RNI No. MAHENG/2015/67505 I **Postal Reg. No.** MCS/210/2019-21
Vol. VIII | Issue 7 I January 2022 I **Total Pages•16 I Price:** ₹ **2/-**

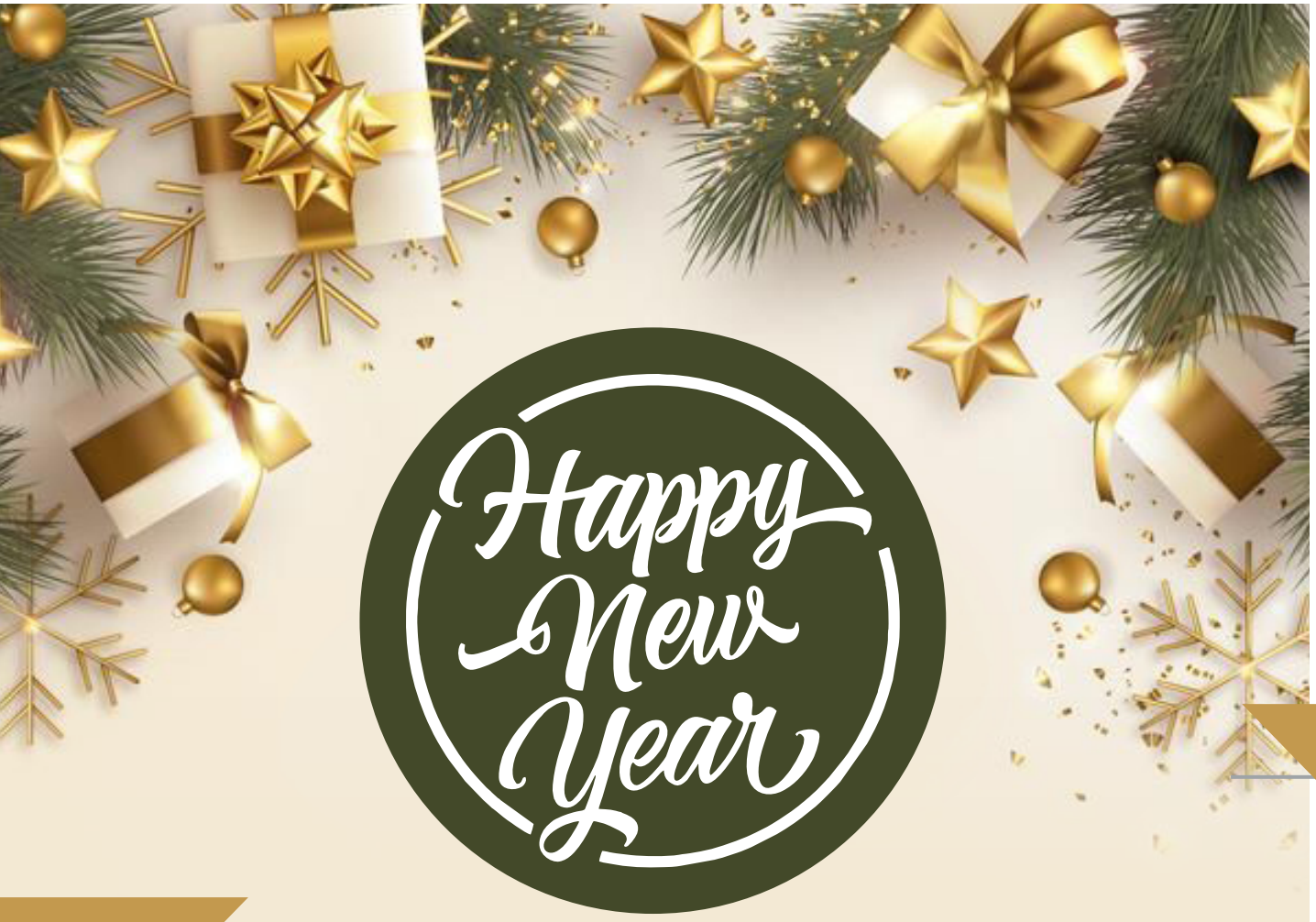
Estd. 1926
ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

JANUARY 2022



"We all get the exact same 365 days. The only difference is what we do with them." —Hillary DePiano

CONTENTS

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 - *Manager-Events* - 8080254129
Bindu Mistry : *Manager-Technical* - 9637692312 Manisha Kasbe : *Manager-Accounts* - 8104816841

Helpdesk: (1) Events: Mr. Pradeep Nambiar / Mr. Anand Kadam Email: events@ctconline.org (2) Accounts: Ms. Manisha Kasbe Email: accounts@ctconline.org (3) Journal: Ms. Bindu Mistry Email: jou@ctconline.org (4) Membership: Ms Savita Mane Email: member@ctconline.org

Indirect Taxes

Days & Dates
Thursday, 10th March, 2022 to
Sunday, 13th March, 2022

10th Residential Refresher Course on GST at DELTIN, Daman

Indirect tax Committee of The Chamber of Tax Consultants is pleased to announce it's much awaited **Residential Refresher Course** on GST, at DELTIN, Daman from Thursday, **10th March 2022 to Sunday, 13th March 2022.** The venue is easily accessible by road from Mumbai, Surat and other parts of Maharashtra & Gujarat. The Nearest airports are Mumbai and Surat. Nearest railway station VAPI is just 12 Kms away from the venue. Vapi station is well connected by rail with most of the cities of India.

