

INHOUSE
JOURNAL
28th Edition



B E T W E E N U S 2023

*R.Sogani
&
Associates*

US
BETWEEN



BETWEEN

Between US Foundation

‘Dreaming... for a Better Future’

‘Between US Foundation’ is a non-profit organisation, set up in February, 2017 with an aim to assist the dedicated students pursuing mainly the esteemed profession of Chartered Accountancy. The Foundation is always ready to grant scholarships, fellowships and recognition by way of prizes to deserving students who are willing and dedicated to pursue education. It also ensures that necessary facilities such as hostel, access to study materials, coaching classes etc are made available to such students. The Foundation also handholds those students through their journey of becoming a Chartered Accountant, who are deprived of proper counselling and continuous guidance for making right decisions at right time.

Members of the Foundation feel privileged to be able to give back to the society by way of nourishing the buds into fully groomed Chartered Accountants. The Foundation has given them the title of ‘Between US Scholars’. Till date, total number of eight deserving students are being assisted by the Foundation, out of which, three have become successful Chartered Accountants and rest of them are also on the same path. Its aim is to restore hope for a better future and to ensure that every person has right access resources and opportunities in order to live and develop with dignity and to become an active and contributing member of our society.

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Editors' Desk



"A reader lives a thousand lives before he dies . . . The man who never reads lives only one."

Dear Readers,

Welcome to the in house Journal of R. Sogani & Associates - "Between Us". As we sail into one more edition of Between Us Journal, let us convey our feelings to you. We would like to thank all the article assistants, partners and all the helping hands of RSA for their collective efforts and cooperation in making this edition a grand success as without their support we would not have been able to sail our boat to the end. Between Us has always been celebrated as an event since its commencement in 1993. This Journal focuses not only in enhancing academical knowledge of the readers but also it focuses on transforming a person into a leader.

"The more that you read, the more things you will know. The more that you learn, the more places you'll go." Each author during his/her Between Us journey gets deep knowledge of various fields related to the curriculum of a Chartered Accountancy course. We, the editors would like to extend our gratitude to the partners at RSA for giving us the golden opportunity of playing the role of a leader and perform all the tasks in a manner which ensured the overall growth and development of us.

One of the biggest things to handle in this world for a person is the weight of the word "Responsibility". The Between Us journey has been one of the biggest contributors in making us understand the true meaning of this word. This Journal has been crafted in such a manner that you won't feel boredom reading any of the topics written in this Journal. We have ensured that all the topics which relate to the curriculum of Chartered Accountancy course have been covered in this Journal. The content in this Journal will not only develop interest in reading more and more topics but will also add to your practical understanding.

So without a further ado, jump onto the topics and upgrade your basket of knowledge. We hope with full commitment and determination that this 28th edition of Between Us Journal will serve its cause and goal. We would like to thank each and every person of RSA family for their support and encouragement.

Happy Reading !!

Message from our Achiever



CA Farhan Ur Rehman

AIR-12, May 2022

A Journey to a thousand miles begins with one step, and that one step for me towards my career was the RSA family. RSA family has played a very important role in grooming my inner self by providing various opportunities and exposures to different aspects of CA Profession and thereby enhancing my knowledge and experience and motivating me to always go beyond the limits and think out of the box.

I would like to express my gratitude to all the partners of RSA family for helping me out in taking the first step towards my career and making me this capable to handle all the hurdles with ease. Going forward I will always be grateful to RSA for providing me with all these opportunities and the experiences.

Thank you!

*And even though its hard
and I may struggle through it all
You may see me struggle....
But you will NEVER see me fall.*

~Joyce Alcantara

*Success isn't always about
greatness. It's about consistency.
Consistent hard work leads to
success. Greatness will come.*

~Dwayne Johnson

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ACCOUNTING & AUDITING

Standards on Internal Audit

Anuj Khandelwal

Inputs by: Harsh Agarwal

Supervising CA: Jitendra Kumar

Introduction

The **Standards on Internal Audit (SIAs)** are a set of minimum requirements that apply to all members of the ICAI while performing an internal audit of any entity or body corporate.

*“Tum SIA ke
peeche
bhago, audit
quality jhak
mar ke
tumhare peec
he aayegi”*

To begin with, let's understand the term “Standards on Internal Audit”.

First, what does it mean by **Standards**?

“Standards can be defined as the point of reference or the criteria against which the quality of procedures and results are maintained and evaluated”

The next question is **What is Internal Audit?**

“Internal audit is a management function in which the entity's workings are evaluated and areas for improvement are spotted, through which the entity can implement controls for the improvement and governance mechanism of the entity”



Jisko sab jaante hai
Standards on Auditing



Jisko sab nhi jaante
Standards on Internal Audit



**HOW WELL DO YOU KNOW
SIA?**



Apart from SAs, the ICAI has also introduced SIAs. But most people are not aware of them. The reason is the **recommendatory nature** of these standards, which means not mandated to be followed while conducting an Internal Audit.

One thing to ponder upon is



What is the importance of the standards in audits?

- Maintain the quality of audit.
- To ensure uniformity.
- Helps in performance of effective audit procedures.
- To maintain attitude of Professional Skepticism.

SIA was first issued in November 2004 by the “**Committee for Internal Audit CIA**,” formed by ICAI for reviewing the existing internal audit practices in India and to develop Standards on Internal Audits (SIAs). Since then, these have been revised twice- first in July 2007 and next in November 2018. Till Date **24 SIAs have been issued by the council.**

Frequently Asked Questions

If SIAs were not to be mandated, why were these even introduced?

- The reason behind introduction of Standards on Internal Audit is to provide a benchmark for quality of services during an internal audit. It aims to apply the best practices in internal audit services.

Who should refer & follow these SIAs?

- There might be a confusion that since the SIAs were issued by committee formed by ICAI so the SIAs should be only applicable on Chartered Accountants. However, these can be followed by any person who is conducting an internal audit as these standards provide a benchmark for conducting internal audit.

Here, we are discussing those SIAs which become a major part of Internal Audits:

Internal Audit Evidence

**SIA
320**

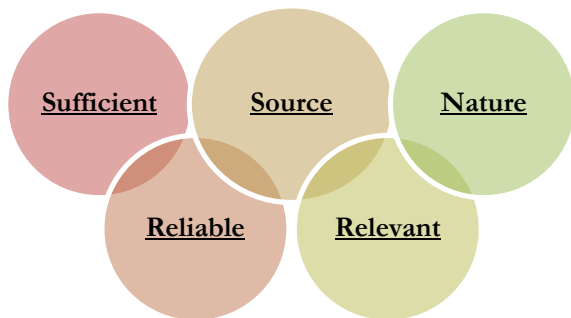
"Internal Audit Evidence" refers to the information used by the Internal Auditor in arriving at the conclusions on which the auditor's opinion is based. Gathering appropriate and reliable audit evidence is a critical part of the internal audit process.

Objectives of Internal audit evidence

Check the sufficiency of audit procedures

Review of the audit work done.

Essentials of Good Audit Evidence:



Thumb Rules which help in identifying the appropriateness of audit evidence.

1. Written (documentary) evidence is better than testimonial evidence.
2. Evidence from the external source is more reliable.
3. Original documents are preferable over photocopies
4. Evidence obtained by an auditor through direct observation, inspection, and physical verification is better than evidence obtained indirectly.

EXAMPLE

Observation:

An auditor while conducting HR audit observed that the number of employees in the salary sheet is greater than actual employees working in the factory as per biometric attendance, which cast a doubt on the reliability of Salary Sheet.

Action performed/Procedure followed:

The attendance as per the salary sheet was then reconciled with the biometric attendance record & manual register.

Audit Evidence:

The following documents were considered as audit evidence:

- Salary Sheet
- Manual Attendance
- Biometric Attendance Record

Conclusion:

- (a) It is not necessary that the audit evidence will always be obtained from Books of Accounts (financial matter or monetary terms) but evidences may also be obtained from non-financial matters.
- (b) Professional skepticism must be exercised while obtaining audit evidence.

Sampling

SIA
5

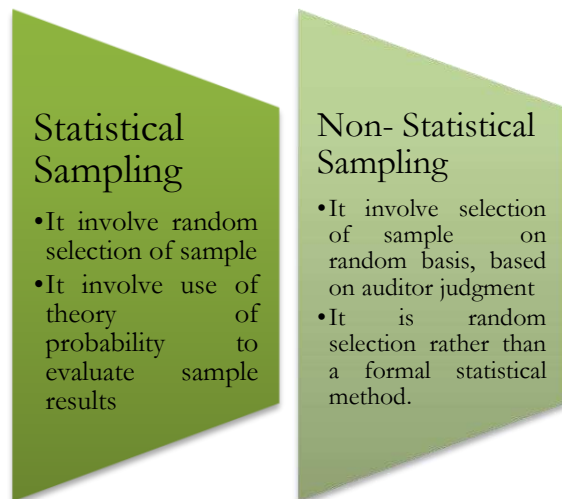
"Sampling" means the application of audit procedures to less than 100% of the items within an account balance or class of transactions to enable the internal auditor to obtain and evaluate audit evidence about some characteristic of the items selected in order to form a conclusion concerning the population"

In simple words, sampling is a technique that allows the internal auditor to form an audit opinion on the basis of selected sample items, out of entire population.

This SIA also describes the internal auditor's documentation requirements in the context of the sampling.

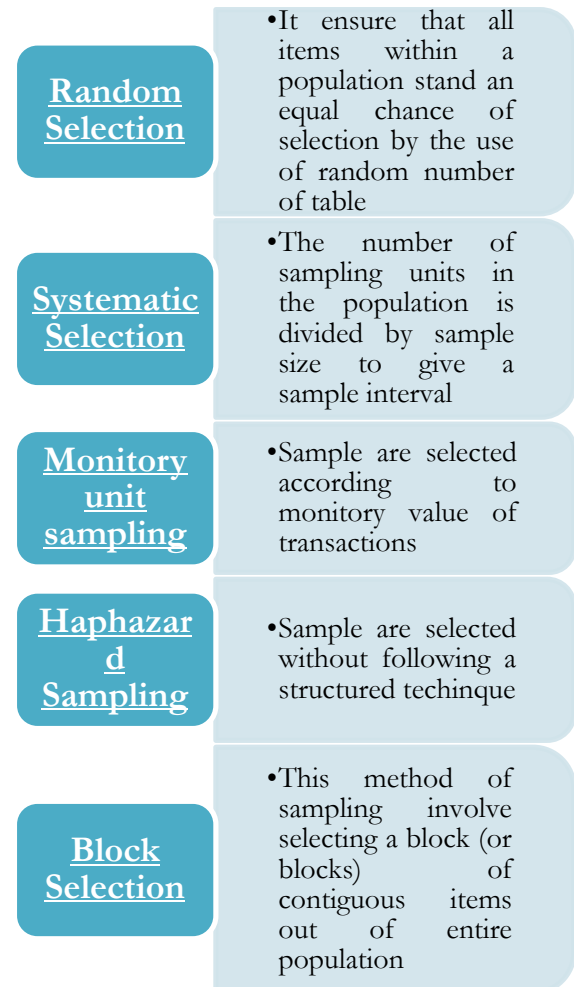


There are two forms/approaches of sampling which are as follows –



The internal auditor should design the composition of the sample in such a way that the sample should represent entire population. This requires that all items or sampling units in the population have an equal opportunity of being selected.

The sample can be selected by using of various methods some of which are follows-



Let's understand sampling with an example:

Mr. A is the internal auditor of XYZ Pvt. Ltd. During the audit, he observed that there is a large quantum of similar transactions in the company and it is not possible to check all the transactions. So, he decided to apply **SIA 5 Sampling methods.**

Based on the professional judgment he decided to select the sample area-wise(purchase, sales, direct expenses, income)and for different amounts. For

instance – there were 2,200 purchase transactions. He segregated the transactions into amount ranges and selected the sample as follows:

Range (in Rs.)	Total Transaction s	%	Sampl e Size
More than 5,00,000	500	25	125
Between 1,00,000 and 5,00,000	700	15	105
Less than 1,00,000	1000	10	100

This SIA helps the auditor to perform audit procedures on sample transactions that represent the entire population which helps auditor to give true and fair opinion.

Internal Audit in an Information Technology Environment

**SIA
520**

- The purpose of this SIA is to establish standards on procedures to be followed when an internal audit is conducted in an Information Technology (IT) Environment.

- Extent of the IT environment used
- Computer-based accounting system's impact on the audit trail.
- Flow of the complete and correct data that have been properly authorized to the processing department.
- The tasks undertaken related to processing, analyzing and reporting during the installation.

IT Environment – Matters to Consider



- The internal auditor should have sufficient knowledge of the information technology systems to plan, direct, supervise, control and review the work performed.
- The internal auditor should consider whether any specialised IT skills are needed in the conduct of the audit. If specialized skills are needed, the internal auditor should seek the assistance of a technical expert possessing such skills, who may either be the internal auditor's staff or an outside professional.

Skills and Competence



- The internal auditor should obtain an understanding of the systems, processes, control environment, risk-response activities and internal control systems sufficient to plan the internal audit and to determine the nature, timing and extent of the audit procedures, in accordance with SIA 1, "Planning an Internal Audit".

Planning



The planning structure in the Internal Auditing Process involves the following-

- Significance of the computerized or automated processing system
- The complexity of the processing system
- The infrastructure of the Information Technology
- Determining the available data
- Determining the organizational structure of the company

The internal auditor should review the robustness of the IT environment and consider any weakness or deficiency in the design and operation of such IT control within the entity, by reviewing:

- System audit reports of the entity, conducted by independent information system auditors
- Reports of system breaches, unsuccessful login attempts, passwords compromised and other exception reports
- Reports of network failures, virus attacks and threats to perimeter security, if any
- General controls like segregation of duties, physical access records, logical access controls, etc.
- Application controls like input, output, processing and run-to-run controls
- Excerpts from the IT policy of the entity relating to business continuity planning, crisis management and disaster recovery procedures.

EXAMPLE

Santa Ltd. is a shoe manufacturing company in India and has multiple departments like purchase, production, sales, marketing distribution, etc. Due to lack of coordination among the above departments, the company faces many problems like the non-availability of sales order details to the production department. It will lead to lower or higher production. The purchase department does not get information from the production department. It seems that many times no order was made for raw material and it leads to discontinuity in production. To resolve this problem management decided to implement ERP system.

ERP system helps the company to provide the flow of information on real-time basis among all the departments. Now, it's easy for the production department to track records and sales order received by the sales dept. Accounts dept. will have access to all necessary information like the availability of raw materials and finished goods kept on branches and warehouses and it can make records of such transactions.

ERP implementation is cost-effective, and it will provide correct information on real-time basis to management.

Now, Auditors need to ensure whether ERP system is working correctly auditor verify that sales orders are received by the sales dept. are same recorded by accounts dept. and the same quantity of finished goods outward by the inventory department.

For the better understanding of readers, a comparison between SIAs and SAs is elucidated herewith listing out the similar standards side by side:

Sr. No.	SIA	SIA Name	SA	SA Name
1	110	Nature of Assurance		
2	120	Internal Controls	315	Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment
3	130	Risk Management	315	Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment
4	140	Governance		
5	150	Compliance with Laws and Regulations	250	Consideration of Laws and Regulations in an Audit of Financial Statements
6	210	Managing the Internal Audit Function		
7	220	Conducting Overall Internal Audit Planning	300	Planning an Audit of Financial Statements
8	230	Objectives of Internal Audit	200	Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing
9	240	Using the Work of an Expert	620	Using the Work of an Expert
10	250	Communication with Those Charged with Governance	260	Communication with Those Charged with Governance
11	310	Planning the Internal Audit Assignment	300	Planning an audit of the Financial Statements
12	320	Internal Audit Evidence	500	Audit Evidence
13	330	Internal Audit Documentation	230	Audit Documentation
14	350	Review and Supervision of Audit Assignments		
15	360	Communication with Management	260 and 265	Communication with Those Charged with Governance; Communicating Deficiencies in Internal Control to Those Charged with Governance and Management
16	370	Reporting Results	265	Communicating Deficiencies in Internal Control to Those Charged with Governance and Management
17	390	Monitoring and Reporting of Prior Audit Issues		

18	520	Internal Audit in an Information Technology Environment		
19	530	Third-Party Service Provider	402	Audit Considerations Relating to Entities Using Service Organisations
20	5	Sampling	530	Audit Sampling
21	6	Analytical Procedures	520	Analytical Procedures
22	7	Quality Assurance in Internal Audit	220	Quality Control for Audit Work
23	11	Consideration of Fraud in an Internal Audit	240	The auditor's responsibilities relating to fraud in an audit of financial statements
24	18	Related Parties	550	Related Parties

Conclusion

- The objectives of internal audit which includes evaluation of internal control, existence of compliance, efficient utilization of resources, etc, can be effectively fulfilled if SIAs are followed by the internal auditor.
- Therefore, although SIAs are not mandatory by any law to be followed at the time of internal audit but they should be followed as they keep utmost importance in the internal audit of an organization.
- Internal Auditors should also be ready to follow these standards as these can be mandated by the law any time soon. There might also be some penalties for not following the standards in the future.

Role of Statutory auditor in Physical verification of Inventory

Gunjan Gupta

Inputs by: Tamanna Agarwal

Supervising CA: Nitin Sharma

Physical verification of Inventory is necessary when the level of inventory is substantial and depends upon the nature of business inventory. It is required to be done to check the internal control of the management whether any discrepancy exists or not.

*“Physical
verification-
ek safar hi
suhana”*

Is auditor mandatorily liable for performing Physical Verification?

Primarily, it is management's duty to periodically undertake physical inspections of inventory whereas, auditor's responsibility is to express an opinion, whether the financial statements reflect a true and fair view and there is no such requirement of attendance at physical inspection of inventory before commencement of SA – 501 “Audit Evidence-Specific considerations for selected items”.

SA-501 “Audit Evidence-Specific considerations for selected items” came into



effect on April 1, 2010, and it is specifically provided that if the inventory is material to the financial statements, the auditors shall obtain sufficient appropriate audit evidence regarding the existence and condition of inventory by attendance at physical inventory counting, unless impracticable or unforeseen circumstances. In such cases, he may resort to other ways discussed later on. It is management's responsibility to intimate auditor about the date when they are going to carry out physical verification.

