

E mail: maladchamber@gmail.com

Website: www.mctc.in

Price ₹ 5/-

Regd. Office

B/6, Star Manor Apartment, 1st Floor, Anand Road Extn.,
Malad (W), Mumbai 400 064. **Mobile : 7039006655**

Admn. Office

C/o. Brijesh Cholerra : Shop No. 4, 2nd Floor, The Mall,
Station Road, Malad (W), Mumbai-400 064

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April, 2024



President's Communiqué

My Dear Professional Colleagues,

The **World Earth Day** was celebrated globally on the **22nd April, 2024** and the theme was **Planet vs Plastics**. The theme aims to bring attention to the serious issue of plastic pollution and how it harms nature. For Earth Day 2024, EARTHDAY.ORG aims to end plastic for planetary health and demands a 60 per cent reduction in the production of all plastics by 2040. Let us all play our part in supporting this great initiative.

As Temperatures soar and India faces brutal **Heat Waves** this summer, it becomes imperative for us to contribute in this fight against Global Warming. In the meanwhile, please keep yourselves hydrated, avoid direct sun exposure and wear loose fitting clothes to avoid a heat stroke.

The Chamber successfully hosted an **Income Tax Study Circle on "Navigating the controversies of Section 44AD & 44ADA"** on 20th April, 2024 by Young **Speaker CA Viral Shah**. It was an engaging session which was presented in a very interesting way by CA Viral discussing the various issues extensively and providing resolutions backed by detailed study of the sections. The session was interactive with active inputs received from all participants.

In continuation to the Virtual series, we are introducing a Third Part on "**Opportunities for Tax & Finance Professionals abroad**" in association with **Lions Club of (Mumbai) Walkeshwar, Lions Club of (Mumbai) Corporate & Foundation for Skill Development**. This webinar series was initiated with an intention to enable professionals to explore opportunities overseas and will continue with **Speaker CA Rajat Shah** from **Brisbane, Australia on 18th May, 2024**. It will be third in the abroad series after the successful response to the Dubai and UK lectures.

As the nation enjoys Fresh **Mangoes**, **IPL 2024** and **School vacations**, I wish everyone a Happy Summer 2024. I would also like to extend my best wishes for **Maharashtra Day** **Rabindranath Tagore Jayanti** and **Buddha Purnima!**

CA Khyati B. Vasani

President

Request members please send your Mobile No. & Email ID to update list of life members. Please send message on 7039006655 or email to maladchamber@gmail.com

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Name	Designation	Contact Nos.	E-mail
CA Khyati Vasani	<i>President</i>	9833288584	khyativasani@yahoo.com
Adv. Jaideep Sonpal	<i>Vice President</i>	9892005352	sonpalconsultants@gmail.com
Shri Rajen Vora	<i>Hon. Treasurer</i>	9819807824	vora.rajen@gmail.com
Shri Bhavin Mehta	<i>Jt. Secretary</i>	9224208781	bhavinjmehta@yahoo.com
Shri Rinav Khakhar	<i>Jt. Secretary</i>	9920022323	rinavkhakhar@gmail.com

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The Malad Chamber of Tax Consultants

jointly with

Lions Club of (Mumbai) Walkeshwar

Lions Club of (Mumbai) Corporate & Foundation for Skill Development

Announces a Lecture series on Opportunities for Tax Professionals & Finance Professional Abroad.

Day & Date	Saturday, 18th May, 2024
Time	11.00 am to 1.00 pm
Topic	Opportunities for Tax Professionals and Finance Professionals in Australia
Venue	Zoom Platform
Speaker	CA Rajat Shah (Brisbane)
Zoom ID	889 9428 7799
Zoom Password	MCTCFFSD

DIRECT TAXES CIRCULARS AND NOTIFICATIONS ISSUED BY CBDT/MINISTRY OF FINANCE

Compiled by CA Nitin Bhuta

Part I – Circulars

Readers, please note that no further circulars are issued after circular no 04/2024 dated 07/03/2024; thus, nothing is reported in this section of the newsletter.