About The DELTIN, Daman

The DELTIN, Daman is a 176-room five-star hotel and the largest integrated resort spread over 10 acres, with 3,00,000 sq. ft. of developed area. It's a the first and only 5-star hotel in Daman.

The hotel is 2.5-hour drive from Mumbai and Surat making it an ideal location for a weekend getaway as you enjoy the road trip on your way to the hotel! With the largest banquet facility in the area, two bars, two specialty restaurants, luxury suites and a meandering pool this hotel has everything one needs for relaxation.

It is a great destination for participants seeking a relaxing stay in a resort, replete with the sights and sounds of exotic birds, peaceful surroundings, and a private driveway for a memorable arrival experience.

Participants may visit the hotel website: https://www.deltin.com/the-deltin-hotel/ for further details.

About Daman.

- Daman, once a part of Portuguese colony, boast of a rich and multi - faced cultural heritage. Here is a true fusion of cultures - tribal, urban, Portuguese and Indian. This ornate amalgam is reflected in the traditional dances of Daman.
- Daman is a well-known tourist place and holiday gateway for surrounding states. Jampore Beach, Devka Beach, Bom Jesus Church, Dominican Monastery, Governor Palace, Mirasol water park, Mirasol Lake Garden etc. are prominent tourists attractions.

Salient features of the RRC:

- RRC is for 3 Nights/4 Days to provide relaxed schedule for learning and enough time for participants to enjoy the venue and places around. The relaxed schedule also helps in networking with professional colleagues coming from various parts of the country.
- There will be 2 case study papers, 2 presentation papers and one panel discussion covering substantive and conceptual aspects of GST. The papers will be contributed by senior, expert and experienced faculties invited from different part of the country.
- There will be longer duration for intensive group discussion. Faculties will be given more time to cover the case studies in greater depth.

RRC itinerary:

Papers for Discussion		Faculties/Panelists
PAPER I	Case studies on Unique overseas transactions – GST and Customs Implications	**Shri Nishant Shah, Advocate**
PAPER II	Intricate case studies on Input Tax Credit	**CA S. S. Gupta**
Paper For Presentation		
III	Important concepts and definitions and its implications under GST	**Shri V. Raghuraman, Senior Advocate**
IV	Litigation strategy & management including prosecution aspects – In talk show format.	**Guest faculty:** **Shri Tushar Hemani, Senior Advocate** **Host: CA Abhay Desai**
Panel Discussion		
V	Assorted case studies covering different sectors and concepts	**Panelists:** **1. CA Sunil Gabhawalla** **2. Shri L. Badri Narayan, Advocate** **Moderator: CA A. R. Krishnan**

Date	**Thursday, 10th March 2022 to Sunday 13th March 2022**
	3 nights and 4 days on Twin Sharing basis
Venue	Hotel DELTIN, Daman
Fees	**Enrollment fees up to 25/01/2022 and on Twin Sharing (Early Bird)**
	₹ 17,500/- + ₹ 3,150/- (18% GST) = ₹ 20, 650/- for members
	₹ 19,000/- + ₹ 3,420/- (18% GST) = ₹ 22,420/- for non-members
	Enrollment fees up to 25/01/2022 and on Single Occupancy (Early Bird)
	₹ 28,500/- + ₹ 5,130/- (18% GST) = ₹ 33,630/- for members
	₹ 30,000/- + ₹ 5,400/- (18% GST) = ₹ 35,400/- for non-members
	Enrollment fees on or after 26/01/2022 on Twin Sharing basis
	₹ 19,000/- + ₹ 3,420/- (18% GST) = ₹ 22,420/- for members
	₹ 20,500/- + ₹ 3,690/- (18% GST) = ₹ 24,190/- for non-members
	Enrollment fees on or after 26/01/2022 on Single Occupancy
	₹ 30,000/- + ₹ 5,400/- (18% GST) = ₹ 35,400/- for members
	₹ 31,500/- + ₹ 5,670/- (18% GST) = ₹ 37,170/- for non-members

Other relevant information:

1. Out of abundant precaution, managing committee has decided to restrict participation upto 200 delegates on first come first serve basis. Members are requested to enroll at earliest, to avoid the disappointment.
2. **Only those participants who have received both doses of Covid Vaccines will be allowed to attend the RRC. Participants are requested to ensure that they get fully vaccinated prior to 14 days of the event. Please carry your Final Vaccination Certificate & ID (Aadhar) at venue.**
3. RRC will commence from Lunch at 12.30 p.m. on Thursday, 10th March, 2022 and end by 2 p.m. (after lunch) on Sunday, 13th March, 2022.
4. Check in time at The DELTIN, Daman is at 12.30 p.m. on 10th March 2022. Inaugural session will start at 3.30 p.m. on 10th March 2022. Participants are requested to plan accordingly.
5. Participants have to make arrangements for reaching to Hotel the DELTIN, Daman.
6. RRC fees includes course materials, stay on twin sharing basis, all meals, etc.
7. Request for refund will be entertained subject to the discretion & approval of managing committee of chamber. In case any member / immediate family member is affected with Covid before the commencement of RRC, he can request for replacement with any other delegate. In case if replacement is not possible and refund is to be given in exceptional circumstances, requisite proofs will be required to be submitted for processing of refund request.

