



ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

JULY 2022



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तस्मादसक्तः सततं कार्यं कर्म समाचर |
असक्तो ह्याचरन्कर्म परमाप्नोति पूरुषः || 19||

tasmād asaktah satatam kāryam karma samāchara
asakto hyācharan karma param āpnoti pūrushah



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

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(4) Membership: Ms. Savita Mane Email: member@ctconline.org

RENEWAL NOTICE – 2022-23

SUB: PAYMENT OF ANNUAL MEMBERSHIP FEES FOR 2022-23

Dear Members,

15th February, 2022

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 2022-2023. 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 Vijay U. Bhatt (2021-2022)

Hon. Treasurer

Sr. No.	Particulars	Fees	GST @18%	Total
I	MEMBERSHIP			
1	LIFE MEMBERSHIP FEES	15000	2700	17700
2	ORDINARY MEMBERSHIP FEES - YEARLY (APRIL, 22 TO MARCH, 23)	2500	450	2950
3	ADMISSION FEES - ORDINARY MEMBERSHIP	750	135	885
4	ASSOCIATE MEMBERSHIP - YEARLY (APRIL, 22 TO MARCH, 23)	7500	1350	8850
5	ADMISSION FEES - ASSOCIATE MEMBERSHIP	1000	180	1180
6	STUDENT MEMBERSHIP - INCLUDING E JOURNAL (APRIL, 22 TO MARCH, 23)	500	90	590
7	COURIER CHARGES FOR CHAMBER'S JOURNAL (OPTIONAL)	339	61	400
II	CHAMBER'S JOURNAL SUBSCRIPTION - YEARLY (HARD COPY)			
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 COPY)			
1	E JOURNAL SUBSCRIPTION – FOR LIFE MEMBERS (APRIL, 22 TO MARCH, 23)	700	126	826
2	E JOURNAL SUBSCRIPTION – FOR NON MEMBERS (APRIL, 22 TO MARCH, 23)	1000	180	1180
IV	ITJ SUBSCRIPTION			
1	INTERNATIONAL TAX JOURNAL SUBSCRIPTION (QTRLY – APRIL, 22 TO MARCH, 23)	1400	0	1400
V	STUDY CIRCLES & STUDY GROUPS (RENEWAL)			
1	STUDY GROUP (DIRECT TAXES)	2150	387	2537
2	STUDY CIRCLE (DIRECT TAXES)	1800	324	2124
3	STUDY CIRCLE (INTERNATIONAL TAXATION)	1600	288	1888
4	STUDY CIRCLE (INDIRECT TAXES)	2000	360	2360
5	CORPORATE AND IBC STUDY CIRCLE (VIRTUAL MEETINGS ONLY)	500	90	590
6	INTENSIVE STUDY GROUP ON DIRECT TAX	1800	324	2124
7	FEMA STUDY CIRCLE	1600	288	1888
8	PUNE STUDY GROUP (PHYSICAL/VIRTUAL MEETINGS)	2000	360	2360
9	BENGALURU STUDY GROUP	1600	288	1888
10	HYDERABAD STUDY GROUP	2000	360	2360
11	ALL STUDY CIRCLE/STUDY GROUP MEETINGS HELD AT MUMBAI (VIRTUAL MODE ONLY)	3000	540	3540
	(FOR OUTSTATION MEMBERS ONLY)			

Notes:

- Members are requested to visit our 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 and Mobile No on the reverse of Cheque/DD.
- Kindly pay your membership fees by **31st July, 2022** 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/DD.
- 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.

BRIEF REPORT OF 95TH ANNUAL GENERAL MEETING

At the 95th Annual General Meeting held on Monday, 4th July, 2022, the following business was transacted:

- To read and adopt the minutes of the 94th Annual General Meeting held on July 3, 2021.
- The Annual Report for the year 2021-22 was approved & adopted.
- The Accounts for the year ended 31st March, 2022 were adopted.
- CA J. L. Thakkar, was appointed as Auditor for the year 2022-23 and will hold office up to the next AGM.
- Results of the elections for the year 2022-23 were declared by the Election Officer, Shri Bhavesh Vora, Past President as follows:
 - Parag Ved** was declared elected as President
 - The following fourteen members were declared elected to the Managing Council

1. Abhitan Mehta	8. Neha Gada
2. Bhavik R. Shah	9. Premal Gandhi
3. Dharan Gandhi	10. Rahul Hakani
4. Haresh Kenia	11. Sumit Jhunjunwalla
5. Kirit Dedhia	12. Tejas Parikh
6. Maitri Savla	13. Vijay Bhatt
7. Mehul Sheth	14. Vitang Shah

THE DASTUR ESSAY COMPETITION:

Hon'ble Shri Justice V. G. Bisht, Bombay High Court, was the judge of the Essay Competition.