Part II – Notifications

A. Notification No 27/2024 dated 05/03/2024 & Notification No 34/2024 dated 19.03.2024 (Form 3CD changes applicable from AY 2024/25)

CBDT has been notified of the above notification whereby changes are notified in Form 3CD to be filed for any assessment years w.e.f 05/03/2024 vide Income Tax (Fourth Amendment) Rules, 2024. Changes are as follows:

- Part A clause 8a -Substitution of Section 115BAD/115BAE (viz. co-operative manufacturing societies) in place of Section 115BAD
- Part B changes
 - *Clause 12 - Substitution of Section 44AD, 44ADA etc. Readers can note that Section 44ADA was inadvertently not added. Still, it was reported due to a reference to any other relevant section all the stakeholders used to report such information under this clause.*
 - *Clause 18 – substitution in clause (ca) – adjustment made to the written down value –*



- o (iii) under the second proviso to sub-section (3) of Section 115BAC (for assessment year 2024-25 only);
- Clause 19 – two sections are inserted
 - o Section 35ABA (Spectrum License Fees deduction – similar provisions Section 35ABB – Telecom License Fees) added after section 35(2AB)
 - o **Any other relevant section** added after section 35E.
 - o Readers are recommended to examine the insertion of the residual entry very deeply and await further clarification from CBDT/ICAI in this regard, as any such insertion is planned after deep thinking by the legislature; in my understanding, interpretation can vary from person to person.
- Clause 21 (a) – Nature – substitution/replacement
 - o “Expenditure for any purpose which is an offence or is prohibited by law or expenditure by way of penalty or fine or violation of any law (enacted in India or outside India)” – Form amended to incorporate the changes aligned to Explanation 3 to Section 37 of the Income Tax Act, 1961. Before the substitution clause stated, ‘Expenditure by way of penalty or fine or violation of any law for the time being in force.’
 - o “Expenditure incurred to compound an offence under any law for the time being in force, in India or outside India” – Form amended to incorporate the changes aligned to Explanation 3 to Section 37 of the Income Tax Act, 1961. Before the substitution clause stated, ‘Expenditure by way of any other penalty or fine not covered above.’
 - o “Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person” – Form amended to incorporate the changes aligned to Explanation 3 to Section 37 as well as section 194R ramifications under the Income Tax Act, 1961. Before the substitution clause stated, ‘Expenditure incurred for any purpose which is an offence or which is prohibited by law.’
 - o Readers can observe the scope of nature of such expense reporting is expanded to align with Section/s amended by the Finance Bill from time to time.
- Clause 22 - words “any other amount not allowable under clause (h) of section 43B of the Income Tax Act 1961” has been added to the amount of interest admissible under section 23 of Micro, Small and Medium Enterprises Development Act, 2006. **Readers, please note interest payable to MSME is permanently disallowable, but any other amount not allowable under clause (h) of Section 43B is not permanently disallowable. So appropriate care should be taken while determining Deferred Tax workings as per AS 15 to be recognized in the Financial Statements and for the purpose of MAT Workings as per the provisions of the Act and Rules. In my opinion, in the next year, suitable changes will be introduced in Form 3CD to report the allowability of such disallowance, which has been reported under clause 22 by the Assessee. The assessee and the Tax Auditor must maintain proper working papers.**
- Clause 26 – **clause (h) has been omitted**, which stated - any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)

- Clause 32 - Substitution of Section 115BAD/115BAE (viz. co-operative manufacturing societies) in place of Section 115BAD in columns 5 & 6 and further words added to provide – “to be filled only for AY 21/22 & AY 24/25 as applicable.
- In addition to the Form 3CD changes, consequential changes are introduced in Form 3CEB – Part C (Specified Domestic transaction) applicable to cooperative manufacturing societies claiming benefits u/s 1115BAE of the Act, Form 65 verification by the assessee located in IFSC, etc.

B. Notification No 37/2024 dated 27/03/2024 (Income Tax Return Verification Form & Income Tax Return Acknowledgement for AY 2024/25]

Vide the above notification, CBDT has notified the Income Tax Return Verification Form in connection with Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4(SUGAM), ITR-5, ITR-7 filed but NOT verified electronically and consequently notified Income Tax Return Acknowledgement after e verification of such returns verified as per Rule 12 of the Income Tax Rules 1962.

