FEBRUARY, 2019

TAX Bulletin

VOLUME - 33

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

MISSION STATEMENT

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

VISION STATEMENT

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Objectives of Taxation Committee:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders.

FEBRUARY, 2019

TAX Bulletin

VOLUME - 33

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

FROM THE DESK OF THE CHAIRMAN

Namaskar and Best wishes.

The Tax Research Department for successfully conducting two seminars in the last fortnight. The first one was on the 27th of January 2019 at Bhubaneswar themed "Insight to the Assessment of Income Tax". Shri Ajai Das Mehrotra, Principal Chief Commissioner of Income Tax graced the occasion and elaborated on the scope and role of CMAs.

The second seminar was on the 28th of January 2019 at Delhi on "GST- A boon or a bane for MSME Sector and its Consumers". It was honourably graced by **Shri Pranab K Das, IRS, Chairman, CBIC, Shri Upender Gupta Principal Commissioner GST** and **Shri Samanjasa Das, IRS,** Principal ADG, Directorate General of Anti Profiteering. A publication titled, '**Handbook on impact of GST on MSME sector**' was also released at the seminar.

Three webinars with huge participations has also been conducted on the topics - GST Amendment Law and Latest Update, New forms for GST annual return and audit and New Horizons of GST Audit and Annual Return.

The department also submitted a representation to the Government on 'Inclusion of Cost Accountants for authorizing the certificate of claiming ITC in case of exports'. Another representation was submitted requesting for inclusion of Cost Accountants for providing certification for reimbursement of CGST and Central Government's share of IGST paid by Charitable / Religious Institutions on purchase of specific raw food items for servicing free food to public / devotees.

I am hopeful that these continuous and rigorous efforts of Team – Tax Research under the able guidance of the committed Resource Persons will bring in commendable amount of success in near future. Team... Let's imagine, believe and achieve..!!

Thank You.

CMA Niranjan Mishra
Chairman - Taxation Committee
4th February 2019

TAXATION COMMITTEE 2018 - 2019

CMA Amit Anand Apte	-	President
CMA Balwinder Singh	-	Vice President
CMA Niranjan Mishra	-	Chairman

MEMBERS

CMA Sanjay Gupta, IPP	CMA Manas Kumar Thakur
CMA P Raju Iyer	CMA Papa Rao Sunkara
CMA Dr. P V S Jaganmohan Rao	CMA Dr. Sanjay R Bhargave (Co-opted)
CMA Antaryami Acharya (Co-Opted)	CMA Waman Parkhi (Co-Opted)

SECRETARY

CMA Rajat Kumar Basu

ACKNOWLEDGEMENTS

CMA Mrityunjay Acharjee	Vice-President (Accounts, Finance & Taxation), Balmer Lawrie Ltd.
CMA Amit Sarker	Director Indirect Taxation, Deloitte Haskins & Sells
CMA Vishwanath Bhat	Practicing Cost & Management Accountant
CMA B Mallikarjuna Gupta	SME, Speaker, Author & Advisor on GST
CMA T K Jagannathan	Practicing Cost & Management Accountant
CMA Shiba Prasad Padhi	Practicing Cost & Management Accountant
CMA Arindam Goswami	Practicing Cost & Management Accountant
CMA Anil Sharma	Practicing Cost & Management Accountant
CMA Neeraj Gupta	Sr. Vice President (Accounts & SAP), Avadh Sugar & Energy Ltd.
Gadde Shareesh	CMA - Final Student

TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu	-	Additional Director - Tax Research
CA Neelesh Jain	-	Deputy Director - Tax Research
CMA Priyanka Roy	-	Assistant Director - Tax Research
Ms. Mukulika Poddar	-	Officer - Tax Research
CMA Amit Dey	-	Senior Associate - Tax Research
CMA Debasmita Jana	-	Associate - Tax Research
Ms. Debjani Mukherjee	-	Associate - Tax Research

SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri	-	Graphics & Web Designer

CONTENTS

Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original. Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

GOODS AND SERVICE TAX (GST) ON NON-PROFIT ORGANISATIONS

GADDE SHAREESH
CMA - Final Student

Introduction:

Taxation of activities of Non-profit organisations has been carried over from erstwhile Service tax legislative provisions. In whole, all services provided by such entities are not exempt. There are many activities which will fall under the ambit of Goods and Service tax Act that are provided by Non Profit Entities (NPO's). There are so many charitable and religious institutions in India with the objective of promoting Education, Orphanages, Child and Women protection, religious activities and social welfare. These organisations are not aimed at generating revenue but incidentally to the main object, they will be earning revenue directly or indirectly. Taxability of Non-profit making entities has to be decided based on from the view point of services, such entity undertakes. In the following paragraphs explains detailed view of provisions relating to taxability of such services under GST.

Taxable event under GST arises when a person undertakes ***Supply of goods or services***. To consider the activity as Supply, it has to satisfy business test specified under Section 2(17) of the CGST Act and also definition of Supply provided under Section 7 of the CGST Act. Under Section 2(17) of CGST Act clearly states that for an activity to be considered as business, profit making is not a required condition. So any activity without profit motive will also be considered as business transaction.

As per section 7(1) of the CGST Act, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. To constitute supply conditions like Consideration, during the course or Furtherance of business and Taxable activity has to be satisfied. Activities enumerated in Schedule I & II will qualify as supply even if made without consideration and not in the course of business. In these situations if Non-Profit organisation acts as implementing agency for donor, then grant utilised for the benefit of beneficiaries is liable to GST.

For example if donor donates goods in kind (School bags) to an NPO to be distributed by the NPO in its educational programmes, as these be treated as supply and become subject to GST. But activities of an entity registered under Section 12AA of the Income Tax Act, 1961 is exempted vide Notification no.12/2017-Central Tax dated 28.06.2017.

Transactions by NPO from Tax view:

Various activities performed by Institutions without profit motive will be analysed from GST view which has been discussed below:

a) Educational Services (including services rendered by charitable trusts):

Educational services with certain conditions has been exempted in CGST Notification No. 12/ 2017 (Rate), dated 28/6/2017 as amended via CGST Notification No. 2/ 2018 (Rate), dated 25/01/2018. This exemption consists of various services provided and received by Non-profit making entities. Entry 66 of Mega Exemption Notification contains the following exempted activities provided by institution to:

a) its students, faculty and staff,
b) Students entrance examination against consideration in the form of entrance fee,

c) an educational institution, by way of:
   - Transportation of students, faculty and staff;
   - Catering, including any mid-day meals scheme sponsored by the Central Government, State Government, Union Territory;
   - Security or cleaning or house-keeping services performed in such educational institution;
   - Services relating to admission to, or conduct of examination by, such institution;
   - Supply of online educational journals or periodicals;

Educational Institution has been defined as an organisation providing educational services of Pre-school, Higher education and Institutions recognised by law.

b) Importation Services:

As per the entry no. 10 of Notification no. 9/2017 - Integrated Tax (Rate) dated 28.06.2017, in case of charitable trusts registered under Section 12AA of Income-tax Act receives any services from provider of services located in non-taxable territory, for charitable purposes, then such services received by trust are not chargeable to GST under the reverse charge mechanism.

c) Various Services of Charitable Trusts:

In case if trusts are providing residential or non-residential yoga camps by receiving donation or other charges from the participants, these will not be considered charitable activities (as it is different from advancement of religion, spirituality or yoga). Since donation is received for participation, it will be considered commercial activity and it will be covered under the ambit of GST.

No GST will be applicable if charitable trusts are running public libraries and lend books or other publications or knowledge enhancing material from their libraries. This activity is specifically excluded by way of entry No. 50 of Notification No. 12/2017- Central Tax Rate (and is applicable for everyone, including charitable trusts); but services of private libraries are not exempt from GST.

Supply of any goods by such charitable/religious trusts for consideration to any person shall be liable to GST. So, Sale of goods are also covered under GST scope.

Health care services[1] provided by clinical establishment, an authorised medical professional or paramedics including services by way of transportation of the patient to and from a clinical establishment. Public health will be considered at top priority and government cannot tax such services. Veterinary hospitals engaged in health care of animal and birds also been exempted through notification by government.

d) Donations Received:

Donations received by Non-Profit organisations does not constitute taxable event under GST. As receipt of donations will not satisfy business definition under GST Act and there is no element of supply of services embedded in it. These donations will not be considered in the calculation of Turnover.

e) Interest Income:

Receipt of income by way of extending deposits, loans or advances other than interest involved in credit card services has been exempted vide Notification no. 12/2017 dated 28/06/2017. In these case if income received by organisation under Savings/Recurring/Fixed Deposits will be exclusively exempted under GST. But these amounts will be considered while calculating the total turnover of the firm. These provisions make all non-profit making entities to register under the act and become liable for payment of taxes in case if they

[1] Serial No. 74 of Notification No. 12/ 2017-Central Tax (Rate), dated 28/06/2017, specifically provides for exemption on healthcare services

supply small value taxable items. Subsequently all the provision has to comply are required to follow like normal Business taxable person.

f) Renting Services:

Exemption has been provided through vide CGST Notification No. 12/ 2017(Rate), dated 28/06/2017, Serial No. 12 Services by way of renting of residential dwelling for use as residence. However, for renting service, there is another exemption entry at Serial No. 13 for Non- profit organisations, which reads as follows:

Services[2] by a person by way of:

- conduct of any religious ceremony;
- renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:
- Provided that nothing contained in entry (b) of this exemption shall apply to,-
    - Renting of rooms where charges are one thousand rupees or more per day;
    - Renting of premises, community halls, kalyan mandapam or open area, and the like where charges are ten thousand rupees or more per day;
    - Renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

g) Training or Coaching in recreational activities:

Training or coaching provided by institutions in dance, music, art, literature, theatres, drama etc. or any kind of the sports will be exempted from payment of GST. One more exemption to Non Profit making Entities are services by way of training or coaching in recreational activities relating to arts or culture, or sports by charitable entities registered under section 12AA of the Income-tax Act 1961[3]

h) Participation in activities:

Many institutions involved in exhibition, dramas, and sporting events etc. which have token fees for entry. These services also liable for GST but government has provided exemption to all such organisations which will come within the ambit of GST.

[4]Services by way of right to admission to circus, dance, or theatrical performance including drama or ballet; award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; recognised sporting event; planetarium, where the consideration for right to admission to the events or places as referred to in items above is not more than Rs. 500 per person.

i) Publication Sales:

Sale of publications by trusts will come under the definition of business. Also, this being sale for a consideration will attract the provisions of Supply under section 7. Therefore, it will come under the ambit of GST. However, Books covered under HSN Code 4901 and Newspapers, periodicals and monthly journals covered under HSN Code 4902 attract "Nil" rate of Tax. But yearly printed Calendars covered under HSN Code 4910 attract 12% GST Rate. So, publication sales will be taxable and leads to applicability of all provisions to Non-profit making entities.

[2] As per CGST Notification No. 12/ 2017(Rate), dated 28/06/2017, Serial No. 13 exempted Renting Services.
[3] Exempted as per Serial No. 80 of Notification No. 12/ 2017-Central Tax (Rate), dated 27-Jun-2017,
[4] So, in the Notification No. 12/ 2017-Central Tax (Rate), dated 28/06/2017, Serial No. 81 as amended by Notification No. 2/2018-Central Tax (Rate), dated 25/01/2018

j) Sale of small goods:

At present many religious organisations charge token money for sale of Prasadam. So, this being sale for a consideration will attract the provisions of Supply under section 7. Government has provided exemption in these regard which covers Prasadam supplied by all religious institutions. Notifications are as follows:

[5]Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc., Also, Puja Samagri has been exempted. Puja Samagri namely, - Rudraksha, rudraksha mala, tulsikanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd); Sacred thread (commonly known as yagnopavit); Wooden khadau; Panchamrit; Vibhuti; Unbranded honey; Wick for diya; Roli; Kalava (Raksha sutra) & Chandantika.

Conclusion:

All activities of Non Profit Organisations are generally exempted. However, there may be some activities that can attract GST provisions. At most attention should be taken while involving in any income-generating transactions, as such activities may or may not be taxed under GST Law. Also, activities mentioned above are some of the services provided by profit-making entities, nowadays. Like, there are many private schools and hospitals which are working on commercial basis. Activities relating to public enhancement, education, general health and infrastructure facilities has been exempted to all such entities also.

[5] Serial No. 98 & 148 of Notification No. 2/2017-Central Tax (Rate), dated 28/06/2017.

SUGGESTIONS FOR BRINGING PERMANENT TAX RELIEF TO SALARIED CLASS ASSESSEES

CMA NEERAJ GUPTA
Sr. Vice-President (Accounts & SAP), Avadh Sugar & Energy Ltd.