Interested Members may enroll 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 favor of "The Chamber of Tax Consultants." Outstation members are requested to make the Online payment or by at par Cheque/Demand Draft only.

For enrollment and any other conference related inquiries, please contact Mr. Hitesh Shah – *Manager of Chamber's Office* on 9821889249

10th Residential Refresher Course on GST at

DELTIN, Daman
Varkund, Nani Daman, Daman & Diu. PIN 396210

PROFORMA OF ENROLMENT FORM

Name of Member: ..... Sex: M/F Age:.....

Firm Name: ..... GSTIN:.....

Mailing Address: .....

Telephones: (O) .....

Mobile: ..... Email id: .....

(Kindly fill in Email address carefully and in legible writing, since all the communication from Chambers' office with regards to this conference would be only by email.)

Choice of Room Partners (to be considered, only if possible)

(1) .....

Preference of Food (Non Jain / Jain)

Course Material to be collected - Personally ..... by Courier.....

I would like to act as Group Leader for following papers: (Please Tick √ Box)

(1) Case Studies on Unique overseas transactions-GST and Customs Implications ☐

(2) Intricate Case Studies on Input Tax Credit ☐

Delegate Fees:

Draft/Cheque No. ..... dated ..... drawn on .....Bank

..... Branch For ₹ .....is enclosed herewith.

Date: ..... Signature.....

THE CHAMBER OF TAX CONSULTANTS
3, Rewa Chambers, Ground Floor, 31 New Marine Lines, Mumbai 400 020
Tel.: 2200 1787 / 2209 0423 / 2200 2455
E-mail : ctcdebatecompetition@gmail.com | Visit us at: www.ctconline.org

H. R. College of Commerce and Economics
Vidyasagar Principal K.M Kundnani Chowk,
123 Dinshaw Vaccha Road,
Churchgate, Mumbai 400 020

The 5th Dastur Debate Competition

Thursday, 27th & Saturday, 29th January, 2022
Venue: Virtual e-Platform

The Chamber of Tax Consultants in association with **H. R. College of Commerce and Economics** is pleased to announce its Fifth Debate Competition.

Objectives

Debate is the art of dialectic, that puts questioning, reasoning, critical thinking and logic at the heart of the trivium. These are all essential attributes of a great education and to be able to do them well can help ensure that young people perform well academically and, indeed, socially. The young students are the future of our nation. They have the potential to bring new ideas before society. The objective behind organising The 5th Dastur Debate Competition is to ignite students' thought process and bring before us mint fresh thoughts.

Every year, the Competition is held physically at H. R. College of Commerce and Economics, Mumbai. However, due to the ongoing Covid-19 pandemic, we will be organizing the Debate Competition on e-platform which will enable a wider reach and participation from colleges/firms across India.

Details of the Debate Competition are as under:	
Each Team consist of	Two participants (Colleges/Law firms/CA firms/Individual* are eligible to send their teams)
Eligibility of participants	a. A student below 24 years of age AND b. A student studying in law/commerce college and not possessing any professional qualification such as CA, LLB, CS, ICWA etc. Note : CA/CS Articled Assistants are allowed to participate.

***Individual should enroll as an Independent Team**

Enrolment is restricted on a First-Come-First-Served-Basis. Interested students may send their enrolment along with participation details on ctcdebatecompetition@gmail.com or before Saturday, 15th January, 2022

Awards

- Trophies & Certificates & Prize Vouchers shall be awarded to the winning team, first and second runner up.
- Trophy & Certificate will also be presented to the Best and 2nd Best Speaker.
- Physical Certificate of Participation will be presented to each of the participants.

1st Prize worth ₹ 7,500/-

2nd Prize worth ₹ 5,000/-

3rd Prize worth ₹ 2,500/-

The pre-event will be organised on **Monday, 24th January, 2022** to brief participants about the event and to assign the topics at **12 noon** on a virtual e-platform.

For Rules & Regulations please visit our website www.ctconline.org
or call on CTC Office : 2200 1787 / 2209 0423 / 2200 2455
or HR College : Ms. Trisha Dutta - 7738907722 / Ms. Inaya Contractor - 9869675903

Direct Taxes

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

Indirect Taxes

Chairman: **Atul Mehta;** Vice-Chairman: **Sumit Jhunjhunwalla;**
Convenors: **Hemang Shah, Keval Shah, Kush Vora;** Advisor: **Rajiv Luthia**

Day & Date
Saturday, 22nd January, 2022
Time
10.00 a.m. to 2.00 p.m.

