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ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

MAY 2022



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“My Lord Increase me in knowledge”

The Quran 20:114



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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

THE CHAMBER OF TAX CONSULTANTS

Dear Member,

This new year we intend to streamline the office administration by allocating different email ids for improvising our communication system. Instead of one email id for all the staff, we have assigned Email ids to the staff in work allocated to them. For ease of reference, a chart is prepared giving a list of email ids, area of work, and staff handling the said area of work. The same is listed as under:

Sr. No.	Email ID	Area of Work	Staff handling the area of work
1	manager@ctconline.org	General Queries	Mr. Hitesh Shah, <i>Manager</i>
2	events@ctconline.org	All event-related issues like webinar, conference, study circle/group meeting, payment related to events	Mr. Pradeep Nambiar / Mr. Anand Kadam/ Ms. Neha Kadakia/ Mr. Dinesh Dalvi
3	accounts@ctconline.org	accounts related issues	Ms. Manisha Kasbe/ Ms. Savita Mane
4	jou@ctconline.org	Chambers Journal printing matter, newsletter matter and other related matters	Ms. Bindu Mistry/ Ms. Neha Kadakia
5	it@ctconline.org	All website and social media related matters	Mr. Dinesh Dalvi/ Mr. Pradeep Nambiar
6	member@ctconline.org	Members queries such as Renewals/ journal not received/change of address etc	Ms. Manisha Kasbe/ Ms. Savita Mane
7	office@ctconline.org	Will be used parallelly for 3-6 months. Thereafter, it will be used for communication with members only.	Ms. Savita Mane/ Ms. Neha Kadakia

The members are requested to send emails on the above mentioned emails for smooth functioning of Chambers.

We solicit your wholehearted co-operation for smooth functioning of the Chambers office.

Thanks and regards,

For The Chamber of Tax Consultants

Sd/- Sd/-
(Neha Gada) (Mehul Sheth)

Hon. Joint Secretaries

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

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) (FOR OUTSTATION MEMBERS ONLY)	3000	540	3540

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 May, 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.

**Enrollment
Closed**

45th Residential Refresher Course (RRC) on Direct Taxes at The Zuri White Sands, Goa

**Thank You
for your
overwhelming
response**

Venue: Pedda, Varca, Goa-403721 | Days & Dates: Thursday, 9th June, 2022 to Sunday, 12th June, 2022



**Pune Study
Group**

Convenors: Sachin Sastekar, Mehul Shah, Shreedhar Pathak

Day & Date
Saturday, 7th May, 2022
Time
11.00 a.m. to 1.00 p.m.

Lecture meeting on Law of Reassessment including impact of Supreme Court Judgement

SPEAKER

Ajay Vohra, Senior, Advocate

The law relating to Reassessment is an evergreen topic for discussions and debates. As we are aware that a higher threshold is prescribed in the Income Tax Act 1961 (ITA) to select a case for reassessment. The Finance Act, 2021 proposed to change the regime of reassessment by substituting Section 147, 148 and 149 and introduced section 148A with effect from April 01, 2021. Many far-reaching changes have been proposed in ITA which includes the concept of "recorded reasons", getting substituted with "information" notice and order U/s 148A, modification of time limit to select a particular assessment year for reassessment etc.

Even before the new regime has started functioning, The Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 permitted extension of the last date for issuance of Notice under section 148 of the Act, i.e., the erstwhile reassessment regime. CBDT vide Notification No. 20

of 2021 dated March 31, 2021, extended the period of limitation for issuance of Notice under section 148 of the Act to June 30, 2021. The battle between the Old Regime Vs New Regime started immediately. Various High Courts gave ruling in favour of the tax payer stating that the notices issued post 1st April 2021 without following the procedures U/s 148A are bad in law. Today, on 4th May 2022 Honourable Supreme Court has delivered a landmark judgment resolving the controversy in favour of the Tax department.

With a view to understand the intricacies of the judgment of the Honourable Supreme Court and also to understand the revised/new law on reassessment, Chamber of Tax Consultants has organised a Public lecture meeting - Law of Reassessment including impact of Supreme court judgment on 7th May 2022 at 11 AM. Senior Adv. Ajay Vohra has agreed to guide the members at large on this complex topic.



