434 of 2021.

4. **Whether the supply of electricity and water is a sale of goods and whether the same will be included in the taxable value for evaluating the service tax applicable?**

Facts & Pleadings: Electronics Technology Parks (hereinafter "Assessee"), a State Government Company, is the first Electronic Software Technology Park('ETP') promoted and funded by the Government of Kerala The Assessee had acquired land and developed ETP by constructing buildings, roads, continuous power and water supply, security service, housekeeping, medical attention, etc., wherein a number of services were provided by independent vendors like restaurants, clubs guest house, etc. Subsequently, a show-cause notice was issued by the Department alleging that services provided by the Assessee to the units functioning in their campus were 'composite' in nature and were therefore classifiable under the head of 'Support Services of Business or Commerce' as defined under Section 65(104C) r/w Section 65(105) (zzzq) of the Finance Act 1994, instead of 'Renting of Immovable Property' as classified by the Assessee. There were several issues dealt upon in the said appeal, however, only the important ones are discussed herein.

The Assessee pleaded that the demand of service tax under 'Support Services of Business or Commerce' was not sustainable and that the department had misconstrued the meaning and scope of the service covered in this category. The Assessee submitted that the supply of electricity, water and air-conditioning are obligatory and incidental for the use of rented or leased premises, and that they were not charging any service tax on the sale of water, electricity, air-conditioning and supply of electricity by operating DG sets, since them being goods are transactions of 'sale of goods'. The Assessee further contended that the charges for the same are collected separately, wherein the charges for supply of standby power through DG set are also share of an expenditure on the cost of diesel and other consumables used for generation and supply of electricity. The Assessee also submitted that value of goods used for the operations of the AC and the supply of conditioned air is a transaction of sale of conditioned air exempt under Notification No.12/2003-ST dt. 20.06.2003 and that the diesel generator charges are apportionment of the price of electricity generated and sold to the tenants/lessees. Therefore, the Assessee stated that no support was being provided by the Assessee to any businesses of the lessees, and that service tax was only payable

on the collection of rentals, covered under 'renting of immovable property'.

Judgment: The CESTAT, Bangalore observed that the supply of electricity and water is incidental for the use of the rented or leased premises. The Tribunal stated that the sale of water and electricity is a transaction of sale of goods and the Assessee is not charging any service tax on the sale of water, electricity, air-conditioning and supply of electricity by operating DG sets. The Tribunal observed that the charges for the same were collected separately, and on the examination of the sample invoices it can be ascertained that these charges are apportioned as per the area occupied by each tenant or lessee and are charged under separate invoices. The Tribunal stated that the rental or lease rental of the building takes into consideration the common facilities and the maintenance of the building and the supply of electricity and water is the transaction of sale of goods. Thus, the Tribunal observed that reasoning adopted by the department is completely misplaced and contrary to law and beyond the plain language of the statutory definition of 'Renting of Immovable Property'. It was further observed that the reliance placed by Department on Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 to consider such expenses or costs as consideration and to be included in value of services, was contrary to the law laid down in UOI vs. Intercontinental Consultants & Technocrats Ltd. [2018(10) GSTL 401 (SC)]. Thus, the Tribunal held that the services rendered by the Assessee are covered under the category of 'Renting of Immovable Property' under Section 65(105)(zzzz) and not under 'Support Services of Business or Commerce' during the relevant period.

Electronics Technology Parks vs C.C.,C.E.& S.T -Trivandrum & Ors, CESTAT Bangalore, decided on 26.07.2021, vide Final Order No. 20645-20646/2021.

5. **Whether the Appellant can claim refund of service tax liability paid under reverse charge mechanism in GST regime on the count that there are no provisions to claim Cenvat credit under the CGST Act, 2017?**

Facts & Pleadings: M/s. NSSL Pvt. Ltd. (hereinafter "Appellant") are engaged in the manufacture of

industrial valves, spares parts of valve and components etc., falling under Chapter Headings 84 and 87 of the First Schedule to the Central Excise Tariff Act, 1985. During the disputed period, the Appellant had availed services like GTA, manpower supply agency, legal services, security agency services, etc., but had not paid the service tax applicable under Reverse Charge Mechanism during the stipulated time. However, the Appellant paid the same into central government account belatedly. The Appellant had reflected the service tax liability under the Reverse Charge Mechanism in the periodic ST-3 return filed by it. reflecting the same in the periodic ST-3 returns. Subsequently, the Finance Act was repealed and replaced by the GST Act in 2017 and as a consequence the Appellant had filed a refund application on 04.06.2018 claiming the refund of service tax paid by it under the Reverse Charge Mechanism.