Search and Seizure under the Income Tax Law & GST Law

Search and Surveys are tools provided into the armoury of revenue department to unearth unaccounted transactions & income and ensure the compliance of law. The department officials sometime use powers to violate the personal space of the assessee and interfere with his privacy.

Of late, there has been a spurt in the search and survey proceedings being conducted by the revenue department. There are also cases of confrontation between the tax payer and the department on various issues. The issue becomes very critical due to the power provided under the GST law to arrest dealers/taxpayers.

It is intended to cover the topic holistically, thus the domain shall include search under Income Tax, GST and its implication under the Benami Law, Black Money Act & PMLA. The Learned speakers shall guide the participants through the maze of practical issues roving around the subject

Some common issues that shall be redressed by the speakers are as under:

- The rights and duties of the assessee during search proceedings, Remedies in case of misbehaviour or assault by official.
- Recording of statement on oath and retraction of the same.
- Evidentiary value of retracted statement.
- Implications of statements recorded under Income tax Act under Benami Law, Black Money Act, and Prevention of Money laundering Act & Companies Act (SFIO).
- Issues faced by person (whether registered or not) under the GST search.
- Summons received by the person (whether registered or not) under the GST.

In order to keep the member and business community abreast and aware with the law, procedure, duties and rights relating to search and survey, this webinar is being organised jointly by the Direct Tax committee and Indirect Tax committee of The Chambers of Tax Consultants.

Sr. No.	Topics	Speakers
1.	Search and Survey under the Income Tax Law	**Ashwani Taneja, Advocate & Amit Khemka, Advocate**
2.	Summons, Search & Seizure under GST Law	**Shailesh Sheth, Advocate**

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

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, 13th January, 2022
Time
4.30 p.m. to 6.30 p.m.

Panel Discusssion on Interplay between Income Tax Act, Benami Transactions (Properties) Act and Money Laundering Act and other allied laws
(Jointly with IMC Chamber of Commerce & Industry and Bombay Chartered Accountants' Society)

The Chamber of Tax Consultants jointly with IMC Chamber of Commerce and Industry & Bombay Chartered Accountants' Society is organizing a Panel Discussion on Interplay between Income Tax Act, Benami Transactions (Properties) Act and Money Laundering Act and other allied laws on Thursday, January 13, 2022 from 4.30 pm to 6.30 pm.

The success of a developing economy like India critically depends on the capacity of our society to root out the evil of corruption and black money from its very foundations. The Present Indian Government has rigorously being enforcing measures to curb the generation of black money and to bring back the suppressed money along with its benefit which is circulating in the economy under the tax regime. With this motive, the Government introduced the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, substantially amended the Prohibition of Benami Property Transactions Act, 1988 and has vigorously applied such acts along with the Prevention of Money-laundering Act, 2002.

Income tax Act and other laws relating to economic offences have large scale overlap amongst themselves and possess interplay. Also, the enforcement of the Black Money Act and the judiciary process under the same has been operating through the Income-tax Authorities and there have been some litigation which has traversed to Income-tax Appellate Tribunal as-well.

In order to understand this multifaceted and intertwined application amongst the above mentioned laws, we have organised a Webinar which will give more clarity on the issues arising on account of interpretation and application of the multiple laws.

The Session will be in panel discussion format and the Speakers of the programme are as under:

- **Shri Rabi Narayan Dash (Ex-CCIT & Ex-Chairman Tribunal of PMLA & Benami Law)**
- **Shri Ashwani Taneja (Advocate & Ex-Tribunal Member)**
- **Shri Amit Khemka (Advocate, Supreme Court of India)**

The speakers will also reply/ clarify the questions received from the participants post the panel discussion. The questions to be posted to the Speakers can be sent in advance to office@ctconline.org

A limited number of participants will be admitted on first-come first-served basis.

Bengaluru Study Group

Co-ordinator: **Sandeep C.;** Convenor: **Bharat L.**

Day & Date
Friday, 28th January, 2022
Time
5:00 p.m. to 6:30 pm

Bengaluru Study Group Meeting on Interplay between Double Taxation Avoidance Treaties and Investment Treaties with Snippet Update on International Tax Developments

The Bengaluru Study Group (BSG) Committee of the Chamber of Tax Consultants is organising a webinar on the topic of "Interplay between Double Taxation avoidance treaties and Investment treaties with Snippet update on International Tax Developments" is scheduled on 28th January, 2022.

Sr. No.	Topics	Speakers
1.	Snippet update on International Tax Developments – Dec 2021 & Jan. 2022	**CA Navaneeth SB, Bangalore**
2.	Interplay between double taxation avoidance treaties and investment treaties	**CA Sudarshan Rangan, Chennai**

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

IMPORTANT DECISIONS UNDER GST AND SERVICE TAX LAWS

By Vinay Kumar Jain and Sachin Mishra, ***Advocates***

1. Whether Interchange Fee is consideration for credit card services provided by the issuing bank and consequently, whether service tax is payable on the same?