The Top 3 Winners of the Essay Competition are:

Rank	Participant Name	Topic	Associates/College
1	Mr. Satya Sankar Perepu	Privatisation of Public Sector Undertakings – Opportunities and Challenges	Grant Thornton Bharat
2	Ms. Anjana K	Does Media need to be regulated? If yes, how should it be regulated?	Government Law College, Kozhikode
3	Mr. Dhairya Bheda	Privatisation of Public Sector Undertakings – Opportunities and Challenges	CGCA & Associates LLP

The winner of The Dastur Essay Competition, 2022 viz Mr. Satya Sankar Perepu (1st Winner) and Mr. Dhairya Bheda (3rd Winner) were felicitated by Hon'ble Justice Shri S. J. Kathawalla (Retd.) by offering Trophy, Certificate and Cheque. Ms. Aanchal Shah (4th Winner), Ms. Muskan Dadia (6th Winner) and Mr. Mokshit Maru (9th Winner) were also felicitated by offering Appreciation Certificate and Memento at the 95th Annual General Meeting.

RELEASE OF PUBLICATION:

Hon'ble Justice Shri S. J. Kathawalla (Retd.) released the publication on "Practical Guide to Income Tax Practice"

KEY NOTE ADDRESS:

Hon'ble Justice Shri S. J. Kathawalla (Retd.) delivered his Key Note Address on "Reflection of Life & Journey as Law Student, Lawyer and Judge."

THE NEW TEAM FOR 2022-23

- In the First Managing Council Meeting held on Monday, 4th July, 2022, the following members were appointed as Office Bearers:

Sr. No.	Name	Designation
1.	Haresh P. Kenia	Vice President
2.	Vijay U. Bhatt	Hon. Jt. Secretary
3.	Mehul R. Sheth	Hon. Jt. Secretary
4.	Neha R. Gada	Hon. Treasurer

ii) The following nine members were Co-opted to the Managing Council for the year 2022-23:

1. Anish Thacker	6. Mahendra Sanghvi
2. Ashok Sharma	7. Nilesh Vikamsey
3. Hinesh Doshi	8. Paras K. Savla
4. Jayant Gokhale	9. Paresh P. Shah
5. Kishor Vanjara	

iii) The following members will be special invitees to the Managing Council for the year 2022-23:

1. K. Gopal	2. Hitesh R. Shah
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iv) EDITOR & EDITORIAL BOARD OF THE CHAMBER'S JOURNAL:

Mr. Vipul Choksi was appointed as the Editor of "The Chamber's Journal".

The following were appointed as Editorial Board Members:

1. A. S. Merchant	4. Kishor Vanjara
2. K. Gopal	5. Pradeep Kapasi
3. Keshav Bhuje	

The following were appointed as Asst. Editors:

1. Ajay Singh	3. Manoj Shah	5. Kumarmangalam Vijay	7. Sanjay Parikh	9. Viraj Mehta
2. Haresh Chheda	4. Nishit Gandhi	6. Rakesh Upadhyay	8. Vikram Mehta	10. Yatin Vyavharkar

v) COMMITTEES

The following Committees were formed and their Chairpersons were appointed:

Committees	Chairman/Chairperson
1. Accounting & Auditing	Tejas Parikh
2. Commercial & Allied Laws	Dharan Gandhi
3. Direct Taxes	Abhitan Mehta
4. Indirect Taxes	Sumit Jhunjunwalla
5. International Taxation	Kirit Dedhia
6. International Tax Journal	Paresh P. Shah
7. I.T. Connect	Maitri Savla
8. Journal	Paras K. Savla
9. Law & Representation	Mahendra Sanghvi
10. Membership & Public Relations	Premal Gandhi
11. Office Premises	Kishor Vanjara
12. Research & Publication	Rahul Hakani
13. Residential Refresher Course	Bhavik R. Shah
14. Student	Vitang Shah
15. Study Circle & Study Group	Ashok Sharma
16. Centenary Year	Anish Thacker

DELHI CHAPTER

The following members were appointed as Core Team of the Delhi Chapter:

1. Sanjeev Chaudhary	Chairman
2. Prakash Sinha	Vice Chairman
3. Harpreet Singh	Jt. Hon. Secretary
4. Richa Sawhney	Jt. Hon. Secretary
5. Parul Jolly	Hon. Treasurer

International Taxation Committee

Chairman: Kirit Dedhia

Co-Chairperson: Karishma Phatharphekar

Vice Chairman/Chairperson: Isha Sekhri
Shabbir Motorwala

Convenor(s): Kartik Mehta, Niraj Chheda,
Vishal D. Shah

Advisor: Dilip J. Thakkar

2-Day Study Course on TDS U/S 195 On Foreign Remittances (Hybrid Mode)

Venue: Babubhai Chinai Hall,
2nd Floor, Indian Merchant Chamber (IMC),
Churchgate, Mumbai-400 020

Friday,
August 26, 2022
Saturday,
August 27, 2022

9.30 a.m. to
5.30 p.m.