1. Auditor's Responsibility as per SA-501 “Audit Evidence- Specific Consideration for Selected Items”:

Goal of SA-501 –Inventory: To check assertions related to physical inventory: Existence, Ownership, Valuation.

- To evaluate managements instruction and procedure for recording and controlling entity's physical verification counting.
- Observe the performance of management's count procedure
- Inspect the inventory.
- Perform the test counts.

2. How an auditor is going to decide the extent of physical verification?

There is no set formula to decide the scope of verification and it may vary from entity to entity. And based on the entity's business and inventory, risk of material misstatement should be decided. Based on the above risk estimation, level of benchmark is set to reach at minimum rate of tolerance.

At the time of execution, depending upon the nature and volume of inventory, sampling based on percentage of quantity or value or 100% verification is performed to detect any errors or fraud which may have impact on value of stock reported in Financial statements. Sampling should be done in accordance with SA-530 "Audit Sampling".

Techniques through which auditor may perform Physical verification

- **External confirmation** is the more reliable technique to get confirmation regarding the existence and condition of goods complying with SA-505 "External Confirmation" in case when inventory is with the third party.
- Auditor may do **ABC Analysis** of the inventory to distinguish fast moving or slow moving items or can perform stratified sampling that would give the idea of entire population of inventory.

Practical Scenarios faced by auditor and how SA-501 deals with them:

1. How an auditor is supposed to deal when inventory is with the third party?

- Obtain confirmation letter from the third party.
- Obtain report from the service auditor to know the Internal control and procedures adopted by the third party.

Example: Suppose company based in Jaipur has sent its inputs for job work to Sikkim. Here, auditor can ask for confirmation from the third party on quantities and condition of goods as per "SA-505-External confirmation".

Alternatively, auditor could also attend the third party's physical inventory counting, if required, through company's authorization.

Example: X Pvt. Ltd. is in export business; part of stock is at the port for long time. In this case, what pops in your mind?

In such situation, auditor may take permission from the Customs authority to perform physical verification at the port, if possible.

If not, he may cross check the export invoices with the document approved by the custom authority.

2. How is an auditor supposed to deal when attendance at physical inventory counting is impracticable?

In some cases, attendance at physical inventory counting may be impracticable. This may be due to factors such as the nature and location of the inventory, for example, where inventory is held in a location that may pose threats to the safety of the auditor.

Instances of unforeseen or impracticable circumstances: -

- Location is not favorable – e.g. Border area
- Pandemic period – e.g. Covid
- Riots at warehouse location

Example: Marvels Ltd. India based company having another foreign branch in Ukraine. Goods were exported to the foreign branch on consignment. At the year end, JK Rolling and Associates, the auditor did physical verification at warehouses located in India but could not proceed for the verification at Ukraine warehouse due to war occurred between the Ukraine & Russia. In this instance, JK Rolling and Associates may perform alternative procedure.

Other alternative procedures which may be performed -

- Auditor can perform physical verification on other date than the financial statement date.
- Use work of another auditor as per SA-600, if inventory is kept at remote location.
- Take Management representation regarding Inventory.

Note: When auditor takes MR, he shall not rely on it without checking the appropriateness of the underlying assumptions and he shall also check whether the amount mentioned in MR is consistent with other evidences and amounts.

Content to be included in MR instances:

- Inventories held by company have been physically verified at the year end.
- Actual physical count\weight\ measurement has been carried out under supervision of appropriate personnel
- All inventories owned by the Company wherever located have been recorded, including goods sent on consignment.

3. When physical count is not possible on Financial Statement date.

Auditor can perform physical counting inventory on other alternative date. For the same procedure, reconciliation should be done from the date of financial statement to counting date and intervening transactions.

4. What if auditor is unable to obtain sufficient and appropriate audit evidence?

If not possible to obtain sufficient & appropriate audit evidence in any circumstances, then auditor should modify his report as per **SA-705 “Modification to the Opinion in the Independent Auditor’s Report”**.

Meaning of sufficient and appropriate audit evidence:

This purely depends upon professional judgement of auditor and has no specific criteria or standards. The auditor should base on his judgment, gather enough evidence, based on which he can prove the authenticity and correctness of the claimed stock quantity.

Instances where auditor can consider evidence as sufficient and appropriate:

1. If auditor is physically present, there and is satisfied with the procedure of physical verification of stock.
2. Weighment slip by external weighing points., timing of weighment, type of goods weighed are correct.
3. In case of huge stock size, suppose 100 crores - 10 items worth 70 crores and 500 items worth 30 crores, while physical verification, only 300 items were checked and found okay.

Case 1: 300 items included 10 items worth 70 crores

Auditor may consider it has sufficient and appropriate audit evidence as he can form an opinion on correctness of stock.

Case 2: 300 items excluded 10 items worth 70 crores

Such physical verification report by management cannot be considered as sufficient and appropriate evidence as it does not include information about high value items, resulting into difficulty in forming opinion.

Role of NFRA in Non-Compliance with

SAs: According to Section 132 of “The Companies Act, 2013”, National Financial Reporting Authority (NFRA) regulates and oversees the quality of service provided by the auditors. If auditor fails to comply with the Standards of Auditing, and failure to invite attention to any material departure

from the generally accepted procedure of audit applicable to the circumstances, this leads to misconduct on account of professional ethics.

According to the case law "*SRBC & Co.LLP v/s NFRA [2022] 141 taxmann.com 497*," SRBC audited ITNL in fiscal year 2017-18. In this case, NFRA stated that there is no documentation to support the audit firms' claim that proper P.V. was performed. The NFRA concludes:

- No evidence of reconciliation between books to physical verification was found.
- No documentation for cut off procedure (i.e. material purchased but not received included, material issued and are in transit excluded).
- No evidence of audit sampling for the inventory maintained at 2 locations : CNTL & KNCEL.
- Date of actual physical verification is not seen recorded, it is unlikely that all the items are tallied with the books as on 31/03/2018, date shown on those statements.
- No supporting was found regarding the SRBC statement that 50 samples on a surprise basis were physically verified.

Conclusion: NFRA concludes that in the absence of any evidence the explanations given by the Audit firm are not acceptable. Hence, report made by the Audit firm under clause(ii) of CARO 2016 is without performing adequate procedures.

- In these circumstances, NFRA has power to impose penalty of not less than of lakh rupees, which may extend to five times the fees received or,
- Debarring the member from accepting an appointment as an auditor or internal auditor for a minimum of six months and a maximum of ten years, as may NFRA decide.

Auditor's Responsibility as per CARO:

Inventory: Auditor's duty is report in CARO in clause(ii) related to any discrepancy of 10% or more found in physical verification of inventory. In case PV is not carried out by the management, auditor shall report it in Clause (ii)(a).

Case-based examples and general FAQ's

1. X Pvt. Ltd. had 20 branches and had stock of around 20-30 lakhs in each branch. How will auditor deal with such situation and carry out physical verification?
 - Auditor may ask for Managements' Representation(MR) on stock for all the branches. Further, to check the authenticity of MR, auditor shall perform sample check on material branches and verify correctness of MR on the basis of sample result. He may also use work of internal auditor in compliance with SA-610 'Using work of Internal Auditor'.
2. Can auditor conduct physical verification through video mode?
 - It is an obvious fact that on-site verification cannot replace virtual verification, although it can be used depending upon how reliably past records of entity has been maintained. Also, the motive is to create maximum possible real time scenario of warehouse at auditor's place. This can be done through live video conferencing and using Go Pro Camera, 360-degree Camera, Uninterrupted internet connection. Live video conferencing is more reliable than pre-recorded video of stock.
3. Can management appoint independent entity to carry out PV and how shall auditor deal with such cases?
 - Management can appoint independent agency\individual and auditor shall use SA-620 "Using work of auditor's expert" during the audit of inventory in order to verify the correctness of inventory.
4. Who can be auditor's representative?
 - Auditor may appoint and send anyone from the audit team on behalf of auditor who have enough competency and knowledge to carry out PV. He may also appoint an expert as per SA-620 'Using work of auditor's expert'
5. Techniques to carry out PV for different nature of stock:
 - Chemicals: - Considering the usage of chemicals in the textile sector for an

instance. Auditor may perform an ABC analysis of the fabric's chemical usage ratio. Assume that three chemicals—grey chemical, caustic soda, and whitening agent are used to dye fabric in the proportion 50:30:20. Instruct the management's personal to weigh grey chemical drums / note down the tagged measurement. Auditor shall be present there during the whole process, record the measurement, and shall verify it with the records. The physical verification of the remaining inventory may be done using a random sampling method.

- Bricks: - Let's say auditor has to attend PV of brick supplier's inventory with quantity of 10 lakh bricks. In this case, he may instruct the management's personal to count the number of bricks that are kept in a row in a lot, then count the number of rows to get the total number of bricks in the lot. Now, ascertain no. of lots present in warehouse. This provides auditors with a reliable estimate for inventory count.

CONCLUSION

Auditor shall be present and carry out physical verification. Also, it may help auditor to detect frauds and errors, which will assist him in forming his opinion about financial statements which is the ultimate objective of auditor.

General procedure which should be followed by office: Auditor or Auditor's Representative should be present during physical verification by management at year-

end, at least for top 10 clients based on value of stock. We can circulate e-mail to larger clients to intimate well in advance for presence of auditor during physical verification of inventory.

Accounting Entries for Actuarial Valuation of Gratuity

Kavita Das

Inputs by: Nandini Gupta

Supervising CA: Bharat Sonkhiya

Ind AS 19 and AS 15, both the standards prescribe the accounting and disclosure of Employee Benefit Expenses incurred by the employer and also mandate the company to conduct the actuarial valuation for retirement benefits.

*“Employment
K Sath Bhi,
Employment
K Baad Bhi”*

The actuarial valuation is carried out by the actuary to estimate the company's potential obligation for future benefit payments.

Actuarial Gain/ Loss is the change in Defined Benefit Obligation due to a change in the assumption of the Actuary. Example- Mortality and Discount Rates etc.

The difference between Ind AS 19 and AS 15 is that; as per Ind AS 19, the actuarial Gain/Loss arising out of actuarial valuation is recognized in the **Statement of Other Comprehensive Income (OCI)**, while as per AS 15 the same is recognized in the **Statement of Profit and Loss**.



Ind AS 19 does not mandate entities to involve a qualified actuary to conduct the actuarial valuation, while AS 15 requires that an entity shall conduct actuarial valuation through a qualified actuary.

In this article, we will discuss the accounting entries of Gratuity as per Ind AS 19.

There are mainly four types of Employee Benefits:

- Short Term Benefits
- Long-Term Benefits
- Termination Benefits
- Post-Employment

Let's begin a discussion about Post-Employment Benefits.

The Post-Employment benefits include:

- **Defined Contribution Plans:** In this plan, an entity pays fixed contributions into a separate entity (a fund) and is under no constructive obligation to make additional contributions, in case of a shortfall, if any, at the time of payment benefits to the employee and all risk will fall on

the employee. Example- Provident Fund.

- **Defined Benefit Plans:** In this plan, the obligation of the entity is to provide agreed benefits to the employees and the entity has the constructive obligation to make an additional contribution, in case of a shortfall, if any, and all risk will fall on the entity. Example- Gratuity.

Now, let's understand the terms that will be used in the accounting of the actuarial valuation of gratuity with an example.

Suppose A Ltd. has promised an employee to pay 1% of the last drawn salary on retirement after five years of service. The salary of the employee is 10,000 in 1st year and it is estimated that the company will have a 10% of increment in its salary every year. It means the last drawn salary will be-

Year End	Salary Before Increment	10% Increment	Salary After Increment
1	10000	-	10000
2	10000	1000	11000
3	11000	1100	12100
4	12100	1210	13310
5	13310	1331	14641

As calculated Last Drawn Salary is 14641, so the gratuity that will be payable is 146 i.e. 1% of 14641. The total defined benefit obligation that will be payable is $146 \times 5 \text{ years} = 730$.

The total liability of the company is 730, now the question arises that whether the whole 730 will be recorded at the end of 1st year or not. So the answer is no, the 730 will

be attributed to 5 years each on a Discounted basis since the liability for the gratuity will arise after 5 years so the same will be recorded on the present value and the company records a liability on an accrual basis every year and follows going concern assumptions. Let the Present value factor be 10%.

Year End	Gross Annual Benefits	Present Value Factor @10% each	Present Value of Current Service Cost
1	146	.683	100
2	146	.751	110
3	146	.826	121
4	146	.909	133
5	146	1	146
Total			610

Now, the current service cost is the present value of benefit attributed to each year of service.

Year End	Opening Balance of defined benefit obligation	Interest 10% (a)	Current Service Cost (b)	Closing Balance of defined benefit obligation (c)=(a)+(b)
1	-	-	100	100
2	100	10	110	220
3	220	22	121	363
4	363	36	133	532
5	532	53	146	731
Total		121	610	610+121=731

Basically, defined benefit obligation has arrived from interest cost plus current service cost. Here a difference of 1 Rs. may arise due to Rounding Off .

The interest cost is the change in defined benefit obligation due to the passage of time. In simple terms, for unbinding the current service cost, we charge interest to the opening balance of the current service cost.

To meet the obligation the company will make investments.

Plan Assets- Plan assets are earmarked investments that can be used primarily for settling defined benefit obligations.

It comprises;

- a) Assets held by an entity (a fund) that is legally separate from reporting entity and exists solely to pay or fund employee benefits, and;
- b) Qualifying insurance policy.

As per Ind AS 19, a qualifying insurance policy is the insurance policy, where the entity pays an insurance premium to the insurance company to fund post-employment benefit obligation, the payment of the insurance premium accounts for the insurance policy as a plan asset, and the entity has the obligation to pay the employee benefits directly when they fall due or to contribute a further amount, in case of the shortfall; if any.

Here we can say that, Defined Benefit Plans may be funded and non-funded. In case the same is funded then the third party will manage the funds and the entity will compensate for the shortfalls if any.

However, if it is non-funded then the entity will manage the investment for payment of benefits.

However, if the entity does not have the constructive obligation to pay the shortfall if any then the same will be treated as a Defined Contribution Plan, and payment of premium will be treated as settlement of obligation and the entry will be the same as in case of a contribution in provident fund.

Now, let us understand accounting entries in different situations.

Situation 1. A ltd. is a non-funded entity which means the company does not have a third party to manage the funds i.e. the Plan Assets of the company is Nil.

The table given below is showing changes in the Present Value of Obligations:

Period	Rs.
Present value of the obligation at the beginning of the period	1000
Add-Interest cost	50
Add-Current service cost	100
Less-Benefits paid	(10)
Add-Actuarial loss	20
Present value of the obligation at the end of the period	1160

Accounting entries are as follows:

Sr. No.	Particulars	Debit	Credit
1.	Interest Expense A/c Dr. To Provision For Gratuity A/c (Interest expense has been calculated to unbind the provision for gratuity since the provisional amount was calculated on a discounted basis.)	50	50
2.	Profit & Loss A/c Dr. To Interest Expense A/c (The interest cost is then charged to the Profit and Loss A/c)	50	50
3.	Current Service Cost A/c Dr. To Provision For Gratuity A/c (Being current service cost i.e. present value of benefit attributed to each year transferred to Provision for gratuity A/c)	100	100
4.	Profit & Loss A/c Dr. To Current Service Cost A/c (The current service cost is then charged to Profit & Loss A/c)	100	100
5.	Provision For Gratuity A/c Dr. To Bank A/c (Being benefits paid to employees at the time of their retirement.)	10	10
6.	Actuarial Loss A/c Dr. To Provision for Gratuity A/c (Actuarial Loss that arises due to increase in liability of the company will be credited in the provision for gratuity A/c)	20	20
7.	OCI A/c Dr. To Actuarial Loss A/c (As discussed the actuarial loss will be transferred to OCI A/c instead of P&L A/c)	20	20

Situation 2: B ltd. is a funded company which means the company has a third party to manage the funds. The third-party can be either trust or a LIC.

Let's assume that the company pays the insurance premium to the insurance company under a contract, that at the time of retirement of the employees, the shortfall of the funds, if any, will be paid by the company.

Now, in this case, the company will record the obligation and plan assets in its books since ultimately the benefits from the employees are derived by the company, and the constructive obligation to pay the shortfall is on the company, not on the LIC.

Table Showing Changes in Present Value of Obligations:

Period	Rs.
Present value of the obligation at the beginning of the period	1000
Add-Interest cost	50
Add-Current service cost	100
Add-Past Service Cost	-
Less-Benefits paid	(10)
Less-Actuarial gain	(30)
Present value of the obligation at the end of the period	1,110

Table showing changes in the Fair Value of Plan Assets:

Period	Rs.
The Fair value of plan assets at the beginning of the period	500
Add-Expected return on plan assets	10
Add-Contributions	50
Less-Benefits paid	(10)
Less-Actuarial gain/(loss) on plan assets	(20)
Fair Value of Plan Asset at the end of the Period	530

The Accounting Entries are as follows:

Sr. No.	Particulars	Debit	Credit
1.	Interest Expense A/c Dr. To Provision For Gratuity A/c (Being provision for gratuity A/c increased due to Interest Expense)	50	50
2.	Current Service Cost A/c Dr. To Provision For Gratuity A/c (Provision for gratuity increases due to current service cost)	100	100
3.	Profit & Loss A/c Dr To Current Service Cost A/c (Current Service Cost Charged to Profit and Loss A/c)	100	100

4.	Provision For Gratuity A/c Dr. To Actuarial Gain A/c (Actuarial gain arising due to a decrease in liability will result in decrement of the provision for gratuity)	30	30
5.	Provision For Gratuity A/c Dr. To Plan Assets A/c (Being Benefits Paid to employees out of Plan Assets)	10	10
6.	Plan Assets A/c Dr To Interest Income A/c (Interest Income is basically the income that arises through the fund given to another entity, so income arising out of Plan Assets will increase the Plan Assets.)	10	10
7.	Plan Asset A/c Dr To Bank A/c (Contribution made by the company in Plan Assets will increase the Plan Assets)	50	50
8.	Actuarial Loss A/c Dr. To Plan Asset A/c (Actuarial Loss arising due to decrease in value of Plan assets i.e. changes in fair value of plan assets.)	20	20
9.	Profit & Loss A/c Dr To Interest Expense A/c (Being net Interest cost charged to Profit & Loss A/c i.e. 50-10)	40	40
10.	Actuarial Gain A/c Dr. To OCI A/c (Being net Actuarial Gain transferred to OCI A/c i.e 30-20)	10	10

Note- In this situation company has Plan Assets of Rs. 530 against a defined benefit obligation of Rs. 1,110, which means the rest portion of a defined benefit obligation of Rs. 580 is unfunded. To bear the same, the company will have to manage its own investments.