Facts and Pleadings: CITI Bank (hereinafter referred to as "Bank") is a bank engaged in issuing credit cards & is known as the Issuing Bank. When a customer holding a credit card, swipes it for a transaction with a Merchant Enterprise ("ME"), the transaction goes to an acquiring bank. This acquiring bank makes the payment to the ME and deducts certain amount from the merchant known as Merchant Discount Rate ("MDR") for providing service to them. The acquiring bank discharges the service tax liability on this amount. The acquiring bank in turn receives the payment from the issuing bank, which retains a part of the MDR before remitting the amount. This amount is known as the Interchange Fee. For example, if a cardholder swipes his credit card for a purchase of ₹ 100 with an ME, then the acquiring bank pays the ME ₹ 94.30 after deducting a pre-determined amount of ₹ 5.70. Here, ₹ 5 is the MDR on which ₹ 0.70 is discharged as service tax to the authorities by the acquiring bank. The issuing bank remits ₹ 98 to the acquiring bank after deducting ₹ 2 as its interchange fee. Hence, the issuing bank gets ₹ 2 out of the MDR of ₹ 5 and the acquiring bank gets the balance of ₹ 3. The matter in dispute in the present case was whether the issuing bank is liable to pay service tax on Interchange Fee received by it.

The revenue argued that Bank was liable to pay service tax on the interchange fee as they were rendering services. They submitted that interchange fee was consideration for their service of verification and facilitation of the transaction as per their contract with the Card association and also for taking the risk of collection from card holder. Further, the revenue submitted that it is not a transaction in money as the interchange fee is for allowing the transaction and only the debited amount is a transaction in money. They also argued that there was no double taxation as there were two independent transactions and separate services were being provided by the issuing and acquiring banks. Further, the revenue pointed out that service tax was not discharged on interchange fee as the fee is paid to the issuing bank prior to the receipt of MDR.

The Bank submitted that it is not performing any service so as to render it exigible to service tax on the interchange service. The interchange fee is in the nature of interest it has earned in the credit card transaction with the customer. The Bank also stated that the service was being provided by both the issuing and the acquiring bank in the transaction and the MDR was the gross amount of consideration, part of which was payable to the issuing bank and another part to the acquiring bank. The Bank also submitted that the acquiring bank was paying service tax on the entire MDR, which included the amount of interchange fee. If the Bank also paid tax on it, then there would be double taxation.

Judgement: There was divergence of opinion among the Hon'ble Judges of the Division Bench and hence the Papers are to be placed before the Hon'ble Chief Justice of India for constituting an appropriate Bench in the matter.

As per Hon'ble Justice K. M. Joseph, the issuing bank as well as the acquiring bank both provide services in the transaction involving a credit card purchase and this service is clearly covered under Section 65(33a)(iii) of the Finance Act, 1994. Hon'ble Justice K. M. Joseph also observed that the interchange fee is the consideration that accrues to the issuing bank for verifying, facilitating and extending the purchase value in line with the contractual agreement the issuing bank; has with the card association and taking the risk for collection of amounts from the Card holder. Hon'ble Justice K. M. Joseph further observed that the activity performed by the issuing bank and the acquiring bank in this transaction is different and therefore, the service provided by the two banks is distinct, which means that both the banks are required to discharge service tax. Hon'ble Justice K. M. Joseph did not accept the argument that Interchange Fee was an interest and not consideration for service. Hon'ble Justice K. M. Joseph also rejected the argument that the credit card transaction was not chargeable to service tax as it was a "transaction in money". Hon'ble Justice K. M. Joseph explained that the issuing bank not only approves the transaction but also undertakes the risk to recover the credit from the customer and earns Interchange Fee as consideration. The authority seeks to tax this fee and not the money amount made available to customer. Therefore, this cannot be said to be a "transaction in money".

Whereas, Hon'ble Justice Bhat agreed with Hon'ble Justice Joseph on all matters except on the fact that the issuing and acquiring bank were providing distinct services. Hon'ble Justice Bhat observed that the credit card transaction, involving the settlement of payment, was one "indestructible integrated service", whose constituent parts were inseparable.

Therefore, the issuing bank was not subject to service tax as its service was already incorporated in the service provided by the acquiring bank. The gross consideration received in this case was the MDR, inclusive of the Interchange Fee, on which service tax was discharged by the acquiring bank. For this reason, Hon'ble Justice Bhat did not agree with Hon'ble Justice Joseph that the appeals should be allowed. Accordingly, matter was referred to Larger Bench due to difference of opinion.

Commissioner of GST and Central Excise vs M/s CITI Bank NA, Supreme Court of India, decided on 09.12.21, in Civil Appeal No 8228 of 2019 with Civil Appeal No 89 of 2021.