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 • Visit us at : www.ctconline.org

15th Residential Conference on International Taxation, 2022

Days & Dates: Thursday, 23rd June 2022 to Sunday, 26th June 2022

Venue: Aamby Valley, Maharashtra

Galaxy of Knowledge Powerhouse

Group Discussions and Paper Presentation



Trends in International Taxation

CA Pinakin Desai &
CA Geeta Jani

Anti-avoidance measures under DTAA and Interplay with GAAR

CA Padamchand Khincha



Presentation



Taxation of Virtual Digital Assets including Cryptocurrencies and NFT - Cross Border, FEMA, GST issues

Session Chairman : CA Dilip Thakkar

Speaker : Adv K. Vaitheeswaran

Panel Discussions

Cross Border Restructuring - Case Studies

Panel : CA Gautam Doshi, CA Hiten Kotak and CA Amrish Shah



Case Studies - Int'l Tax and TP (Emerging Issues)

Panel : CA Pranav Sayta, Sr. Adv. S. Ganesh, CA T. P. Ostwal, Adv. Zoheb Hossain (Senior Standing Counsel), CA Yogesh Thar

Residence Participants For Aussie Rooms, the fees will be as under:

Particulars	Fees
Double Occupancy basis for Members	INR 26,750/- + 18% GST INR 4,875/- = INR 31,565/-
Double Occupancy basis for Non-Members	INR 28,250/- + 18% GST INR 5,085/- = INR 33,335/-
Single Occupancy basis for Members	INR 49,500/- + 18% GST INR 8,910/- = INR 58,410/-
Single Occupancy basis for Non-Members	INR 51,000/- + 18% GST INR 9,180/- = INR 60,180/-

**Spanish Room
SOLD OUT**

For enrollment and Conference related inquiries, please contact **Conference Directors** CA Kartik Mehta - 9833218700 and Mr. Niraj Chheda - 9821787080 or Mr. Hitesh Shah, *Chief Manager* - 9821889249/7977258507

Chairman : CA Rajesh P. Shah | **Co-Chairperson :** CA Isha Sekhri | **Vice-Chairmen :** CA Kartik Badiani, CA Kirit Dedhia & CA Shabbir Motorwala

Organised by International Taxation Committee



Study Circle & Study Group

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

Day & Date
Tuesday, 17th May, 2022
Time
6.00 p.m. to 7.45 p.m.
Venue
Kilachand Hall,
(2nd Floor), IMC Building,
Opp. Churchgate Station,
Mumbai 400 020

Study Group Meeting on Recent Judgements under Income Tax Act (Hybrid Mode) (Jointly with Bengaluru Study Group)

SPEAKER
CA Jagdish Punjabi

Fees	
For Mumbai Study Group & Bengaluru Study Group Members	Nil
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18 % GST) = ₹ 472/-



Study Circle & Study Group

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

Day & Date
Friday, 13th May, 2022
Time
6.00 p.m. to 8.00 p.m.

Study Circle Meeting on Reassessment Provisions - Section 148, 148A etc & issues (Jointly with Bengaluru Study Group)

SPEAKER
K. K. Chythanya, Senior Advocate

Fees	
For Mumbai Study Group & Bengaluru Study Group Members	Nil
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18 % GST) = ₹ 472/-



Delhi Chapter

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

Day & Date
Tuesday, 10th May, 2022
Time
6.00 p.m. to 8.00 p.m.

Case Law Discussion

Sr. No.	Topics	Chairmen / Speakers
1.	a) Union of India vs Ashish Agarwal & Ors (Supreme Court) b) Larsen & Toubro Ltd (Bombay High Court) c) Salesforce.com Singapore Pte Ltd (Delhi Tribunal)	Chairman: Mr. Sudhanshu Srivastava - Hon'ble Member ITAT, Chandigarh Moderator: CA Sanjiv Chaudhary, Chairman, CTC Delhi Speakers/ Panelists: CA Prakash Sinha, CA Aditi Gupta, CA Mridhu Malhotra

Day & Date
Tuesday, 28th June, 2022
Time
6.00 p.m. to 8.00 p.m.

Physical Lecture Meeting: Vipassana Meditation - Need of the 21st Century Human

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

SPEAKER

CA Vallabh Bhansali

(He is an old Vipassana meditator, Chairman and co-founder of ENAM Securities and a Trustee of the Global Vipassana Foundation)

We as professionals constantly undergo stress and depression. One of the best ways to overcome these conditions is to meditate. It brings about relaxation, mindfulness and inner peace.