C. Notification No 2/2024 dated 02/02/2024 [Time limits for e-verification of ITR Returns w.e.f April 1, 2024) & Corrigendum to Notification No 02/2024 dated 04.04.2024.

Vide the above notification, CBDT has notified the time limit of 30 days in pursuance of powers conferred under Rule 14 of the Centralised Processing Scheme, 2011, as per Notification No 05/2022 dated 29.07.2022.

Further, it has been clarified that:

- Where the return of income is uploaded, and e-verification/ITR-V is submitted within 30 days of uploading. In such cases, the date of uploading the return of income shall be considered the date of furnishing the return of income.
- Where the return of income is uploaded, but e-verification or ITR-V is submitted after 30 days of uploading – In such cases, the date of e-verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Act shall follow, as applicable

It is further clarified by way of corrigendum dated 04/04/2024 to Notification No 02/2024 dated 02.02.2024, which is as follows:

It is further clarified that where the return of income is not verified within 30 days from the date of uploading or till the due date for furnishing the return of income as per the Income-tax Act, 1961 - whichever is later - such return shall be treated as invalid due to non-verification.

D. Notification No 33/2024 dated 19/03/2024 (Notification of DTAA between India and Spain)

Vide the above notification, DTAA between India and Spain has been amended Article 13 by adding the following para 2 which is as follows:

Para 2—However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of the State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed ten per cent of the gross amount of royalties or fees for technical services.

This notification is applicable from AY 2024/25.

E. Notification No 28/2024 dated 07/03/2024 (Trade facilitation notification for the units established in IFSC)

Via this notification vide powers conferred under section 197(1F) read with section 80LA (2) of the Income Tax Act, 1961, it has been notified that no deduction of tax shall be made by any ‘payer’

to a person being a Unit of International Financial Services Centre (payee) under section/s 195, 194J, 194H, 194D, 194A, 194.

F. Series of Notification to notify several organizations/associations

Sr No	Notification No and date	Name of the Organisation/Associations
1	29/2024, dated 13.03.2024	'Indian Institute of Technology, Kharagpur' (PAN: AAAJI0323G) is notified under the category of 'University, College or Other Institution' for 'Scientific Research' for the purposes of clause (ii) of sub-section (1) of section 35 of the Income Tax Act, 1961, read with rules 5C and 5E of the Income Tax Rules, 1962, from AY 2024/25 to AY 2028/29.
2	30/2024 dated 13.03.2024	"Sardar Vallabhbhai National Institute of Technology", Surat (PAN: AAAJS1184P) is notified under the category of 'University, College or Other Institution' for 'Scientific Research' for the purposes of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5E of the Income-tax Rules, 1962 from AY 2024/25 to AY 2028/29.
3	31/2024, dated 13.02.2024	'National Forensic Sciences University, Gandhinagar' (PAN: AAALN3742Q) is notified under the category of 'University, college or other institution' for 'Scientific Research' for the purposes of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5E of the Income-tax Rules, 1962 from AY 2024/25 to AY 2028/29.
4	32/2024 dated 15.03.2024	"The Press Trust of India Limited, New Delhi" is notified as a news agency set up in India solely for collection and distribution of news for the purpose of the said clause for two assessment years 2022-2023 to 2023-2024 under section 10(22B) of the Income Tax Act 1961.
4	35/2024 dated 22.03.2024	Vide this notification, the CBDT has notified 'Principal Secretary, Planning Department, Government of Uttar Pradesh' for the purpose of section 138 (1)(a)(ii) of the Income Tax Act, 1961
5	36/2024 dated 26.03.2024	'National Mission for Clean Ganga', New Delhi (PAN AABAN3769K), is notified as an Authority constituted under the River Ganga (Rejuvenation, Protection and Management) Authority Order, 2016, u/s 10(46) of the Income Tax Act 1961 from AY 20/21 to AY 22/23 with specific stipulations as notified.