Situation 3- In continuation to situation 2, in some cases, the entity may transfer its entire obligation to the Insurance company and not retain any legal obligation to pay the employee benefits directly when they fall due. Now, if the Company settles its liability by transferring its Defined Benefit Obligation to LIC, then an entry for settlement will be-

Particulars	Rs.
Defined Benefit Obligation A/c Dr.	1,110
To Plan Assets A/c	530
To Profit & Loss A/c	580

As per Ind AS 19 Recognition in Financials are as follows;

- **Recognition in Profit & Loss A/c**

In **Profit and Loss A/c**, the interest cost on Defined Benefit Obligation and Interest Income on Plan Assets will be shown on a net basis.

All other costs such as current service costs, past service costs, and gain/loss arising on settlement shall be shown separately.

- **Recognition in OCI Statement**

In the OCI statement, the actuarial gain/loss on Defined Benefit Obligation and on Plan Assets will be shown on a net basis.

- **Recognition in Balance Sheet**

In the Balance Sheet, we will disclose Defined Benefit Obligations and Plan Assets on a net basis.

- **Recognition in Notes to Accounts**

In notes to Accounts, reconciliation statements for the present value of defined benefit obligation, plan assets, and net defined liability/asset shall be provided between the opening and closing balance.

Note- This standard requires an entity to recognize employee benefit cost but does not specify how to present it in Financials. An entity presents it as per Ind As 1

Now, let's understand the presentation in financials in the above situation.

In the case of Situation 1

Balance Sheet as at 31st March 20XX

Particulars		Notes	₹
A	Equity and Liability		
1	Shareholder's Funds		
	Share Capital		XXX
	Reserve and Surplus		XXX
2	Non-Current Liabilities		
	Long Term Provisions	1	1160
3	Current Liabilities		XXX
		Total	XXX
B	Assets		
1	Non-Current Assets		XXX
2	Current Assets		XXX
		Total	XXX

Note- If the liability to pay arises within 12 months then the same will be classified as short-term provisions under Current Liabilities.

Note-1 Long-Term Provision

Particulars	Amount
Provision for Gratuity	1,160

Statement of profit and loss account for the year ended 31st march 20XX

Particulars		Notes	₹
I	Revenue From Operation		XXX
II	Other Income		XXX
III	Total Income (I+II)		XXX
IV	Expenses:		XXX
	Cost of Raw Material		XXX
	Changes In Inventories		XXX
	Employee Benefit Expenses		XXX
	Depreciation		XXX
	Other Expenses	2	150
	Total Expenses		XXX
V	Profit Before Tax		XXX
	Current Year Tax		XXX
	Deferred Tax		XXX
VI	Profit After Tax		XXX
VII	Other Comprehensive Income		
	Gain/(Loss) that will not be reclassified to profit or loss (Net of Income Tax)	3	(20)
VIII	Total Other Comprehensive Income		(20)
IX	Total Comprehensive Income for the period (VII+VIII)		XXX

Note-2 Other Expenses

Particulars	Amount
Interest Cost	50
Current Service Cost	100

Note -3 Other Comprehensive Income

Particulars	Amount
Actuarial Loss	(20)

In the case of Situation 2

Balance Sheet as at 31st March 20XX

Particulars		Notes	₹
A	Equity and Liability		
1	Shareholder's Funds		
	Share Capital		XXX
	Reserve and Surplus		XXX
2	Non-Current Liabilities		
	Long Term Provisions	1	580
3	Current Liabilities		XXX
		Total	XXX
B	Assets		
1	Non-Current Assets		XXX
2	Current Assets		XXX
		Total	XXX

Statement of profit and loss account for the year ended 31st march 20XX

Particulars		Notes	₹
I	Revenue From Operation		XXX
II	Other Income		XXX
III	Total Income (I+II)		XXX
IV	Expenses:		XXX
	Cost of Raw Material		XXX
	Changes In Inventories		XXX
	Employee Benefit Expenses		XXX
	Depreciation		XXX
	Other Expenses	2	140
	Total Expenses		XXX
V	Profit Before Tax		XXX
	Current Year Tax		XXX
	Deferred Tax		XXX
VI	Profit After Tax		XXX
VII	Other Comprehensive Income		
	Gain/(Loss) that will not be reclassified to profit or loss (Net of Income Tax)	3	10
VIII	Total Other Comprehensive Income		10
IX	Total Comprehensive Income for the period (VII+VIII)		XXX

Note- 1 Long-Term Provision

Particulars	PVDBO	Plan Asset	Net Balance
-------------	-------	------------	-------------

Opening Bal.	1000	500	500
Interest Cost/Income	50	10	40
Current Service Cost	100	-	100
Settlement Gain/Loss	-	-	-
Benefits Paid	(10)	(10)	0
Contribution Paid	-	50	(50)
Actuarial Gain/Loss	(30)	(20)	(10)
Closing Bal.	1,110	530	580

Particulars	Amount
Net Defined Benefit Liability (Provision for Gratuity - Plan assets) (1,110-530)	580

Note-2 Other Expenses

Particulars	Amount
Interest Cost (Interest Expense-Interest Income) (50-10)	40
Current Service Cost	100

Note-3 Other Comprehensive Income

Particulars	Amount
Actuarial Gain	10

In the case of Situation 3

Since the company has settled its Obligation, it will only show the gain/ loss that arose from the settlement of obligation in the statement of Profit and Loss.

Particulars	Amount
Gain on Settlement	580

The above disclosures are required in case the entity is having plan assets.

Conclusion- It can be concluded, if the actuarial valuation of the entity is non-funded and it manages its own investments for payment of defined benefit obligations, then, in that case, the company will only record its defined benefit obligation in its books and the investments will be shown separately.

If the actuarial valuation of the entity is funded, which means a third party will manage the fund, the entity has the constructive liability to pay the employees, in case of a shortfall, if any, then the entity will record the defined benefit obligation and the plan assets in its books on a net basis.

The third party only manages the fund, so ultimately the plan assets belong to the company, and not to the third party.

Note- Now, here one question may arise whether the interest income is exempt or not; and whether deduction of interest expense is allowed or disallowed.

So the answer is, if the company has interest income then the same will be exempt from tax and if the company has interest expenses then the same will be disallowed, and it will be allowed on Payment Basis.

Shifting of ownership under AS- For revenue recognition- FOB Sales and CIF Sales

Khushi Agarwal

Inputs by: Nandini Bhargava

Supervising CA: Nitin Sharma

Generating revenue is yet another eminent task an entity has to face to ascertain its continuous expansion. Sales is a basic and

*Control Kab Hua
Paar,
FOB aur CIF ki
Naav Mein
Sawaar?*

crucial part for an entity's growth. The sales of an entity determine its size.

Revenue is the total amount of income generated by the sale of goods or services related to the company's primary operations.

There are certain incoterms (International Commercial Terms) for determining the stage at which sales are booked or revenue is recognized in the case of exports. Two such terms are:

1. Cost, Insurance, and Freight (CIF)
2. Free On Board (FOB)

CIF stands for Cost, Insurance, and Freight. These are the charges a seller pays to cover the costs, insurance, and freight of a buyer's order when it's in



transit. Only commodities carried by water, sea, or ocean are subject to CIF.

FOB stands for Free on Board. This includes the charges a seller pays till the goods are loaded on board.

There are certain conditions to be fulfilled for an entity to recognize any amount as its revenue. These conditions broadly state the transfer of risk and control of the sold product in the hands of the buyer for an amount to be recognized as revenue.

If we look into *IND AS 115: Revenue from Contracts with Customers* in respect of transfer of control, it talks about:

- Identification of contract
- Identification of performance obligation
- Determination of Transaction Price
- Allocation of a transaction to a performance obligation
- **Recognition of revenue as and when the performance obligation is satisfied.**

As per *AS 9: Revenue Recognition*, the transfer of property in goods generally means the transfer of significant risks and rewards of ownership to the buyer.

Revenue from service transactions is usually recognized when the service is performed.

In case of advance received from a customer against sales, the same will be treated as a liability till the time performance obligation has not been satisfied by the entity.

In both AS-9 and Ind AS-115, Revenue is recognized at the time of performance of an obligation or when the right to receive has been established or say transfer of control.

The transfer of control under the terms of FOB and CIF is as:

FOB means the stage at which the goods are loaded on the ship and a bill of lading is acquired as proof of shipment. It includes Ex-Factory Price + Local Freight + Local Taxes + Loading Charges + Export duty cess.

Control of the promised goods under FOB is transferred after the goods are on-boarded on the ship.

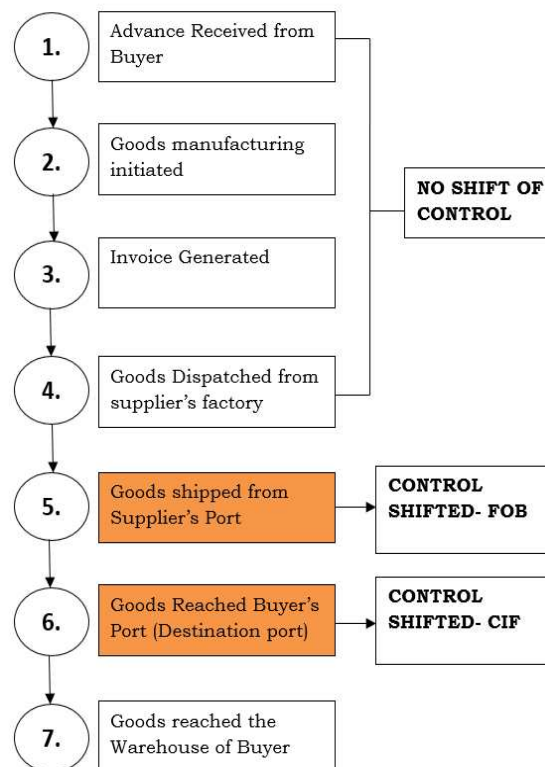
CIF (Cost Insurance Freight) The seller is responsible for the costs incurred from the seller's place to the customer's port. Such costs include insurance of the goods shipped and the freight charges relating to the shipment of the same.

Control under CIF is transferred after goods are off-loaded at the port of destination.

According to AS 9: Revenue Recognition and IND AS 115: Revenue from Contracts with Customers, it can be said that the point

of transfer of ownership under both the standards is same.

It has been illustrated through the following chart: -



While recognizing an amount as revenue, often confusion arises in respect of the point at which an entity can recognize the amount as revenue. To determine this stage of recognition, whether it be domestic sales or exports, the entity must check the **agreed terms and conditions in the contract** so made with the buyer to ensure the point when performance obligation is satisfied.

Transfer of control of the good or service promised to the buyer will be considered completed as per the agreed terms in the contract.

The recognition of revenue under FOB and CIF, specifically is not mentioned in the accounting policies of entities. Rather, it states that an entity can book its revenue as and when the control is transferred to the customers and there are no unfulfilled obligations.

Accounting policies of the following have been taken for reference:

1. Tata Motors Limited
2. Adani Enterprises Limited

Now, with the help of some practical scenarios, let's understand the transfer of goods and services and the recognition of revenue in respect of the same.

Case 1:

Sales as per CIF incoterm but revenue is being on departure of goods from the seller's port:

Vyapaar Limited is involved in the business of exporting granite to its customers based in U.S.

The company was following the practice of booking the CIF sales at the stage when the order departs from the seller's port rather than at the stage of off-loading the order at the U.S. port.

In the financial year 2021-22, such default in sales recognition came to notice by the auditor of Vyapaar Limited and it was advised by the auditor to reverse its sales of Rs. 3.02 crores and defer it to F.Y. 22-23 as it factually was related to the same since the order was yet to be off-loaded at the U.S.

port despite which the company had booked the sales of.

ISSUE RELATED TO REVENUE RECOGNITION AT THE END OF FINANCIAL YEAR:

The issue of transfer of control and recognition of revenue in respect of the same becomes more critical at the year end, particularly when date of invoice and date of shipment (in case of FOB) or unloading (in case of CIF) fall in different financial years.

This issue has been dealt with in the following illustration:

I. Illustration:

Sales as per FOB incoterm but revenue is being booked on date of invoice generation instead of date of shipping:

Berozgar Limited is involved in the business of manufacturing and exporting apparels. The company has recognized its revenue of Rs.1,68,910.70 on the invoice generation i.e., 16/03/2022.

But as per revenue recognition concept, revenue should be recognized when the ultimate risks and rewards are transferred to the buyer (i.e., the shipping date) on 11/05/2022.

Now the issue arose on 31st March, 2022 that as per the company practice, the revenue related to the following bills were also recognized during the current year:

S. No.	Invoice No.	Invoice Date	Dispatch Dte	Value	Shipping Date/ Bill of lading
1	59/2021-22	16/03/2022	17/03/2022	1,68,910.70	11/05/2022
2	62/2021-22	26/03/2022	26/03/2022	19,02,012.64	19/04/2022
3	63/2021-22	26/03/2022	27/03/2022	3,88,039.50	08/04/2022
4	64/2021-22	27/03/2022	29/03/2022	32,03,535.39	06/05/2022
5	65/2021-22	29/03/2022	30/03/2022	65,260.80	04/04/2022
6	66/2021-22	27/03/2022	28/03/2022	11,32,284.45	06/05/2022
7	67/2021-22	27/03/2022	28/03/2022	7,08,999.88	07/05/2022
8	68/2021-22	27/03/2022	29/03/2022	5,17,588.31	02/05/2022
9	69/2021-22	28/03/2022	31/03/2022	6,20,278.07	17/05/2022
10	70/2021-22	28/03/2022	30/03/2022	38,479.50	29/04/2022
				87,45,389.24	

However, since the shipping bills relate to next financial year, the correct treatment should be to recognize the revenue next year when there is actual transfer of risks from seller to buyer when bill of lading is made.

GST Aspect:

Since the GST amount in respect of the sales as to be booked on the date of invoice but the sales are being booked on the shipping date/ date of bill of lading. Since there is a change in financial year between the date of invoice and shipping date/ date of bill off-loading, a difference in GST reconciliation of both the periods will be seen but this difference in reconciliation in GST will not impact the date of booking of sales.

DEFERMENT OF RIGHT TO RECEIVE PAYMENT DUE TO AGREEMENT BETWEEN BUYER AND SELLER.

For instance, at a normal circumstance, sale on CIF basis is booked at the time of unloading of goods at the buyer's port. However, if the agreement requires the seller to deliver the goods to the buyer's

warehouse, the revenue will be booked on unloading of goods at the buyer's warehouse and the seller's right to receive payment will defer and sales will be booked accordingly.

NOW, IN CASE OF GOODS LOST IN TRANSIT DURING SHIPMENT:

Following questions might arise:

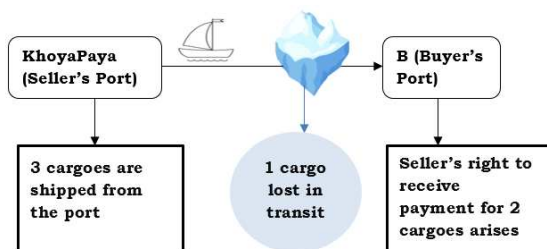
- What happens when goods are lost in transit?
- Who will bear the risk?
- How will be the amount received shown in books of accounts?



Mainly, the person who will be bearing the risk of the shipment will be the one to take insurance on the same and will be liable to receive the insurance claim in case of any loss/ damage.

Further, all these questions will be answered by this illustrative.

KhoyaPaya Limited received a contract of exporting clothes to the customer in U.S. on incoterm CIF. This order on preparation was loaded in 3 cargoes and was expected to reach the destination port in a time span of 40 days approximately.



specified, sales can be booked at a later stage when transfer of control/ right to receive is established.

At the time of negotiation with the buyer, it was agreed that KhoyaPaya Limited will deliver the rest goods and the insurance claim of the shipment will be received by KhoyaPaya Limited, since the expense of the same was incurred by them and will be shown as an indirect income.

Though part goods have been lost in transit, this will not affect the seller's right to receive payment for the 2 cargoes reached. The transfer of ownership of these 2 cargoes will occur as soon as they reach the buyer's port.

CONCLUSION:

In case of FOB Sales, control of the promised goods is transferred after goods are on- boarded on the ship so the revenue is to be booked on the date of on boarding of such goods.

In case of CIF Sales, control is transferred after goods are off- loaded at the port of destination so the revenue is to be booked on the date when such goods have reached the destination port.

Furthermore, in ascertaining the stage of revenue recognition, we also have to analyse the agreed terms and conditions in the contract with a customer in which if

Audit of Contract Labour

Kunal Jha

Inputs by: Ayushi Todi

Supervising CA: Jitendra Kumar

Before starting the audit of any organization, the auditor needs to

It takes less time to do things right, than to explain, why you did it wrong.

understand and get knowledge of its business, environment, processes, etc. Therefore, to begin with, we will understand one of the audit area i.e., **Contract labour.**

In simple words, contract labour refers to those persons who are hired in an organization on contractual terms, through a contractor. The organization hires the contractor, who further recruits and supervises the labour.

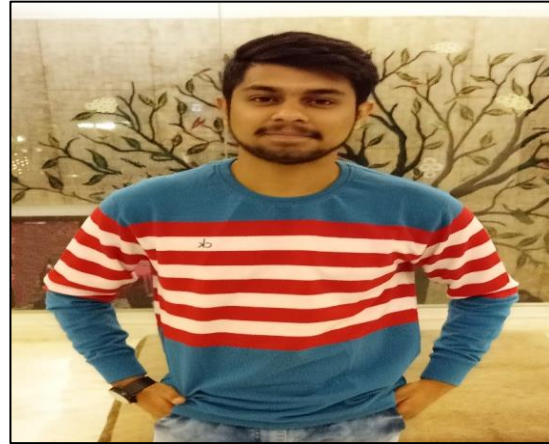
From an organization's point of view, there are some advantages and drawbacks of hiring contract labour.

Advantages:

- **Flexibility-** Hiring of contract labour is comparatively easy and flexible than hiring of permanent workers.
- **Cost Benefit-** More cost is expected to incurred in hiring process of permanent workers. For e.g. training cost, allowances cost, etc.