However, the refund applications were rejected by the jurisdictional service tax authorities, on the ground that the input tax credit can only be claimed under the CGST Act 2017 and not otherwise.

Judgment: The Hon'ble CESTAT, Mumbai observed that the Ld. Commissioner (Appeals) had wrongly relied upon Section 142(8)(a) of the CGST Act for rejecting the refund applications. The Tribunal observed that case of the Appellant is governed by Section 142(3) and not Section 142(8)(a) inasmuch as no assessment/adjudication orders were passed by the competent authorities in determining the tax liability of the Appellant under the erstwhile statute. The Tribunal stated that under Section 142(3) an assessee can file the application claiming refund of the amount Cenvat credit after the appointed day and the said application was to be disposed of by the authorities in accordance with the erstwhile statute. It further stated that since no questions had been raised by the authorities regarding the entitlement of the Appellant to the Cenvat credit under the erstwhile Cenvat statute, the refund claims of the Appellant should merit consideration under Section 142(3). Thus, the appeal was allowed.

M/s. NSSL Pvt. Ltd. v. Commissioner of Central Excise, CGST & Central Excise, Nagpur-I, CESTAT Mumbai, decided on 03.08.2021, in Final Order No: A/86639-86640/2021.

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

UNREPORTED TRIBUNAL DECISIONS

By Ajay R. Singh Advocate and CA Rohit Shah

1. S. 50C: Applicability in case of Transfer of Reversionary Rights

Assessee company had e-filed its return of income for A.Y. 2011-12, declaring a total income of ₹ 2,02,57,520/-. Original assessment was framed by the A.O u/s 143(3) at an income of ₹ 8,35,36,800/- after inter alia assessing the Long-Term Capital Gain (LTCG) on sale of property u/s. 50C at ₹ 7,71,09,287/- (as against LTCG shown by the assessee in its return of income at ₹ 1,38,30,005/-). The property in question was originally leased by Rustomji Bymmjee Jeejeebhoy & Others i.e the lessors to Cursetjee Dinshaw Bolton i.e the lessee. Thereafter, the assessee company terminated the lease on the ground of breach of the terms and conditions of the lease and agreed to sell its reversionary rights in the aforesaid property for a lump sum price to Yash & Yashika Mercantile Pvt. Ltd. Accordingly, in the backdrop of the aforesaid facts, it was the claim of the assessee that as it had only transferred its reversionary rights qua the aforesaid property in question, thus, its market value could not be considered for the purpose of computing the income under the head capital gains.

CIT(A) accepted the assessee's claim that in a case of mere transfer of reversionary rights the market value could not be considered for the purpose of computing the income under the head capital gain. Accordingly, the CIT(A) after perusing the agreement, qua the aforesaid transfer transaction observed, that as the assessee had only transferred its reversionary rights in the property in question, therefore, the provisions of Sec.50C would not stand triggered. Accordingly, the CIT(A) directed the A.O to take the sale consideration in respect of the transaction

entered by the assessee with M/s. Yash & Yashika Mercantile Pvt. Ltd. as was reflected by the assessee in its return of income.

The Hon'ble ITAT, held that, it is not necessary that consideration paid by the buyer of a property, at the time of buying the property, must only relate to ownership rights. In the case of tenanted property, as is the case before us, while the buyer of property pays the owner of property for ownership rights, he may also have to pay, when he wants to have possession of the property and to remove the fetters of tenancy rights on the property so purchased, the tenants towards their surrendering the tenancy rights. Merely because he pays the tenants, for their surrendering the tenancy rights, at the time of purchase of property, will not alter the character of receipt in the hands of the tenant receiving such payment. What is paid for the tenancy rights cannot, merely because of the timing of the payment, cannot be treated as receipt for ownership rights in the hands of the assessee. This distinction between the receipt for ownership rights in respect of a property and receipt for tenancy rights in respect of a property, even though both these receipts are capital receipts leading to taxable capital gains, is very important for two reasons – first, that the cost of acquisition for tenancy rights, under section 55(2)(a), is, unless purchased from a previous owner – which is admittedly not the case here, treated as Nil; and, - second, since the provisions of Section 50C can only be applied in respect of 'transfer by an assessee of a capital asset, being land or building or both', the provisions of Section 50C will apply on receipt of consideration on transfer of a property, being land or