2. **Whether the notification No. 22/2014-15 dated 16.09.2014 to the extent of appointment of officers of Directorate General of Central Excise Intelligence (DGCEI) as 'Central Excise Officers' having all India jurisdiction is illegal and ultra vires being violative of the Constitution? Whether officers of DGCEI have jurisdiction to issue and adjudicate show cause notice?**

Facts and Pleadings: M/s. Xylem Resources Management Pvt Ltd. (hereinafter "Petitioner") was engaged in management consultancy services. Senior Intelligence Officer (SIO), DGCEI, Belagavi initiated investigations against the Petitioner for payment of service tax on the reimbursement of expenses. Pursuant to the aforesaid investigation by the SIO, DGCEI, a Show cause notice dated 13.12.2016 was issued by Principal Additional Director General, DGCEI based on the above investigation.

The Petitioner has challenged these proceedings on the ground that the summons were illegal and unconstitutional as the Petitioner is being forced to pay service tax on reimbursement of expenses without taking into consideration the normal assessment procedure. The Petitioner has also challenged the summons due to lack of jurisdiction. The Petitioner claimed that they were under the jurisdiction of Commissionerate of Bangalore, while the DGCEI Officers were located in Belagavi. This led to illegal and duplication of jurisdiction. The Petitioner also questioned the validity of the Notification No.22/2014-15 dated 16.09.2014 conferring jurisdiction on the ground that it is contrary to the Act as certain officers were being given jurisdiction all over India, in addition to specific jurisdiction.

The Respondents contended that the Officers of DGCEI were conferred jurisdiction PAN India vide the notification dated 16.09.2014. Further, the summons were issued by the SIO to only record the statement of the Petitioner and to transfer the case to jurisdictional Commissionerate. The proceedings were conducted by competent authority in the Commissionerate of Service Tax.

Judgement: The Hon'ble High Court observed that the definition of Central Excise Officer as provided under Section 2(b) of the Central Excise Act, 1944 includes a Principal Commissioner of Central Excise ("PCCE"). Hence, as per Hon'ble High Court, when this definition is read in context with the impugned Notification No.22/2014-15 dated 16.09.2014, it can be concluded that powers of the PCCE can be exercised by the 5 officers specified in the notification, one of whom is the Principal Additional Director General, DGCEI. Therefore, the Principal Additional Director General, DGCEI before whom the Petitioner was directed to appear has jurisdiction to issue the show cause notice. As per Hon'ble High Court, the SIO only issued summons, recorded statements and transferred the matter and records to the proper office. It was also noted by Hon'ble High Court that the SIO did not issue the show cause notice. It was held by Hon'ble High Court that the show cause notice was issued by proper office and though the summons emanated from a different office, the file was transferred to the competent authority. Hence, it was held that the show cause notice cannot be said to be without jurisdiction. Further, the Hon'ble High Court also rejected applicability of Hon'ble Supreme Court decision in Cannon India Private Limited V. Commissioner Of Customs 2021 SCC Online SC 200, on the count that the said case was concerning confiscation of goods and in that context, the Apex Court held that it was not instituted by the proper officer.

M/s. Xylem Resources Management Pvt. Ltd. vs. The Deputy Directorate General of Central Excise Intelligence (DGCEI), Belagavi and Others, The High Court of Karnataka, dated 30.09.2021, in Writ Petition No. 59487 of 2016.

3. **Whether derailment of work in a project i.e. taxable output service after payment of consideration along with service tax to vendors i.e. input service, an assessee is entitled to take Cenvat credit on the said input services?**

Facts and Pleadings: L&T Hydrocarbon Engineering Ltd (hereinafter referred to as "Appellant") had entered into an agreement for installation of MNW-NF Bridge and Bridge Jacket and Plies. The Appellant hired services of various vendors for work of installation and commissioning of the bridges. During installation of Bridge Jacket and Plies, the tripod tilted and sunk and the project was derailed. However, the Appellant made payment to the vendors involved in

installation of the bridges and also paid the applicable service tax. The Appellant availed Cenvat credit on the service tax paid.

Department alleged that due to derailment of the project, the input services utilized by the Appellant did not result in any output service and therefore Cenvat credit cannot be availed on the same. It was further alleged by the department that the Appellant also claimed insurance for the accident but did not pay any service tax on the insurance amount.

The Appellant submitted that as per Rule 2(l) of Cenvat Credit Rules, 2004, "input service" means any service used by a provider of taxable service for providing an output service. The Appellant submitted that though the project was derailed initially, the work was completed later by the Appellants and service tax was also paid on the same. So as per the Cenvat Credit Rules, the Appellants were provider of output services and were entitled to take Cenvat credit on all input services used by them.

Judgement: The Hon'ble CESTAT agreed with the submissions of the Appellant and held that any service received by the Appellant is an input service and they were entitled for Cenvat credit in terms of Rule 3 of Cenvat Credit Rules, 2004. It was clarified that derailment of the project did not mean that no service was provided. During the impugned period, i.e., from April 2009 to March 2010, the work was in progress and it cannot be held that no taxable service was provided as the project was completed later on and service tax was also paid on the same. Therefore, the appeal was allowed with consequential relief.

