



**The Malad
Chamber of
Tax Consultants**



MCTC Bulletin

MNW/175/2021-23

E mail: maladchamber@gmail.com

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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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President's Communiqué

My Dear Professional Colleagues,

The Finance Minister of India announced the **Union Budget** on 1st February, 2024. Although it was an Interim Budget, it promised growth through **Viksit Bharat by 2047**. There were no changes in the Direct and Indirect Tax provisions. However, the Government withdrew old income tax demands which will benefit about one crore taxpayers.

The Malad Chamber of Tax Consultants jointly with AIFTP (WZ), BCAS, CTC, GSTPAM and WIRC of ICAI is Conducting a **Workshop on GST Law** which begun on 16th January, 2024 and will continue till 27th February, 2024. This workshop is carefully curated to include 13 sessions involving a Brains trust session with the stalwarts of the profession. It aims at resolving legal issues as well as procedural issues faced by the Tax Professionals today. There are a few changes in the schedule for the GST Workshop, please find it in the Upcoming Event's section.

The Chamber successfully hosted a **RRC at Novotel Imagica** from the 26th of January to the 28th of January, 2024. I would like to thank the Chairman (RRC Committee) **Shri Sachin Gandhi** and Co-Convenors **Adv Rinav Khakhar** and **Adv. Haseet Bathiya** for their contribution and support in shaping the phenomenal RRC.

We had two enriching Group Discussions on "Current issues in Direct Taxes and Indirect Taxes" at the RRC with Learned Chairmen **Dr. Bharat Vasani** and **CA Janak Vaghani** respectively. The Group Leaders **CA Gunja Thakrar** and **CA Zankhana Dobaria** moderated a very productive and educational Discussion. Several Pertinent issues were discussed including Section 43B(h) and restrictions on ITC for 2017-18 & 2018-19.

The participants also enjoyed the Breakfast Parades, Imagica Amusement Park, Snow Park and Musical Fountain & Light show. The mountains in the backdrop, thrilling rides and scrumptious food made the RRC a learning as well as a fun experience.

नार्यस्तु राष्ट्रस्य श्वः । (Women are the nation's future)

"As women achieve power, the barriers will fall. As society sees what women can do, as women see what women can do, there will be more women out there doing things, and we'll all be better off for it." — Ruth Bader Ginsburg

The **International Women's Day** will be celebrated on 8th March, 2024. I wish all Women a **Very Happy Women's Day!**

CA Khyati B. Vasani
President

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

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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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"WORKSHOP ON GST LAW" ORGANISED JOINTLY BY MCTC, AIFTP (WZ), BCAS, CTC, GSTPAM & WIRC of ICAI FOR THE YEAR 2023-24

Fees: • Members: ₹ 1,600/- • Non-Members: ₹ 2,100/-

Google Form Link: <https://docs.google.com/forms/d/e/1FAIpQLSeeNyQ7QeRi903-agS5IA09vLUW asU31GlrpUtnawos15ZfCw/viewform?vc=0&c=0&w=1&flr=0>

Day	Date	Session No.	Topics	Speakers	Timings (pm)
Tuesday	16/01/2024		Inauguration		2.00–2.30
Tuesday	16/01/2024	1	Legal Issues in Input Tax Credit & Apportionment-	CA Sujata Rangnekar	2.30-5.45
Friday	19/01/2024	2	Procedural issues in Input Tax Credit	CA Adv Vivek Laddha	2.30-5.45
Tuesday	23/01/2024	3	Issues In E-Way bills, E-Invoicing & Way Forward	CA Sumit Jhunjunwala	2.30–4.30
		4	Issues in claiming Exemptions	CA S. S. Gupta	4.45–5.45
Tuesday	30/01/2024	5	GST on deemed Sales	CA Rajat Talati	2.30–5.45
Tuesday	06/02/2024	6	Provisions Related To Summons, Inspections, Search, Seizure, Bail, Prosecution.	Adv. Nikita Badheka	2.30–5.45
Friday	09/02/2024	7	Important Circulars & Clarifications.	CA (Dr.) Shailendra Saxena	2.30–4.00
		8	Issues in Intermediary Services.	CA Pauloma Dalal	4.15–5.45
Tuesday	13/02/2024	9	Departmental Audit, Assessment, Recovery	CA Pritam Mahure	2.30–5.45
Friday	16/02/2024	10	Issues related to JDA, Redevelopment, Builders & Developers	CA Jayesh Gogri	2.30–5.30
Wednesday	21/02/2024	11	Issues related to Liquidated Damages, Actionable Claims, Lottery, Gaming, etc.	Adv Ishaan Patkar (subject to confirmation)	2.30–5.45
Friday	23/02/2024	12	Provisions related to Appeals, Interest & Penalty	CA Rajiv Luthia	2.30–5.45
Tuesday	27/02/2024	13	Mega Brain Trust Session	CA Deepak Thakkar CA Ashit Shah Adv. Dinesh Tambde Adv. Deepak Bapat	2.30–5.45

Due to Some unavoidable reasons the following sessions of the ongoing Joint Workshop Series are being reschedule as follows:

SR No	Topic	Speaker	Original Timing	Revised Timing
1	Issues related to Liquidated Damages, Actionable Claims, Lottery	Adv. Ishaan Patkar	21st February 2.30 p.m. to 5.30 p.m.	24th February 2.30 pm to 5.30 pm
2	Issues in Intermediary Services	CA Puloma Dalal	9th February 4.15 PM to 5.45 pm	21st February 4.15 pm to 5.45 pm
3	Important Circular, Clarifications.	Dr CA Shailendra Saxena	9th February 2.30 pm to 4 pm	

The Malad Chamber of Tax Consultants jointly with All India Federation of Tax Practitioners (Western Zone) & Goods and Service Tax Practitioner Association of Maharashtra Announces a Triangular Cricket series 2024 on Opportunities for Tax Professionals & Finance Professional Abroad.