Drawbacks:

- **Quality of work-** Work performed by contract labour may hamper the effectiveness and quality of the output.
- **Lack of Control-** Unlike permanent employees, the organization cannot directly supervise or control the contract workers.



Loyalty & Belongingness

One of the biggest factor which an organization considers before hiring contract labour over regular workers is sense of belongingness and loyalty. It plays an important role in the effectiveness of the work performed.

When a person feels that he is an integral part of the organisation, he gives his maximum input for the best results.

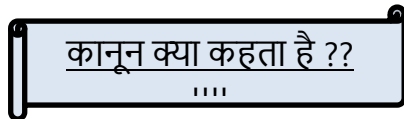
A permanent worker can have a greater sense of loyalty and belongingness than a contract labour. So, the organization should ensure the loyalty and belongingness from the contract labour as well, so that the output is not hampered. Although it is a very challenging task, but nowadays through different welfare activities, especially labour law compliance, an organisation can manage the same.

Over a period, it was found that there are various problems faced by contract labour related to their economic condition, job security, inadequate working conditions, exploitation, etc. So, in order to protect the interest and ensure the effective functioning of contract labour,

the **Contract Labour (Regulation & Abolition) Act, 1970** came into existence.

As of now, we have got introductory knowledge about contract labour; let's look into the auditing aspects of the same.

➤ **The Contract Labour (Regulation & Abolition) Act, 1970:**



Definition of Contract Labour: As per Section 2 of Act “a workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.”

- **Applicability:** This act is applicable on:

Establishment- Every establishment in which 20 or more workmen are employed or were employed on any given day of the preceding 12 months as contract labour.

Contractor- Who Employs or who employed on any day of the preceding 12 months, 20 or more workmen.

- **Maintenance of Register:** The principal employer should maintain the register and keep a record of the contractors.

- **Filing of Annual Returns:**

- The principal employer should file the return on annual basis (accounting year), by 15th February of the succeeding year.
- The contractor should file the return on half yearly basis within 30 days from the end of half year (accounting year).

- **Welfare and health of Contract Labour:** The organization had to ensure that the following facilities are provided to the contract labour:

- Canteen
- Restrooms
- Washrooms
- Washing Facilities
- First Aid Facilities

The auditor should ensure whether the organization has complied with all the provisions of the Act or not.

For example – Mr. Aatmaram Tukaram Bhide was appointed as the auditor of Gada Electronics Pvt. Ltd. He found that, there were 10 contractors appointed but only 2 were listed in the register maintained. Also, 2 contractors were found who do not hold license under the act.

➤ **Categorization of Labour:**

Out of various ways of categorisation, one is on the basis of skills, which is elucidated herewith:

• Labourers who are trained, experienced and able to perform specialised tasks and provide high value output to the organization.

Skilled



• Labourers who possess basic knowledge, skills, and training. They are not much specialised but are able to perform more complex tasks than unskilled labour.

Semi skilled



• Labourers which are associated with a limited skill set and minimal economic value for work performed.

Unskilled



The economic benefit received by the organization from the labour varies according to their skill level. Therefore, the payment made to them is also different. The auditor should check the payment mechanism of the organization and discuss the procedure of payment with the personnel who authorize the payment of wages.

For the purpose of control, the principal employer should ensure that the disbursement of wages is done in the presence of authorized personnel.

Mr. Bhide suggested the organization:

SUGGESTION:

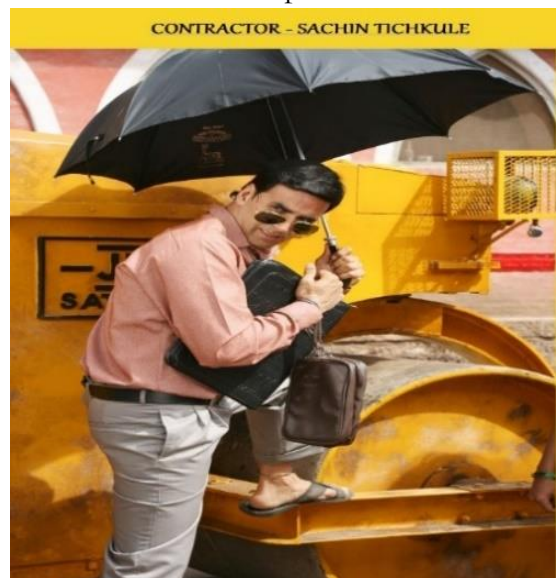
Instead of paying wages on the basis of skills, the organization can adopt Piece-rate wage system. No of units produced are directly linked to wages, which can increase productivity and output. Also, it would be a more just and equitable disbursement of wages.



➤ **Selection of Contractor:**

Selecting the best out of many alternatives always leads to positive results. It can be in terms of higher efficiency, cost saving, quality of service, etc.

The same is applicable in the case of contract labour. The organization should be very diligent in selecting the best available contractor and restrain from appointing contractors like the gentleman in the picture below.



➤ **Terms of Agreement with contractor:**

The terms of the agreement between the contractor and organization should be checked by the auditor to ensure the validity and reasonableness of the same. The agreement should be inclusive of the following:

- The work delegated, period of hire, number of workers and number of hours.
- Registration of the organization, licensing of the contractor and responsibilities of both parties.
- Payment procedure and any other relevant details.

If any inappropriate clause is found in the agreement, the auditor should advise the organization to amend the same.

For example – It was written in the agreement that the contractor will issue the invoice by the 7th day of the succeeding month, but Mr. Bhide observed that the invoice was not received by the company within the time frame.

➤ **Correctness of invoice raised by the contractor:**

The invoice raised by the contractor should be checked accurately for correctness. Basis of every payment should be determined. Other points to be considered are as follows:

- No. of days/hours worked – date-wise,
- No. of workers hired and their wage rate,
- PF and ESI details,
- GST charged,
- Signature of the contractor.

➤ **Compliance with Minimum Wages Act, 1948:**

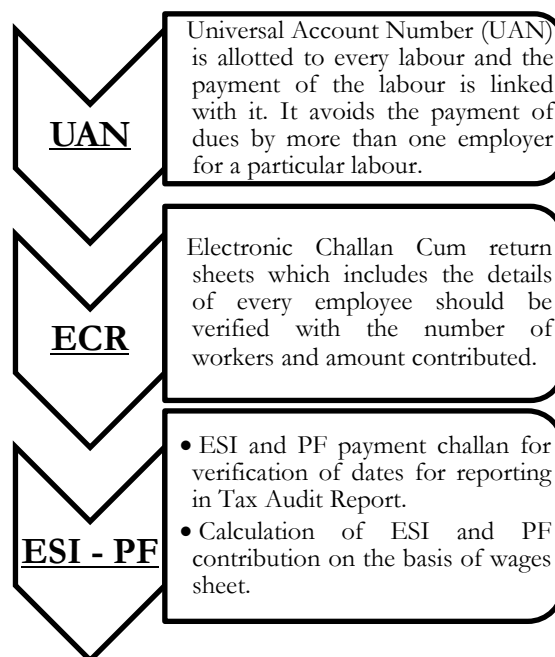
The auditor should also check compliance with the Minimum Wages Act, 1948. The payment of wages should be disbursed by the 7th day of the succeeding month.

➤ **ESI And PF:**

The wages of contract labour are also liable for the deduction of ESI and PF. The primary responsibility for payment of ESI and PF contributions of the contract workers lies with the contractor himself. But, if the dues are not paid by him, then the ultimate responsibility for the employer's contribution of ESI and PF is of the organization only.

Therefore, the organization must keep an eagle's eye watch on the contractor whether ESI – PF contributions have been made or not.

On the part of the auditor, the following points should be ensured w.r.t. payment of the statutory dues:



➤ **Payment of Bonus:**

The Payment of Bonus Act, 1965 provides for a statutory right to employees to claim their share in the profits of the organization. It provides for payment of bonus to persons employed in private sector factories, employing 20 or more persons. The criteria are as under:

- Section 8 of the Act provides that any employee who has worked for 30 days or more in a given year shall be entitled to get bonus from the employer.
- A minimum bonus of 8.33% and the maximum is 20% of wages is payable.
- Bonus is payable within 8 months from the close of the accounting year.

- Payable to all employees whose wages do not exceed Rs. 21,000 per month.
- If employee's wages equal to or more than Rs. 7,000 or the minimum wages fixed by the Government then the bonus is paid as per employee's wages.
- The contract labour is entitled to get bonus from the profits of the organization in which labour had worked.
- If the particular worker had worked in different organizations for a specific period in an accounting year, so the worker will get bonus from the profits of all those organizations, proportionately.

For e.g. If contractor had assigned his labour for 100 days each in 3 different companies, so that labour is entitled to receive bonus from the 3 companies, proportionately for 100 days.

The primary responsibility to pay bonus falls upon the contractor himself. However, if bonus is not paid by him, then the ultimate responsibility for paying bonus is of the organization only.

It is pertinent to note that liability to pay bonus is existing in the hands of the principal employer and the same should be checked during the course of audit.

➤ **Compliance with TDS:**

TDS under Section 194C shall be deducted on payment made to the contractor for carrying out the contract services (including the supply of labour).

The auditor should ensure that the organization has deducted and deposited TDS on the transactions on timely basis.

For example – In the audit of Gada Electronics Pvt. Ltd., Mr. Bhide found

and reported 5 cases of short deduction of TDS under section 194C.

➤ **Evaluation of work performed by the Contractor:**

The performance of the contractor should be regularly monitored and evaluated. It should be compared with the best practice prevailing in the market. The auditor should check for any wrong/ fraudulent practices followed by the contractor and any other relevant aspects.

➤ **Attendance System:**

- To ensure effective and correct payment of wages, a proper attendance system should be implemented as a part of internal control.
- The auditor should observe the attendance mechanism followed by the organization and its effectiveness. He should recommend the organization to use biometric or face recognition in order to decrease manual work and irregularities, if it is not implemented by the organization.
- The auditor should cross verify the payment made with the attendance record and any deviation found must be reported.

For example – While analyzing the attendance register, Mr. Bhide observed that there are no entries made on a particular day because the person responsible for the attendance was not

Contractor	Rate	Limit
Individual/HUF	1%	Rs 30,000 – Single Transaction
Other than Individual/HUF	2%	Rs 1,00,000 – Aggregate transactions in F.Y.

present on that day. This shows the weakness of internal control of the company.

➤ **Physical Verification:**

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!!!!

Physical verification of the contract labour can describe the effectiveness of internal control of the organization, related to the attendance, maintenance of records and several other aspects. But physically verifying the labour can be a challenge for the auditor.

First of all, if there are both types of labour i.e., contract labour and regular (permanent) workers, it is difficult to differentiate if no proper identification mechanism is adopted by organization., but it can be sorted out in the following manner:



SUGGESTION:

1. *Different dress code can be assigned to permanent workers and contract workers, so that they are easily identifiable.*
2. *Identity card method can also be adopted for differentiation.*

Second, if labour is working in different units of the organization, and that too in different shifts, physical verification can be conducted if attendance is verified at entry gate at the beginning and ending of the shift, so that all workers are present at same place on same time and discrepancies can be reported.

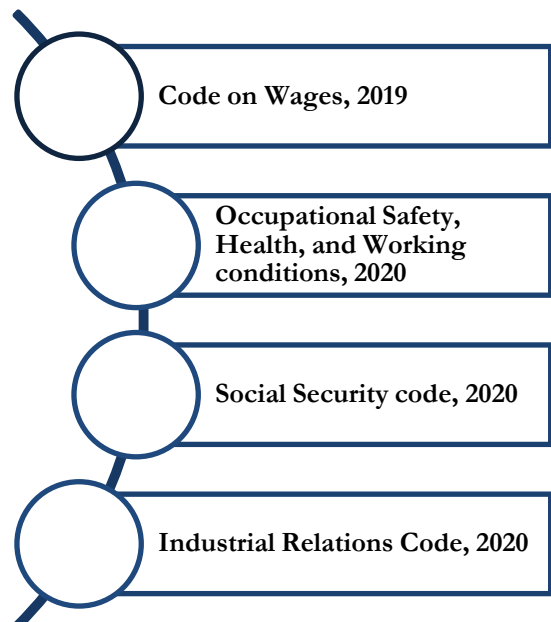
➤ **LABOUR CODES:**

आगे आगे देखो होता है क्या !!!!

We have studied about the existing legislation related to labour, now let's see what lies in store for them in the future.

Considering the need to standardise the working of labour, the Ministry of Labour and Employment has taken certain initiatives towards that direction.

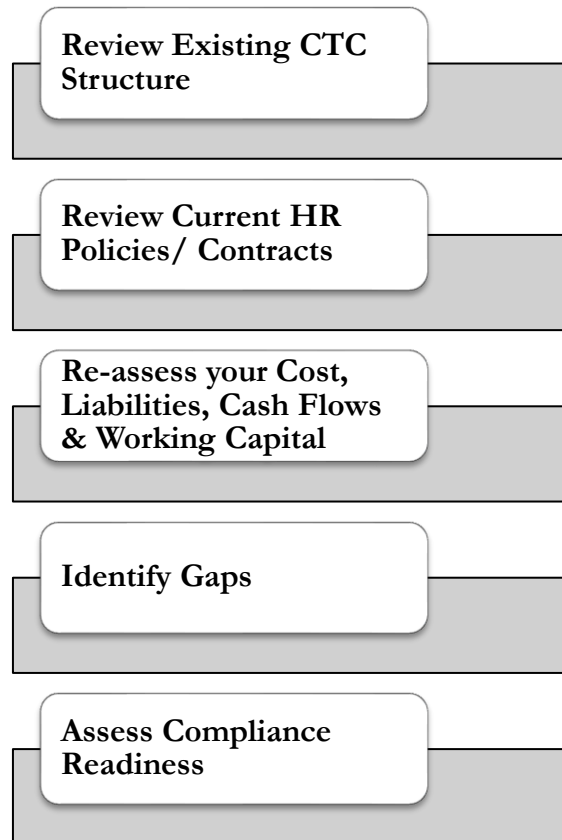
With the object of uniformity, w.r.t. existing laws related to labourers/ workers in India, the central government had enacted 4 Labour and Industrial codes by amalgamating 29 different acts under current labour law.



Relevant changes through Labour Codes- Impact on compliance towards contract labour				
Sr. No	Criteria	Existing Law	Proposed Law (Labour Code)	Impact Analysis
1	Definition of Wages	12 different definitions of Wages which majorly includes Basic Wages + DA + Fixed Allowance	Include: Basic Pay + DA + Retaining Allowance Exclude: Bonus, House Accommodation, Contribution to PF, EPS and Interest thereon, HRA, Gratuity, Overtime, Retrenchment Compensation, Other retirement benefits, Commission and Remuneration payable under any award or settlement.	<p>As discussed above, that contract labour is also as good as permanent employees due to concept of principal employer. New wage code is equally applicable to contract labour.</p> <p>It is expected that there will be increase in wage rate due to introduction of floor wage in India to maintain uniformity.</p>
2	Quantum of wages	No specific Criteria	50% or more of the total remuneration paid or payable.	<p>It will tantamount to increase in significant cost to the organization in form of increase payment of wages to contract labours and also in form of increased liability in form of their retirement benefits like PF, ESI, Gratuity etc.</p>
3	Concept of Minimum Wages	Each State can decide its own wages.	<p>New concept of floor wages introduced, which will be decided by central government.</p> <p>State govt had to ensure minimum wages not below than the floor wages.</p>	
4	Time Limit for payment of wages	Applicable on employees drawing wages up to Rs. 24,000 P.M.	<u>Pay Day as per new code:</u> 1. Daily Wages: End of shift 2. Weekly Basis: Last working day of week 3. Fortnightly basis: 2 days from the end of the fortnight 4. Monthly Basis: 7 days from the end of month 5. Wages upon termination: 2 working days.	In existing laws, you can make payment of wages whenever organization wants but now organization has to manage funds in such a way to meet requirement of laws to make payment to contract labour.

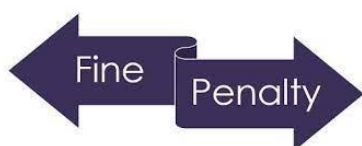
5	Wage Slip	No specific Criteria	Every employer shall issue wage slips, as prescribed.	<u>Welcome amendment for organization having contract labour:</u> Wage Slips help a worker in seeking loans, future employment, availing government subsidies, and acts as a legal document of employment.
6	Health Checkup of worker	Not mandatory	Free Annual Health Check-up; before July 30 of every financial year, for workers aged > 45 years.	Equally applicable to contract labour and organization has to ensure the same.
7	Introduction/Establishment of various facilities	Canteen: ranged from 100 to 250 workers Crèche: ranged from 20 to 50 female workers Welfare officer: ranged from 300 to 500 workers.	Canteen: If workers including contract labourers exceeds 100 Crèche: If number of workers exceed 50 Welfare officer: For factory/ mines/ plantation, if employees exceed 250.	Since limit also includes contract labour therefore it may further increase cost of company.
8	Flash Strike	Workers' Union can conduct strike anytime without giving any prior notice.	No flash strike after introduction of new codes. Notice of 14 days is required for all types strikes and lockouts.	Beneficial for the organization to manage any unexpected production breakdowns – Specially when organization working based on contract labour.
9	Limitation for Initiating Enquiries related to EPF and ESI	Could be initiated from the date of commencement of the establishment or the date on which respective law becomes applicable, whichever is later.	Limitation of 5 years will be imposed on EPF & ESI dues for initiating enquires, i.e. for 5 years immediately preceding the relevant year. Also, the enquiry has to be concluded within 2 years.	<u>Welcome amendment for organization having contract labour:</u> Beneficial to the organization as demands couldn't be raised for a period longer than 5 years.

➤ Action Plan to be followed – before implementation of four labour codes



Prior to the implementation of the 4 labour codes, each and every organization must follow a basic thumb rule, i.e. for checking the applicability of relevant provisions, contract labours have to be included along with the in house workers for calculating the threshold limit for each such compliance. Similarly, the Auditor must also verify the compliance in the manner as discussed above.

Continuing the above example, Mr. Bhide (Auditor) conveys the **PENAL PROVISION** as below:



As per the Section 24 in the Contract Labour (Regulation and Abolition) Act, 1970

“If any person contravenes any of the provisions of this Act or any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.”