Section 195 of the Income-tax Act, 1961 (Act) lays down the obligation for deduction of income-tax at source from payments made or credits to non-residents which are in the nature of income chargeable to tax in India. This position is then required to be declared and certified in Form 15CA/ 15CB.

In order to be compliant with the provisions of section 195, one has to understand the applicable sections of the Act and Tax Treaties with respect to various foreign remittances and payables to Non-Residents and then determine the taxability and the correct rate of tax to be applied thereon. There have been several recent developments which impact this obligation and there is interplay with other enactments e.g. the widened scope of Equalization Levy, etc. Further impact of MLI has also to be considered while granting benefit of Tax Treaties which are Covered Tax Agreements. There is now a new scheme for taxation of dividend income earned by shareholders including non-resident shareholders and there has been wide interpretation of the deemed incomes taxable under section 9 of the Act. With a view to understand and deal with all these issues and recent developments, the International Taxation Committee of the Chamber of Tax Consultants has organized this Seminar for the benefit of the professionals in practice and the professionals in the industry.

Fees	Early Bird Fee till 7th August 2022	Fee from 8th August 2022
CTC Members	₹ 2,500/- + ₹ 450/- (18% GST) = ₹ 2,950/-	₹ 3,000/- + ₹ 540/- (18% GST) = ₹ 3,540/-
Non-Member	₹ 3000/- + ₹ 540/- (18% GST) = ₹ 3540/-	₹ 3500/- + ₹ 630/- (18% GST) = ₹ 4130/-

Sr. No.	Topics	Speakers
1	Key Note Address	Eminent Faculty
2	Overview of TDS on payments / credits to Non-Resident under section 195.	CA Hitesh Gajaria
3	Taxation of Commercial Payments, Royalty & Fees for technical services Nature of payments liable to TDS as Commercial payments , Royalty / FTS, various issues under DTAA such as make available, software royalty and interplay between taxation of Royalty/ FTS and EL	CA Naresh Ajwani*
4	Taxation of dividends and other income Domestic law, Impact under various treaties including MLI, MFN clauses, etc., Dividend payments to FIIs and other controversies including interplay between Sec 195 and 196A/196D	CA Jimit Devani
5	Taxation issues on payments to Non Resident Employees including reimbursement to foreign companies for seconded employees.	CA Pallavi Dhamecha
6	Taxation of capital gains including indirect transfer. Nature and taxation of capital gains for non-residents liable to withholding tax under the Act and DTAA.	CA Ravikanth Kamath
7	Taxation of foreign Shipping & Aircraft Companies in India (including Logistics & Transportation sector) Interplay between Section 172 and 44B of the Act read with the DTAA provisions.	CA Sameer Kanabar
8	Issues in Form 15CA/15CB from Banker's Perspective	Senior Faculty – ICICI Bank
9	Taxation in India of Non-Resident Actors, Athletes & Sport-persons	CA Isha Sekhri
10	Brains Trust session / Panel Discussion.	Moderator: CA Shabbir Motorwala Panelists: CA Gautam Nayak & CA Sushil Lakhani*

* Subject to confirmation

Study Circle & Study Group

Chairman: Ashok Sharma

Study Group Meeting on Recent Judgements under Income-tax Act (Hybrid)

Speaker: Ajay Singh, Advocate

Venue: 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020.

Thursday
18th August,
2022

06.00 p.m. to
08.00 p.m.

The Study Circle and Study Group committee of The Chamber of Tax Consultants has organised a Study Group Meeting on "Recent Judgements under Income Tax Act" scheduled on 18th August, 2022.

Fees

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

Indirect Taxes

Chairman: Sumit Jhunjhunwalla

Vice-Chairman: Hemang Shah

Convenors: Keval Shah, Raj Khona, Yash Parmar

Advisor: Rajiv Luthia

IDT Study Circle Meeting on GST Issues in Logistics Sector (Physical Mode)

Group Leader: CA Darshan Ranavat

Chairman: CA Vinod Awtani

Venue: Babubhai Chinai Hall, 2nd Floor, Indian Merchant Chamber (IMC), Churchgate, Mumbai 400 020

Tuesday,
July 19, 2022

5.00 p.m. to
7.00 p.m.

Levy of GST on Logistics Sector has been complex from the inception with multiple rate options given in this industry, restriction and exceptions to ITC, applicability of RCM to certain transactions, etc. The pertinent issues faced by this Industry have been amplified with frequent amendments, with the most recent being in the 47th GST Council meeting. These issues need in-depth deliberation and timely actions to curtail exposure to tax litigation.

To understand these issues the Indirect Taxes Committee of the Chamber of Tax Consultants has planned a study circle meeting on the said topic.