THE HIGHLIGHTS

There are certain issues related to taxation of salary income adversely affecting the salaried class which is the most regular payer of income tax in India. These need to be addressed in the manner given below –

- **Rationalizing the quantum of Standard Deduction**
  Quantum of Standard Deduction should be linked as a percentage of salary income, say @ 15% with a ceiling, say @ 20% of the income exempt from tax for the relevant A.Y.

- **Deduction against conveyance expenses**
  Expenses incurred by employees on commuting between place of their residence and employment should be allowed as an incidental expense incurred to earn salary income which may be fixed @ 5% of salary subject to maximum of Rs.50000 for big cities and @ 2.5% of salary subject to maximum Rs.25000 for smaller cities.

- **Deduction against House Rent Paid**
  The condition of payment of HRA by employer for allowing deduction towards house rent paid by the employee should be removed as taking a house on rent near work place is incidental to employment and getting an allowance from the employer is not in the hands of an employee.

- **Exemption of notional value of housing accommodation provided by the employer**
  Housing accommodation is provided to employees in or near the workplace to make their services instantly available for the job. Hence notional value of such facility should not be added in their taxable income, if there is no additional income to them by occupying it or the income so generated is separately subjected to tax.

- **Elimination of multiple categories of employees**
  Employees have been divided into various categories, prescribing different criteria for taxing their income which not only makes computation of tax a complicated affair but gives rise to dissatisfaction among employees. Hence same criteria should be prescribed for all employees.

- **Review of monetary ceilings determined under various provisions**
  In cases where a monetary ceiling is fixed for allowing exemption of or a deduction from income chargeable to tax etc., it may lose relevance, if not reviewed for a long time. Hence these may be linked with certain parameters like the income exempt from tax for the relevant A.Y. so that there is no need for separate review thereof.

- **Allowing deduction for amount recovered by employer from an outgoing employee**
  Sometimes, employers make a recovery from the outgoing employees, if the notice given by them for leaving employment falls short of the stipulated period. A provision is required to be made to give credit of such recovery, while calculating income tax liability of such employees.

- **Relaxation required to be given in taxing of certain incomes**
  Compensation received at the time of voluntary retirement / separation and retirement benefits should not be taxed as the revenue income of the year of receipt but be treated as capital receipt in the hands of employees.

- **Offering a suitable Investment option to the retiring employees**
  Now most of the employees do not get pension after retirement and have to solely depend on return from investments made out of their retirement benefits. Since the coverage under social security schemes in India, is still not sufficient to take care of the citizens in their old age, the government should provide a safe platform wherein the retiring employees may park their retirement benefits and earn an assured regular income.

THE DETAILS

Salaried class is the most regular payer of Income Tax in India. It may be due to stringent provisions of TDS as well as transparent nature of their source of income but they also by nature abide by rules and pay taxes willingly. Hence it is also expected from the Government to take care of their interests well. But it has been observed that they often remain seated on back benches, deprived of their due. Even if some relief is given to them, it proves temporary, as not reviewed later, loses its meaning soon and turns out to be merely symbolic.

Here are some such relief measures which not only need to be looked upon in present perspective but also for framing proper mechanism for auto revision thereof so that these remain relevant in future too –

1. <u>Rationalizing the quantum of Standard Deduction</u>

Under the scheme of the income tax law in India (as contained in the Income Tax Act, 1961 and Income Tax Rules, 1962, hereinafter referred as the 'Act' and the 'Rules' respectively), income of an assessee is taxed after deducting incidental expenses incurred by him to earn the income being subjected to tax under any head of income, like Income from House Property u/s 24, Profits or gains from Business or Profession u/s 28-44, Capital Gains u/s 48 and Income from Other Sources u/s 57 of the Act.

In the same manner, salaried persons also have to incur certain expenses to earn salary, like purchasing of books and periodicals, obtaining membership of professional bodies, joining certain courses to move forward in career, attending seminars to update their knowledge, making payment to placement agencies to find a new job etc. However, since it is difficult to assess the quantum of such expenses in each individual case, a portion of salary income was being allowed as 'Standard Deduction' u/s 16 (i) of the Act which was later withdrawn w. e. f. the Assessment Year (A.Y.) 2006-07. After pursuing the matter for long*, a flat deduction of Rs.40000 has now been allowed w.e.f. the A.Y. 2019-20.

Though it is a welcome step in right direction taken by the Government of late, it seems to require further review. Actually, this relief has been fixed for various Assessment years in past in different manner as may be observed from the table given below –

Assessment year	Amount of Standard Deduction allowed u/s 16(i)		Amount exempt from Income Tax (as applicable in case of a male resident individual up to 60 Years of age)	% of maximum amount of Standard Deduction with threshold limit of Income exempt from Tax
	For salary income	Standard Deduction allowed @		
2001-02	Up to Rs. 100000	1/3rd of Salary subject to maximum of Rs.25000	Rs.50000	50%
	From Rs.100001 to Rs.500000	Rs.20000		

	From Rs.500001 and above	NIL		
2002-03 & 2003-04	Up to Rs. 150000	1/3rd of Salary subject to maximum of Rs.30000	Rs.50000	60%
	From Rs.150001 to Rs.300000	Rs.25000		
	From Rs.300001 to Rs.500000	Rs.20000		
	From Rs.500001 and above	NIL		
2004-05 & 2005-06	Up to Rs. 500000	40% of Salary subject to maximum of Rs.30000	Rs.50000	60%
	From Rs.500001 and above	Rs.20000		
2006-07 to 2018-19		Nil	Rs.100000 to Rs.250000	Nil
2019-20	No Limit	Rs.40000	Rs.250000	16%

As elaborated above, the amount of such deduction which was Rs.25000 in the A.Y. 2001-02, then increased to Rs.30000/-, was withdrawn from the A.Y. 2006-07 and now restored after 13 years with a nominal increase of Rs.10000. Incidentally, the threshold limit of amount exempt from tax which was Rs.50000 in the A.Y. 2006-07 has now increased by 5 times to Rs.250000. Hence the increase of Rs.10000 seems to be on lower side.

Moreover, since this deduction is not linked with any parameter, it is most likely that it remains unrevised for a long period to come. Though in earlier years it was being allowed as a percentage of Salary Income, but since a ceiling has to be fixed for it, timely revision of such ceiling also becomes an issue. Hence, in order to ensure that there is a self-regulating mechanism to revise the quantum of this deduction in future, it may be linked with certain parameters.

Accordingly, it may be allowed as a percentage of salary income, say @ 15%, the ceiling may be fixed as a percentage of income exempt from tax for the relevant A.Y., say @ 20%, so that there is no need for separate review thereof. In future, whenever, there is any revision in the threshold limit of income exempt from tax, the maximum limit of Standard Deduction will also stand revised accordingly. If we see the position of above suggestion in the present context, persons earning salary of Rs.300000 PA will get a deduction of Rs.45000 and those earning Rs.333333 or more will get maximum deduction of Rs.50000 as against present deduction of Rs.40000.

2. Deduction against conveyance expenses –

Most of the salaried class persons have to incur expenses on commuting between place of their residence and employment. However, no deduction is allowed to them for these. Previously, if an employee was getting any payment from his employer as Transport Allowance to meet out such expenditure, a sum up to Rs.1600/- per month was exempted out of it u/s 10 (14) read with Rule 2BB. But if he was not getting any amount from his employer as such, he was not entitled to claim any exemption on this score. However, this exemption was withdrawn w.e.f. the A.Y. 2019-20, apparently as an offset against restoration of Standard Deduction.

Though it is quite logical that deduction against conveyance expenses should not be linked with paying of an allowance by an employer, as employees have to incur these expenses irrespective of the fact whether their employers pay anything to them on this score or not. However, it seems justified that an additional deduction should be allowed to all such employees who do not reside in the office/factory campus and have to travel from residence to work place, whether in public transport or by an owned vehicle (except in case where the conveyance facility is provided by the employer), over and above the Standard Deduction allowed u/s 16 (i). In the past also, both of these, namely exemption against

Transport Allowance u/s 10 (14) and the Standard Deduction u/s 16 (i) were being allowed simultaneously up to the A.Y. 2006-07.

In fact, deduction against conveyance expenses should be allowed in the ratio of salary as the amount incurred by an employee for this purpose normally varies in proportion to his salary income. According to a rough estimate, if an employee residing in a big city earns up to Rs.5.00 Lac PA and travels through Metro/Auto or maintains a Scooter for commuting between residence and office, he has to incur a sum of Rs.25000 approx in a year whereas a person earning about Rs.10.00 Lac PA may travel through Cab or maintain a Car and have to incur a sum of Rs.50000 approx in a year for this purpose. This shows that on an average about 5% amount of salary is spent by an employee on conveyance which is purely linked with his employment. Even if they have to maintain a vehicle mainly for this purpose, they are not entitled to claim depreciation. Hence, a deduction at this rate percent of salary, with a ceiling of course, say, Rs.50000 may be considered to provide some relief to salaried tax payers. Though in case of employees working in smaller cities, this deduction may be lesser, say 2.5% with a ceiling of Rs.25000, as their expense on this score is normally lesser in comparison to those residing in big cities.

3. Deduction against House Rent Paid –

Deduction against House Rent paid is allowed under any of the two provisions, namely –

A. To the employees who are getting House Rent Allowance (HRA)

An employee who is getting allowance from his employer for making payment of rent in respect of residential accommodation occupied by him, can claim exemption u/s 10 (13A) read with Rule 2A, to the least of the following, whether he owns any residential accommodation or not –

a) An amount equal to 50% of salary, where the residential house is situated at Mumbai, Kolkata, Delhi or Chennai and 40% thereof in other cases.
b) HRA received by the employee in respect of the period during which the rental accommodation is occupied by him during the previous year.
c) The excess of rent paid over 10% of salary.

B. To other employees

An employee, not getting any such allowance at any time during the previous year, or any other assessee, residing in a rented accommodation, would get a deduction u/s 80GG of the Act in respect of rent paid, if he or his specified relatives do not own any residential accommodation at the place of his work and also if he owns any residential accommodation at any other place but does not claim concession in respect of self-occupied house property u/s 23 (2) (a) or 23 (4) (a) of the Act. The amount deductible will be the least of the following –

a) Rs.5000/- per month.
b) 25% of his total income (excluding capital gains & other specified sums)
c) Excess of rent paid over 10% of total income(excluding capital gains & other specified sums)

Though the deduction allowed u/s 10 (13A) seems to be more in comparison to that allowed u/s 80GG, the former still needs some modification to make it rational. Since taking a house on rent near work place is incidental to employment and getting an allowance from the employer is not in the hands of an employee, the criteria of HRA being paid to the employee should be removed for calculating the amount eligible for exemption u/s 10 (13A) read with Rule 2A, though the limit of salary which is equal to 50% and 40% respectively at present may be revised at a slightly lower level, to rationalize the deduction under this section, if required. Moreover, full amount of rent paid should be exempt instead of reducing it by 10% of salary.

4. Exemption of notional value of housing accommodation provided by the employer from tax in certain cases

In case, an employer provides housing accommodation to his employees in or near the workplace to make their services instantly available for the job, the employees have to live in it as a condition of their employment. Notional value of such accommodation is determined and taxed in the hands of employees. But this does not seem justifiable in following circumstances –

i) In cases where, before occupying such accommodation, the concerned employee was residing in an owned house which is left vacant, no income from vacant house property is to be calculated in respect of owned house by virtue of the provisions of section 23 (2) (b) and there is no additional income to such employee from occupying the new accommodation.

ii) On the other hand, in case such owned house is then let out, giving rental income to him, such earning is separately subjected to tax. Hence the notional value of occupied accommodation should not be added in the income and taxed again.

iii) In cases, when he owns a residential house but was residing in a rented house which is vacated after he starts living in the accommodation provided by the employer, it gives some saving to him. But if he could not vacate the accommodation, he was living earlier, due to some reason and continues paying rent for it, he does not get any monetary benefit by occupying the house provided by the employer. In such cases, perquisite value of house should be proportionately reduced for the period during which the rent is continued to be paid for rented house.

iv) In case where he does not own any house and was also not residing in a rented house (e.g. living with his parents) and starts living in the accommodation provided by the employer, then also perquisite value should not be added in his income on the same ground.

In fact, the views expressed in clause no. 3 and 4 above are correlated. The basic concept is that since living near the work place is incidental to employment, if employee has to pay rent for that, it should be exempt from tax. But if the employer himself provides such accommodation, it should also not be taxed as a perquisite.