Day & Date	Saturday, 23rd March, 2024
Venue	Durgadevi Saraf Trust Turf, Malad (west)

ANNOUNCEMENT

At the **44th Annual General Meeting** held on 02nd July 2023, Sunday, at N. L. High School, Malad (W) at 10.45 am, the following Suggestions were received:

1. The Chamber should move towards **digitization** in every aspect.
2. To save paper and in an effort to be eco-friendly, we should consider **paperless** communications.
3. There were majority recommendations for **E-Bulletin** instead of **Paper Bulletin**.

At the 1st Managing Committee Meeting held on 16th July 2023, Sunday, at Aquaria Grande, Borivali (W), the following resolution was passed:

1. A proposal is to be given to all the members offering an option to opt for **Electronic Bulletin or Physical Bulletin**, if no response is received the offer will be assumed to be in the favour of Electronic Bulletin;
2. For adequate communication a **QR code** was to be generated for a google form and circulated for the members to respond to the offer of their preference of **E-Bulletin or Paper Bulletin**.

After the Managing Committee's request to the members to respond in the MCTC Bulletin of August, 2023 and September, 2023 using the QR Code mentioned of the google forms. The Chamber received only 10 responses in the favor of Paper bulletin. With a low response received in favor of Paper Bulletin, the Managing Committee has resolved to switch over to E-Bulletin with effect from February, 2024.

The Managing committee wishes to Update the KYC details of Members and requests the members to co-operate and fill out the KYC Google form for effective correspondence. Please send us your Email ID and Phone Numbers on maladchamber@gmail.com for enabling appropriate sending of E-bulletin in electronic mode.

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

Compiled by CA Nitin Bhuta

Part I – Circulars

A. Circular No 1/2024 dated 23/01/2024 (Circular explaining the provisions of Finance Act, 2023)



The Circular explains amendments made by the Finance Act of 2023, which are as follows:

Section wise amendments of Income-tax Act, 1961 viz. 2 Definitions 9 Income deemed to accrue or arise in India 10 Incomes not included in total income 10AA Special Provisions in respect of newly established units in Special Economic Zones 11 Income from property held for charitable or religious purposes. 12A Conditions for applicability of sections 11 and 12 12AB Procedure for fresh registration 13 Section 11 not to apply in certain cases 17 "Salary", "perquisite" and "profits in lieu of salary" defined 28 Profits and gains of business or profession 35D Amortization of certain preliminary expenses 43B Certain deductions to be only on actual payment 43D Special provision in case of income of public financial institutions, public companies etc. 44AB Audit of accounts of certain persons carrying on business or profession 44AD Special provision for computing profits and gains of business on presumptive basis 44ADA Special provision for computing profits and gains of profession on presumptive basis 44BB Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils. 44BBB Special provision for computing profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects 45 Capital Gains 47 Transactions not regarded as transfer 48 Mode of computation 49 Cost with reference to certain modes of acquisition 50AA Special provision for computation of capital gains in case of Market Linked Debenture 54 Profit on sale of property used for residence 3 54EA Capital gain on transfer of long-term capital assets not to be charged in the case of investment in specified securities. 54EB Capital gain on transfer of long-term capital assets not to be charged in certain cases. 54EC Capital gain not to be charged on investment in certain bonds. 54ED Capital gain on transfer of certain listed securities or unit not to be charged in certain cases. 54F Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house 55 Meaning of 'adjusted', 'cost of improvement' and 'cost of acquisition' 56 Income from other sources 72A Provisions relating to carry forward and set-off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. 72AA Carry forward and set off of accumulated loss and unabsorbed depreciation allowance in scheme of amalgamation in certain cases. 79 Carry forward and set off of losses in case of certain companies 80C Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures etc. 80CCC Deduction in respect of contribution to certain pension funds 80CCD Deduction in respect of contribution to pension scheme of Central Government 80CCH Deduction in respect of contribution to Agnipath Scheme 80G Deduction in respect of donations to certain funds, charitable institutions, etc. 80-IAC Special provision in respect of specified business 80LA Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre 87 Rebate to be allowed in computing income-tax 87A Rebate of income-tax in case of certain individuals 88 Rebate on life insurance premia, contribution to provident fund, etc. (omitted) 92BA Meaning of specified domestic transaction 92D Maintenance, keeping and furnishing of information and document by certain persons 94B Limitation on interest deduction in certain cases 111A Tax on short-term capital gains in certain cases 4 112 Tax on long-term capital gains 115A Tax on dividends, royalty and technical service fees in the case of foreign companies 115BAC Tax on income of individuals and Hindu Undivided Family 115BAD Tax on income of certain resident co-operative societies 115BAE Tax on income of certain new manufacturing cooperative societies 115BB Tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever. 115BBJ Tax on winnings from online games. 115JC Special provisions for payment of tax by certain persons other than a company 115JD Tax credit for alternate minimum tax 115TD Tax on accreted income 115UA Tax on income of unit holder and business trust. 115VP Method and time of opting for tonnage tax scheme 116 Income-tax authorities. 119 Instructions to subordinate authorities 131 Power regarding discovery, production of evidence, etc. 132 Search and seizure 133 Power to call for information. 134 Power to inspect registers of companies. 135A Faceless collection of information. 140B Tax on updated return 142 Inquiry before assessment 148 Issue of notice where income has escaped assessment 149 Time limit for notice 151 Sanction for issue of notice. 153 Time limit for completion of assessment, reassessment and recomputation 154 Rectification of mistake. 155 Other amendments 158A Procedure when assessee claims identical question of law is pending before High Court or Supreme Court. 158AB Procedure where an identical question of law is pending before the High Courts or Supreme Court. 170A Effect of order of tribunal or court in respect of business reorganisation 5 177 Association dissolved or business discontinued. 189 Firm dissolved or business discontinued. 192A Payment of accumulated balance due to an employee 193 Interest on securities 194B Winnings from lottery or crossword puzzle, etc. 194BA Winnings from online games, 194BB Winnings from horse races. 194LC Income by way of interest from Indian company 194N Payment of certain amounts in cash. 194R Deduction of tax on benefit or perquisite in respect of business or profession 196A Income in respect of units of non-residents. 197 Certificate for deduction at lower rate 206AB Special provision for deduction of tax at source for non-filers of income-tax return 206C Profits and gains