Vipassana is one of India's most ancient techniques of meditation. It was re-discovered more than 2500 years ago by Gautam Buddha. Vipassana means to see things as they really are. This non-sectarian technique provides a universal remedy for universal ills and because of its scientific character it has spread around the world in a silent manner over the last fifty years, after it was revived in India in 1969 and then spread from here by the late Acharya S N Goenka. Vipassana is a way of self-transformation through self-observation, involving no dogma, rituals or preaching. It helps one see for oneself that one is the master of one's own destiny. If you can't put in the required effort to develop that mastery, you have no one else to blame. If you can, slowly but surely you will master your own happiness and spread the same around you. Depending on the effort one puts in mastering the three elements of this Art of Living- viz moral life, a concentrated mind and correct understanding of one's reality, one can hope to benefit immensely at physical, mental, emotional, spiritual and professional levels. People from all backgrounds and sections of society around the world have benefitted from Vipassana.

Vipassana meditation is taught totally free, no charges for teaching, boarding or lodging in courses of ten and a half days at a Vipassana Centre. All expenses are met by donations from grateful old students having experienced the benefits of Vipassana, wish to give others the opportunity

to benefit from it. Like any other life skill one can benefit to its full potential only by practising it regularly after one has been initiated.

Those who practice Vipassana regularly experience amongst other benefits:

Better control over one's emotions and stress

Greater efficiency and fitness in all aspects of life

- Remaining in the present moment
- Reduce regrets from the past and worry less about the future
- Better capacity to respond to situations and take decisions
- Better relationships

The Membership and Public Relations Committee of the Chamber of Tax Consultants is delighted to organise a **Physical Meeting** on the theme:

"Vipassana Meditation - Need of the 21st Century Human".

The session will also have a practical session of Anapana - the first step in the practice of Vipassana meditation. Anapana provides a handy tool to deal with the fears, anxieties and pressures across all age groups. Because of its scientific basis and simplicity, the technique is easy to understand and practice.

**All are
cordially
invited**



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, 17th June, 2022 and
Saturday, 18th June, 2022

Time

Fri, 02.30 p.m. to 07.30 p.m.
Sat, 10.00 a.m. to 06.00 p.m.

Seminar on Charitable Institutions

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

Learn, Unlearn, Relearn

Charitable Institutions shoulder the government in achieving its obligation of upliftment of society. In recent years, the regulatory framework governing Charitable Institutions has undergone tremendous change, which the charitable institutions and their consultants should be aware off and take necessary steps if any tweaking or overhauling is required in the functioning of the Charitable Institution.

To educate Charitable Institutions and Tax Professionals in deciphering the maze of regulatory compliances, amendments and law, the Direct Tax Committee of the Chambers of Tax Consultants has organized a two-day seminar on Charitable Institutions. The sessions aim to exhaustively and holistically cover formation, registration, operations of Charitable Institutions considering requirement are restriction under variety of laws including Income Tax, CSR, FCRA, GST, etc.

Sr. No.	Topics	Speakers
1.	Introduction – Types of charitable entities (trust, company, society, etc.) and overview of laws governing them	CA Vipin Batavia
2.	FCRA – Important provisions of FCRA & Compliance under FCRA applicable to Charitable Institutions	CA Noshir Dadrawala
3.	Income tax – Scope of 'charitable purpose Sec 2(15) for registration under Income Tax Act along with the new process of registration and issues there on.	CA Ashok Mehta
4.	CSR – Nuances of Company Law in relation to CSR activities through Charitable Institutions	CS Savithri Parekh
5.	Income Tax – Specific provision in relation taxation of Charitable Institutions [Section 10,11,12] and Taxation of anonymous donations.	CA Anil Sathe
6.	Income Tax – Restrictions on activities of Charitable Institution and consequences of not adhering to the restrictions like cancellation of registration, tax on accreted income, etc. (sec 13 & Sec 115TD)	CA Rajesh Kadakia
7.	GST – Basics of Supply, RCM in context to Charitable Trusts, exemption provisions relating to Charitable Institutions and issues therein	CA Naresh Sheth

Fees

CTC Members	₹ 2,500/- + ₹ 450/- (18% GST) = ₹ 2,950/-
Non-Members	₹ 3,000/- + ₹ 540/- (18% GST) = ₹ 3,540/-

(Participation is restricted to 75 person)

Day & Date
Friday, 20th May, 2022
Time
10.00 a.m. to 6.00 p.m.

