



ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

FEBRUARY 2023



”

All power is within you. You can do anything and everything. Believe in that.

- By SWAMI VIVEKANANDA'S



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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,

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>Chief 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/-

(Vijay Bhatt)

Hon. Joint Secretaries

Sd/-

(Mehul Sheth)

RENEWAL NOTICE – 2023-24

Dear Members,

SUB: RENEWAL OF ANNUAL MEMBERSHIP FEES FOR 2023-2024

24th January, 2023

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, subscription of The Chamber's Journal, Study Groups and Study Circles for the financial year 2023-24. 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 Neha R. Gada

Hon. Treasurer

Sr. No.	Particulars	Fees	GST @18%	Total
I	MEMBERSHIP RENEWAL FOR EXISTING MEMBERS			
1	ORDINARY MEMBERSHIP FEES - (APRIL TO MARCH) – WITH HARD COPY OF JOURNAL	2500	450	2950
2	ORDINARY MEMBERSHIP FEES - (APRIL TO MARCH) – WITH SOFT COPY OF JOURNAL (E- JOURNAL)	1500	270	1770
3	ASSOCIATE MEMBERSHIP - (APRIL TO MARCH)	7500	1350	8850
4	STUDENT MEMBERSHIP - INCLUDING E JOURNAL (APRIL TO MARCH)	500	90	590
II	CHAMBER'S JOURNAL SUBSCRIPTION – (APRIL TO MARCH) (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	COURIER CHARGES FOR CHAMBER'S JOURNAL (OPTIONAL)	339	61	400
IV	CHAMBER'S E - JOURNAL SUBSCRIPTION (SOFT COPY)			
1	E JOURNAL SUBSCRIPTION – FOR LIFE MEMBERS (APRIL TO MARCH)	700	126	826
2	E JOURNAL SUBSCRIPTION – FOR NON MEMBERS (APRIL TO MARCH)	1000	180	1180
V	ITJ SUBSCRIPTION			
1	INTERNATIONAL TAX JOURNAL SUBSCRIPTION (QUARTERLY – APRIL TO MARCH)	1400	0	1400
VI	STUDY CIRCLES & STUDY GROUPS			
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	2000	360	2360
9	BENGALURU STUDY GROUP	1600	288	1888
10	HYDERABAD STUDY GROUP	2000	360	2360
11	ALL STUDY CIRCLES / STUDY GROUPS MEETINGS HELD AT MUMBAI - (ONLY FOR OUTSTATION MEMBERS ON VIRTUAL MODE ONLY)	3000	540	3540
VII	FEES FOR INCOMING NEW MEMBERS			
1	LIFE MEMBERSHIP	15000	2700	17700
	SUBSCRIPTION OF JOURNAL (OPTIONAL)	1350	0	1350
2	ADMISSION FEES – (ORDINARY MEMBERSHIP)	750	135	885
	ORDINARY MEMBERSHIP FEES - (APRIL TO MARCH) – WITH HARD COPY OF JOURNAL	2500	450	2950
	ORDINARY MEMBERSHIP FEES - (APRIL TO MARCH) – WITH SOFT COPY OF JOURNAL (E- JOURNAL)	1500	270	1770
3	ADMISSION FEES – (ASSOCIATE MEMBERSHIP)	1000	180	1180
	ASSOCIATE MEMBERSHIP FEES	7500	1350	8850

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 30th April, 2023 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.

Membership & PR

Chairman: Premal Gandhi

Co-Chairperson: Ashita Shah

Convenors: Bandish Hemani, Tanvi Vora

Advisor: Sujal Shah

Public Meeting on The Union Budget 2023-2024 (Virtual Mode)

(Jointly with Forum of Free Enterprise, Indo Japanese Association; Investors' Grievances Forum & other Associations)

Speaker: Mr. H. P. Ranina, Noted Tax Expert

Thursday, 2nd
February, 2023

4.00 p.m.
onwards

International Taxation Committee

Chairman: Kirit Dedhia

Co-Chairperson: Karishma Phatharphekar

Vice Chairman/Chairperson: Shabbir

Motorwala, Isha Sekhri

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

The Int'l Taxation Committee has schedule 4 virtual sessions (see details below) wherein we will have overseas speakers give a brief overview of the domestic taxation laws to the attendees. The details are tabulated below:

Objective: To provide Indian professionals (CA, CS, lawyers, etc.) a flavour of structure of taxation law in some of the prominent foreign jurisdictions with which India has significant commercial ties as well as where there is a large NRI diaspora

Proposed structure:

1. Very high overview of the scheme of taxation of the foreign jurisdiction – federal, state, county, etc.;
2. Light on some critical nuances related to Individual taxation (FTC, mechanism to tax, etc.) as well

Webinar Series on Foreign Countries Taxation Laws (Virtual Mode)

as corporate taxation (pass through scheme of taxation, etc.);

3. Corporate reorganisation / structuring aspects;
4. How to peruse / analyse the income tax return; portions of the ITR relevant from an international taxation perspective (details of foreign taxes, etc.);
5. Practical experiences dealt with respect to above highlighting issues like foreign tax credit – allowability of credit for federal vs state taxes, carry back of losses, NOLs, reorganisation provisions, redomiciliation permitted or not, etc.;
6. Transfer Pricing limits;
7. Basic withholding tax provisions;
8. Annual compliances;
9. FATCA / FBAR, as applicable.

Sr. No.	Day, Date & Time	Topics	Speakers
1	Friday, 03.02.2023 6.00 p.m. to 8.00 p.m.	Overview of USA Taxation	Mr. Gangaraju Hanumaiah
2	Friday, 10.02.2023 6.00 p.m. to 8.00 p.m.	Overview of UAE Taxation	Mr. Nirav Shah
3	Friday, 17.02.2023 10.00 a.m. to 12.00 Noon	Overview of Singapore Taxation	Mr. Mahip Gupta
4	Friday, 24.02.2023 6.00 p.m. to 8.00 p.m.	Overview of UK Taxation	Mr. Sarin Shringi

Fees

CTC Members

₹ 750/- + ₹ 135/- (18% GST) = ₹ 885/-

Non-Members

₹ 1,000/- + ₹ 180/- (18% GST) = ₹ 1,180/-

Membership & PR

Chairman: Premal Gandhi

Co-Chairperson: Ashita Shah

Convenors: Bandish Hemani, Tanvi Vora

Advisor: Sujal Shah

Public Meeting on Union Budget 2023

Venue: ZAVERBEN Popatlal Sabhagruha
Auditorium, Upashrya Lane , Near Rashriya
Shala Compound, Saibaba Nagar,
Pant Nagar, Ghatkopar (East)

Speakers:

Economic Affairs - Ms. Aruna Parimi

Direct Tax Proposals - CA Mehul Shah Indirect

Tax Proposals - CA Rajiv Luthia

Sunday, 5th
February, 2023

9.00 a.m. to
1.00 p.m.

The Chamber of Tax Consultants Jointly with Ghatkopar CPE Study Circle of WIRC of ICAI has organised the Public Meeting on Union Budget 2023 (Jointly with Forum of Free Enterprise & Other esteemed Associations)

ALL ARE
CORDIALLY INVITED

International Taxation Committee

Chairman: Kirit Dedhia

Co-Chairperson: Karishma Phatharphekar

Vice Chairman/Chairperson: Shabbir

Motorwala, Isha Sekhri

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

FEMA Study Circle Meeting on Acquisition and Transfer of Immovable Property under FEMA [Virtual Mode]

Speaker : CA Pooja Desai

Monday, 6th
March, 2023

6.00 p.m. to
8.00 p.m.

The International Taxation Committee of The Chamber of Tax Consultants (CTC) has organised a FEMA Study Circle Meeting on "Acquisition and Transfer of Immovable Property under FEMA". It is scheduled on 6th March, 2023. The Acquisition and Transfer of Immovable Property in India by Persons Resident Outside India is regulated by the Foreign Exchange Management Non-Debt Instrument Rules 2019 dated 17th October 2019

and the Acquisition and Transfer of Immovable Property outside India by Persons Resident in India is now regulated by Foreign Exchange Management Overseas Investment Rules 2022 dated 22nd August 2022. As the dates suggest, regulations dealing with immovable properties have been overhauled recently and an in-depth study of the rules would benefit all participants.