Fees

For IDT Study Circle Members	NIL
CTC Members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-
Non-Members	₹ 500/- + ₹ 90/- (18% GST) = ₹ 590/-

Direct Taxes

Chairman: Abhitan Mehta

Intensive Study Group (ISG) Meeting

Speaker: Devendra Jain, Advocate

Topic: • Recent Cases Laws relating to the New Reassessment Regime
• Issues & Propositions relating to the New Reassessment Regime

Thursday,
21st July, 2022

6.00 p.m. to
8.00 p.m.

Please note that this meeting is restricted to 100 participants on a first-come-first-served basis

Pune Study Group

Co-ordinator: Mehul Shah, Sachin Sastakar & Shridhar Pathak

Analysis of Section 68 & 69 series

Speaker: K.K. Chythanya, Senior Advocate

Saturday,
23rd July, 2022

10.00 a.m. to
11.30 a.m.

The Pune Study Group of The Chamber of Tax Consultants (CTC) has organised a Study Group Meeting on "Analysis of Section 68 & 69 series" scheduled on July 23, 2022.

The details of the meeting which will be held via Zoom are as follows:

Fees	
For Pune Study Group Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

Direct Taxes Committee

Chairman: Abhitan Mehta

Virtual Workshop on Tax Audit**Topics:**

- Clause by clause Analysis and Issues
- Reporting pertaining to GST
- AIS data and its implication in tax audit
- Clause relating to GAAR reporting

Speaker:

CA Mahendra Sanghvi
CA Vyomesh Pathak

Friday,
5th August, 2022

5.00 a.m. to
8.00 p.m.

Fees	
CTC Members	₹ 500/- + ₹ 90/- (18% GST) = ₹ 590/-
Non-Members	₹ 700/- + ₹ 126/- (18% GST) = ₹ 826/-

Indirect Taxes

Chairman: Sumit Jhunjhunwalla

Vice-Chairman: Hemang Shah

Convenors: Keval Shah, Raj Khona,
Yash Parmar

Advisor: Rajiv Luthia

Half Day Workshop on 'Sector Wise Ramifications of Amendments Proposed by 47th GST Council Meet'

Venue: Walchand Hall, 4th Floor,
Indian Merchant Chamber (IMC),
Churchgate, Mumbai-400 020

Saturday,
23rd July, 2022

9.00 a.m. to
1.15 p.m.

With the advent of GST, taxpayers have been burdened with frequent changes in the Tax rate, Law, Procedure and Clarifications. GST was introduced in India 5 years ago on the 1st of July 2017 with a key objective to simplify and harmonise the indirect tax regime in the country. In this process, the GST council meeting has met 47 times and as consequent result, the amendments relating to GST have been delinked with Union Budget to a certain extent and are now introduced in law in staggered manner as per recommendations of GST council.

During the recent meeting of GST council in Chandigarh, the council has proposed quite a lot of far-reaching amendments relating to law, procedure, rates, exemptions, refunds and recommended issuance of clarifications. Some of these proposals are implemented through issuance of notifications and circulars while few are expected by 18th of this month. The Indirect Taxes Committee of the Chamber has always been at the forefront, whether in form of Disseminating knowledge, Connecting Tax officials with taxpayers or representing critical issues of Trade and Industry at Central and State Level.

These proposals are like mini budget having far reaching impact on various sectors of Trade and Industry. Keeping in view the time sensitiveness and importance of these amendments, Indirect Taxes Committee of the Chamber has organized a Half Day Workshop on – 'Sector Wise Ramifications of Amendments proposed by 47th GST Council Meet'. The subject will be dealt with thread bear analysis by distinguished Speakers, having vast and rich experience in Indirect tax field.

Fees

CTC Members

₹ 700/- + ₹ 126/- (18% GST) = ₹ 826/-

Non-Members

₹ 850/- + ₹ 153/- (18% GST) = ₹ 1003/-

Sr. No.	Topics	Speakers
1.	Sector Wise Ramifications of Amendments proposed by 47th GST Council Meet': 1. Automobile Industry 2. Health & Pharma 3. Real Estate & Infrastructure 4. Media & Entertainment	Nishant Shah, Advocate
2.	Sector Wise Ramifications of Decisions of 47th GST Council Meet on; 1. Hotel & Hospitality 2. Logistics & Transportation 3. Refund & Exports 4. Small Taxpayers 5. Changes in GSTR 3B including new Reporting requirements w.r.t. ITC	CA Parind Mehta

Important Decisions under GST and Service Tax Laws

By Vinay Kumar Jain and Jay Chheda, Advocates

1. Whether transfer of Input Tax Credit from one branch to another branch of same legal entity under the garb of Facilitation Service and Business Support service is legal and acceptable?