Concluding it, the audit of contract labour is very specific. While doing the audit, auditor’s focus should be driven towards evaluation of the system of deploying of contractor and his workmen, compliance of organizations with the provisions of Contract Labour (Regulation & Abolition) Act, 1970 and Minimum Wages Act, 1948, that includes:

- Deposition of ESI and PF
- Filing of returns
- Deduction of TDS
- Correctness of Invoice
- Attendance System
- Maintenance of Records and registers

“Components that will form part of Stock Valuation as per AS 2, Freight outward expense will be part of Stock valuation or not”

Mohit Sharma

Inputs by: Hardik Jain

Supervising CA: Nitin Sharma

Stock valuation!!, Listening to this word the first question that comes to our mind is what does Stock Valuation include? Does it include all types of expenses like Freight, insurance, cartage, etc., or not?

*Stock ka jurri hai
shi
VALUATION
Wrna GP pe
chala jaega
Wrong
IMPRESSION*

To understand the same, let's try to make some inferences from AS 2, which deals with the determination of the value at which the inventory is carried in the financial statements, including the ascertainment of the cost of inventories.

As per AS 2, Stock has to be valued at cost or Net Realizable Value (NRV) whichever is lower. The stock should not be overstated with abnormal amounts of wasted materials, labour, and other costs that are non-allocable to the cost of inventory.



Correct valuation of stock is necessary to determine the correct profitability of the company. Stock cannot be valued beyond its direct cost otherwise profit of the company will be untrue. Hence, the cost of Inventory includes the cost at which the stock is purchased, the cost of conversion, and any other cost incurred for bringing the inventory to its present location and condition.

Now, if we consider the elements that will form part of the cost of inventory stock, we need to comprehend one term: "Direct Cost."

Direct Cost means a cost that can be linked with the production of specific goods or services or buying of a wholesale product for resale. It includes Direct Material Costs, Direct Employee Costs, and Direct Expenses. In simple words –

Let us understand this with some examples-

Example 1. ABC Ltd. is a cookies manufacturing company, it has taken 2 buildings from XYZ Ltd. on rent, one for manufacturing purposes and the other for office administration.

The rent paid to the factory for manufacturing the product will be treated as direct expenses since it was necessary to bring the inventory to its present location and condition and will form part of the cost of inventory. On the other hand, the rent paid for the office building will be treated as indirect expenses, since the expenses were not necessary for the manufacturing of the inventory and will not form part of the cost of inventory.

Example 2. The Teeth Shiner Pvt. Ltd. is a toothpaste manufacturing Co. It uses two packages for selling the product, one is a tube in which the product is stored and the other is a corrugated box. So, the tube is primary packaging and the corrugated box is secondary packaging.

The primary packaging is necessary for bringing the product to its present location and condition, hence it will form part of the cost of inventory, while the secondary packaging is not necessary for bringing the product to its present location and condition since the product could be sold even without the secondary packaging, so it will be an indirect expense and will not form part of the cost of inventory.

Let's examine one more case whether it will form part of stock valuation or not.

Freight Inward & Freight Outward

Freight Inward means the charges which an entity has paid in respect of the transportation cost of goods so purchased from a supplier. It will be treated as a direct expense since it was necessary to bring the inventory to the factory.

Let's take an example to understand the concept of present location and condition.

A ltd. is a trading concern and it purchases goods from B ltd. under a contract, that freight expenses will be borne by A ltd.

Here, the freight expenses borne by A ltd. will form part of the cost of inventory because AS 2 clearly states that the cost incurred to bring the inventory to its present location and condition will be part of the cost of inventory.

Now, there is no doubt regarding the inclusion of Freight inward in inventory valuation but confusion arises about the Freight Outward expense. when we think of the Export Sales done on a CIF basis and Freight is recovered from the customer.

To better grasp the topic, it is important to first understand two key terms related to export sales.

- **Sales on FOB Basis:** This denotes the sales which have been made on the condition that the risk of the seller ends at the time when he delivers the goods on the port. After that, any type of transit risk will be borne by the buyer.
- **Sales on CIF Basis:** This denotes the sales where it is the seller's responsibility to deliver the goods at the buyer's port and he will bear the freight and insurance charges relating to those goods. However, he can recover the same from the buyer.

The first query is now: Can the seller recover freight and insurance costs and treat this as direct income?

This income is directly linked to the Sales made by the entity and its value is recovered by the entity by including it in the invoice value only. Thus, it will be treated as Direct Income only as this service is being provided during the normal course of business.

When it became apparent that this was a direct source of income, the question of whether the expenses that had been incurred in connection with the freight were direct or indirect arose.

The expense so incurred w.r.t such sale is actually a Freight Outward expense. This is incurred in relation to the units sold, not to the units of closing stock. Direct expenses only include such expenses which relate to the cost of purchase and production. Thus, the freight will be booked as an indirect expense in the books, since the same was incurred after the goods were ready for sale.

Let's take an example for making our concept clear about this....Because

‘Bina example kuch samjh na aata

Wrna ye article ab tk khatam ho jaata’

Example

There is an entity named BIGPL. It requires 1 unit of raw material to produce 1 unit of finished goods. It purchased 100 units of raw material at a price of Rs.50 per unit and paid Rs.500 for freight charges regarding such purchases.

It is an export-oriented entity. It sold 70 units out of the total produced units at Rs.170 per unit (inclusive of Rs.6 per unit of freight and insurance). This sale is done on CIF terms with the customer. The entity incurred Rs.420 for the freight and insurance of such goods.

What will be the value of the closing stock? (Assume Opening stock is NIL)

Solution: First of all, we calculate the units of closing stock–

Opening Quantity +Purchase Quantity – Sold Quantity

$$= 0+100-70 = 30 \text{ units}$$

Then we calculate the cost per unit–

(Purchase Price +Freight)/Total purchased units

$$= (5000+500)/100$$

$$= \text{Rs.55 per unit}$$

In this case, we book sales of Rs.11,900 (including the freight recovered from the customer) and book Freight outward of Rs.420 as an Indirect Expense.

Now, the closing inventory will be valued as follows:

$$30 \text{ units} * \text{Rs.55 per unit} = \text{Rs.1650}$$

Let's Take one more example to understand the concept-

ABC Ltd. is a trader involved in the trading of apples in Kashmir. It purchases apples from the Farmer for Rs. 5,00,000/- and incurs freight of Rs.10,000/-. When apples

are received, it distributes them to its different warehouses located in Rajasthan, Delhi, Uttar Pradesh, and 5 other places located in India. And incurred Freight of Rs. 1,00,000/-

Here, Rs.10,000/- is considered as carriage inward & shown as a direct expense but Rs.1,00,000 is considered as general freight expense, which is considered either direct or indirect?

Freight outward means the transportation expense incurred in connection with the sale or delivery of materials or goods from factory or depot or any other place from where goods are sold/removed.

As per Author's point of view, general freight expense will be shown as an indirect expense. Because expenses incurred to bring the apples to the Kashmir warehouse will be treated as expenses incurred to bring inventory to the present location and condition. Hence, the same will also form part of the cost of inventory and other than this will form part of indirect expense.

In addition, In the above example if Rajasthan Unit is taken Apples directly from farmers and incurred freight of Rs. 25,000

Here, Rs. 25,000/- is considered as carriage inward & shown as a direct expense because this is the cost incurred to bring inventory to the present location and condition hence, considered as part of stock valuation.

No doubt, in this case cost of material of Rajasthan unit is higher than the cost of material of other warehouses due to freight expense.

But the freight incurred to bring the apples to different warehouses will not be regarded as a direct cost. Hence, it will be considered as general freight expense and will not form part of the inventory.

In Short, in case of warehouse transfer, the price of apples can't be inflated with the cost of freight expense.

In addition, In the above example of ABC Ltd. Sold apples in Kashmir of Rs. 102/- which having cost of Rs. 100/-, hence earn GP margin is 2% and if, in case distributes apples in Chennai warehouse, having freight expense of Rs. 18 and sold apples in Chennai of Rs. 120/-

In this case, what to be considered as GP margin? Whether it is 20% or 2%.

If freight expense Rs. 18 considered as direct expense – than GP is 2 % (120-100-18)

If freight expense Rs. 18 considered as indirect expense – than GP is 20 % (120-100)

On the based on earlier view, above freight expense will be shown as indirect expense, because it is incurred after the bringing it to present location and condition. Hence, not considered for GP calculation.

It can be concluded; it is not appropriate to book the freight outward as a direct expense since the same is incurred after the goods have been brought to the present location and condition. This is a selling overhead and can't be allocated to inventory valuation.

Auditor's Responsibility for Non- Compliance of Schedule – III by Company- Reporting and Consequences

Nandini Gupta

Inputs by: Narayan Garg

Supervising CA: Bharat
Sonkhiya

Companies produce Financial Statements that provide information about their

Schedule III
ki maano,
nhi to
NFRA
ajayega!!!

financial position and performance. Every company needs to follow Schedule III as it provides a standard format of financial statements complying with AS or Ind AS (as per

Division I or Division II). It is the information that is used by multiple stakeholders in taking various financial decisions. Typically, those that own a company (the shareholders) are not those that manage it. Therefore, the owners of these companies take comfort from independent assurance that the financial statements fairly present, in all material aspects, the company's financial position and performance.



Schedule III prescribes multiple matters regarding presentation and disclosures such as bifurcation of assets and liabilities into Current Assets/liabilities and Non-Current assets/liabilities.

It also mandates multiple disclosures like Ageing of trade payables/trade receivables, ratio analysis etc.

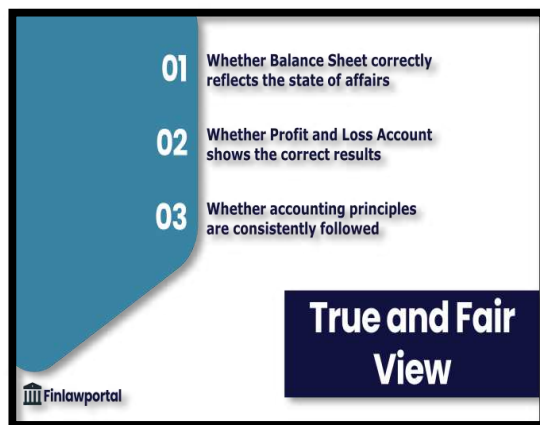
These presentation and disclosures are so vital that they affect the stakeholders' decision based on Financial statements. For instance, bankers shall consider Ratio analysis and ageing schedule of the company before lending loan. Considering above, we can say that without adequate verification (through applicable standards of auditing) of presentation and disclosure, auditor cannot present a true and fair view about the financial statements.

The preparation of Financial Statements in accordance with Schedule III is the sole responsibility of the management of the company. However, as per **Section 143 (2)** of the Companies Act, 2013, it is the responsibility of auditor to ensure that the financial statements shall give a **true and**

fair view of the state of affairs of the company and shall be in compliance with Schedule-III.

As per our understanding, for ensuring true and fair view, it is necessary for the auditor to ensure verification of compliance with schedule III so as to enable the users of financial statements to take appropriate financial decisions.

Meaning of True and Fair View-



In common parlance, True and Fair means that the auditor will state its opinion as to whether the financial statements are free from material misstatements and bias.

As per the view expressed by author in Ramaiya u/s 143(2) [Pg 2668 and 2669 of A Ramaiya, Guide to the Companies Act (18th Edition)], “As far as the auditor’s report is concerned, the phrase “true and fair”, which has not been defined in the Act, may be taken to signify that the auditor gives an opinion as to whether the financial statements represent fairly, the actual financial position as at the end of the accounting period and the profit or loss for that period. What constitutes a true and fair

view is, thus, a matter of an auditor’s judgment in the particular circumstances of a case.”

The auditor may keep in view the following in addition to the other aspects:

- (i) the financial statements should be drawn up in conformity with the provisions of Schedule III.
- (ii) the financial statements should communicate all the information clearly.

The extent of check to be done by auditor depends on his **professional judgment, level of materiality, and the associated risks.**

To ensure sound financial reporting practices and transparency in the financial statements safeguarding the interest of the stakeholders, the Institute has formed the **Financial Reporting Review Board (FRRB)** in the year 2002. The Board undertakes the review of financial statements and auditor’s report thereon of selected enterprises with the view to identify the non-compliances with the reporting requirements of Accounting Standards, Standards on Auditing, CARO, Schedule II & Schedule III to the Companies Act, 2013 and other reporting requirements under the relevant statute governing the enterprise and communicate the same to the auditors.

Reference is also to be drawn to **Case no- NF – 23/30/2021**, where the auditor was penalized by NFRA.

Auditor - M/S Subramaniam Bengali & Associates

Auditee- Trilogic Digital Media Limited (TDML)

Engagement Partner (EP) – CA Rajiv Bengali

Following misreporting were identified by NFRA leading to Non-Compliance with Schedule-III which were considered to be affecting the true and fair view of the financial statements:

- Deferred tax assets (DTA) which were required to be classified as Non- Current Assets are classified as current assets.
- Cost of material consumed/ purchase of stock-in-trade/changes in inventories of finished products/work-in-progress and stock-in-trade was to be presented on the face of the Statement of Profit and Loss, but have been shown in Notes to Accounts.
- Wrong Figure of Earning per share has been reported.
- Disclosure about loans in the Notes to Accounts in Financial Statements is incomplete, as the bifurcation of loan amounts was not mentioned.
- Classification of short term loans and advances to financial statements has not been given.

On the basis of above mentioned, NFRA imposed a penalty on EP in exercise of powers u/s 132(4)(c) of the Companies Act, 2013, order:

- Imposition of a monetary penalty of **Rs.5 lakhs upon EP.**

EP was also debarred for **five years** from being appointed as an auditor or internal auditor or from undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate.

The auditor may have to face the following non-compliances in the financial statements:

- (i) required disclosures/information not provided.
- (ii) incorrect disclosures given and not rectified subsequently
- (iii) no basis for verification provided

If, on the basis of test verification carried out by the auditor, he concludes that there are no non-compliances of Schedule III in the financial statements, the auditor shall express an unqualified opinion.

However, if the auditor concludes that there are non-compliances in the financial statements w.r.t Schedule III, he shall have to enhance the extent of his verification and may also have to apply alternate audit procedures for obtaining sufficient and appropriate audit evidence. Depending on the materiality of the non-compliance, he may also consider to communicate the matter to the TCWG and report accordingly.

The auditor should obtain **sufficient and appropriate audit evidences** in order to form an opinion on financial statements.

The auditor's opinion shall be based on an evaluation of the conclusions drawn from the audit evidence obtained, as to whether the financial statements as a whole are prepared in accordance with the applicable

financial reporting framework as per **SA – 700 “Forming an opinion and reporting on financial statements”**.

The auditor should carefully read the requirements of Schedule III to ascertain whether the disclosures made by the management are adequate and in compliance with the requirements of the Companies Act, 2013. If the auditor is not satisfied with the disclosures made by the management or detects cases of non-compliance, the auditor should qualify the report in accordance with **SA-705 “Modifications to the Opinion in the Independent Auditor’s Report”**.

In case of non – compliance, it is the auditor’s professional judgement regarding the disclosure for the same which would be based on the level of materiality and the risks associated with such non-compliances. The auditor can report such cases under following paragraphs in Independent Auditor’s Report:

- 1) Key Audit Matter Paragraph
- 2) Emphasis of Matter Paragraph
- 3) Other Matter Paragraph

The auditor may modify his opinion as given below:

- 1) Qualified Opinion
- 2) Adverse opinion
- 3) Disclaimer of opinion

Nature of Matter Giving Rise to the Modification	Auditor’s Judgment about the Pervasiveness of the Effects or Possible Effects on the Financial Statements	
	Material but Not Pervasive	Material and Pervasive
Financial statements Are materially misstated	Qualified opinion	Adverse opinion
Inability to obtain sufficient appropriate audit evidence	Qualified opinion	Disclaimer of opinion

Let us now quickly go through some case scenarios-

Case Study-1

Following is the Balance sheet of ABC Ltd as on 31st March, 2022:

S No	Particulars	Amount (in Lakhs)
I	EQUITY & Liabilities	
A	Shareholders Fund	200
B	Non-Current Liabilities	100
C	Current Liabilities	50
	TOTAL	350
II	ASSETS	
A	Property, plant ,equipment and Intangible Assets	100
B	Current Assets	
(i)	Trade Receivables	100
(ii)	Inventory	50
(iii)	Cash and Cash Equivalent	100
	TOTAL	350

Net Profit for the year ended amounts to **Rs. 50 Lakhs**.

B & Associates has been appointed as the auditor of the ABC Ltd for the audit of Financial Statements.

During the review of financial statements, auditor observed that out of trade receivables of Rs. 100 Lakhs, receivables of Rs. 70 Lakhs are outstanding for more than 3 Years.

Case Scenario-1:

Auditor communicated the same to Those Charged with Governance (TCWG). TCWG agreed that their follow up process

was weak and such amount is doubtful and cannot be recovered. It was decided to write off such trade receivable from the books of accounts. Consequently, the profit of Rs 50 lakhs got converted into a loss of Rs.20 lakhs.

Auditor's Remark- Since, adequate disclosure has been made in the Financial Statements but in the auditor's professional judgment, the matter is of such importance that it is fundamental to users' understanding of the Financial Statements, therefore, auditor will disclose such matter under **Emphasis of Matter** Paragraph without modifying his opinion.

Case Scenario-2:

Auditor communicated the matter to TCWG. However, their representation states that such amount is not doubtful. Currently, the customers are facing liquidity issues but their net worth is around Rs.500 Lakhs. Hence, such amount is not required to be separately disclosed under the Financial Statements.

Auditor's Remark- Auditor has duly communicated the matter with TCWG. However, the matter in his professional judgment, were of most significance in the audit of Financial Statements. Therefore, auditor will report this matter under Key Audit Matter Paragraph as per SA-701 "Communicating Key Audit Matters in the Independent Auditor's Report".

Case Scenario-3:

Out of total trade receivables of Rs. 100 Lakhs, company has disclosed Rs. 70 Lakhs

under "**Outstanding for more than 3 years**" but such trade receivables are considered good and there is no doubt about their recovery. Auditor requested to provide basis for verification of such classification. However, no basis has been provided by them.