Full-day Hybrid seminar on “TDS and TCS Provisions – a 360° Perspective”
(Jointly with Indian Merchants Chamber, Bombay Chartered Accountants’ Society & Bombay Chamber of Commerce and Industry)

Meeting : Hybrid (Online as well as in person)

Venue : (for in person attendees) Walchand Hirachand Hall
(4th Floor), IMC Building, IMC Marg, Opposite Churchgate Station, Mumbai-400020

The Chamber of Tax Consultants jointly with IMC Chamber of Commerce and Industry, Bombay Chartered Accountants’ Society & Bombay Chamber of Commerce and Industry is organizing a full-day Hybrid seminar on “TDS and TCS Provisions – a 360° Perspective”

This seminar is being organized to understand the major effects of recent and past developments and changes relating to TDS & TCS in a holistic manner.

TDS and TCS provisions have changed and compliances have increased substantially in last few years, impacting MSMEs and other tax payers both big and small. These compliances have become an onerous task with serious repercussions. The consequences of non-compliance or compliance with errors are substantial. The seminar will cover all important and

current topics to be dealt with by subject experts and industry representatives through a blend of panel discussions and presentation session.

The seminar will be in a Panel Discussion format where the topics will be discussed in detail by the Industry Experts and Professionals. It will be useful for Tax Managers, Tax Heads, CFOs, Tax Consultants, Tax Practitioners and others keen to keep abreast with the rapid changes in TDS and TCS Provisions

Sr. No.	Time	Topic	Speakers
1	10.15 a.m. – 12.00 p.m.	Practical issues: TDS and TCS issues faced by taxpayers in relation to TDS on Purchase of Goods, TCS on Sale of Goods and TDS provisions on e-commerce transactions.	Moderator: CA Abhitan Mehta Panelists: CA Shikha Gupta – Tax Director - HUL, CA Rakesh Gupta – Vice President & Group Head Taxation -RPG Group CA Anish Thacker CA Mahendra Sanghvi

Sr. No.	Time	Topic	Speakers
2	12.15 p.m. – 1.30 p.m.	Practical issues related with TDS u/s. 195 from payments to non-residents.	Chairman: Mr. Sangam Shrivastava – Pr.CCIT(IT & TP, WZ) Moderator: CA Padmanchand Khincha Panelists: Mr. Vijay Shankar – CIT (IT) CA Sunil Choudhary – Sr. Vice President Tax, Reliance Industries Ltd, CA Dhinal Shah
3	2.15 p.m. – 4.00 p.m.	Practical issues arising on account of introduction of TDS on perquisites under section 194R and TDS on Virtual Digital Assets under section 194S by Finance Act 2022.	Moderator: Mr. Indra Anand – Group Tax Head, Tata Sons Panelists: Mr. Amit Patwardhan – Head, Tax (India), HSBC Bank Mr. Rahul Verma – Head, Taxation, Cipla Ltd. CA Brendan Saldanha
4	4.15 p.m. – 5.45 p.m.	Practical issues: Non-filers checking, Lower deduction of tax; Rectifications of returns filed; Excess deduction – refund; Penal provision and compounding of offences; Belated filing of returns/ belated payment of taxes; Interest u/s 201 and 201(1A); Mechanism for Clarifications; etc.	Chairman: Ms. Reena Jha Tripathi, Pr CCIT-3, Mumbai Moderator: CA Gautam Nayak Panelists: CA Hemant Kadel – Senior President, Grasim CA Anil Mehta – VP Corporate Taxation, L&T CA Ameet Patel

In view of the importance of the topic and its overall impact on taxpayers, we hope you would surely like to attend this seminar and get more clarifications on related TDS and TCS provisions.