Facts and pleadings: JSW Steel Ltd., Odisha (hereinafter referred to as 'Petitioner' or 'JSW Orissa') is engaged in the business of manufacturing and sale of hot and cold rolled coils, sheets and plates bearing GSTIN 21AAACJ4323N2ZR. JSW Steel Ltd., Maharashtra ('JSW Maharashtra') has obtained GST registration as Input Service Distributor under GSTIN 27AAACJ4323N2ZF. JSW Maharashtra had participated in a tender bidding process invited by the Government of Odisha for lease of iron ore blocks in Odisha. JSW Maharashtra was granted the lease after successful bid. JSW Odisha paid bid premium, royalty and other charges to Odisha State government towards license for right to use minerals at the mining blocks. JSW Odisha paid the applicable OGST and CGST under reverse charge ('RCM') on the various charges paid and availed Input Tax Credit ('ITC'). Further, JSW Odisha utilized the said ITC against output liability on stock transfer of goods and sale of goods. JSW Odisha also raised an invoice on JSW Maharashtra towards facilitation charges for payment of license fees on behalf of JSW Maharashtra and discharged output IGST liability by utilizing ITC accumulated at its end. Through the said transaction the accumulated ITC at JSW Odisha was exhausted and ITC was indirectly transferred and made available to JSW Maharashtra, which being an ISD, distributed the same to various other units of JSW.

The Odisha state GST officials objected to such modality as they were of the view that the intention of raising invoice towards facilitation charges on JSW Maharashtra was to indirectly transfer the accumulated ITC at JSW Odisha to JSW Maharashtra which in turn would be transferred by JSW Maharashtra as ISD to other units of JSW. The department initiated proceedings under Section 74 of the CGST Act, 2017 and confirmed demand against JSW Odisha of ₹ 401,16,88,016/- along with penalty of ₹ 401,16,88,016/- and interest of ₹ 99,14,51,105/.

The Petitioner i.e. JSW Odisha challenged the said order in Writ Jurisdiction and argued that the Petitioner's payment of royalty and other statutory dues to Odisha State government were made on

behalf of JSW, Maharashtra. Hence, the Petitioner contended that the unutilized ITC is of JSW Maharashtra who is competent to distribute such ITC to its other units. The Ld. Advocate General argued that the transactions in question are sham due to lack of "supply" of "goods" or "services" by JSW Odisha to JSW Maharashtra. Further the Ld. Advocate General stated that JSW Odisha has not obtained ISD registration to distribute ITC to JSW Maharashtra.

Orrisa High Court Judgement: The Hon'ble High Court held that that JSW-Company from its Head Office at Bombay had applied and participated in the tender process but JSW as a Company, has been granted the mining lease for iron mines situated within Odisha. To utilize such mines in Odisha, registration was obtained by JSW in the state of Odisha. Subsequently, JSW Odisha paid royalty and other statutory dues and ITC was also claimed which lead to excess ITC remaining as unutilized at JSW Odisha. Such unutilized ITC was sought to be utilized by raising facilitation output invoices on JSW, Maharashtra in the garb of 'support services'. The Court held that the JSW Odisha's claim of depositing output GST under RCM on behalf of JSW Maharashtra lacks sufficient evidence to back such claim and the transaction in question prima facie amounts to siphoning of tax credit from one branch to another. Accordingly, the High Court declined to allow the prayer of the Petitioner to restrain the Revenue to affect recovery of the demand confirmed under section 74. However, the High Court issued notice to Revenue to file its response on the challenge of lack of jurisdiction of State of Odisha to confirm such demand as ITC has been availed by JSW Maharashtra and no proceedings can be initiated against JSW Odisha.

M/s JSW Steel Ltd. v. Union of India and Others – Judgement dated 17.05.2022 in W.P. (C) No. 10052 of 2022 & I.A. No. 5190 of 2022, High Court of Orrisa

2. Whether the Show Cause Notice issued by the officers of Directorate of Revenue Intelligence (DRI) were within jurisdiction or not in view of the amendments in Finance Act 2022 to negate the impact of decision of Supreme Court in the case of Cannon India?

Facts and pleadings: In the said case, Writ Petition was filed to challenge the Order-in-Original emanated from Show Cause Notice issued by the officers

of Directorate of Revenue Intelligence (DRI). The Petitioner challenged the order contending the lack of jurisdiction of DRI officers on the ground that they are not a “proper officer” within the meaning of Section 2(34) of the Customs Act, 1962 by relying on two decisions of the Hon’ble Apex Court, Commissioner v. Sayed Ali 2011 (265) E.L.T. 17 (S.C.) and Canon India Private Limited Vs. Commissioner of Customs 2021 (376) E.L.T. 3 (S.C.) which held that the officer from DRI is not a “Proper Officer” as per Section 2(34) of the Customs Act, 1962 for issuing Show Cause Notice under Section 28 of the Customs Act, 1962.