5. Elimination of multiple categories of employees

Employees have been divided into various categories, prescribing different criteria for each such category for exempting certain income from tax, valuation of perquisites and allowing deduction from income chargeable to tax, e.g. employees engaged with government, local authorities, statutory corporations, private and other sectors. Even these categories have not been put in one class but are treated differently for different purposes, making calculation of tax liability of employees a complicated affair. Following are the areas where different treatment is given to the different class of employees –

A. Tax treatment of Gratuity

Any death-cum-retirement gratuity received by employees of Central or of a State Government or local authority (but excluding employees of statutory corporation) is fully exempt from tax u/s 10(10)(i) of the Act.

In case of employees other than those above and covered by the Payment of Gratuity Act, 1972, amount exempt from tax u/s 10(10)(ii) of the Act is least of, a)15 days' salary (7 days' in the case of seasonal establishments), last drawn for every completed year of service or part thereof in excess of 6 months, or, b) Rs.20.00 Lac, or c) Gratuity actually received.

.

In case of other employees, amount received as Gratuity is exempt from tax, which is least of, a) Half month's salary for each completed year of service (any fraction of the year even if more than 6 months is to be ignored), b) Rs.20.00 Lac, or , c) Gratuity actually received.

From the above, it appears that though the full amount of gratuity received by employees covered at para first of this clause above has been rightly exempted from tax, limits have been fixed in other cases. Ideally, full exemption should also be allowed to the employees covered at para second and third above, or at least certain modifications should be done in their case. Firstly, the ceiling (presently Rs.20.00 Lac) needs to be reviewed and suitably revised from time to time. Secondly, when an employer pays gratuity to his employee, there seems to be no reason to consider whether he was covered under the Payment of Gratuity Act or not. In such cases, his entitlement for exemption should be calculated on the same basis, as he would have got, had he been covered under the above Act. Accordingly, there seems to be no justification of ignoring the fraction of year for calculating number of years of completed service in their case which is to be rounded off in case of employees covered under the Gratuity Act.

B. Tax treatment of commutation of Pension

Any commuted pension received by an employee of the Central or of a State Government, local authority or statutory corporation after his retirement is wholly exempt from tax u/s 10(10A)(i) of the Act.

However, in case of any other employee, where he receives gratuity, commuted value of 1/3rd of pension which he is entitled to receive is exempt from tax but if he does not receive gratuity, 1/2th portion thereof is exempt from tax.

From the above, it appears that certain restrictions have been placed for allowing exemption for commuted pension received by second category of employees, whereas blanket exemption should be allowed to all the employees. Till then, at least a provision should be made so that in case commutation is being sought by the retired employee for any contingency like illness of self or any of his immediate family members, marriage of ward, or buying, constructing or repairing of a house for his residence, etc., 100% exemption should be allowed from tax.

C. Tax treatment of Leave Salary

Full amount received as cash equivalent of leave salary in respect of the period of earned leave at his credit at the time of retirement/superannuation is exempt from tax in case of employees of Central or of a State Government u/s 10(10AA) (i) of the Act. However, in case of other employees, any amount so received is exempt u/s 10(10AA) (ii) of the Act, to the least of, a) 30 days leave for every year of actual service rendered for the employer from whose service he has retired, or b) 10 Month's average salary, or c) an amount as specified by the government (which is Rs.3.00 Lac at present), or d) the amount actually received as such.

As explained above, full amount received against encashment of leaves at the time of retirement of employees of Central or of a State Government has been rightly exempted from tax, whereas certain limitations have been placed in case of other employees. Hence blanket exemption should be allowed in these cases also or at least the present ceiling of Rs.3.00 Lac, which was set about 20 years ago, should be suitably revised, say to Rs.10.00 Lac.

D. Perquisite value of rent-free unfurnished accommodation

In case of employees of Central or of a State Government, value of perquisite for rent free furnished accommodation is equal to the license fee which would have been determined by the respective government as per rules framed for allotment of houses to its officers.

However, in case of other employees, the amount calculated in the following manner is added in their salary income under Rule 3 (1) –

a) Where the accommodation is owned by the employer and is situated in a city, population of which is exceeding 25 Lac - 15% of salary, exceeding 10 Lac but up to 25 Lac - 10% of salary and any other - 7.5% of salary.

b) Where the accommodation is taken on lease or rent by the employer, 15% of salary, or Lease rent paid by the employer, whichever is less.

As explained above, provisions determining perquisite value of house provided to government employees rightly confines the same to a reasonable level but it is determined excessively in case of other employees. Moreover, such valuation is done on the basis of location of accommodation and paying capacity of employees, without considering rental value thereof. Accordingly, in case the accommodation located at the same place but different in terms of space or facilities is provided to two employees earning equal salary, perquisite value will be the same for both of them. Hence, it should be nominal or at least may be taken at lesser of the estimated rental value of accommodation and percentage of salary calculated as above.

In fact, the reason of treating different class of employees in a different manner seems to be based on a notion that the employees working in some sectors, especially in private sector, may get some benefits in such manner which might escape tax liability, hence tax exemption should be allowed to them in a restrictive manner. This position may have been true earlier, but now, comprehensive rules for valuation of perquisites and strict provisions of TDS have made it sure that no benefits or amenities can be provided by an employer to its employees, which can escape tax. Even then, if it is apprehended that employers in any sector may plan the benefits given to their employees to unduly bring down their tax liability, the tax benefit for such items of income to the employees in that sector may be restricted, up to the extent available to employees in other sectors but criteria should be the same for all classes of employees for taxing their salary income.

6. Review of monetary ceilings determined under various provisions –

There are several provisions in the Act and the Rules wherein a monetary ceiling is fixed for the purpose of allowing exemption of some income from tax or some deduction from income chargeable to tax etc. Such ceilings may be logical in the year when these are fixed but gradually lose their relevance, if not reviewed for a long time. A list containing many such ceilings fixed in respect of salary taxation, is being given here below to explain the position –

A. Exemption u/s 10 (14) read with Rule 2BB for certain allowances paid by the employer -
Children Education Allowance at Sl.No.11 of above and an allowance granted to an employee to meet the hostel expenditure on his child at Sl.No.12 of above are exempt from tax @ Rs.100 and Rs.300 respectively per PM per child up to a maximum of 2 children.

The amount of these exemptions was last revised w.e.f. 01-08-1997. As everybody knows, cost of education has gone manifold during the last two decades, these amounts of exemption have lost relevance. Hence these need to be suitably revised, say to Rs.1000/- and 3000/- per month per child respectively to give some relief to the salaried tax payers. Otherwise, there is no use of continuing this exemption which has now turned out to be merely symbolic.

B. Exemption for Leave Salary
The amount of leave salary exempt u/s 10(10AA) (ii) in case of an employee other than of the Central or of a State Government is Rs.3.00 Lac w.e.f. 2-04-1998 and has not been revised since last about 20 years.

C. Exemption for Compensation received at the time of voluntary retirement or separation
Amount of exemption u/s 10(10C) for Compensation received at the time of voluntary retirement or separation was fixed as Rs.5.00 Lac w.e.f. 1-04-1993 and has not been revised since last about 15 years.

D. Exemption for compensatory allowances
There are certain allowances which are normally paid to government employees, like Hilly Area Allowance, Difficult Area Allowance etc., the nomenclature of which itself clarifies that these are not

being paid to increase their income but to compensate them for the loss suffered due to change of their posting in comparatively difficult areas/conditions. Though such allowances are exempt from tax to the extent provided u/s 10(14) read with Rule 2BB at Sl. No.7-9, 13-15 and 18-21, these limits need to be modified whenever these allowances are revised. But in most of such cases, the present exemption limits were made applicable between 1-08-1997 to 1-04-2001, after which the amount of these allowances might have been revised. Hence it is suggested that there should be a blanket exemption for such allowances in case of government employees so that there is no need to frequently review these and for employees engaged in other sectors posted in similar areas/conditions, it may be kept confined to the amount applicable for the government employees for concerned period.

E. Definition of 'Specified Employees'

Section 17(2)(iii) defines certain employees whose income chargeable under the head Salary does not exceed Rs.50000/- PA, as 'Specified Employees' for determining taxability of perquisites, namely services of sweeper, gardener, watchman or personal attendant, supply of gas, electricity or water for household purposes, education facility to employee's family members, leave travel concession, medical facility, car etc. It may look strange that the perquisite value of the services of a personal attendant or a car provided by an employer is not taxable in the hands of an employee if his annual income is less than Rs.50000/- in view of the fact that there seems to be no chances of a person with such meager annual income in India at present be provided such facilities by his employer, as a personal attendant or the driver might himself be earning more than 3-4 times of this amount nowadays.

Actually, it also seems to be the result of fixing independent ceilings without linking these to some parameters and also not reviewing these from time to time. In fact, when this ceiling was fixed in the year 2002-03, the amount of income exempt from tax was also Rs.50000/- which meant that if the income of a person, before adding value of perquisites, was below the threshold limit of income exempt from tax for that year, no such perquisite value was to be added in his income so as to make it taxable. Accordingly, this amount should have been automatically increased to Rs.2.50 Lac at present.

Hence wherever a monetary ceiling is fixed, it should be realistic and subject to revision from time to time, say after every 5 years, instead of fixing it for once and then forgetting about it for the decades to come. Or else, it may be linked with some parameters like a percentage of the threshold limit of income exempt from tax so that it is automatically revised with every revision in the amount of income exempt from tax.

7. Allowing deduction for amount recovered by employer from an outgoing employee

There are cases where employers make some recovery from the employees parting with the organization, if the notice given by them for leaving employment falls short of the stipulated period. Since income of the concerned employees is reduced to the extent of amount so recovered from them, credit of such recovery should be given while calculating their taxable income. However, since there is no such provision under the present Income Tax Law, the employers cannot do that. On the other hand, in case any reimbursement is made to concerned employees against such recovery, either in full or in part, by their succeeding employers, the amount so reimbursed is added to the salary income of such employees and taxed as such.

Accordingly, there should be a provision, under which the previous employer has to give credit of the amount recovered from outgoing employees, in lieu of notice period, if any, while calculating their income tax liability. Not only this, if after giving credit for the amount so recovered, the net salary from previous employer shows negative income for that year (such a situation may arise when the employee leaves job at the beginning of a financial year), it should be adjusted from his salary income from next employer. Of course, if the succeeding employer reimburses something towards such recovery, it should continue to be subjected to tax on his part as at present.

8. Relaxation required to be given in taxing of certain incomes -

There are certain incomes which need to be treated liberally by the income tax law, such as –

A. Compensation received at the time of voluntary retirement or separation

Compensation received at the time of voluntary retirement or separation is exempt from tax u/s 10(10C), subject to the conditions specified therein, up to a sum of Rs.5.00 Lac. However, since the employer pays this amount to the employee to support his family till he gets another employment, it should be treated as income pertaining to the entire period during which the employee remains without job, instead of taxing the amount exceeding Rs.5.00 Lac in the year of receipt, as considering the position of employment in India, it is not so easy to get another job after losing one.

B. Retirement benefits

Whatever benefits an employee gets at the time of retirement as payment made by the employer in recognition of the services rendered by him over a period of time like gratuity, or payment due on year to year basis during the tenure of his service, like payment for leaves not availed and encashed at the time of retirement and balance in PF or Superannuation Account (as far as the employer's contribution is concerned), employer has to make provision in his books of accounts on yearly basis. Hence, the nature of these dues not being regular but spread over the entire span of service, these should not be taxed as the revenue income of the year of receipt but be treated as capital receipt in the hands of employees at the time of their retirement, to be used during the remaining lifetime of such employees.

9. Offering a suitable Investment option to retiring employees

Nowadays, most of the employees do not get any pension after retirement. Since they may not understand the intricacies of the share market or other investment options like buying of an immovable property to earn capital appreciation/rental income, retired employees have to solely depend on return from investments made by them out of retirement benefits. Unfortunately, there are very few options before them to invest their funds in where not only their hard earned money is safe but it gives reasonable return also. Interest rates on bank deposits and other government run schemes have come down to such a lower level that even a person getting retirement benefits, say to the tune of Rs.50.00 Lac cannot expect more than a meager return of Rs.3.00 Lac PA @ 6%, then what to say about those who get lesser amount as retirement benefits.

Hence, the Government should seriously think over forming a special Fund wherein employees from any sector may put their retirement benefits at for a fixed tenure, extendable at their option, with assured reasonable return which is exempt from tax, with an option to get an annuity on monthly basis. This is all the more necessary in view of the fact that the coverage under social security schemes in India, is still not sufficient to take care of the citizens in their old age.

Though the scheme 'Pradhan Mantri Vaya Vandana Yojana (PMVVY), announced for senior citizens under Budget proposals 2017 was a step in right direction, it also needs certain modifications like the scheme should be open at all the times and not for a specified period, the period of deposit which is 10 years at present, should be extendable at the option of the depositor, maximum amount which can be invested under the scheme should be suitably increased from Rs.10.00 Lac at present to, say Rs.30.00 Lac and the rate of interest which is 8% at present may be linked with the rate applicable in respect of PF.