Fees

For FEMA Study Circle Members

NIL

CTC Members

₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-

Non-Members

₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

IT Connect Committee

Chairman: Maitri Savla

Co-Chairman: Murtaza Ghadiali

Vice Chairman/Chairperson: Anand Paurana

Convenor(s): Mayur Jain, Saili Kulkarni

Webinar on Audit of ERP/Accounting Software (Virtual Mode)

Tuesday, 7th
February, 2023

6.00 p.m. to
8.00 p.m.

The IT Connect Committee of the Chamber of Tax Consultants is organising a Webinar on Audit of ERP/

Accounting Software which is scheduled on 7th February, 2023.

Sr. No.	Topics	Speakers
1	Audit of Enterprise ERP Software (SAP and others) [The speaker will take the participants through various aspects of ERP Software like System/Licence Utilisation, GAP analysis, Audit Trails, Business Impact and many others]	Mr. Shashank Rameshwar
2	Audit of Tally ERP - How to ease your Audit by using Audit features in Tally – Data management – Auditing user access	CA Anand Paurana

Fees

CTC Student Members

NIL

CTC Members

₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-

Non-Members

₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

International Taxation Committee

Chairman: Kirit Dedhia

Co-Chairperson: Karishma Phatharphekar

Vice Chairman/Chairperson: Shabbir

Motorwala, Isha Sekhri

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

International Taxation Study Circle Meeting on Discussion on GAAR with Case Studies (Virtual Mode)

Speaker : CA Ganesh Rajgopalan

Thursday, 23rd
February, 2023

6.00 p.m. to
8.00 p.m.

The International Taxation Committee of The Chamber of Tax Consultants (CTC) has organised a Study Circle Meeting on "International Taxation Study Circle Meeting on Discussion on GAAR with Case Studies". It is scheduled on 23rd February, 2023.

Fees

For International Taxation Study Circle Members

NIL

CTC Members

₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-

Non-Members

₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-



The Chamber of
Tax Consultants

WORKSHOP ON ANALYSIS OF FINANCE BILL, 2023

Clause by Clause Analysis of Direct Tax Provisions
of Finance Bill, 2023



Time:
09:30 AM - 2:00 PM
11th Feb 2023 | Sat



Venue:

For Mumbai participants: 4th Floor, IMC, Churchgate
For Outstation participants: Virtual

9.30 AM - 10.30 AM: Keynote Address
Sr. Adv. Arvind Datar



10.30 AM - 12 PM:
CA Yogesh Thar



12.30 PM - 2 PM:
CA Gautam
Nayak



ORGANIZED BY: DIRECT TAX COMMITTEE

Participation Fees (Physical/Virtual):

Members:- Rs. 800+GST= Rs. 944/- | Non-Members:- Rs. 1200+GST=Rs. 1416/-

Register at <https://bit.ly/3LIYJjd> or Scan QR





Estd. 1926
ज्ञानं परमं बलम्

**THE CHAMBER OF
TAX CONSULTANTS**



THE DASTUR ESSAY COMPETITION 2023

For Students of Law & Accountancy

REGISTRATION
CLOSES ON
**28th February,
2023**

SUBMISSION
DEADLINE
**30th April,
2023**

The Dastur Essay Competition

Objectives

The objectives of the Competition are to cultivate good reading and writing communication skills coupled with encouraging "passion for writing" and "creativity", a quality which every human being possesses, which is possibly hidden and may be unknown to the individual himself.

The Dastur Essay Competition gives a platform to the young professionals to showcase their characteristics that illuminate the good students and potentially great writers. This Essay Competition invites students to explore a wide range of challenging and interesting questions beyond the confines of the college curriculum.