from the business of trading in alcoholic liquor, forest produce, scrap, etc. 206CC Requirement to furnish Permanent Account Number by collected 206CCA Special provision for collection of tax at source for non-filers of income-tax return 241A Withholding of refund in certain cases. 244A Interest on refunds. 245 Set off and withholding of refunds in certain cases 245D Procedure on receipt of an application under section 245C 245MA Dispute Resolution Committee 245R Procedure on receipt of application 246 Appealable orders before Joint Commissioner (Appeals) 249 Form of appeal and limitation. 250 Procedure in appeal 251 Powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals). 253 Appeals to the Appellate Tribunal 264 Revision of other orders 267 Amendment of assessment on appeal. 269SS Mode of taking or accepting certain loans, deposits and specified sum. 269T Mode of repayment of certain loans or deposits. 271 Failure to furnish returns, comply with notices, concealment of income, etc. 271A Failure to keep, maintain or retain books of account, documents, etc. 271AAC Penalty in respect of certain income. 271AAD Penalty for false entry, etc., in books of account. 6 271C Penalty for failure to deduct tax at source 271FAA Penalty for furnishing inaccurate statement of financial transaction or reportable account. 271J Penalty for furnishing incorrect information in reports or certificates. 274 Procedure. 275 Bar of limitation for imposing penalties. 276A Failure to comply with the provisions of sub-sections (1) and (3) of section 178. 276B Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. 279 Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. 287 Publication of information respecting assesses in certain cases 295 Power to make rules

In addition to the above, Revision of rates of Securities Transaction Tax by amendments in Finance (No. 2) Act, 2004 under Chapter VII of the Act.

Further, it also explains the rationalisation of the provisions of the Prohibition of Benami Property Transactions Act, 1988 (the PBPT Act) w.r.to Section 2 definitions and Section 46 Appeals to Appellate Tribunal.

Further, it also explains the Extension of Income- tax exemption to the Specified Undertaking of Unit Trust of India (SUUTI) till 31.03.2025 w.r.to Administer to vacate office & Tax exemption or benefit to continue to have effect

Part II – Notifications

A. Series of Notification to notify several organizations/associations

Sr. No.	Notification No and date	Name of the Organisation/Associations
1	01/2024 dated 02.01.2024	Bellary Development Authority' (PAN AAALB0037A) an Authority constituted by the State Government of Karnataka from AY 21/22 to AY 23/24 with specific stipulations as notified.
2	02/2024 dated 02.01.2024	The 'Karnataka State Rural Livelihood Promotion Society'' (PAN AACAK0581H) is constituted by the government of Karnataka from AY 19/20 to AY 23/24 with specific stipulations as notified.
3	03/2024 dated 02.01.2024	Madhya Pradesh Professional Examination Board, Bhopal (PAN-AAAGP1792B) is a board constituted by the Madhya Pradesh Government for AY 23/24 with specific stipulations as notified.
4	06/2024 dated 05.01.2024	'District Legal Service Authority Union Territory Chandigarh' (PAN: AAAGD1545A), an Authority constituted by the Administrator, Union Territory, Chandigarh, from AY 21/22 to AY 23/24 with specific stipulations as notified.
5	07/2024 dated 05.01.2024	'Karmayogi Bharat (PAN: AAJCK2949L), a Company incorporated under Section 8 of the Companies Act, 2013 with 100% equity shared owned by the President of India, i.e. Government of India, from AY 24/25 to AY 28/29 with specific stipulations as notified.
6	08/2024 dated 05.01.2024	'Haryana State Board of Technical Education, Panchkula' (PAN: AAAGT0008A), a Board constituted by the Government of Haryana, from AY 22/23 to AY 23/24 with specific stipulations as notified.
7	09/2024 dated 05.01.2024	'Polavaram Project Authority, Hyderabad (PAN: AAAGP0436N) is an authority constituted by the central government from AY 20/21 to AY 23/24 with specific stipulations as notified.
8	10/2024 dated 08.01.2024	'Chennai Metropolitan Water Supply and Sewerage Board' (PAN: AAALM0037B), a Board constituted by the Government of Tamil Nadu, from AY 20/21 to AY 23/24 with specific stipulations as notified.