During the pendency of the proceedings, Finance Bill, 2022 was passed proposing changes to the Customs Act, 1962. Section 97 of the Finance Act, 2022 validated all proceedings already taken before the commencement of the Finance Act, 2022 by any officers of Customs as specified in the Customs Act, 1962 and to subsequently complete the pending proceedings post the commencement date in accordance with the provisions of the Customs Act, 1962 as amended by the Finance Act 1962.

Madras High Court Judgement: The High court acknowledged the pending proceedings in this matter when the Finance Bill, 2022 (Section 97) was passed proposing changes to the provisions of the Customs Act, 1962 (Section 2(34), 3, 4, 5) and validating the actions already taken. Vide the Budget Amendments in 2022, Section 3 notified the officers of DRI, Customs (Preventive) and Customs (Audit) as officers of Customs. Further amendment to Section 5 provided powers to the CBIC to notify functions of officers and appoint class of officers as ‘proper officers’. Further specific inclusion in section 5 has been undertaken to provide for concurrent jurisdiction in multiple officers. Further such amendments shall retrospectively apply since the time Customs Act has been brought into force and validate all previous actions carried out by this class of officers.

The Hon’ble High Court observed that post Budget Amendments in 2022, the Officers of Directorate of Revenue Intelligence (DRI) are appointed as “Officers of Customs” under notification issued under Section 4(i) of the Customs Act, 1962. Further under Section 6 of the Customs Act, 1962, the powers and functions (duties) of the Board or “Officers of Customs” specified in Section 5 read with Section 4 can be entrusted on these officers. Hence, the court held that, the orders passed are valid and legal and will be disposed off in accordance with the provisions of the Customs Act, 1962 and Section 97 of the

Finance Act, 2022.

N.C. Alexander Vs The Commissioner Of Customs, Chennai II Commissionerate – Judgement dated 9 June 2022 in Madras High Court

3. Whether the principle of unjust enrichment apply in case of refunds when the Petitioner is engaged in export of services?

Facts and Pleadings: Jar Productions Pvt. Ltd. (hereinafter “Petitioner”) is registered under the Companies Act, 2013 and providing production services to ‘A Suitable Company Ltd.’ located in London, U.K. (ASCL). The Petitioner had entered into an agreement with ASCL, wherein as per Clause 4.10, any refund of tax received by the Petitioner, shall be deducted from the production expenses while computing the consideration towards production services. The Petitioner paid output IGST on the consideration received and utilised inputs/input services ITC for payment of output IGST liability and filed first refund claim for the period April to July 2019 on 31.03.2021. The said refund claim was allowed by the Department. Thereafter, the Petitioner filed another refund application for period August 2019 to October 2019. However, a Show Cause Notice was issued to the Petitioners, and subsequently the said claim was rejected on the ground that the incidence of tax was passed by the Petitioner to ASCL, resulting in unjust enrichment to the Petitioner. The Petitioners filed an appeal against the said order, however the same was also dismissed. Similarly, the refund claim of the Petitioners for the period November 2019 to July 2020, was also rejected on similar grounds. Hence, the Petitioner filed Writ petition before Bombay High Court against the said orders.

The Petitioner submitted that based on the decisions of the Hon’ble Bombay High Court in various judgements, the principle of unjust enrichment does not apply to the export services (zero rated supplies) rendered by the Petitioner.

Bombay High Court Judgement: The Hon’ble High Court noted that the Respondents did not dispute the entitlement of refund of GST by the Petitioner but contended the passing of incidence of tax to ASCL. The Court observed that as per Section 54(8) (e) an applicant is entitled to the refund of tax if the incidence of tax has not been passed on to the recipient of the services. The Court observed that in the present case, the agreement executed between the Petitioner and the ASCL shows that the approved production budget includes all costs in connection

with the production services including the amount of Indian GST, thereby depicting that GST is included in all costs in connection with production services. Thus, the Court observed that it can be clearly established that the incidence of tax has not been passed to ASCL since as per Clause 4.10 the amount of GST is refunded to the Petitioner is to be deducted from the total cost in connection with the production services as per the said Clause. Therefore, the Hon'ble High Court set aside the orders of both, the Adjudicating Authority and the Appellate Authority holding that services rendered by the Petitioner were export services and because no passing of incidence of tax was established by the Respondent.

Jar Productions Private Limited v. The Union of India & Ors. – Judgement dated 09.06.2022, W.P. No. 1143 of 2021, High Court of Bombay

4. Whether inordinate delay in adjudication of show cause notice is fatal and violation of the principles of natural justice?

Facts and pleadings: Unic Associates (hereinafter referred to as "Petitioner") were served with a Show Cause Notice on 06.10.2010 (hereinafter referred to as 'SCN'). The Petitioner was aggrieved by the

demand proposed in such SCN which had been adjudicated by the Department in the year 2021. The Petitioner citing the well settled principles of case laws and jurisprudence stating that such proceedings completed long after the issue of SCN to be quashed since they are in violation of the principles of natural justice.