The Chamber is one of the oldest professional organisations founded in 1926. The Chamber has been organising the Dastur Essay Competition since 2012 for Law Students and Articled Trainees pursuing CA, CS and ICWA Courses, where essays on current topics are invited and then the same are judged by senior professionals with prizes and certificates being awarded to meritorious essays.

We, at The Chamber believe that young students are the future leaders of our nation. They have the strength to bring ideas to life. Writing, a dying art today, is an important tool for encouraging the young fresh minds with novel ideas, to express themselves on topics of professional interest and get recognised by a professional forum, with around 4,000 members, through publication of the top three essays in 'The Chamber's Journal'.

Hence, by participating in the Twelfth Dastur Essay Competition of The Chamber, we request the budding professionals to be passionate about expressing themselves through their words and to take this opportunity to get the creative ideas flowing and allow the author within, to blossom.

Cash Prizes Awarded



₹ 10,000/-



₹ 7,500/-



₹ 5,000/-

Student committee

Chairman:
Vitang Shah

Ex-officio:
Parag Ved,
Haresh Kenia

Vice Chairpersons:
Charmi G. Shah,
Niyati Mankad

Convenors:
Charmi A. Shah,
Viral Shah

Advisor:
Ajay Singh

Topics for the Twelfth Dastur Essay Competition are:

1. Do Indian Labour Laws require to be reformed and, if so, how?
2. After 75 years of Independence, what should be India's vision for the next 75 years?
3. To have smarter and success-oriented students, should our school/ college syllabi be changed and, if so, in what manner?

For Rules & Regulations and Enrolment, please visit our website www.ctconline.org
For queries pls mails us on ctcessay@gmail.com or contact on 022- 22001787/ 22090423/ 22002455

Important Decisions under GST and Service Tax Laws

By **Vinay Kumar Jain and Jay Chheda**, Advocates

1. **Whether the Circular No. 183/15/2022-GST dated 27.12.2022 dealing with remedy for mismatch of ITC between GSTR 3B and GSTR 2B during the period FY 2017-18 and 2018-19 is applicable to F.Y. 2019-20 also?**

Facts and Pleadings: The Petitioner made supplies to one ABB Global Industries and Services Private Limited. However, the GSTIN Number mentioned in the invoices raised by the Petitioner was that of one ABB India Limited, which is an entirely independent entity. Thereby, the Petitioner had filed the writ petition in the nature of Mandamus to direct the Revenue to allow the Petitioner get access to the GST Portal and rectify the form GSTR-1 uploaded between FY 2017-18 to 2019-20 with respect to the abovementioned invoices. The rectification would enable the recipient of the invoices to take credit of the tax paid by the Petitioner notwithstanding the time limit prescribed under Section 16(4) of the CGST Act.

The Petitioner argued that vide the Circular bearing No.183/15/2022-GST dated 27.12.2022, bonafide and inadvertent mistakes made by a taxpayer at the time of filing of forms and filing the returns have been allowed to be rectified. The procedure for such cases has been prescribed in Paragraph 4 of the Circular. The said circular provides for rectification of errors for Financial Year 2017-18 and 2018-19, however the same shall be applicable for Financial Year 2019-20 as well.

The Revenue argued that the Circular would not apply considering the same is applicable only for Financial Years 2017-18 and 2018-19. Thereby, the Revenue contended that the petition has no merit and is liable to be dismissed.

Judgment passed by the High Court of Karnataka:

The High Court allowed the appeal filed by the Petitioner. The Court observed that Circular dated 27.12.2022 contemplates rectification of the bonafide and inadvertent mistakes committed by persons at the time of filing the forms and submitting the returns under the GST law. With respect to the same, the Court opined that the error committed by the Petitioner, wherein it mentioned the wrong GSTIN Number of the recipient in its invoices, was a bonafide error. The Petitioner had sufficient cause to approach the Court and thereby, the Court held that the aforesaid Circular would be applicable to the facts of the case.