L&T Hydrocarbon Engineering Ltd vs Commissioner Of Central Excise And Service Tax, The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, dated 09.11.21, in Service Tax Appeal No. 11229 of 2015.

4. **Whether an assessee is entitled for adjustment of amount deposited under the heads of interest and penalty while quantifying the tax amount payable under the Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS)?**

Facts and Pleadings: Schlumberger Solutions Pvt Ltd (hereinafter "Petitioner") had filed a declaration under SVLDRS in relation to a show cause notice issued against them with respect to the Petitioner availing cenvat credit on trading of goods. During the course of audit, the petitioner paid an amount of Rs.2,29,61,536/- towards service tax and amounts of Rs.1,16,51,272/- and Rs.24,44,227/- were paid as interest and penalty respectively. However, while filing the declaration the Petitioner had considered the amount paid as interest and penalty at the time of investigation as pre-deposit for the purposes of Section 124 of Finance (No. 2) Act, 2019 and adjusted the same against the amount payable under the scheme. However, the Designated Committee disagreed with the computation of amount payable made by the Petitioner and rejected the declaration on the count the amount paid towards interest and penalty should not be adjusted towards the amount payable towards tax. Simultaneously, the said show cause notice was adjudicated regardless of this SVLDRS declaration. Hence, the Petitioner approached the Punjab and Haryana High Court, challenging the rejection of its computation by the Designated Committee and the order in original.

The Assessee relied on Section 124 of the Finance (No. 2) Act, 2019 and submitted that the amount deposited by it prior to the issuance of the show cause notice falls within the ambit of 'pre-deposit' and the Assessee is entitled to get deduction of the deposits. However, the respondents submitted that the amount deposited by the Assessee prior to issuance of show cause notice includes interest and penalty. The respondents argued that interest and penalty are different terms under the indirect tax laws and payment made towards it cannot be adjusted against any other head. Hence, they submitted that only amount paid under the head tax can be adjusted during calculation of tax under the SVLDRS scheme.

Judgement: The Hon'ble High Court held that Section 124 (2) provides that any amount paid during proceedings, enquiry, investigation or audit has to be deducted while calculating the amount payable by the declarant. As per Hon'ble High Court, the use of words "any amount paid" indicate that there is no distinction between amounts paid under different heads. Therefore, amount paid under the heads interest and penalty can be used for deduction. Hon'ble High Court further observed that had the Petitioner remitted the entire amount paid by him towards tax, then they would have been allowed credit of the entire amount and their interest liability would also have been waived off. The Petitioner cannot be punished for depositing amount under different heads. Therefore, the Hon'ble High Court allowed the petition and directed the Designated Committee to reconsider the claim.

Schlumberger Solutions Pvt Ltd vs Commissioner Central GST and Others, High Court of Punjab and Haryana at Chandigarh, decided on 30.11.21, in Civil Writ Petition No. 6845 of 2020.

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. **Section 40(b)--Remuneration paid to partner--Interest incomes earned by assessee firm whether to be excluded for working out book profit so as to ascertain ceiling of partners remuneration**

Assessee-firm was engaged in the manufacturing of aromatic chemicals. AO noted that the total income of assessee included dividend income of ₹ 377, interest on deposit of ₹ 4,51,820, interest on income-tax refund of ₹ 28,322 and interest on recurring deposit account of ₹ 42,602, which were covered under the head "Income from other sources". AO noted that these incomes were not directly related to business income of assessee but derived from other sources, therefore these amounts, aggregating to ₹ 5,23,121, were required to be deducted from net profit to compute book profit. Thus, the book profit was to be derived to ₹ 7,89,025 from which admissible remuneration as per under section 40(b)(v) would be at ₹ 3,68,110. However, AO noticed that the remuneration paid to partner was ₹ 5,92,357. So, there was an excess payment of remuneration amounting to ₹ 2,24,247 (₹ 5,92,357/- ₹ 3,68,110). Accordingly, AO made addition.

ITAT Held: It is abundantly clear that for the purpose of section 40(b)(v) read with Explanation, there cannot be separate method of accounting for ascertaining net profit and/or book profit. Therefore, interest income earned by assessee-firm from fixed deposit receipts should not be ignored for the purpose of working-out book profit to ascertain ceiling of partners remuneration. For the purpose of ascertaining such ceiling of the partners remuneration on the basis of book profit, profit would be in the profit and loss account and was not to be classified in different heads of income under section 40. Interest income, therefore, could not be excluded for the purposes of determining allowable deduction of remuneration paid to the partners under section 40B. For purpose of Explanation 3 to section 40(b)(v), assessee took into consideration its net profit as shown in the profit and loss account which included:-- (1) Dividend income : (2) Interest on deposits : (3) Interest on Income Tax Refund : (4) Interest on recurring deposit : Although these incomes of assessee under consideration, were shown under different heading but same were classified under the heading as shown appearing in the matter of computation book profit in terms of Explanation 3 of section 40(b)(v) as said Explanation provides for taking the net profit as shown in the profit and loss account, and not the Profits computed under the head profit and gains on business or profession . Hence, these items were not be excluded while computing book profit for the purpose of partners remuneration. As per Explanation 3 of section 40(b), AO did not get jurisdiction to go behind net profit shown by Profit and Loss Account, except to the extent of the adjustments provided in the Explanation 3, nor he was empowered to decide under which head the income was to be taxed. The net profit as shown, was not to be allocated into different components. Accordingly, addition was deleted.