Auditor's Remark- Since, auditor has not been provided with sufficient and appropriate audit evidences and in the auditor's professional judgment, there exists a probable risk of material misstatement in the financial statements, he shall issue a qualified opinion in Independent Auditor's Report as per SA-700 "Forming an opinion and reporting on Financial Statements".

Case Scenario-4:

Company has not disclosed ageing schedule in notes to accounts. Auditor requested to provide ageing and basis of verification of the same. However, company declined to do the needful. Since, auditor has not been provided with sufficient and appropriate audit evidences, therefore, auditor will qualify his opinion under Independent Auditor's Report as per SA-700 "Forming an opinion and reporting on Financial Statements".

Here, the auditor may also consider to express a 'Disclaimer of opinion' if such matter according to the auditor's judgement if material as well as pervasive.

Case Scenario-5:

During the review of financial statements, it was observed that all the trade receivables are outstanding from last 3 years but are

considered good based on correspondence held with such debtors.

Auditor's Remark- Auditor will issue unqualified report under this case.

Case Scenario-6:

Following Trade Receivables have been disclosed under Notes to accounts-

Particulars	Outstanding for the year ended 31.03.2022 from the due date of payment					Total
	upto 6 months	6 months to 1 year	1-2 years	2-3 years	More than 3 years	
(i) Undisputed Trade receivables – considered good	20	10	30	40		100

(Amount in Lakhs)

Ageing has been incorrectly disclosed by the company. Auditor asked to correct the same. However, company denied to alter the details.

Auditor's Remark- As per Sec 143(3)(d), it is the auditor's responsibility to ensure that the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns. In the aforementioned case, disclosures made in the financial statements are not in conformance with the books of accounts. Since, the matter in auditor's professional judgment, is material but not pervasive because it is a presentation error and does not affect the state of affairs of the company, the auditor shall report the matter

under the **Emphasis of matter** paragraph in the Auditor's report.

Implications on statutory auditors in case of non – compliance with Schedule-III format:



After evaluating Auditor's responsibilities regarding Schedule –III compliances, it is vital to understand that whether Auditor will be penalised in case of Non-Compliance:

(A) Companies Act, 2013:

As per Section 132(4)(c) of the Companies Act, 2013, where professional or other misconduct is proved, the NFRA shall have the power to make an order for-

- (a) Imposing penalty of –
 - (i) Min Rs. 1 Lakh which may extend to 5 times the fees received in case of Chartered Accountant; and
 - (ii) Min Rs. 5 Lakh which may extend to 10 times the fees received in the case of CA Firms.
- (b) Debarring a CA or CA firm for a period of 6 months which may extend up to 10 years from-
 - (i) Being appointed as an auditor or internal auditor or undertaking

any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or

- (ii) Performing any valuation as provided u/s 247.

(B) Professional Ethics

As per Clause (5), (6), (7), (8), and (9) of Part I of Second Schedule to the CA Act, 1949, a CA in practice shall be deemed to be guilty of professional misconduct if he:

- (i) fails to disclose a material fact known to him which is not disclosed in a financial statement,
- (ii) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;
- (iii) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (iv) fails to obtain sufficient information which is necessary for the expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (v) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances

As per Sec 21B (3) of the CA Act, 1949, where the Disciplinary Committee is of the opinion that a member is guilty of professional or other misconduct mentioned

under the CA Act, 1949, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: -

- (a) Reprimand (formal warning) the member;
- (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, extending to five lakhs rupees

Conclusion – Since, Financial Statements depict Company's well-being, then usually question arises: Why auditor is so concerned about its True & Fair view? The answer is clear from the above discussions.

The preparation of the financial statements of the company is the sole responsibility of the management of the company. However, ensuring that the financial statements comply with Schedule III is also the responsibility of the auditor in order to ensure true and fair view so that stakeholders can take financial decisions based on the audited Financial statements of the company. In case of auditor's failure to report non compliances with Schedule III in financial statements, he shall also be penalized in case of non – compliance.

Future of Audit in Artificial Environment

Parvej Khan

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Supervising CA: CA Rajeev Sogani



The technological revolution has improved and in some cases transformed/disrupted our lives in a huge manner, many industries are under pressure to face new technologies and innovations. However, some industries are enjoying the fruits of technological upgradation. Auditing is no different from other industries. Audit firms are excited to see what potential these new innovations have in store for promoting a faster, more efficient, and more accurate audit.

*"Machiney
Bol
Uthegi"*

This topic is to provide an overview, that readers can fully analyse the benefits and drawbacks of AI implementation in the Accounting and Auditing fields.

What is Artificial Intelligence (AI)?

Artificial Intelligence (AI) is a blend of two words Artificial and Intelligence. Artificial means made by human work or art, not by nature i.e. not natural. Intelligence is often dependent on context. Some people define intelligence as level of reasoning power.

The term "Artificial Intelligence" is a science and engineering of making intelligent machines. In other words, AI is a technique of getting machines to work and behave like human or enable machine to do this. AI programming focuses on three cognitive aspects, such as

- Learning,
- Reasoning and
- Self-correction.

This programming allows AI to improve from past iterations, getting smarter and more aware, and allowing it to enhance its capability and its knowledge.

Example of Artificial Intelligence: -

While we are typing a document, there are inbuilt or downloadable auto-correcting tools for spelling errors, readability, mistakes, and plagiarism based on their difficulty level. Artificially intelligent algorithms often use deep learning, machine learning, and natural language in order to detect inappropriate language used and recommend improvements.

One another example of AI can also be seen when we wish to listen to our favourite songs or watch our favourite movie or shop online, have we ever found that the things recommended to us perfectly match our interests? This is the beauty of artificial intelligence.

These intelligent recommendation systems analyse our online activity and preferences to provide us with similar content.

What is the difference between normal programming software and Artificial Intelligence?

Normal software is a program that runs on your computer. It can also be installed by downloading it online. It is designed in such a way where we need to feed DATA (Input) in this with PROGRAM (logic), which run it on the machine, and get the output.

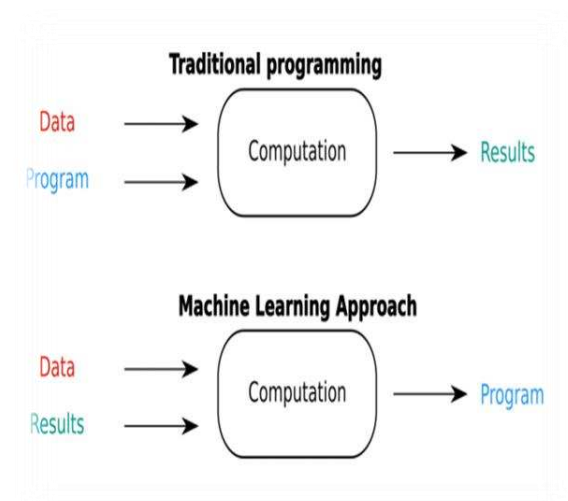
For example: -A tally is a normal programming software used in corporations to record accounting transactions; it is a normal programming software that does not generate any logic or programmes to solve any problems.

Now, the normal software programming is changing with machine learning; currently, software is designed in such a way that we only need to feed in data (input) and the ultimate output that we need to reach, automatically run on the machine. The machine creates its own programme (logic), which can be evaluated while testing.

Let's understand it with an example: -

A company XYZ ltd sold goods on credit to Mr. Bean. For recording such transaction, accountant made a sales entry in tally by first of all creating a ledger in the name Mr. Bean by debiting his account and crediting sale. Now sales were made and Mr. Bean is reflecting as a debtor in tally and when payment is received, his account will be closed by the accountant by making an entry for the payment received.

Let's understand how such an entry would have been made in an artificial intelligence environment. The programming of AI software is designed in such a way that it receives data directly from the GST portal and bank. When a company generates an E-invoice for sales of goods to Mr. Bean, automatically an entry of credit sales is made, and when payment is received from Mr. Bean in his bank account, AI checks such a bank statement and closes Mr. Bean's account.



Will CA Firm survive in future?

Certain myths are prevailing that Artificial intelligence will replace auditors in upcoming future. Let us understand whether this statement is true?

Businesses are growing and getting more complex. Artificial intelligence which incentivize companies to automate more and reduce their cost and increase their efficiency, reliability and getting quality of work in real time basis. AI-powered tools can help businesses to detect duplicacy, out-of-policy spending, incorrect amounts, suspicious merchants or attendees, and excessive spending and so on.

Now, organizations are thinking that they do not need any other person for filling their tax return, internal auditor for making test check that controls are operating effectively or not. It is because all such work can easily be done by software itself.

Although the technology is growing rapidly but the statement that **AI will replace auditor in future is not completely true.** Artificial intelligence uses programming algorithm which focuses on identifying the current patterns and trends of things, understanding such concepts and drawing conclusion and making red flags on the data where abnormality in patterns are found.

AI cannot replace human intelligence. Use of Artificial intelligence helps the auditor to identify and understand patterns and anomalies within data sets and can execute many other tasks at warp speed. But

Artificial intelligence itself cannot draw any conclusion on the data.

Without use of human intelligence, AI is incomplete.

Let's understand above statement with an example: -

Auditor uses AI to make analysis of complete cash and bank transactions. AI finds out the patterns that payment to creditors has been made on every 7th of the month. But in November month, it was found that December month payment of creditors was made on 30th Nov in advance.

One another pattern was observed by AI that company already has good amount of cash in hand in January month. However, cash withdrawal was made from the bank.

AI uses its intelligence to finds patterns for auditors. Is the auditor's job finished in those cases?

No, Auditor uses his professional skepticism, ground realities and past experiences to find the reason of above abnormalities.

When such anomalies were discussed with management by the auditor, it was discovered that payment for the December month was made in November because the company met its sales targets in that month and received the money from existing customers.

Second reason was given by company that cash withdraw was made to maintain

availability of cash due to upcoming bank holidays caused by a bank employees strike.

Now, let us take another example to understand this statement with more clarity.

While performing the audit of ABC Ltd for the Financial year 21-22, Auditor uses AI technique to make creditor analysis. Company had huge amount of creditors outstanding as on 1 April, 2021. Company did not have any transactions during the year with such creditors with large balances. AI finds out such patterns where payment to all above referred creditors, all having opening balances have been paid during the last week of March, 2022.

In such analysis AI raised the following red flags to auditor:-

1. All creditors which have been paid in March 2022 are having opening balances as on 1-April-2021.
2. All such creditors have remained outstanding for a long period.

On the basis of AI analysis, Auditor decided to perform further audit procedures to check the validity of transactions. While performing such procedure,

1. He found that the cheques which were issued for payments are returned in April, 2022. and
2. He decided to take creditor balance confirmations. It was found that some the creditors to whom payment was made by company do not exist. They are only appearing in the books of accounts.

Thus, on the basis of red flags raised by AI, auditor is able to identify such practices.

Now, it is clear that ***"AI is just like a lawyer who analyses a case and collects proof or evidence related to it, but ultimate judgement on the case will be made by a judge."***

Artificial intelligence and human intelligence are complimentary to each other.

The AI software enables auditors to make judgments about which areas need the most scrutiny, based on a sophisticated and thorough analysis of the client's data and financial statements. This helps practitioners to make the best use of their time in the audit. Using machine learning in audit also improves the quality of the audit process.

How Auditor can use Artificial intelligence in Audit



Now, let's understand how AI can help the auditor while performing audit with some examples.

AI can review the content at machine speeds, which the audit team wants to look in an audit (things like bogus vendors or payments that break trends).

For instance,

ABC Ltd. is an Indian shoe manufacturing company that specializes in sport shoes and has a large market segment. However, due to the decline in the global economy caused by war and other economic crises in the UK this year, the company has not been able to achieve its desired sales results and at the same time, it does not want to lose the trust of its investors. Thus, management decides to set a sales target of Rs. 2,000 crores and begins recording fake sales at the end of March. The company prepared all of the bogus sales invoices and transportation bills.

Now, the question is this how auditor can detect such practices followed by the companies during their course of audit.

In such cases, auditor uses AI techniques to check sales transactions made by the company. AI analyses the trends of the company's sales made during the year and finds anomalies such as the company making mostly higher amount sales directly to customers who are not registered in GST at the end of March month, whereas if we analyses other months' sales records, the company mostly makes sales to B2B customers.

Another trend identified by AI is that sales were made on Sunday in March month, whereas no sales were made on holidays in other months. It was also found that production expenses in that month do not increase as compared to sales made in that month.

Now, auditor uses their professional skepticism by observing an entity's internal environment and the effectiveness of internal control related to sales and observing management's behavior with respect to sales booked in March month. Then he extends his audit procedures toward sales and sales related transactions.

Let's discuss another case of AI findings

It can be seen in any entity that employees at any level take advantage of expense reimbursement programs.

For instance, there was an employee named Ravi. He booked air ticket a month in advance, then booked it again right before the trip. After receiving reimbursement from company on second ticket, he cancels the second ticket and fly on the earlier cheaper ticket pocketing the difference.

In general, it is not an unusual scam. Auditor in such case uses AI, which helps him look for people who always seemed to book the tickets at the last moment. AI analyzes if this has happened many times on large level. Auditor finally cross-check with the airline records to see what the trip costs. All these cases can be found through AI and auditor then performs further procedures to draw conclusion on it.

After analyzing above examples, it was found that although AI can play an important role in corporate environment, it can work 24*x7 without any breaks but human beings can't. However, AI can't

replace the role of auditors because it has certain limitations: -

- AI is completely reliant on inputs; a wrong input will lead wrong output.
- AI will struggle in performing an unexpected event.
- Machine can't reach conclusion on their own.
- An experience of Auditors can spot warning signs based on conversations, nonverbal cues, the company environment, the caliber of management and multiple other factors that algorithm doesn't even see and understand.

Use of AI in the field of Goods and service Tax (GST)

The Goods and Services Tax (GST) is a destination-based tax that is one of India's major reforms. Artificial intelligence is now the backbone of GST since the possibilities of AI are limitless.

Let's understand the application of AI in the field of **GST with a simple example: -**

As we all know about GST reconciliation. Input Tax Reconciliation under GST is about matching the in-house Purchase Register and the GSTR-2A, which is auto populated based on GSTR-1 filings by the respective suppliers of the enterprise. GST Input Tax Reconciliation is important to ensure timely and accurate input tax credit as well as the correctness of various return numbers for enterprises. However, some enterprises have reconciliation issues with

GSTR-2A and PR (Purchase Register) data. *"Phele yeh kaam manually hua karta tha"* Things have changed since then.

An AI/ML (artificial intelligence/machine learning)-based technology platform helps the organization in the reconciliation of their books. An important feature of AI would be to extract information from scanned copies of invoices and create purchase records automatically. This also helps in understanding the different formats of purchase registers and reconciling them with GSTR2A. It also reconciles voluminous data faster with high accuracy and categories data in different manners, like matches, mismatches, invalid data, and missing data. It also categories various mismatches as single attribute mismatches, multiple attribute mismatches, and so on. The interrelationship of the forms on the portals GSTR-1, GSTR-2A, and GSTR-3B has made a day's GST return filling easier; without AI, it would not be possible.

Conclusion

"When the winds of change blow, some people build walls others build windmills"

If we imagine a world full of digitalization where all the work is done by machines and the machines start thinking like humans, then this invention brings a number of perpetual challenges that affect each profession.

But we must figure out how to grow in order to compete in a digitalized world.

Although no one knows which technology will survive and which will be disruptive, auditors must find an answer to how to audit new technologies and how to audit through new technology.

Threat is only for those CA firms which are not enhancing their capabilities, and allowing themselves to be replaced by AI. Their survival is in danger, and they will be rendered jobless in future.

However, other firms who will upgrade themselves according to the technology. Such firms will thrive; their scope will increase in audit just because of advent of AI.

In simple words, we do not need to worry about the advent of the AI in our field. Our jobs are like doctors. Although there are many innovations made in medical science like pathology laboratories where all the body test are performed by use of AI techniques and reports are issued on the basis of such tests.

However, doctor does not give their opinion directly on the basis of such reports without taking into mind actual condition of patients. Doctor's role cannot be replaced by AI.

So, CAs firm must be ready to adopt these valuable technologies. These technology innovations will make CA more prudent, more productive, and capable of taking on and handling more clients.

Kyunki "Jab Dhandah bada hoga toh, transactions bhi badenge"

Without the use of AI, it will not be possible for auditors to perform audit of such of large organization like Reliance, Tata, and Infosys etc. It is because they have huge volume of transactions during the year.

In last, AI will bring more opportunities for us so that we can deliver more value and better quality of work. Now we can say that:-

“Without use of AI technique our profession is under danger”.

Income on account of recovery of freight outward exp. Will form part of Direct Income. Yes or No

Prakhar Agrawal

Inputs by: Kavita Das

Supervising: CA Nitin Sharma

Before diving into the topic of whether recovery of freight outward is direct or

indirect income,

We need to know,

what are Direct &

Indirect

Income/Expenses

.

*"I Don't Think
Outside the box
I think of what
I can do with
the box"*

Direct Income
means, incomes

generated directly through business-related activities. In contrast, **Indirect income** is revenue derived from other sources of non-business activity.

For Example- There is a company, that deals in garments, and the company is also having a building, the same has been provided on rent to XYZ ltd.

So, in this case, the company is earning income from the sale of goods and also has a rental income. Since the core business activity of the company is the sale of goods, so the revenue generated from the sale of



goods will be direct income. And the rental income will be treated as indirect income.

Now, in case the business of the company is to provide building on rent then the rental income for that company will be treated as direct income.

Identification of Direct Expenses shall be based on traceability in an economically feasible manner.

Direct Expenses means any expenses other than material and employee costs that can be directly attributable to a **co-object** in an economically feasible manner. **"As Per Cost Accounting Standard 10"**- Expenses relating to the manufacturing of a product or rendering service, which can be identified or linked with the cost object other than direct material cost and direct employee cost.

Indirect expenses are those expenses that are incurred to operate a business as a whole or a segment of a business, and so cannot be directly associated with a cost object, such as a product, service, or customer. Indirect expenses mean all expenses other

than direct expenses incurred by a business for maintenance of office, selling, and distribution functions and also expenses in the nature of financial expenses and incidental expenses.

So, let's examine whether the transportation cost is direct or indirect.

As Per Cost Accounting Standard – 5:

The cost of transportation is classified as inward transportation cost and outward transportation cost.