The Court further observed that the procedure to rectify such mistakes has clearly been discussed in Paragraph 4 of the Circular. Thereby, the Court directed the Revenue to follow the procedure as mentioned in paragraph 4 of the aforesaid Circular. The same would be applicable for the Financial Years 2017-18, 2018-19 and 2019-20 despite the fact that the said Circular only applies to the years 2017-18 and 2018-19. The Court adopted a justice-oriented approach and thereby allowed the Petitioner to be entitled to the benefits of the Circular for F.Y. 2019-20 as well since the errors committed by Petitioner were identical in nature for previous years.

M/s Wipro Limited India v. Assistant Commissioner of Central Taxes, Bengaluru & Others- 2023-VIL-22-KAR

2. **Whether exporter is required to pay service tax on reverse charge basis on bank charges paid in respect of the foreign currency transaction between their local and foreign banks engaged in facilitating the transfer of foreign exchange?**

The Appellant is a manufacturer and exporter of bulk drugs. During the process of realization of export proceeds from buyers outside India, the services of both, the foreign banks and the Indian banks are used for the realization of funds in domestic Indian currency. A commission is paid to the foreign bank in this process by the Indian Bank. The same commission is then reimbursed by the Indian Bank from the Appellant. Revenue demanded service tax on the aforesaid reimbursement of charges made by the Appellant to the Indian Bank for the services provided by the Foreign Bank on reverse charge basis.

The issue was whether the Appellant is required to pay service tax on reverse charge basis for the charges paid by them in respect of the foreign currency transaction between the Indian Bank and the foreign bank engaged in facilitating the transfer of foreign exchange?

The Appellant argued that there was no contract between the Appellant and the foreign bank. Thereby, there was no direct dealing between them. Further, the service charges were paid by the Indian Bank to the foreign bank as per the arrangement that existed between the two banks and there was no involvement of the Appellant in the same. The Appellant argued that in the present case, the service recipient of the service provided by the Foreign Bank is the Indian

Bank and therefore, the Appellant is not liable to pay the service tax for the same.

Judgment passed by CESTAT- Ahmedabad:

The Appellant referred to the Circular No. 20/2013-14-ST-I (Commissioner of ST-I, Mumbai T.N.) dated 10.02.2014. The said Circular had examined URC 522 (Uniform Rules for Collection) and UCP 600 (Uniform Customs & Practice for Documentary Credits) and summarized it. The Circular noted that there exists an implied contract between the Indian Bank and the foreign bank, whereby the foreign bank only recognizes the Indian Bank for providing their services and thereby, collecting the charges pursuant to the services provided. The exporter or the importer in India is usually unaware of the charges charged

by the foreign bank. Hence, the Indian Bank is the recipient of Service in such cases and hence, is required to pay the service tax under Section 66A of the Finance Act, 1994. They further observed that for a person for a person to be treated as a recipient of service, it would be important that they know who the service provider is and there should be an agreement to provide the service, whether orally or in writing.

Thereby, by considering the facts of the case and the articles of URC 522 and UCP 600, the CESTAT concluded that the services are provided by the foreign bank to the Indian bank.

Dishman Pharmaceuticals and Chemicals Ltd. v. CST Service Tax- Ahmedabad- 2023-VIL-24-CESTAT-AHM-ST

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**

- Disallowance of employees contribution to Provident Fund based on the statement made in the Tax Audit Report while processing the return under section 143(1) of the Act – Not permissible :**

Facts:

Assessee remitted the employees contribution to Provident Fund beyond the due date prescribed under the Provident Fund Act, but had duly remitted the same before the due date of filing the return of income under section 139(1) of the Act. This fact of remittance made by the assessee with delay had been reported by the Tax Auditor in the Tax Audit Report. In the said Report Tax Auditor had mentioned the due date for remittance of Provident Fund as per the Provident Fund Act and the actual date of payment made by the assessee.

Ld. CPC Bangalore had taken up this data from tax audit report and sought to disallow the same while processing the return under section 143(1) of the Act, apparently by applying the provisions of section 143(1)(a)(iv) of the Act.

Held:

From the provisions of section 143(1)(a)(iv) of the Act, it is very clear that the said clause (iv)

would come into operation when the Tax Auditor had suggested for a disallowance of expense or increase in income, but the same had not been carried out by the assessee while filing the return of income. In the instant case tax auditor had not stated to disallow Employees Contribution to Provident Fund wherever it is remitted beyond the due date under the respective Act. Hence, it is merely recording of facts and a mere statement made by the Tax Auditor in his audit report.