Sr. No.	Notification No and date	Name of the Organisation/Associations
9	11/2024 dated 08.01.2024	'Punjab State Faculty of Ayurvedic and Unani Systems of Medicine' (PAN: AAALT1669E), a body constituted by the Punjab Government, from AY 20/21 to AY 23/24 with specific stipulations as notified.
10	15/2024 dated 23.01.2024	'State Legal Service Authority Union Territory Chandigarh' (PAN: AAAGS1716A), an Authority constituted by the Administrator, Union Territory, Chandigarh under the Legal Services Authority Act, 1987 (Central Act 39 of 1987), from AY 20/21 to AY 23/24 with specific stipulations as notified.

B. Notification No 04/2024 dated 4/01/2024 [Notification of activity of investment in a financial product by the Non-Resident u/s 10(4G)]

Vide the above notification, considering the powers conferred u/s 10(4G) by CG, it has been notified that activity of investment in financial product by the non-resident, in accordance with a contract with such non-resident entered into by a capital market intermediary, being a unit of an IFSC, where the income from such investment is received in the account of the non-resident maintained with the Offshore Banking unit of such IFSC, as specified or referred to in Section 80LA (1A).

C. Notification No 16/2024 dated 24/01/2024 (Notification of ITR 6 for AY 2024-25)

Vide the above notification, Govt. has notified ITR 6 applicable w.e.f April 1, 2024.

Such IT Returns are filed by the corporate assessee for assessment year (AY) 2024-25.

Companies filing ITR in ITR-6 to include the following additional information on cursory review:

- the Legal Entity Identifier (LEI) if applicable (only certain classes of assesses as of now)(A19) (r)
- MSME registration number,(A19) (s) - what does it imply, food for thought and
- Reasons for tax audit under Section 44AB of the IT Act. -.....General information. (biv)
- Mandatory disclosure of winnings from online games and virtual digital assets under Section 115BBJ of the IT Act.....Schedule OS- Part 2- aii.....plus bifurcation of winnings for advance tax determination similar to Income from Dividend other income in Row 10.....
- UDIN Reporting in ITR 6, where Tax Audit is undertaken as per the provisions of the Act.

This would usher in more transparency in all corporations' data reporting in the ITR.



DIRECT TAX CASE LAWS

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



Borkar Packaging Pvt Ltd (Appellant) v/s ACIT (Respondent).

Citation: ITA No. 232 & 233 (PAN) of 2019.

Interest attributable on borrowing will be disallowed if asset is not put to use

Facts :

Assessee being company engaged in the business of manufacturing of Paper Board Cartons. Assessee during the year made an expansion of its units by adding Rs 2.95 Cr in its Capital work in progress. 30% of the said addition was made out of its own funding and 70% is from general business loan/borrowing. Assessee while filling its revised return of income claimed deduction with respect to the interest paid on such borrowed fund. Case was selected for scrutiny. AO made an addition on total income u/s 36(1)(iii) of Rs 8,72,277/- being interest pertain to 70% of general business loan/ borrowing utilized for Capital Work in Progress. Being aggrieved by the order of the AO assessee file an appeal before CIT(A) however CIT(A) affirm the order passed by the AO. Being aggrieved by the order of CIT(A) assessee file an appeal before us.

Held

Treatment of interest as to the capital or revenue is neither guided by type of borrowing (ie term loan or working capital borrowing) nor its nature of borrowing ie general or specific borrowing ultimate test is "usage" of borrowing. In case of 'CIT Vs Vardhman Ploytex Ltd' 349 ITR 690 (SC) and in case of 'DCIT Vs Core Health Care Ltd.' 298 ITR 184 (SC) Hon'ble

Supreme court held that, interest on capital borrowed for the purpose of creation of any capital asset which yet to start operation/production interest upto such stage shall not be revenue but capital in nature and ineligible for deduction.

Conclude that with respect to the above judgment, interest attributable to the borrowing which is used for creating capital working in progress and such capital work in progress is not yet put to use then interest on such borrowing will not be treated as revenue expenditure and same will be disallowed u/s 36(1)(iii) of the act.

Optum Global Solutions (India) Private Limited, Vs DCIT

Citation: ITA-TP/145&482/HYD/2022, 16 August 2023

'Deduction under Section 80G in case of amount spend of CSR'

Facts:

While scrutinizing the return of income of the assessee, AO made certain additions which include the disallowance of the deduction u/s. 80G of the Income Tax Act. Notably, assessee donated ₹ 1,11,46,000/- to the Prime Minister's National Relief Fund which is eligible for 100% deduction u/s. 80G of the Act, and another sum of ₹ 2,66,54,000/- to the institutions Smile Foundation, Vidya Comfort School, Parikrama Humanity Foundation, Helpage India, Udayan Care, Narayana Hrudayalaya Charitable Trust and Sewa International, which are eligible for 50% deduction under Section 80G of the Income Tax Act. Accordingly, the assessee claimed a deduction of ₹ 1,33,27,000/-. AO, however, disallowed the deduction u/s. 80G of the Act stating that CSR expenditure incurred u/s. 135 of the Companies Act is categorically disallowed u/s. 37 of the Act, and, therefore, on similar logic deduction u/s. 80G cannot be allowed.