Madras High Court Judgement: The Hon'ble High Court stressed on the fact that the authorities are overburdened by several litigations, hence, holding the orders passed long after the issuance of the SCN to be in violation of the principles of natural justice as not fair. Additionally, it added that the Petitioner could have approached the court under Article 226 of the Constitution of India for a Mandamus to direct the Department to adjudicate the show cause notice by completing the necessary assessment in reasonable time. The Hon'ble High Court dismissing the petition expressed that Petitioner of being equally guilty of the delay in not following up with the Department to pass an order at an earlier date.

Unic Associates Vs CCE, Chennai North – Judgement dated 05.01.2022 in W.P. No. 28292 of 2021, High Court of Madras

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. Business disallowance under section 43B(d)/(e) read with 'Explanation 3D - Deduction on actual payment - Bank interest expenses :

Assessee debited bank interest expenses of Rs. 1,93,79,723 in profit and loss account. On being queried that as to why said interest expenditure may not be disallowed in case the same was not actually paid within the meaning of section 43B(d)/(e) read with 'Explanation 3D', it was submitted that as interest charged by the bank was fully recovered from his bank accounts and nothing was pending for payment since entire amount of interest was paid in the subsequent month thus, the provisions of section 43B(d)/(e) read with 'Explanation 3D' were duly complied with. AO was of the view that claim of the assessee that the interest had been actually paid was not factually correct and also not in accordance with the definition of 'actual payment' provided in 'Explanation 3D' to section 43B of the Act.

Insofar the certificate issued by the bank of having received the amount towards interest element was concerned, AO was of the view that same was issued by bank as per their internal accounting adjustments as per RBI guidelines and same had nothing to do with application of provisions of section 43B. In the backdrop of his aforesaid deliberations, AO under section 43B(d)/(e) read with 'Explanation 3D' disallowed assessee's claim for deduction of interest expenditure.

Held:

Section 43B(d)(e) read with 'Explanation 3D' contemplates that any sum inter alia payable by assessee on any loan or advances from a scheduled bank in accordance with terms and conditions of agreement governing such loan or advances would be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting

regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him. Further, as per 'Explanation 3D' it has been clarified that a deduction of any sum, inter alia being interest payable on any loan or advance from a scheduled bank would be allowed if such interest has been actually paid and any interest which had been converted into a loan or advance shall not be deemed to have been actually paid. The controversy in assessee's case emerged from the different manner in which section 43B(d)/(e) read with 'Explanation 3D' had been construed by assessee and the revenue. A bare reading of Explanations 3C and 3D to section 43B provides an answer to the problem by making it clear that where interest amount has not been converted into loan or borrowing (or) loan or advance, as the case may be, there is no question of denying the benefit of deduction. In the instant case interest amount had been actually paid by assessee through Overdraft/Cash Credit account and the same had not been converted into loan or borrowing (or) loan or advance. Therefore, AO was directed to vacate disallowance of the interest expenditure made by him under section 43B(d)(c) read with 'Explanation 3D'.

ACIT v. Ashok Radhakishen Mehra

[ITA No.5096/Mum/2019 ; Bench A ; A.Y. 2015-16 ; dt 18/2/2021]

2. Capital Gains- No Cost of Acquisition - No Capital Gains

The assessee filed return in response to notice u/s 148 declaring Long Term Capital Gains and other income by considering Cost of Acquisition as FMV of land as on 01/04/1981 as land was acquired by the original owner prior to 1-4-1981. No such plea that land came into the possession of the appellant in the circumstances that cost of land was not conceivable was taken before the AO. During the course of appellate proceedings, it was claimed that appellant was in possession of land for a long period and therefore, owner of the land had requested the revenue authorities to delete their name and put the name of the appellant as owner in

the land records. One report of advocate regarding the investigation of the title of the property along with certified copy of mutation entry was furnished. The assessee had also relied on the decision of the courts where in case of adverse possession for a long period, cost to the encroacher was not found determinable, hence, on sale of property by such owners (encroachers) was not held liable to the capital gain tax. Revenue contended that, no material whatsoever was brought on record to show that assessee was in forcible possession of the land and there was any litigation Civil or Criminal between the heirs of G. B. Patwardhan and the appellant. Also, there was no evidence to hold that it was forcible and adverse possession in the hands of the appellant. Therefore, it was held that land was gifted to the appellant on 12.09.1973 and accordingly, cost of acquisition in the hands of appellant can be taken at the option of the appellant either the cost in hands of late G. B. Patwardhan or the FMV as on 01.04.1981.