The Id. ITAT after referring the decision in case of **Checkmate Services Pvt Ltd vs CIT reported in 143 taxmann.com 178 (SC) dated 12/10/2022** allowed the appeal of the assessee and observed that:- The scheme of present section 143(1) does not involve a unilateral exercise. The very fact that an opportunity of the assessee being provided with an intimation of 'such adjustments' [as opposed under sec 143(1)], in writing or by electronic mode, and "the response received from the assessee, if any" to be "considered before making any adjustment" makes the process of making adjustments under section 143(1), under the pre legal position, an interactive and cerebral process. The Assessing Officer-CPC has used a standard reason to the effect that "As there

has been no response/the response given is not acceptable, the adjustment(s) as mentioned below are being made to the total income as per provisions of section 143(l)(a)", and has not even struck off the portion inapplicable. A quasi-judicial order, as a rejection of the objections against the proposed adjustments under section 143(1) inherently is, can hardly meet any judicial approval when it is devoid of the cogent and specific reasons, and when it is in a standard template text format with clear indications that there has not been any application of mind as even the inapplicable portion template text.

M/s. P. R. Packaging Service vs. Assistant Commissioner of

Income Tax-25(3), Mumbai

[ITA No.2376/Mum/2022 , dt 7/12/2022 ; Bench SMC; AY 2019-20]

2. **Reopening on the basis of information received from DDIT – Penny stock – Assessee regular investor – Holding scrip since last two years - SEBI order do not implicate assessee or his broker – Non application of mind by AO - Making roving enquiry not permissible :**

Facts:

The assessee is an individual having income from House Property, Income from business, Income from capital gains and Income from other sources. The assessee is a regular investor in the share market since 2007. In the return of income filed on 12/09/2012 for A.Y. 2012-13, the assessee claimed long term capital gain exemption of Rs.3,00,809/- on sale of shares. The Ld.AO reopened the assessment after recording reasons wherein it was pointed out that he had received information from DDIT, Investigation Wing, Mumbai wherein Gemstone Investment Ltd scrip dealt with by the assessee was treated as a penny stock and assessee being one of the beneficiaries of exempt capital gain, income of the assessee had escaped assessment for which assessment was sought to be reopened

Held:

Neither the assessee's name nor the share broker through whom assessee transacted was even mentioned in the list of parties as beneficiaries. The said SEBI order clearly indicates the list of parties who were involved in price manipulation by way of artificial rigging of prices. No doubt, this scrip of Gemstone Investments Ltd may be a penny stock. But, still, the assessee cannot be faulted for each and every transaction carried out in the said scrip treating the said transaction as tainted transaction. From the perusal of the Income Tax return and computation of total income of the assessee, it was noticed that assessee had made investments in various companies over the period of years. It is not that assessee had merely invested in Gemstone Investments Ltd (which is considered as a penny stock) and made gains in the form of exempt long term capital gains thereon. Moreover, the assessee had merely got an appreciation of 4.5 times on the sale price which, is a normal return expected by any legitimate investor in the share market. The Investigation Wing had only mentioned that the Ld.AO is advised to consider and examine all other relevant details and carry out his own independent enquiry and take necessary action as per law in respect of sale of shares of Gemstone Investments Ltd made by the assessee. The said information nowhere gives any mandate / authority to the Ld.AO to enable him to form a belief that income of the assessee had indeed escaped assessment. It is not in dispute that other than the said letter received from Investigation Wing and SEBI's order, the Ld.AO did not have any information or material which would enable him to form a belief that income of the assessee had escaped assessment warranting reopening. Hence, reopening has been made by the Ld.AO to make fishing and roving enquiries which, is not permissible in law.

Mamta Lalit Jain v. ITO, Ward-1(2), Kalyan

[ITA No. 1626/Mum/2022 ; dt 8/12/2022 ; Bench : SMC; A.Y.: 2012-13]

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