Held:

Out of so many entries under section 80G(2) of the Act, on-ly donations in respect of two entries are restricted if such payments were towards the discharge of the CSR. The Legislature could have put a similar embargo in respect of the other entries also, but such a re-striction is conspicuously absent for other entries. The irresistible conclusion that would flow from it is that it is not the legislative intention to bar the payments covered by section 80G(2) of the Act which were made pursuant to the CSR, and other than covered by section 80G(2)(iihk) and (iihl) of the Act.

Held that inasmuch as the assessee satisfied the conditions of Section 80G of the Act, the assessee is entitled to claim deduction under Section 80G of the Act in respect of such donations which formed part of the spend towards CSR.

Reference:

Reproducing Section 80G(2)(iihk) and (iihl) for ease of reference

(iihk) the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013); or

(iihl) the Clean Ganga Fund, set up by the Central Government, where such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013); or

■■■

Analysis of recent decision of Madras High Court in the case of Eicher Motors Limited in W.P. Nos. 16866 & 22013 of 2023 and W.M.P. No. 32200 of 2023, wherein it is held that even if Form GSTR-3B is filed late, interest is not payable where taxpayer has balance in electronic cash ledger.



Compiled by CA Bhavin Mehta

FACTS OF THE CASE

The appellant Eicher Motors Ltd. filed writ petition before the Madras High Court against the recovery notice issued to them in respect of interest amount of ₹ 23,76,26,657 for the period from July 2017 to December 2017 without even issuance of show cause notice. The Division Bench of High Court directed the Department to consider petitioner representation and pass an order. The Department after considering the petitioner representation passed the order confirming the demand of interest.

Issue: Whether Eicher Motors (petitioner) is liable to pay interest on the GST amount, which was routinely deposited into Electronic Credit Ledger (ECL) within due date but GSTR-3B could not be filed in time due to portal issue. The case of the

Department is that deposit of tax in ECL would not amount to payment of tax and would tantamount to failure to remit GST in time, for which interest liability would be attracted.

APPELLANT (PETITIONER) SUBMISSIONS

1. Tax amount remitted under Form PMT-06 to Government treasury account maintained with RBI and the said amount is paid to the Government (both Central and State).
2. Conjoint reading of section 49(1) of GST Act and RBI FAQ dated 14.04.2020 makes it clear that the money is transferred from the appellant's account to the Government's account at the time of payment into ECL. FAQ No. 8 states "RBI has also facilitated payment of GST by tax payers directly into Government accounts at RBI by using NEFT/RTGS payment options provided in GST Portal".
3. Explanation (a) to Section 49 of GST Act also clarifies that the deposit in ECL is nothing but deposit in Government Account maintained with RBI.
4. The amount paid into ECL cannot be withdrawn by the taxpayer at their sweet will i.e. once the money is deposited into ECL the same will not be refunded unless suitable order is passed by the Department. Section 49(6) of the GST Act states that any balance in ECL after payment of GST would be refunded to the Assessee in terms of Section 54 of the CGST Act read with Rule 89 of CGST Rules. If the department wishes to recover any amount from the taxpayer, they can easily recover the same from the ECL vide mere entry for appropriation of amount against the pending tax demand with any recourse or knowledge or permission of the Assessee. Debit to ECL is only a journal entry. Therefore, the amount paid into ECL belongs to the Government.
5. In the 27th GST Council meeting dated 04.05.2018, the delay in filing of GSTR-3B by tax payers due to technical glitches in the filing of Form TRAN-1 was recognized and as a result, the GST implementation committee had approved the waiver of late fee on such delayed filing. Therefore, there is no tax liability even as on the delayed date of filing of returns. Hence the question of imposing of penalty, interest, etc., would not arise since the same has been waived by the GST Council even for the delayed filing of GSTR returns.
6. In the present case, there is no element of withholding of tax, as the appellant had rightly deposited the amount into ECL on time. Therefore, since there is no basis to levy demand for interest by the department and section 50(1) of GST Act is not attracted in this case.
7. In response to RTI, the Ministry of Finance Department of Revenue, set outs that GST collection figures are prepared on the basis of the amount deposited in the electronic cash ledger.
8. Appellant referred to decisions of (i) **Munshi Ram and another vs. Balkar Singh and others reported in 2016 SCC Online P & H 11166** and (ii) **CIT vs. Modipon Ltd. reported in 2017 (356) ELT 481 (SC)**.