Sr No	Notification No and date	Name of the Organisation/Associations
6	38/2024 dated 08.04.2024	'Amul Research and Development Association, Anand, Gujarat (PAN: AAATA2673H)' under the category of 'Research Association' for research in 'Scientific Research' is approved for the purposes of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 read with rules 5C and 5D of the Income-tax Rules, 1962 from AY 2008/09 to AY 2021/22. Readers, please note that this notification has been issued due to the multiple writ petition/s filed before Gujarat HC.



DIRECT TAX CASE LAWS

Compiled by CA Rupal Shah
(Partner at RHDB & Co LLP)



Agra Portfolio (P.) Ltd v/s PCIT (Respondent).

Citation: [2024] 161 taxmann.com 303, Delhi HC

Whether DCF method adopted by Assessee can be super ceded by NAV method.

Facts:

The issue of valuation had arisen in the context of the appellant having allotted 3,15,000 equity shares of a face value of INR 10/- each at a premium of INR 40/- per share and for a total amount of INR 1,26,00,000 /-.

For the purposes of valuation of the shares offered for subscription, the appellant had placed reliance on a Valuation Report drawn by a merchant banker, M/s SPA Capital Advisors Ltd., and wherein the value of each share was pegged at INR 9.60/-.

Consequent to the rejection of that Report, the AO independently determined the value of each share by NAV method and determined it to be Rs. 40.40 per share.

The principal grievance of the appellant is that even if the AO had deemed it fit to reject the Valuation Report drawn on the basis of Discounted Cash Flow Method, it could not have substituted the means and the method of valuation of its own volition.

Held

In terms of Section 56(2)(viib), the option of choosing a method of valuation stands vested exclusively in the assessee. Once the assessee applied particular method of valuation, (in the present case DCF method), then it is the duty of the Assessing Officer / Id.CIT(A) to scrutinize the valuation report within the four corners or parameters laid down while making the valuation report under DCF method only. It is not permissible for the Assessing Officer to reject the method opted by the assessee and apply a different method of valuation and the Assessing Officer can definitely reject the valuation report but not the method.

The matter is remitted to the AO which shall undertake an exercise of valuation afresh in accordance with the DCF method. We also accord liberty to the AO to determine the FMV of the shares bearing in mind the DCF Method by having the same independently determined by a Valuer appointed for the aforesaid purpose.

Cases relied upon

1. *Vodafone M-Pesa Limited v. Principal Commissioner of Income Tax and Others* 2018 SCC OnLine Bom 21317, Bom HC

**Somnath Duttagupta v/s ACIT (Respondent).**

Citation: IT APPEAL NO. 627 (Kol.) OF 2023

Where assessee was an Indian resident and had exercised employment and received remuneration in US, salary income of assessee was taxable in USA and not in India

Facts

The assessee was employed with PWC, India. During the year under consideration, the assessee was on an international assignment to USA, he stayed and exercised his employment in USA and received salary income.

The assessee claimed that as he had stayed in India only for 16 days, salary income earned by him was not taxable in India but was taxed in USA as per the provisions of article 16 of the Indo-US Double Taxation Avoidance Agreement (DTAA).

The Assessing Officer referring to the provisions of section 90(4) held that since the assessee had failed to submit tax resident certificate of USA, the claim of exemption from taxation of the salary in India could not be allowed. Accordingly, he taxed the aforesaid salary income of the assessee in India.

On appeal, the Commissioner (Appeals) held that the remuneration was paid by the employer who was always a resident of the India and, therefore, the assessee's salary was taxable in India.

On the assessee's appeal to the Tribunal :

Held

A perusal of the section 6(1) would reveal that an individual would be treated as a resident in India if (a) he has been in India in that year for a period or periods amounting in all to 182 days or more; or (b) he has been in India for a cumulative period of 365 days or more within four years preceding that year and further for a total period amounting in all to 60 days or more in that relevant year. The assessee by virtue of provisions of section 6(1) has failed to establish his status of non-resident.

In the instant case, the assessee admittedly had filed income tax return in US as well as in India. The assessee in his revised income tax return has also declared an income of Rs.1.91 lakhs in India. The assessee also filed on record, the copies of the income tax return for the year 2018 and for the year 2019 in US. Therefore, the assessee is a tax resident of both the States.