Hon'ble ITAT, held that section 49(1)(i) to (iv) prescribing cost; with reference to certain modes of acquisition wherein if it is found that the capital asset in issue has been acquired under the specified mode; gift herein is to be taken for which the previous owner had acquired the same for valuation consideration followed by Explanation thereto inserted by Finance Act, 1965 w.e.f. 1-4-1965, the dept failed to rebut the clinching fact that the learned lower authorities could not find the actual cost of acquisition paid by way of valuable consideration. However, as the same could not be done, appeal of the assessee was allowed and the Assessing Officer was directed to frame his consequential computation after adopting the cost of the asset's acquisition in issue as "NIL".

The Tribunal followed the decision in case of CIT Vs. Sambhaji Nagar Co-op. Hsg. Society Ltd. (2015) 370 ITR 325 (Bom) as well as CIT Vs Markapakula Agamma (1987) 165 ITR 386 (AP).

Baban G. Kumbharkar v. ITO

[ITA No. 2315 & 2316/PUN/2016 ; Bench : A Pune ITAT ; dated 18/6/2022 ; AY 2007-08 & 2008-09]

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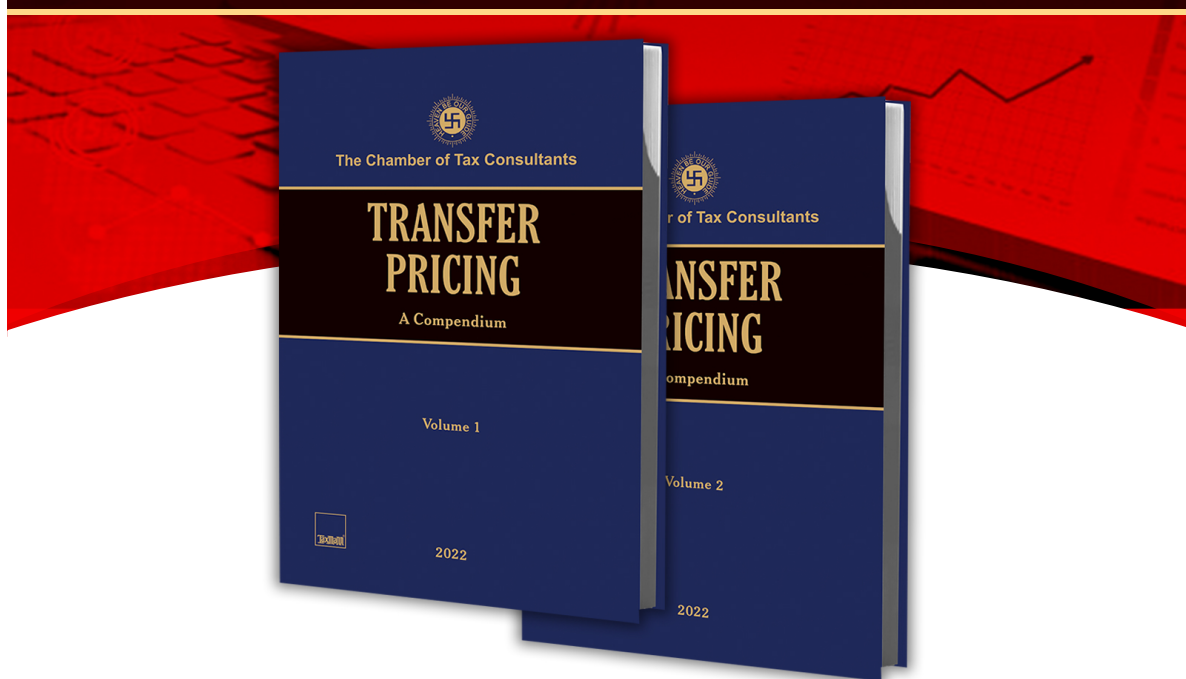
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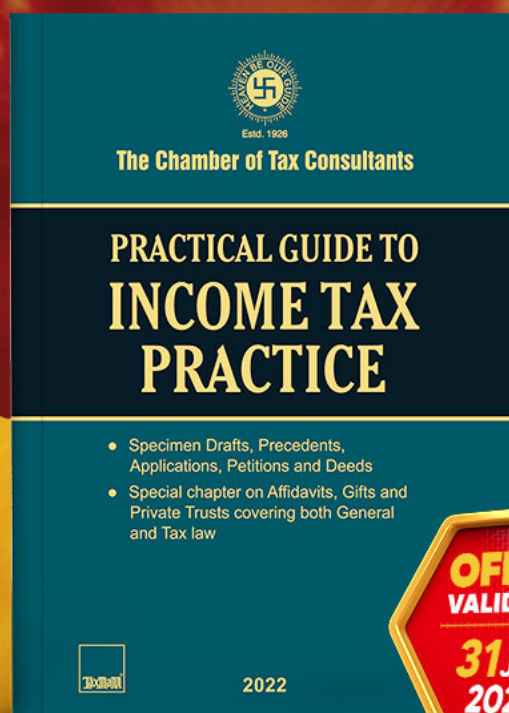
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