REVENUE SUBMISSIONS

1. Petitioner is required to file monthly returns along with self-assessed admitted tax u/s 39(7) of the GST Act on or before 20th of the succeeding months. However, the petitioner has filed the monthly returns belatedly for the period from July 2017 to December 2017. Hence, by virtue of section 50 of the Act, the recovery notice dated 16.05.2023 was sent to petitioner.
2. The petitioner claim of department had not granted the "transitional credit" and hence petitioner was prevented from filing monthly GSTR-3B returns in time is wrong because it is the duty of petitioner to upload the TRAN-1 Form and there is no role of the department to grant any "transitional credit" under section 140 of the GST Act read with Rule 117 of the GST Rules. Non-availability of "transitional input tax credit" has no bearing for filing the mandatory monthly returns in GSTR-3B on the 20th day of the succeeding month. The reason assigned by the petitioner for non-filing of monthly returns is not correct.
3. Petitioner cannot retain the GST collected from their customers to the tune of ₹ 527.54 crore and detain the same in the ECL for non-availability of TRAN-1 credit of ₹ 33.87 crore. Since the petitioner is only an authorized agent to collect the GST on behalf of the Government, they should be responsible to remit the same on or before the 20th of succeeding month, failing which will attract the 'compensatory interest' under section 50 of the GST Act.
4. The "cash" which is paid vide challan under Rule 87(7) is only a "deposit" and such "deposit" is in the petitioner own ECL and not the tax paid to the Government, unless the said amount is debited while filing the monthly GSTR-3B returns. Section 49(3) clearly states that the amount available in ECL may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the Rules made thereunder.
5. Combined reading of section 50, 75(12) and 79 makes it clear that there is no requirement of issuance of any show cause notice for recovery of unpaid interest on self-assessed tax.
6. The Revenue referred to following judgements:
 - (i) **Refex Industries vs. Assistant Commr. of CGST reported in 2020 SCC Online Mad 587;**

- (ii) Manasarover Motors P. Ltd vs. Assistant Commr. reported in 2020 SCC Online Mad 28155;
- (iii) Srnivasa Stampings vs. SPT of GST & CE in W.P. No. 7129 of 2021;
- (iv) P. K. Ores P. Ltd. vs. Commissioner of State Tax reported in MANU/OR/236/2022;
- (v) Orissa Stvedores Ltd. vs. UOI reported in MANU/OR/1116/2022;
- (vi) RSB Transmission (India) Ltd. vs. UOI reported in MANU/JH/1260;
- (vii) Haji Lal Mohd Biri Works vs. State of Uttar Pradesh reported in (1974) 3 SCC 137;
- (viii) The Sales Tax Officer vs. Dwarka Prasad Sheo Karan Dass reported in (1977) 1 SCC 22;
- (ix) Khazan Chand vs. State of Jammu and Kashmir reported in (1984) 2 SCC 456;
- (x) Prahlad Rai vs. Sales Tax Officer reported in (1991) Supp (2) SCC 612;
- (xi) Commr. of Sales Tax vs. Quershi Crucible reported in (1993) Supp (3) SCC 945.

HON'BLE COURT OBSERVATIONS AND ANALYSIS

1. Since Form GST TRAN-1 was not filed in time, the entire credit sought to be transitioned amount of ₹ 33.87 crore was not made available and thus the said amount did not reflect in the ECL, the petitioner could not file the monthly return in GSTR-3B for July 2017 within due date i.e. 28.08.2017. Due to non-filing of July GSTR-3B, the petitioner was unable to file GSTR-3B for subsequent months from August 2017 to December 2017, since section 39(10) of the GST Act disables an assessee from filing returns for the subsequent period if the returns for the previous tax period are not furnished. Though the petitioner was disabled from filing returns, the petitioner has discharged GST liability in time without any delay for the period from July 2017 to December 2017 by depositing the tax amounts both in Electronic Credit Ledger and Electronic Cash Ledger under the appropriate heads as CGST, SGST and IGST.
2. The petitioner was constrained to file revised GST TRAN-1 on 27.12.2017 and on such filing, the transitioned credit of ₹ 33.87 crore got reflected in the petitioner Electronic Credit Ledger, which enables the petitioner to file Form GSTR-3B for the month of July 2017 and accordingly, all the returns from July 2017 to December 2017 were filed on 24.01.2018.
3. The GST Council at its 26th meeting held on 10.03.2018 had discussed about the reversal of late fee paid by the tax payers on filing of Form GSTR-3B due to delay in filing Form GST-TRAN-1 in item no. 4.10. The late fee was waived for belated filing of Form GSTR-3B and Form GST-TRAN-1 due to technical glitches. Though the credit of around ₹ 33 crore was available under the CENVAT Regime for transition to the GST Regime, the petitioner was not able to file the Form GST TRAN-1 due to technical glitches in time. Since the petitioner was not able to upload Form GST TRAN-1, they were unable to upload the Form GSTR-3B for the month of July 2017 and thereafter. Even though the petitioner was not able to file GSTR-3B returns in time, they had duly paid the entire tax amount of ₹ 527.54 crore for the period from July, 2017 to December, 2017 in time. There was no due as on the date of filing of GSTR-3B returns.
4. Reading of Section 39 will reveal that every registered person has to file returns for every calendar month or part thereof electronically to furnish the details of inward and outward supply of goods or services or both, input tax credit available, tax payable, tax paid and such other particulars is mandatory in the monthly returns to provide the details about the tax paid, which means that prior to filing of GSTR-3B, the tax should have been paid by the registered person as provided in section 39(1) of the Act.
5. In Form GST PMT-06, for deposit of GST, the details of the remitting bank, beneficiary account number, name of beneficiary bank, beneficiary bank's IFSC code and amount has to be mentioned. Whatever the amount deposited goes to the beneficiary bank under the name of GST, where the Government has been maintaining their account. The date of deposit through Form GST PMT-06 is the date of credit of GST to the Government account. Thus, the tax can be remitted to the Government well before the filing of Form GSTR-3B monthly returns by using GST PMT-06.
6. Form GSTR-3B states about the details of **tax payable, tax paid through ITC, tax paid by way of TDS/TCS and tax/cess paid in cash**. Therefore, it is clear that prior to filing of the Form GSTR-3B, the tax should have been paid by using GST PMT-06 and that is the reason why details of the payment of tax is required to be furnished in the said form irrespective of time of filing of GSTR-3B, whether it is before or after due date for filing of returns.
7. Section 39(7) provides that every registered person, who is required to furnish a return, shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. Thus, it is clear that not later than the last date of filing of Form GSTR-3B i.e. on or before 20th of every month, the tax should have been paid to the Government. For payment of tax to Government filing of monthly returns is not the matter but the last date of furnishing the monthly return is important. Thus, whether the monthly return is filed in time or not but the GST has to be remitted not later than the last date for filing the monthly returns.
8. The amount paid by GST PMT-06 will be credited to the account of the Government and thereafter only, it will be deemed to be credited to the Electronic Cash Ledger. On reading section 49(11) and explanation thereto, it becomes clear that the date of credit to the account of Government in an authorized bank shall be deemed to be the date of deposit in Electronic Cash Ledger. It is not correct to state that the instance of payment of tax to Government would occur only upon the filing of GSTR-3B return and thereafter by debiting the electronic credit ledger or electronic cash