On reading article 16 of the DTAA as a whole, the reasonable interpretation which would come is that the salary and other similar remuneration derived by resident of a contracting state in respect of an employment exercised in the other contracting state is liable to be taxed in that other state.

The exception clause as mentioned in article 16(2) of the DTAA is not applicable in the case of the assessee. The condition mentioned in clause (a) of article 16(2) is satisfied but the conditions of clause (b) and (c) to article 16(2) of the DTAA have not been satisfied in this case.

Since, it is held that the conditions mentioned in clause (a), (b) & (c) to article 16(2) of the Indo-US DTAA have to be applicable together or to say simultaneously and since all the conditions mentioned in article 16(2) of the DTAA are not attracted in the case of the assessee, therefore, the provisions of article 16(1) of DTAA will be applicable and, accordingly, it is to be held that the income of the assessee is taxable in USA and not in India.

■■■

ON DISCONTINUANCE OF BUSINESS, WHETHER SALE OF LEASEHOLD LAND ALONG WITH PLANT AND MACHINERY EMBEDDED THEREIN WOULD ATTRACT LEVY OF GST?

Compiled by CA Bhavin Mehta



Entry No. 2 of Notification No. 12/2017-CTR dated 28-06-2017 grants exemption from levy of GST to “services by way of transfer of a **going concern**, as a whole or independent part thereof”.

The exemption is available to “going concern”. The question arises is whether discontinued business would qualify as “going concern”. In this respect Education Guide dated 20-06-2012 issued by Department in relation to taxation of service clarifies as under:

“Transfer of a going concern means transfer of a **running business** which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill, etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted”.

Thus, discontinued business would not qualify as “going concern” and therefore exemption notification will not be applicable. Does it therefore means that transfer of leasehold land along with plant and machinery being not covered under exemption notification, would be liable to levy of GST?

It is settled principle that exemption does not pre-suppose a charge. In **Gypsy Pegasus vs. State of Gujarat reported in 2018 (15) GSTL 305 (SC)**, the Hon’ble Court held that the exemption granted to Musical Programme by Notification subject to certain conditions is redundant and has no relevance when the Musical Programme was excluded from the levy provisions of the Entertainment Tax Act, 1977.

Therefore, just because the subject transaction of sale of leasehold land along with plant and machinery is covered under exemption notification, it does not necessarily mean it would be liable to levy of GST.

Before examining the taxability of transaction, it is imperative to understand whether sale of leasehold and sale of plant and machinery demand separate tax treatment? The contract does not recognize separation between sale of leasehold land and sale of plant and machinery. The transaction pertains to sale of leasehold land wherein plant and machinery is embedded therein. The pre-dominant consumer aim is to buy the leasehold land.

Next question arises, whether transfer of leasehold land is equivalent to sale of land?

As per section 3(26) of the General Clauses Act, 1897 “‘immovable property’ shall include land, benefits to arise out of land, and thing attached to the earth, or permanently fastened to anything attached to the earth”.

As per the Land Acquisition Act, 1894, the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

As per Bombay Land Revenue Code 1879 the interpretation of “land” includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in or charges on, the revenue or rent of villages, or other defined portion of territory.

Thus, the word “land” not just includes full title in land but also rights which gives benefits associated with it. Hence the expression ‘sale of land’ connotes ‘transfer’ irrevocably and permanently of title in the land including rights in the form of benefit arising from it.

Sale of land and sale of building are treated neither as supply of goods nor as supply of services under Schedule III. The expression “land” and “building” would include rights in land or building. Land or building, by virtue of definition of immovable property, includes even right in the land or building.

It is relevant to note Entry 18 of List II of Seventh Schedule to the Constitution. It reads as “Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization”. Therefore, reference to land includes even rights in land. This is supplemented by Entry 49 in the same list showing Taxes on land and buildings.

In the premises of above analysis, in the opinion of author sale of leasehold land along with plant machinery is neither supply of goods nor supply of service and therefore would not attract levy of GST.

■■■

Study circle on Navigating the controversies of 44AD and 44ADA by CA Viral Shah

4th Managing Committee Meeting 2023-24



Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

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• **Editor : Shri Kishor Vanjara**

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B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064