In this way, there are certain anomalies regarding taxing of salary income in India. Hence it is submitted that the relevant provisions be reviewed and those found inconsistent or outdated be removed/modified. Considering the contribution of salaried tax payers in the revenue from Income Tax and their vulnerable position, it is expected that their case would be taken up by the Finance Minister on just and humanitarian grounds on the lines of suggestions given hereinabove.

MAJOR CHANGES IN GST - EFFECTIVE FROM 01.02.2019

TEAM TRD

1. Upper limit of turnover for opting composition scheme - *raised from Rs. 1 Cr to Rs. 1.50 Cr.*
2. A Composite dealer (in goods) shall be allowed to supply services (other than restaurant services), for a value not exceeding — *Higher of 10% of turnover in the preceding financial year, or Rs. 5 lakh.*
3. In case of purchase of goods from unregistered suppliers- *Reverse charge mechanism shall be applicable to notified registered persons only.*
4. The threshold limit of Turnover for exemption from registration in the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand - *increased to Rs. 20 Lakh from Rs. 10 Lakh.*
5. Taxpayers may opt for multiple registrations within a State/U.T in respect of multiple places of business located within the same State/U.T on the same PAN even if same vertical of business. Earlier it was allowed for different vertical of business only.
6. Registration shall remain temporarily suspended while cancellation of registration is under process, so that the taxpayer could get relief of further continued compliance. (i.e Taxpayers will not be required to file returns for that period of pending order).
7. Mandatory registration is required for only those e-commerce operators who are required to collect tax at source.
8. The following transactions shall not treated as supply (i.e no tax payable under GST) under Schedule III:-
    - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
    - Supply of warehoused goods to any person before clearance for home consumption; and
    - Supply of goods in case of high sea sales.
9. Registered persons may issue consolidated credit/debit notes to a party in respect of multiple invoices issued in a Financial Year to that party.
10. Commissioner may extend the time limit for return of inputs and capital sent on job work, upto a period of 1 year and 2 years, respectively.
11. Place of supply shall be outside India, where job work or any treatment or process has been done on goods temporarily imported into India and then exported out of India without putting them to any other use in India except the uses which were necessary for the purpose of such job work or treatment or process.
12. Recovery of taxes, interest, fine, penalty etc. can be made from distinct persons, even if such distinct persons are present in different State/Union territories.
13. If RBI would permit, Supply of services outside India shall be regarded as exports, even if payment is received in Indian Rupees.
14. Input tax credit will be available in respect of the following:-
    - Most of the activities or transactions specified in Schedule III;
    - Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
    - Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available; and
    - Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.

HIGHLIGHTS OF INDIA BUDGET 2019 - 2020

TEAM TRD

TAXATION

Income Tax

- Income Tax Slabs Remain Unchanged. However, No Income Tax For Individuals With Income Up to ₹ 5,00,000

  Individual taxpayers with an annual taxable income of upto ₹ 5 Lakhs will now get full tax rebate. This means, no income tax will have to be paid by individual falling in this income category. It is because the tax rebate which was earlier ₹ 2,500 has now been raised to ₹ 12,500. This makes the income tax turn out to be NIL for taxpayers earning less than ₹ 5,00,00 per annum.

- Rebate u/s 87A

  The rebate under Section 87A of the Income tax Act, 1961, has been raised to ₹ 12,500. It is only applicable for those with net taxable income of up to ₹ 5 lakhs.

- Effect on Gross Income

  Individuals with a gross income of ₹ 6.50 lakhs will not be required to pay any income tax. Provided they have made investments in PF, Insurance, Savings etc. Not only this, if we consider the following additional deductions in calculation of income tax, people with even higher income will not have to pay any tax.

  Deductions include:
  - Interest on Home Loan upto ₹ 2 Lakh
  - Interest on Education Loan
  - National Pension Scheme Contributions
  - Medical Insurance
  - Medical Expenditures on Senior Citizens etc

- Standard Deduction for Salaried Employees

  The Standard Deduction for Salaried Employees has increased from ₹ 40,000 to ₹ 50,000.

  Standard Deduction
  Standard Deduction refers to deduction allowed as per the Income Tax irrespective of the expenses met or the investment made by the individual. An individual is not required to disclose any investment proofs or expense bills for this purpose, the Standard Deduction is allowed at a standard rate.

- Benefits to Small Business

  Special benefits and incentives were also given to small businesses and start-ups. Overall compliance processes were simplified. Threshold limit for presumptive taxation of business was raised from ₹ 1 crore to ₹ 2 crore. The benefit of presumptive taxation was extended for the first time to small professionals fixing threshold limit at ₹ 50 lakhs. In order to promote a less cash economy, the presumptive profit rate has been reduced from 8% to 6%. The tax rate for companies with turnover 15 of up to ₹ 250 crore, covering almost 99% of the companies, was reduced to 25% which was also applicable to new manufacturing companies without any turnover limits.

- Notional Rent on Second Self-Occupied House

  In the Budget, the finance minister proposed exemption from notional rent in respect of two self-occupied house properties. Currently, if a person has two properties which are self-occupied, deemed rent from one of the house properties is taxable.

  In the interim budget, government has proposed to exempt levy of income tax on notional rent on a second self-occupied house

- TDS Threshold on Interest Earned On Bank or Post Office Deposits

  TDS limit on such interest earned has been raised from 10,000 to ₹ 40,000. Additionally, TDS limit for deduction of tax on rent is proposed to be increased from ₹ 1,80,000 to ₹ 2,40,000. This has been undertaken to provide relief to small taxpayers.

- Rollover of Capital Gains Under Section 54

  Earlier, the benefit of the rollover of capital gains under the Income Tax Act was restricted to investment in one residential house. This has now increased from investment in one residential house to two residential houses. Such an increment is for a taxpayer having capital gains upto ₹ 2 Crore. And such a benefit can be availed just once in a lifetime.

- Section 80 IB (A) of Income Tax Act Extended

  For making more homes available under affordable housing, the benefits under section 80 IB (A) of the Income tax Act has been extended for one more year. This means housing projects approved till March 31, 2020 can claim benefits under section 80 IB (A).

Goods and Services Tax

Exemptions from GST for small businesses have been doubled from ₹ 20 lakhs to ₹ 40 lakhs. Further, small businesses having turnover up to ₹ 1.5 crore have been given an attractive composition scheme wherein they pay only 1% flat rate and have to file one annual return only. Similarly, small service providers with turnover upto ₹ 50 lakhs can now opt for composition scheme and pay GST at 6% instead of 18%. More than 35 lakhs small traders, manufacturers and service providers will benefit from these trader friendly measures. Soon, businesses comprising over 90% of GST payers will be allowed to file quarterly return.

Customs and Trading Across Border

To promote the “Make in India” initiative, we have undertaken rationalization of customs duties and procedures. Our Government has abolished duties on 36 capital goods. A revised system of importing duty-free capital goods and inputs for manufacture and export has been introduced, along with introduction of single point of approval under section 65 of the Customs Act. Indian Customs is introducing full and comprehensive digitalization of export/import transactions and leveraging RFID technology to improve export logistics.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No.02/2019 - Central Tax
Date – 29.01.2019

Seeks to bring into force the CGST (Amendment) Act, 2018

Central Government has appointed the 1st day of February, 2019, as the date on which the provisions of the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), except clause (b) of section 8, section 17, section 18, clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28, shall come into force.

Notification No.03/2019 - Central Tax
Date – 29.01.2019

Seeks to amend the CGST Rules, 2017

Central Government has made the following rules further to amend the Central Goods and Services Tax Rules, 2017-

1. These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2019 which shall come into force on the first day of February, 2019.
2. In the Central Goods and Services Tax Rules, 2017, in Chapter-II, in the heading, for the words "Composition Rules", the words, "Composition Levy" shall be substituted.
3. In the said rules, in rule 7, in the Table, against serial number (3), in column (3), for the word "goods", the words, "goods and services" shall be substituted.
   a) In the said rules, in rule 8, in sub rule (1),–
   b) the first proviso shall be omitted;
4. in the second proviso, for the words "Provided further", the word "Provided" shall be substituted. In the said rules, for rule 11, the following rule shall be substituted, namely:-

"11 Separate registration for multiple places of business within a State or a Union territory.-

Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place, shall be granted separate registration in respect of each such place of business subject to fulfillment of certain conditions.

"Rule 21A. Suspension of registration.-

Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.

"Rule 41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.-

A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner.

For more details -
http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-03-central-tax-english-2019.pdf;jsessionid=C2D7414ACA2648F9B054407053AC56AA

Notification No.04/2019 - Central Tax
Date – 29.01.2019

Seeks to amend notification No. 2/2017-Central Tax dated 19.06.2017 so as to define jurisdiction of Joint Commissioner (Appeals)

CBIC has made the following further amendments in the Notification No.2/2017- Central Tax, dated the 19th June, 2017.

i. in the opening paragraph, after serial number (k) and the entries relating thereto, the following serial number and entries shall be inserted, namely: -
   Joint Commissioner of Central Tax (Appeals),"

ii. in paragraph 2, in serial number (c), after the words, “Additional Commissioners”, the words “or Joint Commissioners” shall be inserted;

iii. in paragraph 4, for the words and brackets “Additional Commissioners of Central Tax (Appeals)”, the words and brackets “any officer not below the rank of Joint Commissioner (Appeals)” shall be substituted;

iv. in Table I and Table III, after the words, “Additional Commissioner”, wherever they appear, the words “or Joint Commissioner” shall be inserted. 2.

This notification shall come into force with effect from the 1st day of February, 2019.

Notification No.05/2019 - Central Tax
Date – 29.01.2019

Seeks to amend notification No. 8/2017-Central Tax dated 27.06.2017 so as to align the rates for Composition Scheme with CGST Rules, 2017

Central Government has made the following further amendments in the Notification No.8/2017 - Central Tax, dated the 27th June, 2017.

In the said notification, for the portion beginning with the words “an amount calculated at the rate of” and ending with the words “half per cent. of the turnover of taxable supplies of goods in State in case of other suppliers”, the words and figures, “an amount of tax calculated at the rate specified in rule 7 of the Central Goods and Services Tax Rules, 2017” shall be substituted.

This notification shall come into force with effect from the 1st day of February, 2019.

Notification No.06/2019 - Central Tax
Date – 29.01.2019

Seeks to amend notification No. 65/2017-Central Tax dated 15.11.2017 in view of bringing into effect the amendments (to align Special Category States with the explanation in section 22 of CGST Act, 2017) in the GST Acts

Central Government has made the following amendments in the Notification No. 65/2017-Central Tax, dated the 15th November, 2017.

In the said notification, in the proviso, for the words, brackets, letters and figures “sub-clause (g) of clause (4) of article 279A of the Constitution, other than the State of Jammu and Kashmir”, words, brackets and figures “the first proviso to sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to the said section” shall be substituted.

This notification shall come into force with effect from the 1st day of February, 2019.

CENTRAL TAX RATE

Notification No.01/2019 - Central Tax (Rate)
Date – 29.01.2019

Seeks to rescind notification No. 8/2017-Central Tax (Rate) dated 28.06.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts

Central Government has rescinded the Notification No. 8/2017-Central Tax (Rate), dated the 28th June, 2017 except as respects things done or omitted to be done before such rescission.

This notification shall come into force with effect from the 1st day of February, 2019.

INTEGRATED TAX

Notification No.01/2019 - Integrated Tax
Date – 29.01.2019

Seeks to bring into force the IGST (Amendment) Act, 2018

Central Government has appointed the 1st day of February, 2019 as the date on which the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2018 (32 of 2018) shall come into force.

Notification No.02/2019 - Integrated Tax
Date – 29.01.2019

Seeks to amend notification No. 7/2017-Integrated Tax dated 14.09.2017 to align with the amended Annexure to Rule 138(14) of the CGST Rules, 2017

Central Government has made the following amendment in the Notification No.7/2017-Integrated Tax, dated the 14th September, 2017.

In the said notification, in the proviso, in clause (b), for the figures, “151”, the figure “5” shall be substituted. 2. This notification shall come into force with effect from the 1st day of February, 2019.

Notification No.03/2019 - Integrated Tax
Date – 29.01.2019

Seeks to amend notification No. 10/2017-Integrated Tax dated 13.10.2017 in view of bringing into effect the amendments (to align Special Category States with the explanation in section 22 of CGST Act, 2017) in the GST Acts

Central Government has made the following amendments in the Notification No. 10/2017-Integrated Tax, dated the 13th October, 2017.