ledger. The assessee have been maintaining the said ledgers, only for the purpose of accounting, while, the entire tax to be paid to the Government directly by using the Form GST PMT-06 not later than the last date for filing the Form GSTR-3B. Once the GST amount is deposited, it is made available to the Government for their use and the Government cannot wait or postpone the utilization of the said amount until the date of filing of the GSTR-3B by the registered person. The exchequers cannot be deprived of its right to utilize the amount deposited into the Government account under the pretext of non-filing of GSTR-3B monthly returns.

9. Before the introduction of Electronic Cash Ledger and Electronic Credit Ledger, a registered person used to maintain a physical ledger and the same has been now converted into the Electronic form cash/credit ledger. Ultimately, the assessee/registered person, who have been maintaining these ledgers would quantify their tax liability for the relevant month and to ensure as to whether the said tax liability has been paid to the Government or not and to determine the eligibility for refund, if any, etc. Only for the said limited purposes, the Electronic Cash Ledger and Electronic Credit Ledger have been maintained and it is not that the tax liability would be discharged only on the date when the GSTR-3B has been filed. But it is ultimate proof/account for discharge of tax liability. The said discharge of tax liability will happen on different date, which is prior to the filing of GSTR-3B monthly returns. From the moment it is deposited by generating GST PMT-06, it is the money of the exchequers, since the money was collected only under the name of the exchequer in the form of GST. Therefore, the submissions of revenue on the basis of Jharkhand High Court decision in the case of **RSB Transmission (supra)** that GST can be paid only after filing GSTR-3B is against the provisions of section 39(1), 39(7) and explanation (9) to section 49(11) of the Act. Merely, for the default on the part of a registered person in filing GSTR-3B, the utilization of tax amount, which was already deposited into the account of Government, cannot be postponed.
10. Further, as discussed above, the explanation (a) to Section 49(11) of the Act clearly states that any tax amount, which is to be paid by generating GST PMT-06, will be directly credited to the account of the Government and thereafter, for the purpose of accounting, it would be deemed to be credited to the Electronic Cash Ledger, which is only for the limited purpose of the quantification of the liability towards GST and to verify as to whether the entire liability has been paid/ deposited/ discharged by the registered person in accordance with the provisions of the Act and Rules made thereunder.
11. Section 49(3) of the Act states that the amount available in the Electronic Cash Ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount etc., which means upon payment of tax by a registered person under the IGST, CGST, SGST, if any excess amount is available under any particular head, the said person can utilise said amount against other heads of tax liabilities, if there is any due. The amount available under one head can be utilized against the other head in terms of the provisions of Section 49(3) of the Act.
12. Section 49(6) of the Act states that the balance amount in electronic cash ledger or electronic credit ledger after the payment of tax/interest/penalty/fee or any other amount, payable under the Act and Rules made thereunder, will be refunded in accordance with Section 54 of the Act. The excess amount will be refunded, since the claim for refund would be made while filing the GSTR-3 and the column No.14 deals with the refund claim made by a registered person. Reading section 50 (interest provision) it becomes clear that every person, who is liable to pay the tax in accordance with the provisions of the Act and Rules, but fails to pay the tax within a prescribed period, which remains unpaid, shall pay on his own interest at such rate not exceeding 18% per annum. The provision of section 39(7) states that the tax shall be paid to the Government not later than the last date, on which he required to furnish the monthly returns, otherwise, the tax has to be paid along with interest in terms of section 50(1) of the Act. Thus, the prescribed date mentioned in section 50(1) refers to the last date for payment of GST in terms of the provisions of Section 39(7) of the Act.
13. Proviso to section 50(1) provides that interest shall be payable on that portion of tax, which is paid by debiting the electronic cash ledger. Section 50(1) states that cash should have been paid to the Government within the prescribed period, which is 20th day of every month in terms of section 39(7) of the Act. However, the Hon'ble Jharkhand High Court in RSB Transmission interpreted otherwise.
14. Normally, a proviso does not travel beyond the provision, to which it is a proviso. It carves out an exception and to the main provision, to which it has been enacted as a proviso to no other. The normal function of a proviso is to except the something out of the enactment or to quantify something enacted therein, which but for the proviso would be within the purview of the enactment. At any cost the proviso cannot be beyond the scope of the provision of Section. In the present case, the proviso to Section 50(1) of the Act was interpreted in such a way to give a meaning so as to the proviso will override the provision. When a specific date is prescribed under section 39(7) for the last date for payment of tax, the proviso cannot alter the said date, since it is contrary to that provision.
15. Further, section 54(12) provides for payment of interest @6% p.a. for delay in refund of GST. If the deposited amount in ECL does not pass to Government, why should the Government has to pay the interest for delay in refund. The Electronic Cash Ledger is maintained only for the accounting purpose and ultimately to determine the final tax liability and to verify the payment of said tax liability within the time prescribed under the Act and Rules made thereunder.
16. Rule 61(1) deals with regard to furnishing the Form GSTR-3B and Rule 61(2) states about the discharge of liability towards the tax, interest, penalty, fees and any other amount under the Act by debiting the electronic cash or credit