Fees	
Offline seminar (incl. food)	₹ 1,250/- + ₹ 225/- (18% GST) = ₹ 1475/-
Virtual webinar	₹ 750/- + ₹ 135/- (18% GST) = ₹ 885/-

You may register and make payment online at the following link: <https://www.imcnet.org/events-1638>

IMPORTANT DECISIONS UNDER GST AND SERVICE TAX LAWS

By Vinay Kumar Jain and Sachin Mishra, *Advocates*

1. **Whether in absence of any mechanism, ITC inadvertently utilised for payment of IGST on exports in contravention of Rule 96(10) of the CGST Rules, 2017, can be re-credited or restored, once the IGST along with interest is paid upon realisation of mistake?**

Facts and Pleadings: M/s. I-Tech Plast India Pvt Ltd. (hereinafter referred to as "Petitioner") is engaged in the business of manufacturing various types of toys. The Petitioner is importing raw-material under the advance license without payment of the import duty. The finished goods produced using the raw-material so imported have been exported by the Petitioner. The Petitioner opted for payment of IGST on exports, and thereafter claimed refund of such IGST on exports. However, inadvertently, the Petitioner utilized the ITC for payment of the IGST on exports (instead of paying the IGST separately) which, in turn, was automatically refunded. In view of Rule 96(10) of the CGST Rules, 2017 the Petitioner could not have utilized the ITC for payment of the IGST on exports. Upon realizing the aforesaid mistake, the Petitioner separately paid the requisite IGST (which was refunded in past) along with the interest thereon and informed concerned authorities. Subsequently, the Petitioner requested the authorities to re-credit/restore the ITC in the electronic credit ledger which was, inadvertently, utilized for payment of the IGST. The Petitioner, thereafter made several attempts with authorities for restoration of the above ITC. Despite these repeated attempts, when the ITC was not restored as requested, the Petitioner preferred the present petition.

The Petitioner argued that since the Petitioner has voluntarily paid the IGST on exports with interest, the corresponding ITC (which was initially utilized for payment of such IGST on exports) must be recredited/restored in the electronic credit ledger with interest. Despite the repeated oral as well as written representations by the Petitioner, the ITC is not being re-credited/ restored on the count that there is no such mechanism whereby the ITC can be recredited/restored upon voluntary payment of the IGST. As per the Petitioner, an honest taxpayer like the Petitioner must not suffer owing to lack of appropriate mechanism. Accordingly, the Petitioner argued that the action of the department in not recrediting/restoring

the ITC in question is also not in consonance with Article 265 as well as Article 300-A of the Constitution of India, 1950.

The department argued that Petition is not maintainable as the Petitioner is not at all entitled to claim the refund on the count that once an amount in question is paid in the Form-DRC-03 voluntarily, the same cannot be refunded.

Judgement: The Hon'ble High Court observed that in so far as the erroneous grant of refund and return of such refund amount together with interest by the Petitioner is concerned, the same is undisputed. Accordingly, the Hon'ble High Court held that the first part of the transaction is nullified inasmuch as the amount erroneously refunded has already been repaid by the Petitioner along with interest. The Hon'ble High Court further held that if the authorities have accepted that there was an error and resultantly, accepted repayment of the erroneous refund, as a corollary, the credit of the ITC must be restored. The Hon'ble High Court observed that it cannot be that for the purpose of repayment, there was an error, and for the purpose of restoration of the ITC, there was no error. There is no question of any refund of the ITC at all. The Hon'ble High Court observed that the question is one of restoration of the ITC in the electronic credit ledger and not a refund thereof. Hence, any reference to sub-rule (10) of rule 96 of the CGST Rules is completely misconceived and not tenable. Accordingly, the Hon'ble High Court directed the respondent authorities to re-credit/restore the ITC to the tune of Rs.1,39,49,810/- in the electronic tax ledger of the Petitioner.

M/s. I-Tech Plast India Pvt LTD vs. State of Gujarat, decided on 07.04.2022, in R/Special Civil Application No. 3653 of 2021

2. **Whether onsite service rendered by subsidiaries or branch offices on behalf of the Holding Company or Head office located in India to overseas clients amounts to export of services? Whether value of onsite services provided by the subsidiary directly to their clients would be deducted from the value of "total turnover" while calculating refund under Rule 5 of the Credit Rules?**