In the said notification, in the proviso, for the words, brackets, letters and figures "sub-clause (g) of clause (4) of article 279A of the Constitution, other than the State of Jammu and Kashmir", words, brackets and figures "the first proviso to sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to the said section" shall be substituted.

This notification shall come into force with effect from the 1st day of February, 2019.

INTEGRATED TAX RATE

Notification No.01/2019 - Integrated Tax (Rate)
Date – 29.01.2019

Seeks to rescind notification No. 32/2017-Central Tax (Rate) dated 13.10.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts

Central Government has rescinded the Notification No. 32/2017-Integrated Tax (Rate), dated the 13th October, 2017 except as respects things done or omitted to be done before such rescission.

This notification shall come into force with effect from the 1st day of February, 2019.

UNION TERRITORY TAX

Notification No.01/2019 - Union Territory Tax
Date – 29.01.2019

Seeks to bring into force the UTGST (Amendment) Act, 2018

Central Government has appointed the 1st day of February, 2019 as the date on which the provisions of the Union Territory Goods and Services Tax (Amendment) Act, 2018 (33 of 2018) shall come into force.

UNION TERRITORY TAX RATE

Notification No.01/2019 - Union Territory Tax (Rate)
Date – 29.01.2019

Seeks to rescind notification No. 8/2017-Union Territory Tax (Rate) dated 28.06.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts

Central Government has rescinded the Notification No. 8/2017- Union Territory Tax (Rate), dated the 28th June, 2017 except as respects things done or omitted to be done before such rescission.

This notification shall come into force with effect from the 1st day of February, 2019.

COMPENSATION CESS TAX

Notification No.01/2019 - Goods and Services Tax Compensation
Date – 29.01.2019

Seeks to bring into force the GST (Compensation to States) Amendment Act, 2018

Central Government has appointed the 1st day of February, 2019 as the date on which the provisions of the Goods and Services Tax (Compensation to States) Amendment Act, 2018 (34 of 2018) shall come into force.

CUSTOMS - TARIFF

Notification No.02/2019 - Customs
Date – 29.01.2019

Seeks to further amend notification No. 57/2017-Customs dated 30th June, 2017 to prescribe effective BCD rate on parts of power bank of Lithium ion and Battery pack of cellular mobile phones

Central Government has made the following further amendments in the Notification No. 57/2017-Customs, dated the 30th June, 2017.

For more details, please follow - http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs02-2019.pdf;jsessionid=45E8D59CF60F53EA9475278BD103F2A3

Notification No.03/2019 - Customs
Date – 29.01.2019

Seeks to further amend notification No. 50/2017-Customs dated 30th June, 2017 to prescribe effective BCD rate on Electric Vehicle (EV) and their specified part and raw material for manufacture of Lithium ion cells

Central Government has made the following further amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017.

In the said notification, in the Table,

i. against S. No. 495,
   a. in column (2), for the words "Any Chapter", the figures "8507" shall be substituted;
   b. in column (4), for the words "Nil", the figures "5%" shall be substituted;
ii. against S. No. 512, for the entry in column (3), the following entry shall be substituted, namely: -

"(a) Parts, components and accessories except: -
   i. Lithium ion cell (falling under tariff item 8507 60 00) and;
   ii. Printed Circuit Board Assembly (PCBA) (falling under tariff item 8507 90 90) for use in manufacture of lithium-ion batteries other than batteries of mobile handsets including cellular phones falling under tariff item 8507 60 00;

(b) Sub-parts for use in manufacture of items mentioned at (a) above."

For more details, please follow - http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs03-2019.pdf;jsessionid=A1C7FEB313A846672564968655E3F9DE

CUSTOMS - NON TARIFF

Notification No.05/2019 - Customs (N.T.)
Date – 17.01.2019

Exchange Rates Notification No.05/2019-Custom (NT) dated 17.1.2019

The Central Board of Indirect Taxes and Customs has determined rate of exchange of conversion of foreign currencies into Indian currency or vice versa relating to imported and export goods.

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Exported Goods)
Australian Dollar	52.25	50.00
Bahraini Dinar	195.10	183.05
Canadian Dollar	54.60	52.75
Chinese Yuan	10.70	10.35

For more details, please follow - http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt05-2019.pdf;jsessionid=EEE6007D88E832E7EAF5207BCBBFE295

CUSTOMS - ANTI DUMPING DUTY

Notification No.04/2019 - Customs (ADD)
Date – 24.01.2019

Seeks to rescind notification No. 11/2014-Customs (ADD) dated 11th March, 2014.

In exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975) read with rules 18, 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government has rescinded the Notification No. 11/2014-Customs (ADD), dated the 11th March, 2014.

Notification No.05/2019 - Customs (ADD)
Date – 24.01.2019

Seeks to impose anti-dumping duty on "Metaphenylene Diamine" originating in or exported from China PR.

The designated authority vide notification No.7/2/2018 DGAD, dated the 26th February, 2018, had initiated the review in term of sub-section (5) of section 9 A of the Customs Tariff Act, 1975 (51 of 1975) in the matter of continuation of anti-dumping duty on imports of 'Metaphenylene Diamine' originating in or exported from China PR.

Central Government had extended the period of imposition of antidumping duty on the subject goods, originating in or exported from the subject countries up to and inclusive of the 21st March,

2019 vide Notification No. 10/2018-Customs (ADD), dated the 20th March, 2018 dated the 20th March, 2018.

As per Notification No. F. No.7/2/2018-DGAD, dated the 13th December, 2018, Designated Authority in its final findings has come to the conclusion that:

i. Imports from China PR continue to command a significant share in the domestic market;
ii. There has been continued dumping of the subject goods from China PR and the dumping is likely to continue and increase if the anti-dumping duty is allowed to cease
iii. Even when the performance of the domestic industry improved in respect of volume parameters, the domestic industry was not able to improve its market share and was still holding a share much lower than imports. Further, its performance deteriorated in respect of price parameters to such an extent that the domestic industry was suffering financial losses, cash losses and negative return on investment. Growth of the domestic industry is adverse. The domestic industry has suffered continued injury
iv. There is likelihood of continuation of dumping and injury to the domestic industry.

and has recommended the imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

Central Government, after considering the aforesaid final findings of the designated authority, has imposed on the subject goods an anti-dumping duty at the specified rate.

For more details, please follow - http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd05-2019.pdf;jsessionid=22F7847DBBEFD9DDE303C69A1B8B1942

Notification No.06/2019 - Customs (ADD)
Date – 28.01.2019

Seeks to impose definitive anti-dumping duty on "Fluoroelastomers (FKM)" originating in or exported from China PR

In case of import of 'Fluoroelastomers (FKM)' originating in or exported from China PR and imported into India, the designated authority in its final findings vide notification No. 6/25/2017-DGAD, dated the 27th December 2018 has come to the conclusion that-

a. the product under consideration has been exported to India from the subject country below its normal value, resulting in dumping;
b. the Domestic Industry has suffered material injury and material retardation due to dumping of the product under consideration from the subject country;
c. the aforesaid injury has been caused by the dumped imports from the subject country

and has recommended the imposition of definitive anti-dumping duty (for 18 months) on the imports of subject goods, originating in or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

The Central Government, after considering the aforesaid final findings of the designated authority, has imposed on the subject goods an anti-dumping duty at a specified rate.

For more details, please follow - http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd06-2019.pdf;jsessionid=90F539AA8B5776ACDD81CD9543126776

DIRECT TAX

INCOME TAX

Notification No. 8/2019 [F.No.225/344/2018/ITA-II]
Dated: 31.01.2019

Central Govt. notified BSE Exchange Limited as a Recognised Association (PAN: AACC1166721) Under Section 43(5)(e)(iii) read with sub-rule (4) of Rule 6DDD of the Income-tax Rules, 1962 subject to fulfilment of some conditions in respect of trading in derivatives.

Please follow the link for getting the conditions:
https://www.incometaxindia.gov.in/communications/notification/notification_8_2019.pdf

Notification No. 5/2019 [F.No. 370142/22/2017-TPL] /SO 550(E)
Dated: 30.01.2019

Central Govt. has made a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer.

Click on the link for get through the scheme in detail:
https://www.incometaxindia.gov.in/communications/notification/notification_5_2019.pdf

Notification No. 4/2019 [F. No.370142/22/2017-TPL] / GSR 76(E)
Dated: 30.01.2019

Income–tax (15th Amendment) Rules, 2019

In the Income-tax Rules, 1962, for rule 12D, the following rule shall be substituted, namely:-

Prescribed income-tax authority under section 133C - The prescribed income-tax authority under section 133C shall be an income-tax authority not below the rank of Assistant Commissioner of Income-tax who has been authorised by the Central Board of Direct Taxes to act as such authority for the purposes of that section.

Notification No. 2/2019 [F.No.203/06/2009/ITA-II]
Dated: 24.01.2019

Amendment to Notification No. No.68/2009 in F.No. 203/6/2009/IT A.II, dated 151h of September, 2009

It was notified that the organization Sastra University, Chennai has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), from Assessment year 2009-2010 onwards in the category of 'other Institution', partly engaged in research activities. There was certain listed conditions, one of them was "The sums paid to the approved organization shall be utilized for scientific research", which has been now amended to "the sums paid to the approved organization shall be utilized for **social science research**"

PRESS RELEASE

DIRECT TAX

PRESS RELEASE
DATE - 20.01.2019

Press Release on TDS issue for CBDT

Central Board of Direct Taxes (CBDT) today said that certain news items that appeared in a section of media regarding enmasse issue of prosecution notices to small companies for TDS default are completely misleading and full of factual inaccuracies. CBDT clarified that Mumbai Income Tax TDS office has issued prosecution show cause notices only in a limited number of big cases where more than Rs. 5 lakh of tax was collected as TDS from employees etc and yet the same was not deposited with the Income Tax Department in time.

CBDT said that some defaulter companies and vested interests are deliberately misleading the media to thwart action against themselves. Having deducted tax from employees and other taxpayers and not depositing the same in time in the government treasury is an offence punishable under the law. It also affects interest of the employees from whose salary the tax has been deducted by the unscrupulous employers who have not deposited the same in time in the government treasury. If the TDS is not deposited in time, the employee would be ineligible for claiming credit of the tax deducted when he files his own return.

CBDT stated that in last one month only in 50 big cases prosecution notices have been issued by Mumbai IT TDS office. Out of these, in 80% of the cases the TDS tax default is above Rs. 10 lakh and in 10 % cases TDS default is between Rs. 5 to 10 lakh. In the remaining 10% cases, TDS default is of more than Rs. 1 crore as detected in the survey. Prosecutions have also recently been launched against 4 big business houses where more than Rs 50 Crore of tax was collected by them from the tax payers and yet not deposited with the Government in time. But such legal and rightful action is being unfortunately projected in the media by the vested interests as if the department is going overboard to harass small employers. It would be pertinent to note that in a country of 130 Crore people where around 6 Crore returns are filed every year, only a total of 1400 prosecutions have been filed so far for various offences under the Income Tax Act during this financial year. This, by any stretch of imagination, cannot be termed as mass harassment by the income tax department. Therefore, to say that prosecution notices enmasse have been sent to taxpayers for minor defaults is completely incorrect and misleading, CBDT added.

PRESS RELEASE
DATE - 22.01.2019

CBDT identifies non-filers through Non-filers Monitoring System(NMS) by using Data Analytics

The Non-filers Monitoring System (NMS) aims to identify and monitor persons who enter into high value transactions and have potential tax liabilities but have still not filed their tax returns. Analysis was carried out to identify non-filers about whom specific information was available in the database of the Department. The sources of information include Statement of Financial Transactions (SFT), Tax Deduction at Source (TDS), Tax Collection at Source (TCS), information about foreign remittances, exports and imports data etc.

Data analysis has identified several potential non-filers who have carried out high value transactions in Financial Year 2017-18 but have still not filed Income Tax Return for Assessment Year 2018-19 (relating to FY 2017-18).

The Department has enabled e-verification of these NMS cases to reduce the compliance cost for taxpayers by soliciting their response online. It is reiterated that there is no need to visit any Income Tax office for submitting response, as the entire process is to be completed online. Taxpayers can access information related to their case from the „Compliance portal" which is accessible through the e-filing portal of the Department at https://incometaxindiaefiling.gov.in. The PAN holder should submit the response electronically on the Compliance Portal and keep a printout of the submitted response for record purposes. User Guide and FAQs are provided under the "Resources" menu on Compliance Portal.

Non-filers are requested to assess their tax liability for AY 2018-19 and file the Income Tax Returns (ITR) or submit online response within 21 days. If the explanation offered is found to be satisfactory, matters will be closed online. However, in cases where no return is filed or no response is received, initiation of proceedings under the Income-tax Act, 1961 will be considered.