Inward Transportation cost is the transportation expenses incurred in connection with materials /goods received at the factory or place of use or sale/removal. Inward transportation costs shall form part of the cost of procurement of materials which are to be identified for proper allocation/ apportionment to the materials/products.

In simple words, it is the handling and shipping charges or the transport cost that a company or an individual incurs when there is a purchase of goods or raw materials.

Outward Transportation cost is the transportation expenses incurred in connection with the sale or delivery of materials or goods from a factory or depot or any other place from where goods are sold /removed.

Freight outwards refers to the handling and shipping costs that a company incurs at the time of sales while transporting the goods to a customer.

So, it can be concluded that the freight inward will be treated as direct expenses and freight outward will be treated as indirect expenses.

Now let us track back to our topic that whether income on account of recovery freight outward will be part of direct Income or not.

Now, let's understand what happens in an export transaction. First of all, we have to understand the basis on which export is done.

1. On FOB Basis:

Free on Board is a term used to indicate when the ownership of goods transfers from the seller to the buyer and who is liable for goods damaged or destroyed during shipping. FOB means that the risk of the order will be transferred to the buyer once the seller ships the product.

2. On CIF Basis:

CIF stands for Cost, Insurance, and Freight. These are the charges a seller pays to cover the costs, insurance, and freight of a buyer's order when it's in transit. Only commodities carried by water, sea, or ocean are subject to CIF.

In nutshell, the major difference between FOB and CIF is in the transference or liability & ownership. With FOB, title possession and liability usually shift when the shipment leaves the point of origin. With CIF, responsibility moves to the buyer

once the goods reach the point of destination.

Let's understand this concept with an example:

Example: Mr. Suresh sold goods of Rs.1,00,000/- and charge Rs. 20,000/- for freight, Cartage, and Insurance. He gives an invoice for Rs 1,20,000/- .Mr. Pradeep paid to him the whole amount. Let's assume the opening stock is Rs.50,000/- & purchase is Rs.60,000/-, and Direct expense is Rs.5,000/-. & closing stock is Rs.30,000/-. Let's understand how to calculate GP in this situation.

Case 1: When Sale made on CIF Basis.

Trading and P & L Account

Particular	Amt.	Particular	Amt.
To Opening Stock	50,000	By Sales	1,00,000
To Purchase	60,000	By Direct Income	20,000
To Direct Expense	5,000	By Closing Stock	30,000
To Gross Profit (B/F)	35,000		
Total	150000	Total	150000
To Freight Outward	20,000	By Gross Profit	35,000
To Net Profit (B/F)	15,000		
Total	35,000	Total	35,000

GP Ratio: Gross Profit/Sales*100

$$= 35,000/1,00,000*100$$

$$= 35\%$$

Case 2: When sales are made on a FOB Basis, where the liability of freight, Insurance is of the buyer not of the seller. Buyers pay the only price of goods.

Trading and P & L Account

Particulars	Amt.	Particular	Amt.
To Opening Stock	50,000	By Sales	1,00,000
To Purchase	60,000	By Closing Stock	30,000
To Direct Expense	5,000		
To Gross Profit (B/F)	15,000		
Total	1,30,000	Total	1,30,000
To Net Profit (B/F)	15,000	By Gross Profit	15,000
Total	15,000	Total	15,000

GP Ratio: 15,000/1,00,000*100

$$= 15\%$$

It can be understood in this way that seller is providing some extra service to the buyer along with his product, so it is also a performance obligation on the part of the seller and the transaction price of the performance obligation can be treated as revenue as per Ind AS 115.

In case 1, the seller has two obligations. One is sale the goods & the other one is to deliver the goods where the buyer wants. Neither obligation can be fulfilled without the other. That's why, recovery of the cost of freight, and insurance is considered direct income.

Let's understand the same with one more example.

A ltd. is a washing machine selling Co. The Co. enters into a contract to provide a machine to B ltd.

As per the terms of the contract, the company will provide maintenance service for two years.

So, here the core business activity is of providing the machine, not the maintenance service. But the income derived from the rendering of service will be treated as direct income because the rendering of service was the part of sale Contract Only.

Where in case 2, There is only a single obligation of the seller to sell the goods not provide other supporting activities. That's why This is not an expense & income of the seller. So we don't consider it in sellers' books of accounts.

However, one issue, which seems illogical, is that two people are selling identical goods at the same cost and margin in two separate scenarios, CIF and FOB, but their gross profits are different. For sellers who sell on a CIF basis, GP disclosed in the tax audit report is higher than the GP of sellers who sell on a FOB basis. This issue needs to be discussed as and when it occurs and this will create the following two situations:

- a) Whether recovery of freight income can be shown as indirect income.
- b) Whether freight outward expense can be shown as a direct expense.

So we can consider another possible solution:

1. When the recovery of CHA expense is easily identifiable in the sales invoice in the case of CIF sales, then the same shall be present in the Profit & Loss Accounts on a net basis as Indirect income or expense.
2. When recovery of CHA expenses is not identifiable i.e. the same cannot be segregated from Sales then the entity shall estimate the amount & income or expense should be booked accordingly.

The above can be understood with an example-

ABC Ltd. is an Export Oriented Unit, the company exports its goods on CIF Basis. Now, let's assume the company exports goods of Rs. 5,00,000 and incurs CHA Expenses of Rs. 50,000.

In this case, the sale value of Rs 5,00,000 includes Rs. 40,000 as CHA Expense. Then in the Profit & Loss Account, the same will be shown as follows:

Particulars	Amounts
CHA Expenses 50,000	
Less- Recovery of CHA Expenses (40,000)	10,000

It can be concluded that for practical reasons the entity may show the CHA expenses and Recovery of CHA Expenses on a Net Basis.

Control Under AS & Ind AS For Deciding Holding and Subsidiary Relationship and For Consolidation Purpose

Reshab Khandelwal

Inputs by: Jasmeet Kaur

Supervising CA: Bharat Sonkhiya

As per Section 129(3) of Companies Act, 2013 : Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies.

*“Life ho ya
Business
Control
hona Jruri h”*

Further As per Companies Act, a **subsidiary** is defined as a company in which the holding company

- controls the composition of the Board of Directors or
- exercises or controls more than one-half of the [total voting power] (51% or more)

For further clarification, it can be said that the control should be of the company itself and not of common shareholders in the two companies.

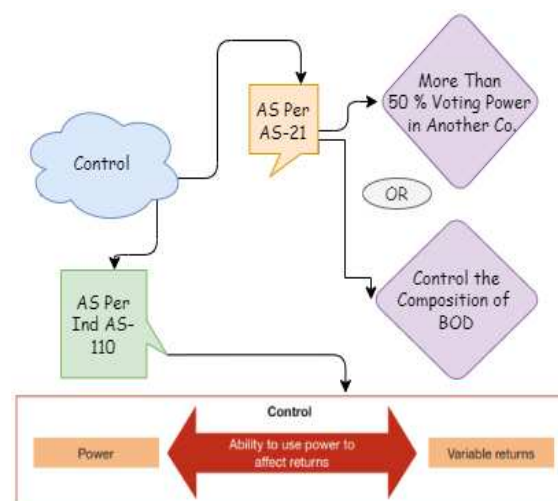


In this Article, we will discuss over the decision of whether CFS would be prepared in certain scenarios or not.

Requirement of Preparation and filing of CFS is governed by Companies Act, 2013 and how to prepare is guided by AS/ IND AS which is also mandated by Companies Act, 2013.

So, let's start with the fundamentals.

An entity is considered as subsidiary of another entity when such another entity which is nothing, but the parent company has **Control** over it.



Is Consolidation required between all subsidiaries irrespective of the nature of entity?

As Per the answer to the FAQs (Frequently Asked Questions) provided by ICAI dated 24-06-2016, it has been stated that relevant **Indian Accounting Standard 110**, “Consolidated Financial Statements” provides that where an entity has control on one or more other entities, the controlling entity is required to consolidate all the controlled entities.

Since, the word ‘entity’ includes a company as well as any other form of entity, therefore, Financial Statement Consolidation would take place amongst different entities i.e., Companies, LLP etc.

Similarly, under **Accounting Standard 21**, as per the definition of subsidiary, an enterprise controlled by the parent is required to be consolidated. The term ‘enterprise’ includes a company and any enterprise other than a company.

Therefore, under AS also, CFS Would be prepared between every other entity with each other.

For Example: A ltd. can be Consolidated with B Ltd or B & CO. (LLP).

Is Consolidation required when Company has investment in associate or Joint venture

Explanation to Section 129(3) of Companies Act, 2013 provides that the word “subsidiary” shall include associate company and joint venture.

In view of the above, although Company does not have any subsidiary, it is required to prepare consolidated financial statements for its associate and joint venture in accordance with the applicable Accounting Standards, i.e., AS 23, Accounting for Investments in Associates in Consolidated Financial Statements and AS 27, Financial Reporting of Interests in Joint Ventures, respectively.

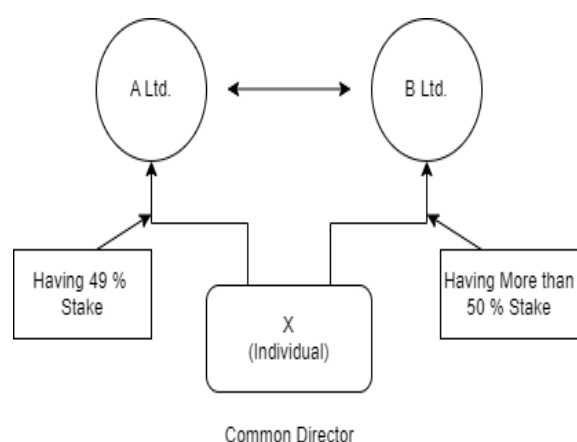
Now Let’s Discuss some Case Studies to have clarity over the concepts.

Practical Case Study: 1

There are Two Companies A Ltd and B Ltd. which are major players in the Automotive sector from almost last two decades.

And it has been found that X an individual, who is a Common director in both the Companies A Ltd. as well as B Ltd.

Here, whether there is any requirement for preparation of Consolidated Financial Statement (CFS)?



Now here, in this Case, We Will discuss this in two scenarios

First: In Accordance with Ind AS 110, To establish Control, certain conditions are required to be fulfilled.

So here,

- ✓ Neither B Ltd. nor A Ltd. Possess power in each other as both companies are not having any voting right between each other so as to give them control over each other.
- ✓ As there are Common director in both the companies and therefore, Director might be able to affect the investee's return through its involvement.
- ✓ As Director X which is Common might also be able to affect the investor's return other than Power and exposure or right to Variable returns.

Both companies are not able to exercise control over each other since all the conditions of Control needs to be satisfied for consolidation as per IND AS 110.

Therefore, as per Ind AS- 110, Consolidation would not happen.

Second: In Accordance with AS-21, Control is not getting established, Because

Company Neither A Ltd. nor B Ltd.

- ✓ Possess Majority Stake in each other (51% or more)
- ✓ And also, neither of them has the power to control the composition of board of directors of other company

without the consent of common directors, as it has been clearly clarified in Para 9 of AS 21, Please refer to the extract of the same.

Para 9 of AS-21

An Enterprise is Considered to Control the Composition of Board Of Directors of the Company, if it has the power, "Without the Consent or Concurrence of any other person", to appoint or remove all or a Majority of Directors of that Company
An enterprise is deemed to have the power to appoint a director, if any of the following conditions is satisfied:
(a) a person cannot be appointed as director without the exercise in his favour by that enterprise of such a power as aforesaid; or
(b) a person's appointment as director follows necessarily from his appointment to a position held by him in that enterprise; or
(c) the director is nominated by that enterprise or a subsidiary thereof.

Twist: What would happen if Common Director X having 99% shareholding in Both the Companies A Ltd. and B Ltd.

Now In this Case also, no matter what percentage of stake is being held by common Director but here Control cannot be established because here neither A Ltd. Nor B Ltd. Possess Power over each other, So the answer would remain same i.e., no need of consolidation.

Practical Case Study: 2

A Ltd. Has 35% shareholding in B Ltd. And A Ltd. Has two directors naming "Chatur" and "Virus".

And it has been found that A Ltd. is a major Supplier of B Ltd. and there is an agreement between both the Companies such that in relation to the same, it has been provided

that no decision can be made by the company (B Ltd.) until agreed with A Ltd.

Now here, if we check Holding and Subsidiary Relationship for the Purpose of Consolidation of Financial Statement, then:

In Accordance with AS 21

CFS Would not be required to be prepared as A Ltd. –

- ✓ Neither have any majority Stake in the company and
- ✓ Nor controlling the composition of Board of Directors as A Ltd. is not having any power of appointing or removing the majority of directors although A Ltd. is having an agreement to give an importance in relation to any decision made in the company (B Ltd.).

In Accordance with Ind AS 110

CFS would not be required to be prepared as it is also not fulfilling all the criteria of Control

- ✓ A Ltd. has Power over B Ltd. as it is having Significant influence over the Company.
- ✓ A Ltd. has Exposure and even right to variable returns from its involvement with the Company B Ltd.
- ✓ But not having any ability to affect the return on the Amount which is invested in B Ltd.

And therefore, in accordance with Ind AS 110 also, Company is not required to prepare Consolidated financial Statement

Practical Case Study: 3

A Ltd. Having 51% Stake in B & Co. LLP, and here, the Two directors (X and Y) are Common Partners as well, in LLP out of 3 partners.

Now in this case,

As per AS-21, CFS would be prepared as Company does have majority stake in B & Co. LLP which is 51% in this case making B & Co. LLP, a subsidiary of A Ltd.

As per IND AS 110 as well, CFS would be prepared since all the conditions mentioned therein to qualify as subsidiary is getting fulfilled.

Practical Case Study: 4 A ltd. Which is an investment entity acquired 100 % stake in S Ltd. And which has no intention to dispose-off in near future.

Now in this Case,

As Per AS-21, CFS would be required as A Ltd. having full control over S ltd. in terms of 100% Shareholding in Such Company.



But As Per Ind AS-110, CFS Would not be required as there is an exception to consolidation as per **Para 31** of IND AS 110 which states that an Investment entity shall not Consolidate its Subsidiaries, instead it shall measure an investment at a Fair Value through Profit or Loss in accordance with the Ind AS 109.

Twist 1: Now here it has been found that S Ltd. Provides investment related Services to the investor as well as to other parties which is also provided by its parent investment entity.

Now In this Case,

Consolidation of financial statement would be prepared as per AS-21 as well as IND AS-110.

Twist 2: If A Ltd. Holds 51% shares in in S Ltd. And holds them as stock in trade and has the intention of Disposing it in near future. (Assuming neither of the entities is an investment entity.)

Now in This Case,

As Per AS-21, CFS would not be prepared even though A ltd holds 51% shares in S Ltd. As Control is intended to be **temporary** because it has been clearly excluded from Consolidation as per Para 11 of AS-21.

But As Per IND-AS 110, there is no such exemption regarding temporary control, so in that case, CFS will be required to be prepared.

In nutshell, CFS would be required to be prepared if a company holds **more than**

one half of total voting power in another company. The voting power should be with the company an not with the common shareholders in two entities. And consolidation can be made even of different entities i.e. Company to Company, Company to LLP etc.

CARO APPLICABILITY: Small Company exemption or specific applicability criteria

Riya Kejriwal

Inputs by: Aditya Jain

Supervising CA: Nitin Sharma

As per Companies Act, 2013, Auditors of Company is required to report on certain matters as specified by CARO 2020.

*“Audit report
ko sudharo,
isiliye krte h
reporting
under
CARO”*

Applicability of CARO, 2020: -

The Ministry of Corporate Affairs has delayed the applicability of CARO 2020 from the financial year commencing from 1st April 2020 to 1st April 2021 (including foreign company), with the exception of the following companies that are expressly exempt from its application:

- One-person Company
- **Small Company**
- Banking Companies
- Insurance Companies
- Company covered under Section 8
- A private company not a holding or subsidiary of a public company whose:



- 1) Paid up share capital and reserves and surplus not more than rupees one crore as on the balance sheet.
- 2) Borrowing of which doesn't exceed rupees one crore from any bank or financial institutions at any point of time during the F.Y.
- 3) And which doesn't have a total revenue as disclosed in Schedule III to the companies act 2013 (including revenue from discounting operations) exceeding rupees ten crore during the F.Y. as per financial statement.

➤ What should be included or excluded in Borrowings?

Borrowings: - Borrowings from banks or financial institutions can be long term or short term. Outstanding balances of such borrowing shall also be considered for computing the limit of one crore. In case of term loans interest accrued and due is considered as borrowing but interest accrued and not due is not considered as borrowing. Borrowings from Non-banking institutions are also be considered while calculating total borrowings.

What are Financial Institutions: -
As per Section 2(39) of the act financial institutions include a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934".

General Clarifications regarding borrowings:

- Financial institutions shall also cover non-banking financial institutions (NBFC).
- Loan taken from any private or foreign bank would also be taken into consideration.
- Loan from Private limited company, And Individual will not be considered.
- External commercial borrowings from Foreign Company will be excluded.

What is a Small Company?

In accordance with Section 2(85) of Companies Act, 2013, Companies with a paid-up capital of Rs. 4 crores or less in the previous year and turnover of Rs. 40 crores or less in the previous year come to be defined as small companies with effect from September 15th, 2022 under the revised definition and threshold restrictions.

Nothing in this shall apply to a holding or a subsidiary company.

The new limits announced on 15.09.2022, will be considered in F.Y 2022-23, for deciding the status of small company.

The previous limit was Rs. 2 crores of paid-up capital and Rs. 20 crores of turnover.

So, I have a Question – Is a small company still exempt even if it exceeds the private company limits?

According to Para 12 of ICAI's guidance note, a small company will continue to be exempt from the order's application even if it meets any of the requirements listed for private companies.

For clear understanding- If a private company having paid up share capital of a Rs. 4 crores or less in the previous F.Y. and Turnover of the same is Rs.40 crores or less in pervious F.Y., will it be necessary to consider specific criteria of private company for determining exemption from applicability of CARO, 2020?

As we can see, it is a small company as defined in Section 2(85), so it will unconditionally exempt from applicability of CARO.

CRUX: Even if Private Company does exceed specific exemption criteria and attracts CARO, but simultaneously meets the Small Company criteria, the small company criteria will override the specific exemption limits and CARO will not be applicable.