Facts and Pleadings: M/s. Tech Mahindra Ltd., India (hereinafter referred to as 'Assessee') is engaged in business of providing software development services primarily to clients located outside India involving both Offshore and Onsite work. The Offshore work is undertaken by the Assessee in India whereas the Onsite work is undertaken by the Assessee with the help of their overseas branches/subsidiaries. The services provided by the Assessee to their overseas clients are classified in two manners, namely, Model I & Model II. Under Model I, foreign customer enters into a direct agreement with the Assessee. As per the contract, Assessee has to perform both offshore and onsite activities as a part of single transaction. The Assessee in turn sub-contracts the onsite work to their subsidiary. Model II covers only few cases where the overseas customers request the subsidiary of the Assessee to specifically enter into a direct contract with them. The subsidiaries of the Assessee enter into contract with the overseas customers on behalf of the Assessee but due to lack of capability to perform the entire activity on their own, they subcontract the entire contract to the Assessee as such with all the risks and rewards. No separate invoice is raised for Model-II by the Subsidiary. The subsidiaries work on cost plus basis and raise a consolidated invoice to the Assessee for performing the onsite services under both the models. Further, the Assessee is raising the invoice on the overseas customers for entire services rendered i.e. onsite as well as offshore. The Assessee has considered the above said taxable ITSS services (onsite as well as offshore) provided to foreign clients under both the Models as the export of taxable services provided from India in terms of Rule 6A of the Service Tax Rules, 1994. Accordingly, the Assessee filed a refund claim under Rule 5 of CENVAT Credit Rules, 2004 for claim of refund of cenvat credit availed on service tax paid on input services which were used in providing the output services exported without payment of service tax.

Department alleged that for Model-I, the activities carried out by the subsidiaries/branches are separate and are carried out by different legal entity. Therefore, as per department, since the onsite services provided by the subsidiaries are performed locally and procured, utilized as well as get consumed abroad, these services do not get covered in the ambit of the taxable services exported from India Territory as claimed by the Assessee. Department further alleged

that in case of onsite services provided under Model-I, the condition (a) & (e) of the Rule 6A of the Rules are not satisfied, therefore, the test of exportability within the meaning of Rule 6A of the Rules fails. Further, the department also excluded the value of the onsite services provided under Model-II by the overseas subsidiaries from the value of the 'total turnover', while calculating the admissible refund claim amount as per Rule 5 of Credit Rules.

The Assessee submitted that when the onsite services are not provided by the Assessee then there is no question of including the amount received on such services in the value of the total turnover. Thus, the value of the onsite services has to be excluded from the Total Turnover while calculating refund under Rule 5 of the Credit Rules. The Assessee also submitted that the location of the Assessee in India is the place from where services are provided to customers. The Assessee also submitted that the onsite services rendered by the overseas subsidiaries and branches under Model-II would also qualify as export as it is the Assessee i.e. providing the services.

Judgement: The Hon'ble CESTAT agreed with the submissions of the Assessee and held that in respect of Model I, the services provided by the Assessee to their overseas clients through their subsidiaries and branch offices located outside taxable territory were in fact the services provided by Appellant to their clients for which they were billing their clients and receiving foreign exchange from their clients. The Hon'ble CESTAT observed that all the services provided by the Assessee to their overseas clients have been provided under umbrella of a single contract. As per Hon'ble CESTAT, the subsidiaries do not provide any services to clients independently. In fact, subsidiaries were providing services to Assessee and raising invoice to them on which the Assessee has discharged service tax under reverse charge mechanism. Therefore, as per Hon'ble CESTAT, these services are input services to the Assessee for providing the export services to their clients overseas. Further, with respect to Model II, Hon'ble CESTAT held that the said onsite services were not provided by the Assessee and therefore the same cannot be treated as part of the "total turnover" of the Assessee. Accordingly, the Hon'ble CESTAT dismissed the appeals filed by Revenue.

CCE & ST vs. Tech Mahindra Ltd., CESTAT, Mumbai decided on 4.3.2022 vide Final Order No. A/85255-85262/2022.

3. **Whether proceedings are to be set aside on the count of inordinate delay in adjudication of the show cause notices on the count that the same have been transferred to call book is justified in view of several Circulars issued by CBIC?**

Facts and Pleadings: M/s. ATA Freight Line (I) Pvt Ltd (hereinafter referred to as 'The Petitioner') was engaged in the activity of buying and selling space in vessel. The Petitioner recovered the expenses from its clients to facilitate export/import of goods for providing cargo handling/ freight service incurred expenses. Five show cause notices were issued in 2011, 2012, 2013, 2014 & 2016 against the Petitioner on the aforesaid transaction for non-payment of service tax on freight difference. The Petitioner has filed reply to the aforesaid show cause notices at respective time itself. However, no further communication was received from the department afterwards. Petitioner addressed a letter dated 23.2.2021 to department seeking copy of closure report, if any. Department vide its letter dated 12.4.2021 informed Petitioner that show cause notices had been put in call book. Hence, the Petitioner challenged the said show cause notices by way of writ petition on the count of delay in adjudication.