JUDGEMENTS

INDIRECT TAX

PRICE REVISION WILL NOT BE ALLOWED IN CONTRACT DUE TO CHANGE IN TAX POST – GST: GUJARAT HC

M/S BIPSON SURGICAL (INDIA) PVT. LTD VS. STATE OF GUJARAT
CASE NO. – 16765 OF 2017
DATE – 27.03.2018

Fact of the Case

1. The petitioner M/s Bipson Surgical (India) Pvt. Ltd is engaged in the business of manufacture and distribution of Surgical Dressing items such as Bandages, Gauze etc.
2. The respondent is a procuring agency of Government of Gujarat which procures the drugs, surgical items etc. from different manufacturers and distributors for the supply of the same to the Government Hospitals throughout the State of Gujarat.

Decision of the Case

1. While dismissing the petition, the division bench observed that, "the grant of any relief as prayed in the present petitions would tantamount to varying terms and conditions of the tender document / rate contracts.
2. In the present case the liability to pay GST under the GST / CGST Act is upon the supplier.
3. It is also observed that the price quoted and the rate contract was inclusive of all the levies and taxes. Therefore, the petitioners shall not be entitled to the revision of price as sought.
4. The Gujarat High Court has ruled that, price revision will not be allowed in Contract due to the change in Goods and Services Tax (GST). Interestingly, the order was passed in March 2018, but reserved for publication till last week.

WHETHER ON SALE OF RELIGIOUS BOOKS OR DVDS IN SATSANG WOULD ATTRACT GST OR IT IS EXEMPT UNDER ANY NOTIFICATION:

Facts of the case:

1. In the given case, assessee sales religious books and DVD in the Sansang.
2. He is contented that organisation's principal activity was the advancement of religious. And spiritual activities and not carrying out a business as contemplated under section 2(17) of the GST Act.
3. Hence the ancillary services such as sale of religious books or DVD in satnsang or accommodation services provided by such organization would not be attract GST

Decision of the Case

1. Authority held that there is no specific exemption under the GST Act.
2. Also held that if primary services are exempted then it does not mean that incidental or ancillary services related to main services are also exempt.
3. The sale of spiritual products which was incidental or ancillary to main charitable object of assessee could be said to be business.
4. Such transaction done by charitable trust or organization registered u/s 12AA of the income tax would qualify as Supply. GST would be attracted and required to pay by the organization.

IF THE PROPERTY HELD JOINTLY THEN GST REGISTRATION LIMIT FOR CO-OWNERS OF A PROPERTY TO BE CHECKED INDIVIDUALLY AND NOT AS WHOLE

Facts of the case:

1. In the case, Assessee is one of the co-owner of a jointly owned immovable property.
2. There are 13 co-`owners holding equal share of land and building. They had given the property on rent. Rent of such property was exceeds more than 20 lakhs in the financial year
3. Assessee filed an application for Advance Ruling whether small business exemption would be available to all owners separately in case of joint owned property or not?

Decision of the Case

The following observation were made by the Authority and passed the judgment:

1. When the rent is collected together and divided equally between respective co-owners, then the small business

exemption for registration under GST is available to co-owners separately

2. And in the given case only property wise rental income is exceeds more than 20lakh. But if it is counted person-wise then such income would not crossed the basic exemption limit provided by the act
3. This is big relaxation to all joint co-owners from GST registration until and unless their rental and other taxable income does not exceeds more than 20lakhs.
4. This judgment is beneficial to all joint co-owners.

INPUT TAX CREDIT NOT AVAILABLE FOR LEASE RENT PAID DURING PRE-OPERATIVE PERIOD FOR LEASEHOLD LAND: GST AAR
GGL HOTEL & RESORT COMPANY LIMITED VS. GST AAR
CASE NO. – 32 OF 2018
DATE- 11.10.2018

Facts of the case:

1. The Applicant, engaged in the hospitality and real estate business and is contemplating a new project on a leasehold land.
2. The applicant sought sought for a ruling as to whether Input Tax Credit is available for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed to be used for furtherance of business, when the same is capitalized and treated as capital expenditure.

Decision of the Case

1. The Authority observed the following facts;-
    - The cost of constructing the immovable asset, therefore, includes the lease rental paid for the right to use the land on which the asset is built.
    - The Authority noted that the property is, admittedly being constructed on the Applicant's own account and treated as a fixed asset, including the lease rental paid.
    - It is held that the lease rental paid during the pre-operative period should be treated as part of the cost of goods and services received for the purpose of constructing an immovable property on the Applicant's own account.
    - The input tax credit is, therefore, not admissible on such lease rental in terms of section 17(5)(d) of the GST Act.

GST APPLICABLE ON CHEQUE BOUNCING CHARGES: AAR
BAJAJ FINANCE LIMITED VS. GST AAR MAHARASHTRA
CASE NUMBER: GST-ARA- 21/2018-19/B- 84
DATE-: 06/08/2018

Facts of the case:

1. Customer made payment to the recipient as financial transaction for the consideration of goods supplied or rendering any service through cheque.
2. For certain reason if the cheque is bounced then cheque bouncing charge is imposed upon the recipient's account with GST.
3. The applicant sought for exemption of GST from cheque bouncing charge imposed upon him..

Decision of the Case

1. The authority for advance ruling observed the following in connection with GST imposed on cheque bouncing charge.
2. The exemption for financial transactions under GST laws is only in respect of the interest/ discount earned or paid for loans, deposits or advances.
3. The consideration not being an interest or discount, the exemption is not available.
4. In the subject case the amount of bounce charges cannot be said to be penalty imposed on by the applicant.
5. It is recovered/imposed only because the client has dishonoured the cheques issued by them towards payment of EMI.
6. The recovery of bounce charges is made in view of toleration of the act of the client by the applicant and therefore construes as 'supply' as per as per Sr. No. S(e) of Sch. II of the CGST Act and is therefore taxable under the GST Act.

DIRECT TAX

BONUS PAID TO DIRECTORS ALLOWABLE AS DEDUCTION: ITAT BANGALORE
CANDOR BUSINESS SOLUTION PVT. LTD. VS. THE INCOME TAX OFFICER, BANGALORE
CASE NO. - 2607/BANG/2018
DATE - 9.01.2019

Fact of the Case

1. In the present case company is the assessee.
2. The assessee company has paid bonus to director shareholders
3. The Assessing Officer had disallowed Rs.17 lakhs paid as a bonus to director-shareholders of the assessee company u/s. 36(1)(iii) of the Act.
4. The assessee contended that the payment of bonus to director shareholders has been made according to terms of appointment of directors duly supported by Board Resolution .
5. It was also contended that the director shareholders are experienced & enough qualified.

Decision of the Case

1. The Income Tax Appellate Tribunal observed that the bonus was paid in addition to salary as a reward for services rendered by the two directors to the assessee company and it was in no way related to their shareholdings in the assessee company.
2. Further, it also cannot be considered as a dividend payment in disguise.
3. Having regard to their qualification & experience and participation in the management of the assessee company, the payment of bonus has been made as part of salary in terms of Board Resolution.
4. The Income Tax Appellate Tribunal (ITAT), Bangalore bench has held that the payment of bonus to partners of a Company can be allowed as a deduction under section 36(1)(ii) of the Income Tax Act.

DELAY IN FILING TAX AUDIT REPORT IS A TECHNICAL VENIAL BREACH: ITAT DELETES PENALTY

Fact of the Case

1. In the instant case the assessee is a businessman who did not attach tax audit report under section 44AB of the Income Tax Act.
2. The Assessing Officer levied penalty under section 271B of the Income Tax Act for violation of provisions of Section 44AB of the Act, for Rs.77,559.
3. Before the authorities, the assessee pleaded that the tax audit was completed on 27/09/2013, by the tax auditor and thereafter, the said tax auditor suddenly fell ill and accordingly the tax audit report could not be filed along with the return of income.
4. Without the tax audit report, the income tax return was electronically uploaded as it was lying with the tax auditor.
5. The assessee appealed to the Tribunal against the order of the A.O.

Decision of the Case

1. The Tribunal observed that the assessee had only committed a technical venial breach without creating any loss to the exchequer.
2. In the instant case, the tax audit report was very much made available before the ld. Assessing Officer before the completion of the assessment proceedings.
3. The Kolkata bench of the Income Tax Appellate Tribunal (ITAT) has held that the delay in filing of the tax audit report is a technical venial breach for which, the penalty under Section 271B of the Income Tax Act is not sustainable.

ITAT DISMISSES APPEAL BY ANIL KAPOOR'S PRODUCTION COMPANY
M/S ANIL KAPOOR FILM CO. PVT. LTD. VS. ITAT MUMBAI
CASE NO. – ITA NO. 5015/MUM/2018
DATE – 31.12.2018

Fact of the Case

1. In the present case Anil Kapoor Film Production Company is the assessee.
2. The assessee is in the business of producing feature films/TV serials, declared nil income/loss from the business in its return filed on 26/11/2014.
3. Income Tax Department issued notice to the assessee under section 143(2) as on 1.09.2015 & subsequently issued notice under section 142(1).
4. The assessee took a loan of Rs. 2 Crores from one "Anubhav Vinimay" and confirmation of the loan transactions was furnished on 27.12.2016 and the

assessment order was passed on 29.12.2016.

Decision of the Case

1. The Pr. Commissioner observed that the creditworthiness/genuineness of the transactions of the lender was never verified/examine by the Assessing Officer and even in the loan confirmation documents; the address of the lender is not mentioned.
2. It was also observed that further the assessee company neither filed the return of income of M/s Anubhav Vinimay Pvt. Ltd. nor the bank statement.
3. In the opinion of Pr. Commissioner Assessing Officer should have made inquiries/verification, to satisfy himself with respect to the creditworthiness of the lender and genuineness of the transactions before framing the assessment.
4. The ld. Assessing Officer was directed to pass fresh assessment order after providing the due opportunity of being heard to the assessee.
5. The Mumbai bench of the Income Tax Appellate Tribunal (ITAT) has dismissed an appeal filed by the Anil Kapoor Film Co. Pvt. Ltd and upheld the revisional order passed by the Principal Commissioner under section 263 of the Income Tax Act.

DEPRECIATION BEING STATUTORY ALLOWANCE CAN'T BE DISALLOWED BY INVOKING S. 40(A)(IA): ITAT

KAMANI INDUSTRIES OIL PVT. LTD. VS. DY. COMMISSIONER OF INCOME TAX, MUMBAI

CASE NO. -5465/MUM/2017

DATE-02.01.2019

Fact of the Case

1. The assessee claimed depreciation which was disallowed by the Assessing Officer under section 40(a)(ia).
2. However, the first appellate authority deleted the order by following the decision of Vishakhapatnam Tribunal rendered in Merilyn Shipping & Transports Vs. ACIT.
3. Before the Tribunal, the assessee contended that the assessees' case is squarely covered by the decision of the Tribunal in Skol Breweries Ltd.

Decision of the Case

1. Depreciation is statutory allowance in nature and not an actual outgoing for the assessee.
2. The Income Tax Appellate Tribunal (ITAT), Mumbai bench has held that the depreciation, being a statutory allowance cannot be disallowed by invoking section 40(a)(ia) of the Income Tax Act.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
7th February, 2019	Depositing TDS/TCS liability under Income Tax Laws.
10th February, 2019	GSTR-8. Monthly - E-commerce operators who are required to deduct TCS (Tax collected at source) under GST.
11th February, 2019	GSTR-1. Monthly - Summary of outward taxable supplies where Turnover exceeds ₹ 1.5 Crore.
13th February, 2019	GSTR-6. Monthly – Details of ITC received and distributed by ISD.
20th February, 2019	GSTR 3B for the Month of January, 2018
20th February, 2019	GSTR-5. Monthly - Summary of outward taxable supplies and tax payable by Non Resident Taxable person.
20th February, 2019	GSTR 5A. Monthly - Summary of outward taxable supplies and tax payable by OIDAR.
31st March, 2019	Due date of TRAN-1 is extended for certain taxpayers who could not complete filing due to tech glitch.
31st April, 2019	Due date of TRAN-2 is extended for certain taxpayers who could not complete filing due to tech glitch.