Mac Industries v. ITO [ITA No. 1036/Ahd/2016; dated 19-10-2020; A.Y. 2009-10]

2. **S. 54: Cost of Improvement claimed – Partial amount allowed considering old flat required renovation to make it habitable:**

The brief facts of the case are that the assessee

has purchased and the expenditure of ₹ 23 lakhs was incurred for the purpose of renovating the house. The A.O asked the assessee to submit bills and vouchers for the above expenditure incurred by him. The assessee did not submit bills and vouchers and submitted that he has purchased an old flat and he renovated the house and incurred the above expenditure and submitted that same may be allowed. The A.O deputed the Inspector of Income Tax to make an enquiry about the house whether the assessee has carried any renovation work or not? Accordingly, Inspector has visited the house and made an enquiry and taken photographs and also, he made enquiry with the neighbors. Neighbors said that they were not aware of the improvements done by the assessee. On the basis of the reports submitted by the Inspector, the A.O came to the conclusion that the assessee has not carried out any improvement at the house purchased by the assessee and accordingly, he disallowed the entire amount.

On appeal, the Ld. CIT(A) held the following:

Firstly, the AO appears to have not appreciated the fact that any new buyer of an undisputedly old house will carry out improvements to make the house habitable to his convenience and he should have taken into account this human nature while appreciating the facts to verify for which he should have also been better served to have referred the case to the departmental valuer for a more scientific valuation of the improvement than drawing an adverse inference on the basis of an Inspector's report who was obviously not an expert in valuation matters. The AO also appears to have come to an arbitrary conclusion by taking pictures of a neighbor's house and by comparing the same with the house of the assessee and then holding that since both the houses looked alike there had been no improvement at all except the shifting and in an arbitrary manner without any detailed investigation and enquiry and without any cross verification with the assessee / Builder as contended earlier thereby violating the principles of natural justice too and resulting in the addition of ₹ 23,00,000/- to the total income. The AO would therefore have done better to conduct basic enquiries with the Builder as to details of the cost of improvements as claimed in the matter rather than ascertain the same from neighbors / tenants who would have been hardly aware of any such development, much less the intricate details of the said improvement. It is also not in dispute that the improvement expenses incurred for making the house habitable also qualify for deduction under section 54. During the course of appellate proceedings, the appellant was called to furnish the documentation relating to the expenses on the aforesaid works and on a random test check of the same it is seen that the assessee was not in a position to produce satisfactory evidence relating to tile removing and relaying and painting works amounting approximately to 4.95 lakhs. Therefore, the Ld. CIT(A) disallowed an amount of ₹ 5,00,000/- and directed the A.O to allow the improvement cost to the extent of ₹ 18,00,000/-.

On being aggrieved, the Revenue carried the matter before the Tribunal. The Hon'ble ITAT upheld CIT Appeals Order and dismissed Revenue's Appeal.

The ACIT vs. Shri Sambandam Dorairaj [ITA No.301/Chny/2020; dated 30-9-2021; Bench: C; AY 2013-14]

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

Registered with Registrar of Newspapers for India under R. NO. MAHENG/2015/67505

Posted at Mumbai Patrika Channel
Sorting Office, Mumbai-400 001.
Date of Posting : 1st or 2nd of every month

Postal Registration No. MCS/210/2019-21
Date of Publishing : 1st of Every Month

Non-receipt of the CTC News must be notified within one month from the date of publication, which is 1st of Every Month.

Printed by Shri Kishor Dwarkadas Vanjara and published by him on behalf of **The Chamber of Tax Consultants (owners),** 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020 and Printed at **The Great Art Printers,** 25, S. A. Brelvi Road, Unique House Opp, Apurva Restaurant, Next to Poddar Chambers, Ground Floor, Fort, Mumbai-400 001. and published at **The Chamber of Tax Consultants** (owners), 3, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020.

Editor : Shri Kishor Dwarkadas Vanjara

Posted at Mumbai Patrika Channel Sorting Office-Mumbai 400 001.

Date of Publishing 1st of Every Month
Date of Posting : 1st or 2nd January, 2022

If undelivered, please return to :

THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor,
31 New Marine Lines, Mumbai 400 020
Tel.: 2200 1787 / 2209 0423 / 2200 2455
E-mail: office@ctconline.org I **Visit us at:** www.ctconline.org
WhatsApp No.: 9004945579
FB Page: https://www.facebook.com/ctcconnect
Follow us on:

To