The Petitioner stated that department ought to have adjudicated upon those 5 show cause notices within a reasonable period of time and could not have transferred to call book. The Petitioner also submitted that in any event, the Petitioner is not responsible for any delay in adjudication of those show cause notices for last several years. The Petitioner thus cannot be made to suffer on the ground that the department has transferred the show cause notices to call book contrary to law.

The department contended that the show cause notices could not be adjudicated upon due to the reason that the said show cause notices had been transferred to call book. As per department, a case is transferred to call book if such case cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance. The transfer of show cause notice to call book is governed by circulars issued by CBIC i.e. Circular No.162/73/95-CX dated 14.12.1995, Circular No.719/35/2003-CX dated 28.5.2003 and Circular No.992/16/2014-CX dated 26.4.2016, Circular No.1053/2/2017-CX dated 10.3.2017. The

department further submitted that the issue involved in the subject show cause notices in the writ petition are regarding non-payment of service tax on freight difference. The said show cause notices had been initially transferred to call book in the light of appeal filed by department in High Court against the order of CESTAT dated 30.9.2015 in case of M/s. Greenwich Meridian Logistics (I) Pvt. Ltd. The appeal filed by the department was dismissed by the High Court. The department filed appeal before the Supreme Court which was dismissed on the grounds of delay vide order dated 1.4.2019. Subsequently, the show cause notices however, were kept in call book in the light of similar issue where department had filed appeal in High Court against the order of CESTAT dated 27.7.2016 in respect of M/s. Phoenix International Freight Services Pvt. Ltd. The said departmental appeal is still pending before High Court.

Judgement: The Hon'ble High Court held that a show cause notice issued a decade back should not be allowed to be adjudicated upon by the department merely because there is no period of limitation prescribed in the statute to complete such proceedings. As per Hon'ble High Court, larger public interest requires that revenue should adjudicate the show-cause notice expeditiously and within a reasonable period. Accordingly, it was held that keeping the show-cause notice in the dormant list or the call book, such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue. The Hon'ble High Court further observed that it is duty of department to take the said Show-Cause notice to its logical conclusion by adjudicating upon the said Show-Cause Notice within a reasonable period of time. In view of gross delay on the part of the department, the Petitioner cannot be made to suffer. In this regard, the Hon'ble High Court relied on Parle International Ltd. Vs. UOI, 2021 (375) E.L.T. 633 (Bom.) & The Bombay Dyeing and Manufacturing Company Limited Vs. Deputy Commissioner of CGST & CX, delivered on 14.2.2022 in Writ Petition No.2874 of 2021. Accordingly, the Hon'ble High Court held that the principles of law laid down in the above referred judgment would apply to the facts of this case. Accordingly, the show cause notices were quashed.

M/s. ATA Freight Line (I) Pvt Ltd vs UOI, The High Court of Bombay, dated 24.03.2022, in Writ Petition No. 3671 OF 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. Section 263- Revision held invalid when two possible views are possible on merits of a question- the AO has adopted one view :

The assessee was the resident of USA and was filing his return of income in USA. The assessee did not file return of income for the year under consideration. On the basis of NMS data available on the ITS, it was noticed that, the assessee had purchased a property for the consideration of Rs.50,40,000/-. In view of this fact the assessment was reopened u/s 147/148 of the Act and accordingly the assessment was completed u/s 144 r.w.s. 147 of the Act whereby the income of the assessee was assessed to the tune of Rs.16,80,000/- being 1/3rd of the value of the property. On verification, it was found that there was nothing on record to establish the share of investment made by each of three persons and no material was available to establish about the filing of the return of other two persons. Therefore, PCIT invoked revision u/s 263 of the Act as the order was erroneous in so far as prejudicial to the interest of the revenue.