DIRECT TAX CALENDAR - FEBRUARY, 2019

07.02.2019

- Due date for deposit of Tax deducted/collected for the month of January, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.02.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of December, 2018

15.02.2019

- Due date for furnishing of Form 24G by an office of the Government where TCS for the month of January, 2019 has been paid without the production of a challan
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2018

DIRECT TAX CALENDAR - MARCH, 2019

02.03.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of January, 2019

07.03.2019

- Due date for deposit of Tax deducted/collected for the month of February, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

15.03.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2019 has been paid without the production of a Challan
- Fourth instalment of advance tax for the assessment year 2019-20
- Due date for payment of whole amount of advance tax in respect of assessment year 2019-20 for assessee covered under presumptive scheme of section 44AD/ 44ADA

17.03.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IBin the month of January, 2019

30.03.2019

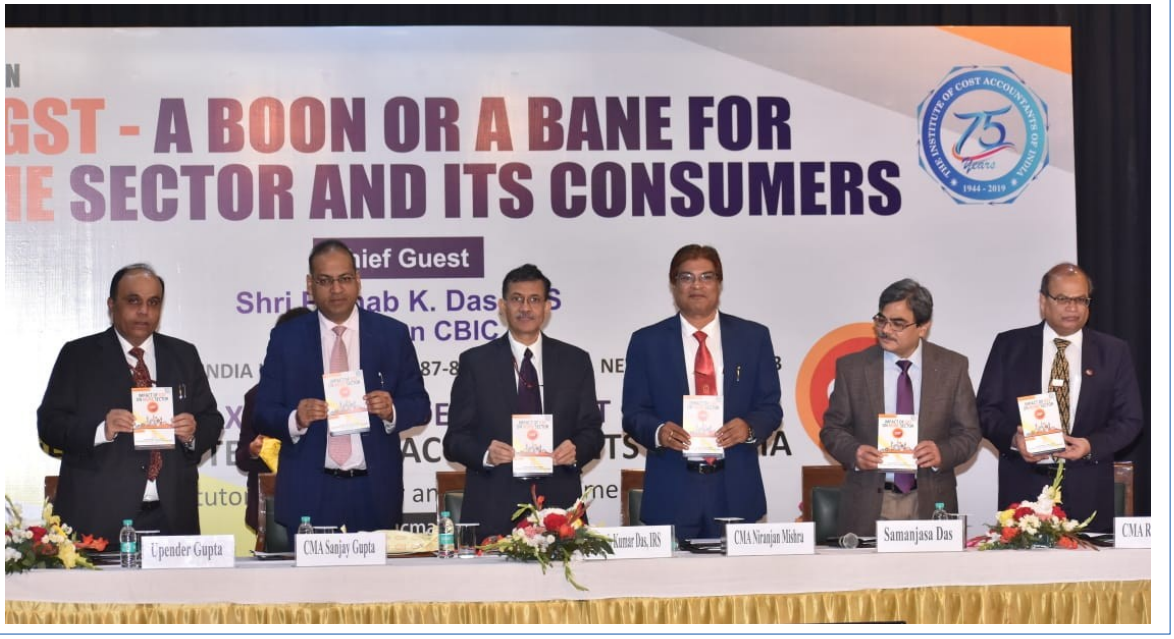
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of February, 2019

31.03.2019

- Due date for linking of Aadhaar number with PAN
- Country-By-Country Report in Form No. 3CEAD for the previous year 2017-18 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group
- Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2017 to March 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

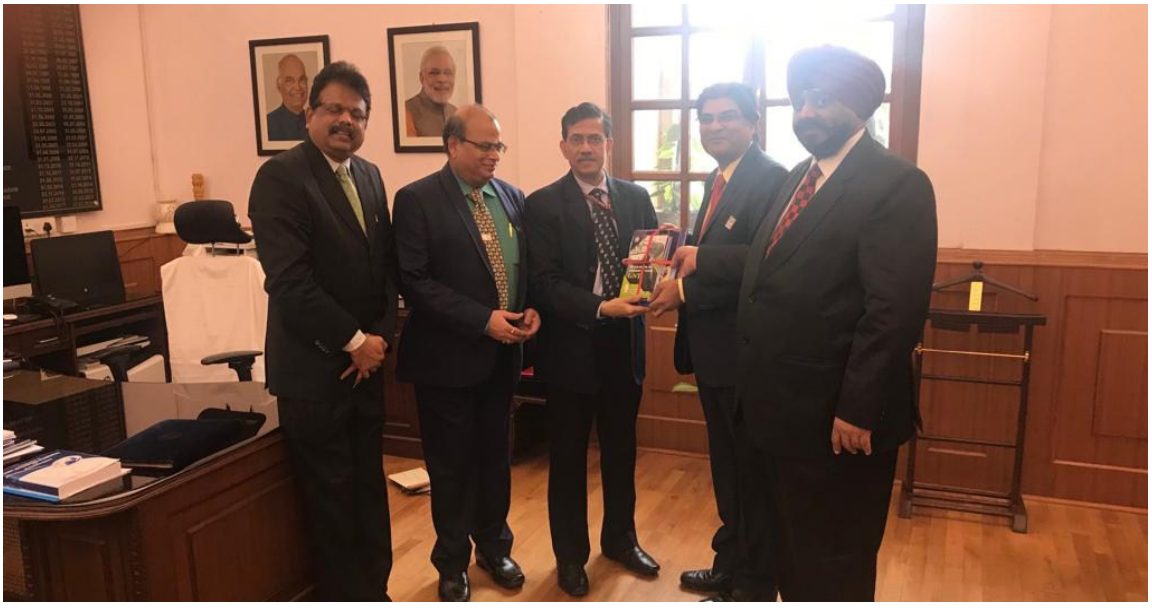
SNAPSHOTS

Inauguration of Seminar GST: - 'A boon or a bane for MSME Sector and its Consumers' in the hands of Shri Pranab K Das, IRS, Chairman, CBIC, organized by the Institute on 28th January 2019 at Delhi. Shri Das being honoured by CMA Sanjay Gupta, IPP and CMA Niranjan Mishra, Chairman – Taxation Committee

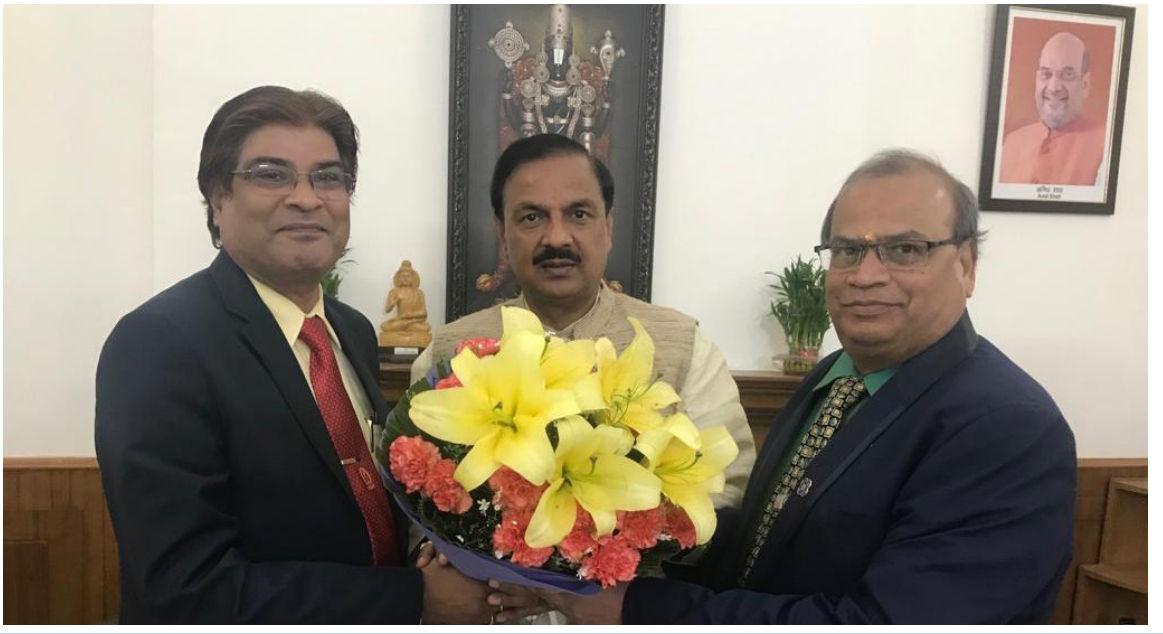


Release of the Handbook on MSME at the Seminar in by Shri Pranab K Das, IRS, Chairman, CBIC. Shri Upender Gupta, Principal Commissioner, GST, CBIC, CMA Sanjay Gupta, IPP, CMA Niranjan Mishra, Chairman – Taxation Committee, Shri Samanjasa Das, IRS, Principal ADG, Directorate General of Anti Profiteering, CBIC and CMA P Raju Iyer, Chairman, Professional Development & CPD Committee grace the dais

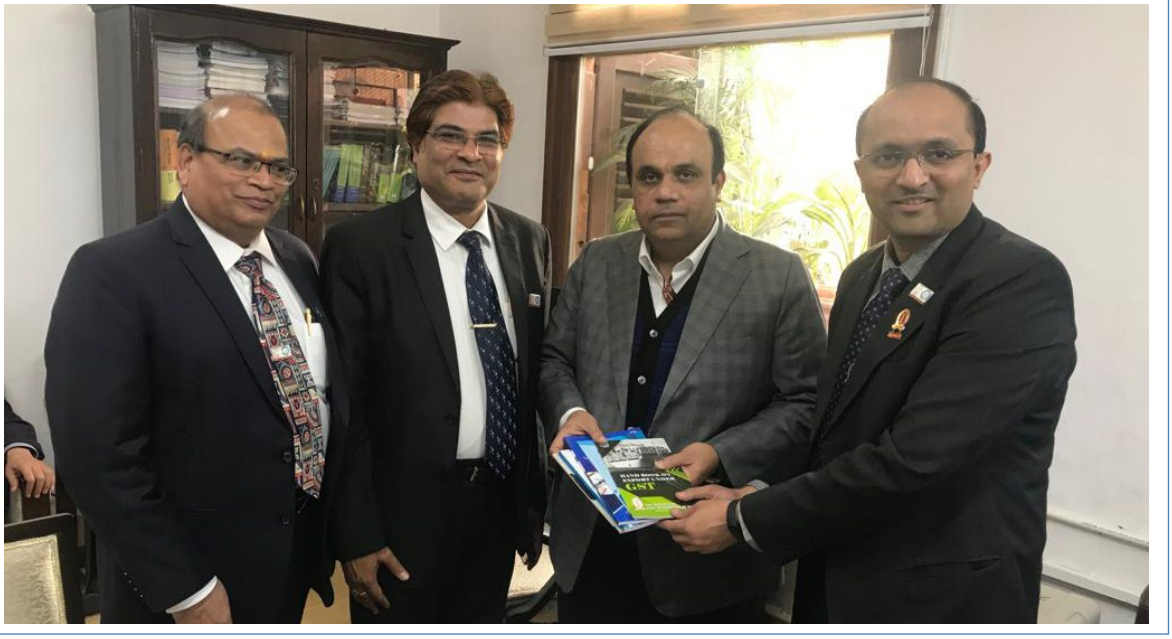
Felicitation of Shri Upender Gupta, Principal Commissioner, GST, CBIC, by CMA Sanjay Gupta, IPP and CMA P Raju Iyer, Chairman, Professional Development & CPD Committee



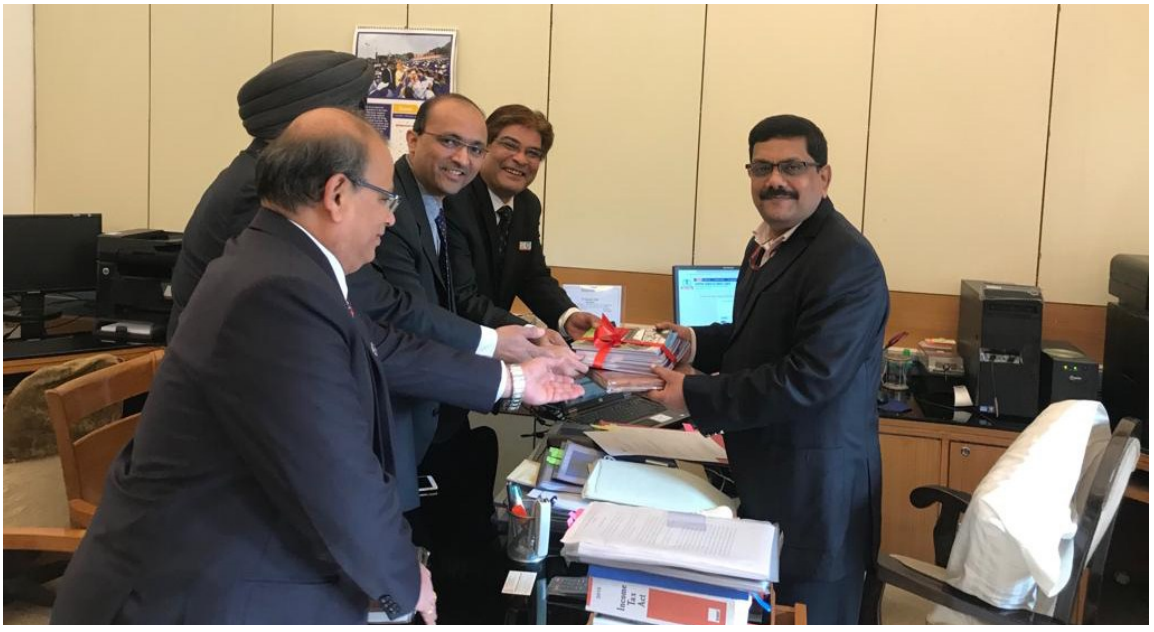
Shri Pranab K Das, IRS, Chairman, CBIC being greeted at his office by offering a Knowledge Pack (a compilation of publications of Tax Research Department) by dignitaries like, CMA Balwinder Singh, Vice-President, ICAI, CMA Niranjan Mishra, Chairman – Taxation Committee, CMA P Raju Iyer, Chairman, Professional Development & CPD Committee and Dr. Giri Ketharaj