building or both, these provisions will not come into play in a case where only tenancy rights are transferred or surrendered. Sale deed unambiguously shows, the assessee has given up all the rights and interests in the said property, which he had acquired by the virtue of lease agreements with owner and which were, therefore, in the nature of lessee's rights; these rights could not have been, by any stretch of logic, could be treated as ownership rights. It has been specifically stated in the sale deed that the lessee, which included this assessee, had proceeded to, inter alia, 'grant, convey, transfer and assign their leasehold rights, title and interest in the said premises'. There is nothing on the record to even remotely suggest that the assessee was owner of the property in question. The monies received by the assessee, under the said agreement, were thus clearly in the nature of receipts for transfer of tenancy rights, and, accordingly, as the Ld CIT(A) rightly held that, section 50C could not have been invoked on the facts of this case.

ACIT - 3(1)(1) vs. M/s. Byramjee Jeejeebhoy Pvt. Ltd.

[ITA No. 813/Mum/2020; dated : 05/08/2021; Bench : B; A.Y. 2011-12]

2. S. 69C: Addition on the basis of Sale of Flats at differential rates to different persons:

Assessee is a builder and developer, filed its return of income for the assessment year 2010-11 declaring total income at ₹ 57,19,810/-. Assessment order was passed u/s. 143(3) of the Act. The AO while passing the assessment order besides other additions/disallowances made addition of ₹ 2,74,66,992/- on account of undisclosed sales receipt u/s. 69C. On appeal before the

CIT(A), both the additions/disallowances were deleted.

Before Hon'ble ITAT, dept contended that during the assessment the Assessing Officer noted that the assessee had sold flats to different persons at different rates. On comparison of the minimum and maximum booking rates it was found that the minimum booking rate was ₹ 2,191/- per sq ft and maximum booking rate was ₹ 3,518/- per sq ft. The assessee could not substantiate the difference in variation in rates and could not give details of any extra facilities provided to the buyers. Therefore, the undisclosed sales receipt was added to the income of the assessee. AR of the assessee submitted that there was a difference in rate of bookings and payments, depending upon the prevailing market condition, business necessities and financial needs. All sales of flats are supported by registered sale deeds.

The Hon'ble ITAT dismissed the ground and concluded that, there is no allegation against the assessee for selling the flat less than the market rate. There is no evidence on record to suggest that assessee received over and above the cheques amount. No enquiries were carried out from the buyers for paying any excess amount by them above the cheques. The contention of the assessee that lowest sale price of the flats is more than the fair market value notified by Govt. under Stamp Act has not been controverted.

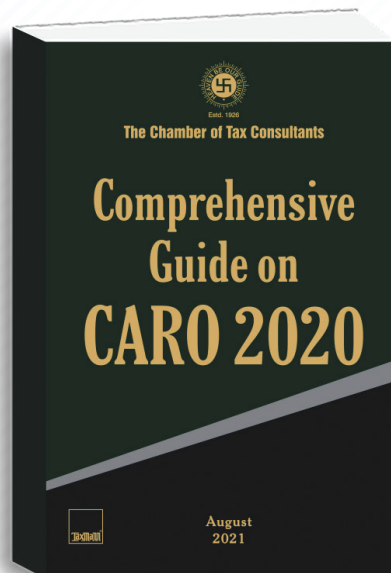
ACIT Circle 3 vs. Ashapura Builders & Developers

[ITA No. 5146/Mum/2016; ITA No. 5146/Mum/2016; Bench H; dated : 10/8/2018; Assessment Year 2011-12]