Assessee submitted that The PCIT did not record the reasons to which the order passed by the AO is erroneous and prejudicial to the interest of the revenue. In first reason for invoking the revisional power by the PCIT is in connection with the total investment in the property and in second reason, the PCIT mentioned about taxing the other two persons who were the share-holder in purchased the property. These facts had already been considered by the AO while passing the assessment order. The assessee had already been taxed to the extent of 1/3rd share meaning thereby a possible view has already been taken by the AO. Nothing

therein to mention about the erroneous of order and prejudicial to the interest of the revenue. In these facts and circumstances and relied upon the decision in the case of CIT Vs. Gabriel India Ltd. 203 ITR 108 (Bombay HC) wherein it was held that the AO had exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion. Such a conclusion could not be termed as erroneous simply because the CIT did not feel satisfied with the conclusion. The Hon'ble Court has also noted that though the words 'prejudicial to the interest of the Revenue' have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised.

The ITAT referred to various cases such as CIT Vs. Arvind Jewelers 259 ITR 502 Gujrat HC, CIT Vs. Hindustan Coco Cola Beverages Pvt. Ltd. 331 ITR 192 (Del), , CIT Vs. Sunbeam Auto Ltd., 332 ITR 167 and held that since the matter of controversy had already been examined by AO and a possible view had already been taken, therefore, invoking the revisional power u/s 263 of the Act nowhere seems justifiable. And thus, allowed Assessee's Appeal.

Anand Vithal v. PCIT-27 Navi Mumbai

[ITA No.1139/Mum/2021 dated 7/4/2022 ; Bench A; A.Y. 2010-11]

2. S. 11: Applicability of proviso to section 2(15)

Assessee is a company engaged in the business of manufacturing of fertilizer chemicals and paints. It filed its return of income at a loss of Rs. 1,84,26,369/- under

normal provisions and at a book profit of Rs. 6,40,71,301/- under section 115JB of the Act. The return of income was selected for scrutiny and assessment order under section 143(3) of the Act was passed determining the total income of the assessee at Rs. 2,44,00,300/-.

Assessing officer considered the software as intangible asset depreciable at 25% instead of 60% as claimed by the assessee. The disallowance of depreciation on software ERP SAP is of Rs. 3,84,70,669/-.

Assessee has installed ERP SAP software amounting to Rs. 10,99,16,199/-. The assessee claimed depreciation thereon under section 32 of the Act at the rate of 60%. The learned Assessing Officer held that depreciation at the rate of 60% is allowable only on computers and software embedded in such computers which are part and parcel and are inseparable. Therefore, according to the learned Assessing Officer assessee has acquired only the license and hence, it is eligible for depreciation at the rate of 25% applicable to intangible assets.

The assessee preferred the appeal before the learned CIT(A). The learned CIT(A) held that depreciation at the rate of 60% is allowable only on system software which are integral part of the computer, however, the claim of the assessee was depreciation at the rate of 60% on ERP SAP software which is nothing but a software for the automation of office working.

Assessee submitted that the depreciation Schedule as New Appendix-I and in Part-A (tangible assets) at serial no. 5 of plant and

machinery, where 'computers including the computer software' are eligible for depreciation at the rate of 60%. He further referred to note No. 7 where computer softwares are defined. He submitted that there is no justification to consider the depreciation at higher rate only on systems software. He further relied on the decision of Hon'ble Madras High Court in CIT vs. Computer Age Management Services (P.) Ltd. [2019] 109 taxmann.com 134 (Madras), wherein a software license acquired by the assessee is allowed depreciation at the rate of 60%.

Hon'ble ITAT observed that entry number 5 under Part A allows depreciation at the rate of 60% on computers including computer software. Note-7 states that computer software means any computer programme recorded on any disk, tape, perforated media or other information storage device. Apparently, it does not make any difference between application system software or application software. Further, part B of appendix-1 prescribed depreciation at the rate of 25% on certain intangible assets such as knowhow, patents, copy rights trademarks, license fee, franchise or any other business or commercial right of similar nature. Therefore, held that the license obtained by the assessee would fall in the definition of computer software so as to make it eligible as tangible asset and then depreciation rate at the rate of 60% will apply and thus allowed the appeal.

M/s Arkema Chemicals India P. Ltd. v. ACIT Circle 15(1)(1) Mumbai [ITA No. 1032/Mum/2021 dated 22/4/2022; Bench A AY 2017-18]

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