ledger and include the details in the GSTR-3B returns. As far as Rule 61(2) is concerned, it deals with the discharge of liability in terms of Section 49(1) of the Act.

17. In *Modipon Ltd* (supra), the Hon'ble Supreme Court held advance deposit of central excise duty constitutes actual payment of duty within the meaning of Section 43B of the Central Excise Act and, therefore, the assessee is entitled to the benefit of deduction of the said amount. The interpretation made with regard to the deposit made to the PLA, is squarely applicable to the present case, since in the present case, the issue is with regard to the ECL, which is equivalent to PLA.
18. For all the reasons as discussed above, this Court is of the view that the law laid down by the Hon'ble Division bench of the Jharkhand High Court in ***RSB Transmission*** case and the judgement rendered by Telangana High Court in ***Megha Engineering*** case in my humble opinion are not in line with the provisions of the Act and Rules made thereunder and hence, this Court is unable to follow the same.
19. The Hon'ble Court referred to Gujarat High Court decision in the case of *Vishnu Aroma Pouching Pvt. Ltd. vs. UOI* reported in 2020 (38) G.S.T.L. 289 (Guj.), which has taken similar view of this Court.

CONCLUSION

1. The credit to the account of Government would always occur not later than the last date for filing the monthly returns in terms of provisions of Section 39(7) of the Act
2. Once the amount is paid by generating GST PMT-06, the said amount will be initially credited to the account of the Government immediately upon deposit, at which point, the tax liability of a registered person will be discharged to the extent of the deposit made to the Government. Thereafter, for the purpose of accounting only, it will be deemed to be credited to the ECL as stated in the Explanation (a) to Section 49(11) of the Act.
3. As long as the GST, which was collected by a registered person, is credited to the account of the Government not later than the last date for filing the monthly returns, to that extent, the tax liability of such registered person will be discharged from the date when the amount was credited to the account of the Government. If there is any default in payment of GST, even subsequent to the due date for filing the monthly returns i.e., on or before 20th of every succeeding month, for the said delayed period alone a registered person is liable to pay interest in terms of Section 50(1) of the Act.

MY COMMENTS

1. Section 50(1) talk about payment of interest on unpaid tax and not on paid tax. Liability to pay interest under Section 50 arises when the registered person fails to pay the tax within the prescribed date. Accordingly, the liability to pay interest shall arise from the date the GST is payable till the date it is paid. Interest is payable because, due to the delayed payment, the department is deprived of the revenue at the right time. The said amount would be in possession of the registered person who would have the benefit of the said amount. It is to compensate the loss sustained by the Revenue, the interest is imposed, i.e. interest is payable for the period during which the Revenue is deprived of the GST, which it was legitimately entitled to and as the registered person had the benefit of the GST by not paying the GST payable on the due date. In other words, interest is compensatory in character, and is imposed on the registered person who has withheld payment of any tax as and when it is due and payable. Unless there is delay in depositing the tax, interest cannot be levied. The Hon'ble Supreme Court in the case of ***Pratibha Processors v. Union of India*** 1996 (88) E.L.T. 12 (S.C.) explained the term "interest" as under:

"13. In fiscal Statutes, the import of the words — "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty — which is penal in character."

2. Payment of GST in Electronic Cash Ledger is substantial compliance, whereas filing Form GSTR-3B is mere directory procedure. In *Commissioner of C. Ex., New Delhi vs. Hari Chand Shri Gopal* reported in 2010 (260) E.L.T. 3 (S.C.), the Supreme Court have enunciated the doctrine of substantial compliance. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements.
3. In the present fact, the amount deposited into ECL account tantamount to depositing the amount into Government exchequer. Depositing the tax amount in to ECL does not result into withholding payment of tax by the registered tax payer. Interest is payable on loss of revenue to the exchequer and in the present case there is no loss or revenue, when the money is deposited in to ECL account.



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