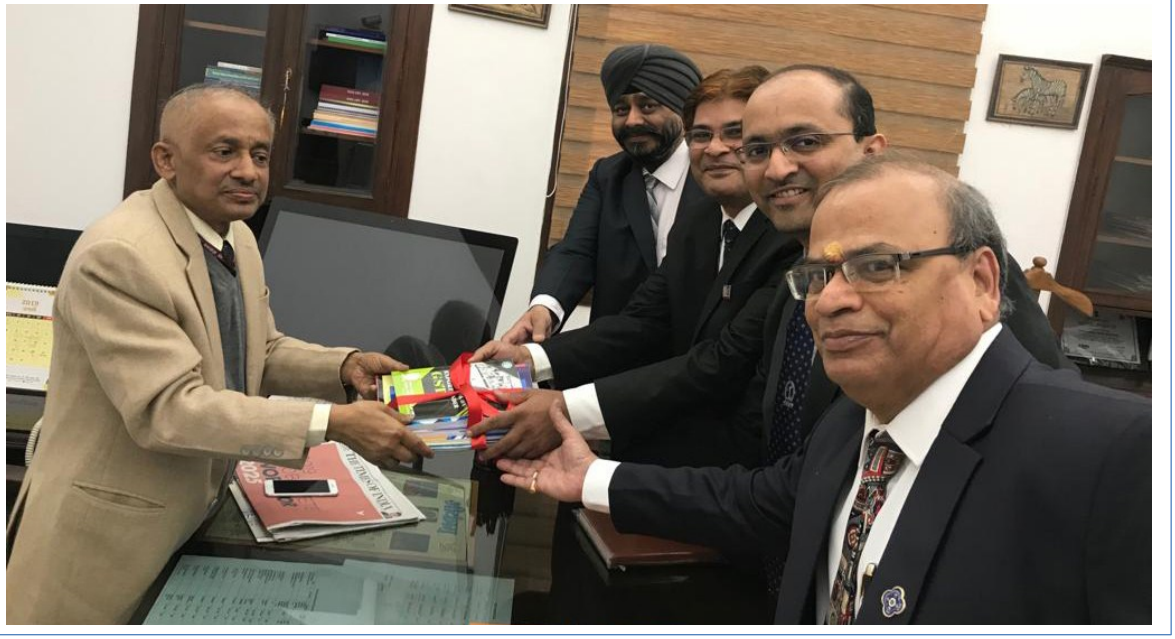
Dr. Mahesh Sharma, Union Minister for Culture, Govt of India being greeted at his office by CMA Niranjan Mishra, Chairman – Taxation Committee and CMA P Raju Iyer, Chairman, Professional Development & CPD Committee



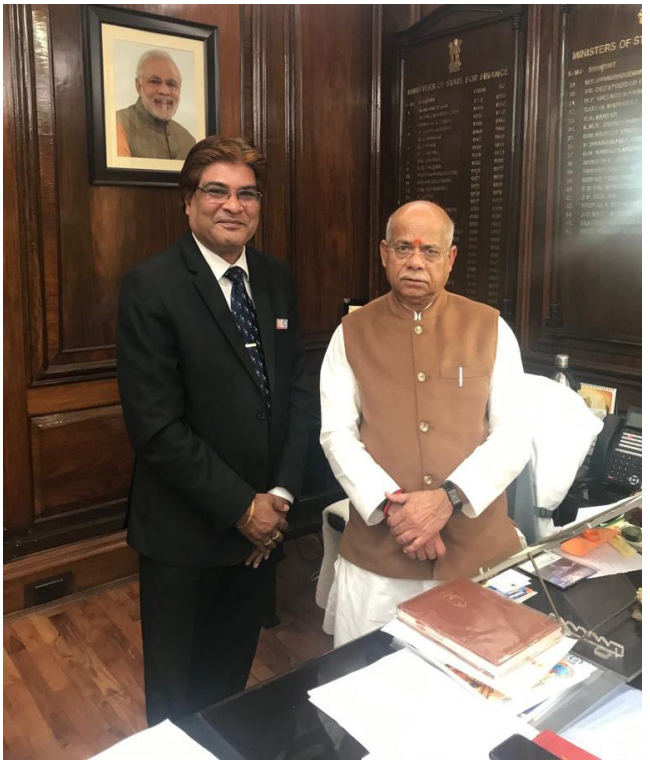
Shri Upender Gupta, Principal Commissioner, GST, CBIC, being greeted at his office by offering a Knowledge Pack (a compilation of publications of Tax Research Department) by dignitaries like, CMA Amit A Apte, President, ICAI, CMA Niranjan Mishra, Chairman – Taxation Committee and CMA P Raju Iyer, Chairman, Professional Development & CPD Committee



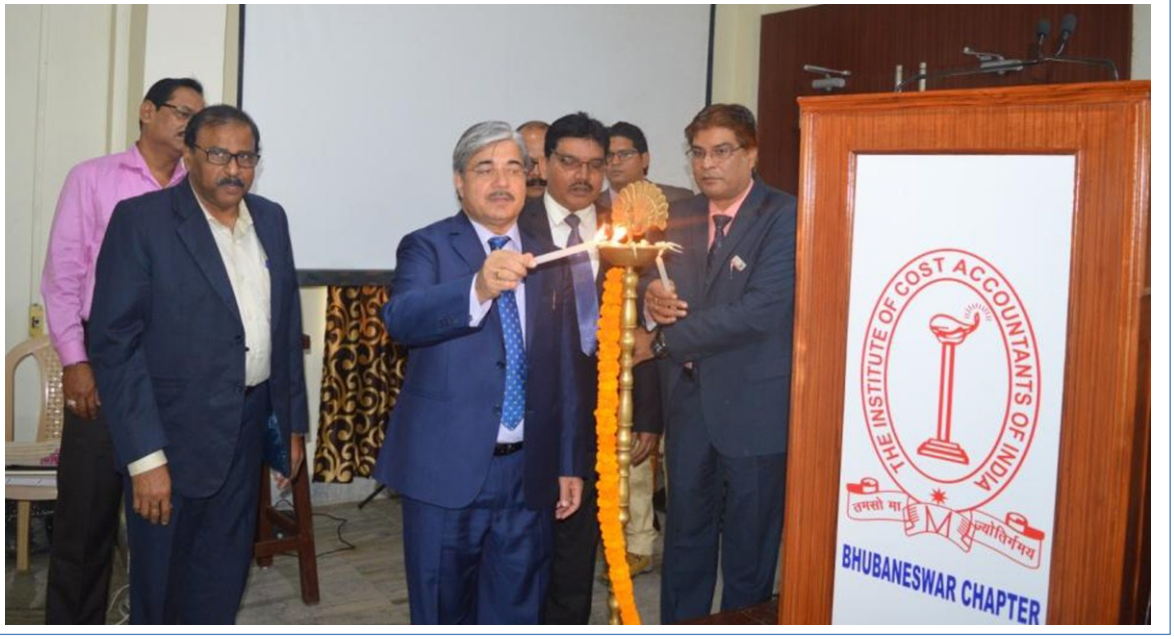
Shri R. R. Das, Joint Secretary, Tax Policy & Legislation being greeted at his office by offering a Knowledge Pack (a compilation of publications of Tax Research Department) by dignitaries like, CMA Niranjan Mishra, Chairman – Taxation Committee, CMA Amit A Apte, President, ICAI, CMA Balwinder Singh, Vice-President, ICAI, CMA P Raju Iyer, Chairman, Professional Development & CPD Committee



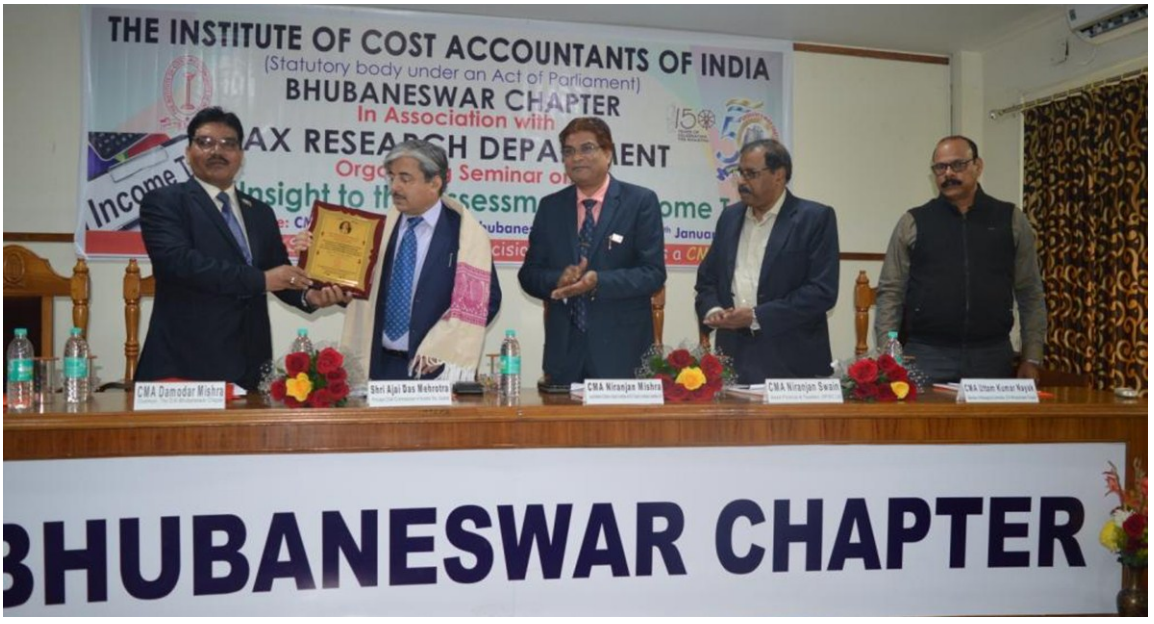
Shri S. K. Panda, Member, CBIC being greeted at his office by offering a Knowledge Pack (a compilation of publications of Tax Research Department) by dignitaries like CMA Balwinder Singh, Vice-President, ICAI, CMA Niranjan Mishra, Chairman – Taxation Committee, CMA Amit A Apte, President, ICAI, CMA P Raju Iyer, Chairman, Professional Development & CPD Committee



Shri Shib Pratap Shukla, Minister of State, Ministry of Finance being greeted at his office by CMA Niranjan Mishra, Chairman – Taxation Committee



Lighting of the lamp by Shri Ajai Das Mehrotra, Principal Chief Commissioner of Income Tax, Gujrat at the Seminar, 'Insight to the Assessment of Income Tax' at Bhubaneshwar Chapter in the presence of dignitaries like CMA Niranjan Mishra, Chairman – Taxation Committee, CMA Niranjan Swain, CGM Finance, Odisha Power Generation Corporation Limited, CMA Damodar Mishra, Chairman, ICAI – Bhubaneshwar Chapter and others



Felicitation of Shri Ajai Das Mehrotra, Principal Chief Commissioner of Income Tax, Gujrat at the Seminar by CMA Damodar Mishra, Chairman, ICAI – Bhubaneshwar in the presence of CMA Niranjan Mishra, Chairman – Taxation Committee, CMA Niranjan Swain, CGM Finance, Odisha Power Generation Corporation Limited and CMA Uttam Kumar Nayak, Managing Committee member, Bhubaneshwar Chapter

Cross Section of the audience at the Seminar, 'Insight to the Assessment of Income Tax' at Bhubaneshwar Chapter

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Contact Details:

Tax Research Department
12, Sudder Street, KolKata - 700016

Phone: +91 33 40364747/ +91 33 40364721/ +91 33 40364711

E-mail: trd@icmai.in

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016
Ph: 091-33-2252 1031/34/35/1602/1492
Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003
Ph: 091-11-24666100