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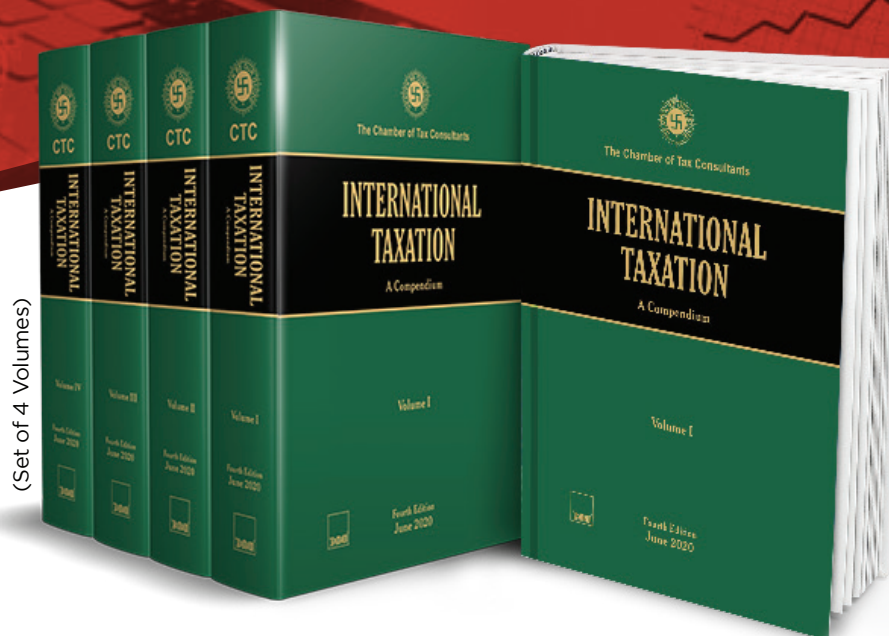
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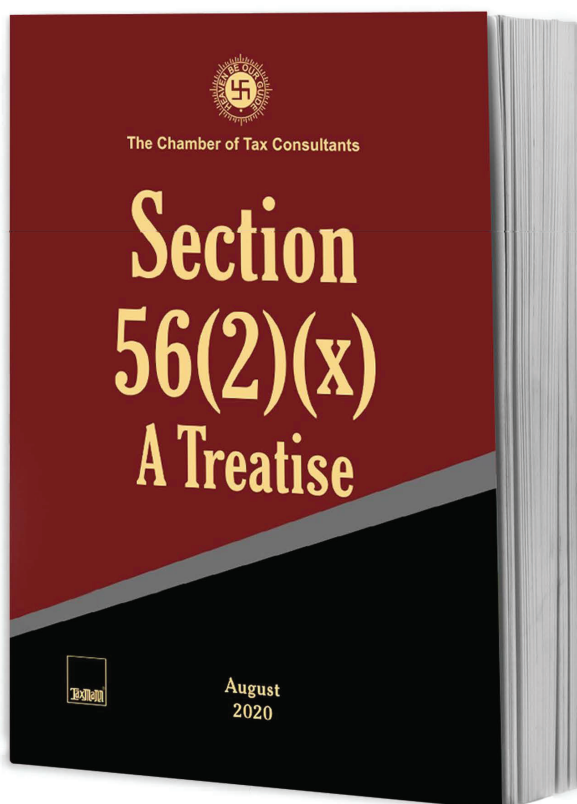
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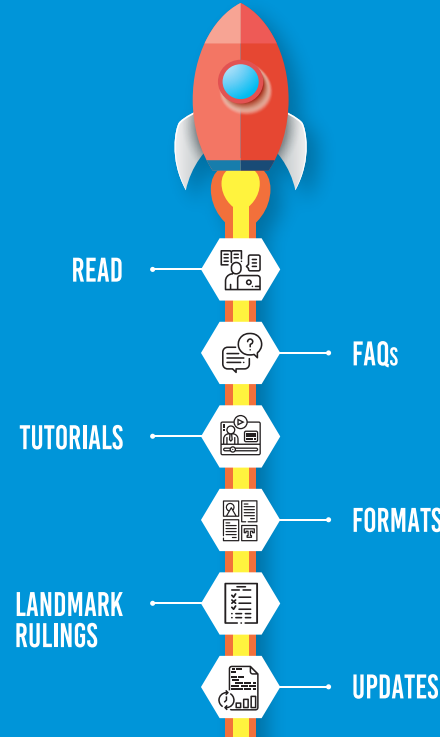
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