Example:

AR Pvt. Ltd. is the holding of LK Pvt. Ltd. As per audited financial statement for the year ending F.Y. 2021-22 of LK ltd its turnover was Rs.15 crores and for F.Y 2022-23, turnover was Rs. 12 crores. Is CARO applicable to LK Pvt. Ltd.?

Now, to check applicability of CARO on LK Pvt. Ltd. for F.Y 2022-23, we need to first check if it is Small Company. Here, LK Pvt. Ltd. is a subsidiary of AR Pvt. Ltd, and turnover of LK Pvt. Ltd for F.Y 2022-23 does not exceed the limits as per Sec 2(85) – (New limits of 40 Crore turnover and 4 Crore Paid up Share capital).

But, since LK Pvt. Ltd. is subsidiary of AR Pvt. Ltd, LK Pvt. Ltd. will fall under exceptions of Sec2(85), and will not be considered as Small Company. Thus, CARO will be applicable on both companies if they exceed specified limits for Pvt. Co. under CARO, 2020 in F.Y 2022-23.

- **Whether CARO is Applicable to the Consolidated Financial Statement?**

Except for clause (xxi) of paragraph 3, the Companies Act, 2013 states that the auditor's report on consolidated financial statements is exempt from application.

According to this clause where any qualification or adverse remark are given by auditor in their respective standalone companies' CARO reports, such details of such remarks are to be mentioned by auditor of the company in his CARO report of CFS.

Example:

Case 1

CA R is appointed as the auditor of ROS Private Ltd whose turnover is Rs.65 Crores (F.Y.2021-22). U.T private limited a subsidiary of ROS private limited has turnover Rs. 11 crores (F.Y 2021-2022), in which auditor has given an adverse opinion

in his Independent Auditor's Report related to AS-15 in Standalone Financial Statements. Provide in your opinion whether CARO will be applicable to Consolidated financial statement?

If auditor gives any adverse remarks in his IAR of UT Pvt. Ltd. but not in CARO report, then CARO, 2020 will not be applicable on Consolidate Financial statement (CFS). So, in above case for CFS, CARO 2020 will not be applicable.

Case 2

Suppose in above example. Reporting under Clause 1 of CARO, 2020 was also done by auditor of UT Pvt. Ltd. related to non-maintenance of FAR. How will Auditor of ROS Pvt. Ltd deal with this situation in CFS?

Auditor will have to report the same in CFS as per clause (xxi) of Para 3 of the CARO, 2020.

Practical Insights through Illustrations:

Illustration 1

Following data relates to X Pvt. Ltd. Will CARO be applicable for F.Y. 2022-23, if Turnover is 19 Cr. in F.Y 2022-23?

Date	Paid up Capital	Remarks
30.09.2021	70 Lacs	-
31.03.2022	4.5 Crore	Shares issued
31.03.2023	3.5 Crore	Buy back of shares of Rs. 1 Crore done during F.Y. 2022-23

As per Sec 2(85), X Ltd shall be considered as Small Co. as its Paid-up share capital is within the specified limit (4 Crore in this case) on 31.03.2023 for deciding status of small company. Thus, CARO will not be applicable.

Illustration 2

X Ltd., a public company, having paid up share capital of 10 lakhs as on 31.03.2023. Can it be considered Small Company for F.Y 2022-23?

A Public Company cannot become a Small Company as per Section 2(85).

Illustration 3

An LLP converted into Private Company during the F.Y.2022-23 will it attract CARO for the financial year ended on 31/03/2023? Yes, CARO will be applicable if the specified limits of Pvt. Ltd. exceed, as applicability of CARO is decided by the year-end status of entity. In the given case, small company cannot be classified in previous year as there are no status of company.

Illustration 5

Suppose a Private Ltd. Company exceeding limits of CARO is converted into LLP during the year. Will it attract CARO?

LLP will not attract CARO as it is not applicable on LLPs.

Conclusion and Author's View:

After the recent amendment in limits of small company, the gap has increased between limits of small companies and limits specified for private companies, exceeding which, CARO shall be applicable

In author's point of view, the limits for private companies are not serving much purpose, as companies can still take status of small company, if eligible, and avoid reporting under CARO, 2020. The appropriate authorities may choose to revise the specific exemption criteria to increase the relevance of the provisions.

Overall, saving time and money is made possible by the CARO applicability exemption for small businesses. However, the companies which are exempt under CARO, must also check the matters stated under this on a voluntary basis for the better check on the company. Because most of the points to be reported in CARO are eitherways necessary to be checked by auditor during audit and may prove useful to him while forming opinion.

Value addition in terms of cost cutting aspects

Shivi Akar

Inputs by: Siddhant Tholia

Supervising CA: Jitendra Kumar

We often wonder that running a business with ever increasing profits is a treat to savor. We look up

*"Cost Kam
Karo Warna*

*....
Loss mein
Run Karo!!"*

to business stalwarts like Mukesh Ambani, Gautam Adani, Ratan Tata and who not for running such successful

businesses since a long period of time. However, what seems perfect from the outside is never a sheer brilliance achieved overnight.

To make profits on year on year basis, an organization has to lay its focus more on reducing its costs. If the organization is able to reduce its cost of operations successfully, it can certainly improve the profit margins and hence push the organization more closer to achieve its objectives in a profitable manner.

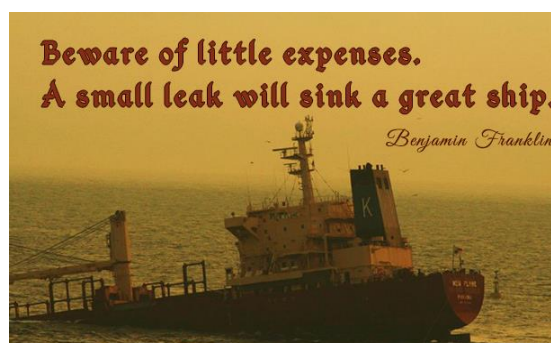
Now, let us look at what we infer from Cost Reduction. It is a process of decreasing the unwanted expenditures of a business in order to maximize its profits. It involves identifying such expenditures and eliminating them in order to provide value to the customers. Cost reduction strategies should be implemented on routine basis to ensure savings and to run



business activities in an effective & efficient way.

Kisi ne sahi kaha hai....Boond Boond se hi sagar banta hai!!

However, in such a volatile environment where the business operates, even the smallest increase in revenue or cost cutting can have a great impact on profitability. But the question arises where does this cost cutting start from?



Scope of Cost Reduction

Some of the important areas where maximum efforts of the organization must be concentrated to reduce costs are discussed as under:

1. Product Designing

A well-conceived cost reduction programme starts with the design of the product. All possibilities of cost reduction should be investigated by the management while introducing new designs of the products or while seeking improvements of the existing designs. Some common life examples which can be seen in today's world are as follows:

1. Though failed in Indian market, **Tata Nano** cars have set a bar of how to design a vehicle in a cost-effective manner which includes:

1. Small body design
2. Usage of two small motor bikes engine as against the conventional car engines.
3. 3 nuts per wheel instead of 4
4. Hydro forming being used in place of stamping.



2. In the initial stage, though the cost will be high, but proper planning of the product design will tantamount to increased margins as well as sales for the business and consequently, the increased cost will be absorbed in future. Following are some examples of how this strategy has been incorporated by two companies:

- The **OLA S1 and S1 Pro** e-



scooters have been able to gain all the limelight due to its product design which includes the high-end features such as keyless ignition, large boot space, external charging

port and loads of smart features accessible via the large LED display.

- Similarly, **Ather** has used tons of smart features like monthly riding stats and Bluetooth connectivity at its product development stage only to increase its demand.

3. Solar panels are yet another example wherein developers focus on following features during its designing stage:

- Usage of more efficient solar cells which reduces the size of a single solar panel.
- Amorphous silicon-coated roof tiles and other photovoltaic materials have been introduced in architectural design.



Constant changes are being made by different manufacturers in the subsequent models so that cost effectiveness can be ensured on a large scale and in desired timelines.

2. Organization Structuring

Cost reduction may be brought about by an improvement in the structure of an organization; economies are bound to be achieved if the following considerations are looked into:

- Definition of each function and responsibility.
- Proper assignment of tasks and delegation of responsibility to avoid overlapping

3. Factory layout Equipment

Factory layout and the plant layout also affect the cost of production to a large extent. The management should examine its factory and plant layout carefully and explore the possibilities of cost reduction by eliminating wasteful and irrelevant system and ensuring maximum utilization of existing facilities.

4. Production Plan, Programme and Method

Production control ensures proper planning of work by implementing an efficient procedure and programme, ordering the correct machines and proper utilization of materials, manpower and resources so that there is no wastage of time and money.

An efficient cost reduction programme should examine the following points relating to production control.

- Whether wastage of manpower and material is kept to the minimum?
- Whether a budgetary control system is in operation to ensure control over overhead costs?

For understanding the practical approach of cost cutting aspects, let's have an insight to some real life cost cutting case studies:

❖ Kappa Packaging – Wastage cost reduction

Challenge – Kappa Packaging had a factory in Greater Manchester, UK that made cartons to hold bottles of drink. The challenge was to cut down the cost of waste paper and cardboard it was producing, which stood at 14.6% of raw material consumed.

Approach – In 2002, Company applied Kaizen costing technique, which means small and continual improvements in existing processes by elimination of waste in production, assembly, and distribution processes. This approach included the following initiatives:

- (a) Making employees more aware of how much waste was being produced
- (b) Requiring them to monitor the amount of waste for which they are individually responsible
- (c) Establishing a Kaizen team to find ways of reducing costs

Results - Kappa was able to reduce the waste from 14.6% to 13.1% by the end of 2002 and down to 11% in 2003. Each percentage – point saving was worth an estimated Euro 1,10,000 a year.

❖ Canon Inc. – Flow Cost Accounting

Challenge: The Company was facing serious concerns as regards material losses (waste), energy, costs and CO2 emissions, i.e. Environmental Costs.



Approach: The Company adopted Flow Cost Accounting method. Under this approach, it calculated the actual costs of waste (hidden costs), i.e. environmental costs. Material losses incurred at various stages of production were also recorded. To bring transparency apart from the quantity of material, the cost per unit and value in total was also recorded.

Results: The Company was able to save more than Euro 30 million in material costs between 2004 and 2012 through

this approach of Material cost accounting.

❖ Ford Motor Company - Technology ridden Process Innovation

Challenge: The Company was looking for measures to reduce the time taken to produce a single vehicle so that manufacturing cost per vehicle could be brought down.

Approach: One of their most notable innovations came more than 100 years ago with the invention of world's **first moving**

assembly line.

An assembly line is a



production process that breaks the manufacturing process of a good into steps that are completed in a pre-defined sequence. Assembly lines are the most commonly used method in the mass production of products.

Results: The process not only simplified vehicle assembly, but shortened the time necessary to produce a single vehicle from 12 hours to 90 minutes. That process innovation, creating an assembly line to speed up production, not only benefited the auto giant, but manufacturers of other consumer goods such as refrigerators and vacuum cleaners. It remains an important mode of production for businesses today.

❖ Technological Supply Chain Collaboration Between Walmart and Procter & Gamble (P&G)

Challenge: During the 1980s, P&G was facing a challenge to bring down its

supply chain, inventory and order processing costs. This was basically because during those days, retailers



shared very little information with manufacturers.

Approach: The 2 giants of that era built a software system that hooked P&G up to Walmart's distribution centres. They partnered in the following manner:

- a) When P&G's products run low at the distribution centres, the system sends an automatic alert to P&G to ship more.
- b) In some cases, the system communicates down to the individual Walmart store, allowing P&G monitor the shelves through real-time satellite link-ups that send messages to the factory whenever a P&G item swoops past a scanner at the register.
- c) The relationship has expanded to include radio-frequency identification (RFID) technologies to gain even more insight into ridding inefficiencies in the supply chain.

Results – The following results were experienced by P&G:

- With this kind of minute-to-minute information, P&G knows when to make, ship and display more products at the Walmart stores. There's no need to keep products piled up in warehouses awaiting Walmart's call.
- The system saves P&G so much in time, reduced inventory and lower order-processing costs that it can afford to give Walmart "low, everyday prices" without putting itself out of business.

❖ Soap Packaging – The Poka Yoke Strategy

Challenge: A Japanese Soap Producing Company received complaints that many boxes ended up delivered to the customers without soap inside! The following challenges were faced by the company:

- a) To check if every single box had soap inside before being delivered (considering the volumes of soaps being produced) it would have required dozens of people anyway that would definitely result into costs being incurred.
- b) Also, the company had to incur costs to deliver the soap to the aggrieved customer without receiving any price for the same.
- c) The company was not in favour to invest in an expensive X-Ray Machine which would again involve manual involvement.

Approach: The managers brainstormed with their team, with the objective to find a *simple and cheap* solution to prevent the defects (empty boxes) from being delivered to the customers, and the solution came! A fan! Put a fan above the last element of the production chain: empty boxes will fly away!

This strategy can be termed as a Poka yoke. Poka-yoke is a Japanese term that means "mistake-proofing" or "inadvertent error prevention". It is a process that helps an equipment operator avoid mistakes and defects by preventing, correcting, or drawing

attention to human errors as they occur.

Results – It took very little time and money to put the fan in place, which helped the soap factory regain the confidence of its customers.

❖ Starbucks – Supply chain cost reduction challenges

Challenge: Starbucks is pretty much a household name, but like many of the most successful worldwide



brands, the coffee-shop giant has been through its periods of supply chain pain. In fact, during 2007 and 2008, Starbucks leadership began to have severe doubts about the company's ability to supply its 16,700 outlets. As in most commercial sectors at that time, sales were falling. At the same time, though, supply chain costs rose by more than \$75 million. Findings included the following problems:

1. Fewer than 50% of outlet deliveries were arriving on time.
2. Several poor outsourcing decisions had led to excessive logistical expenses.
3. The supply chain (like those of many global organizations) had become unnecessarily complex

Approach: Starbucks' leadership had three main objectives in mind to achieve improved performance and supply chain cost reduction. These were to:

Reorganize the supply chain

Reduce cost to serve

Lay the groundwork for future capability in the supply chain

To meet these objectives, Starbucks divided all its supply chain functions into three main groups, known as “plan” “make” and “deliver”.

Next, the company set about terminating partnerships with all but its most effective third-party logistics service providers. It then began managing the remaining partners via a weekly scorecard system, aligned with renewed service level agreements.

Results: By the time Starbucks had completed its transformation program, it had saved more than \$500 million over the course of 2009 and 2010, of which a large proportion came out of the supply chain, as per Peter Gibbons, then Executive Vice President of Global Supply Chain Operations of Starbucks.

Some Innovative Cost Cutting Measures

1. Vendor Contract Negotiating:

Traditionally, vendor contract negotiation used to take place once in 3-4 years. COVID-19 has changed the way of doing business and so is the frequency of vendor contract negotiations. Businesses should reconsider vendor contracts and take in account ways of cutting business expense and operational costs. Whenever a new

vendor got selected, the organization must focus on how the vendor would create value in future rather than the price being finalized.

2. Integrate technologies in workflow:

As technology is improving day by day



and softwares are getting better, manual and monotonous tasks can be performed through workflow automation.

Automation can be used to run reports, process payments, without involvement of human intervention, track timesheets, scan expenses and process expense sheets, generate invoices, collect orders and execute them for fulfilment, reorder stock when levels are low, etc. This, in turn, would reduce the staffing cost.

3. Make or Buy decision:

Outsourcing decision is often called a



‘make or buy’ decision. It involves a decision of

whether to continue ‘making’ a product or ‘buy’ it from an external market. Outsourcing decision enables a firm to reduce investment and capital outlay costs. Outsourcing decision requires incremental analysis.

Example: Entity undertaking construction may take a decision on buying or making the bricks (If resources are available) to be used in the building. Making bricks in-house can result in saving substantial cost.

4. Restructuring of loan:

In case of loans, where instalments are causing a burden on monthly cash flow, having a negotiation with bank can help in reducing such burden. Most banks can give you an option to either pause it for a specific period or restructure to increase the tenure and reduce the instalment. Alternatively, talk with other banks for lower interest rates.

5. Hire Smart and young people:

Experience is important but it is not everything, and it comes with a cost. More and more technology companies now hire fresh



college grads and then train them for a month or two. It turns out to be very cost effective than hiring an experienced person.

6. Involve staff in key decisions:

Usually, staff knows more than anyone else where the operational wastes are. They know the opportunities for improvement and operational areas where cost cutting can be ensured. Involving staff in decision making also boosts up their motivation which will ultimately result in more effective and efficient performance.

7. Follow Work from home (WFH) concept:



In case of operating a business that involves rendering of services without visiting any

office or client premises, one can opt to go remote. With everyone having access to computers and the evolution of communication tools, service industry employees can work from pretty much anywhere. Going remote would mean saving cost of rent and maintaining office space. Apart from the entity being able to directly save expenses on rent and maintenance, it can also experience a boost in team productivity. As per a survey by BCG, 79% of professionals have been able to maintain or improve productivity while working remotely.

Cost Reduction when the clouds of Inflation are just above – A battle to watch out:

Inflation is defined as a rise in the price of everyday goods and services such as food,



housing, clothing, transportation, recreation, consumer staples, and so on. The

average price change in a basket of commodities and services over a period is used to measure inflation. The inflation rate is the rate at which the value of a currency depreciates.

Effects of Inflation:

The people's purchasing power declines as the cost of goods and services rises.

When the rate of inflation is strong, the cost of living rises as well, leading to a deceleration in economic growth.

If inflation is a cost-push, there will be a decline in production as the increase in production cost will hamper the confidence as well as meet the budget constraints of the producer.

Producers hoard stocks of their commodities which results in artificial scarcity of commodities in the market. The producers sell their products in the black market.

Inflation causes misallocation of resources when producers divert resources from the production of essential to non-essential goods from which they expect higher profits.

Measures to reduce Costs during Inflationary trend:

Adjust discounting and promotions, and maximize non-price levers:

Companies that consistently address total customer and product profitability are likely to weather inflationary cycles better than those that focus solely on cost changes, which can limit the size and frequency of their price increases.

Develop the art and science of price change:

Instead of making broad price increases that may erode customer trust and demonstrate insensitivity, companies can tailor their inflationary price increases thoughtfully for each customer and product segment.

Accelerate decision making tenfold:

Companies can use data and analytics to track key metrics, monitor prices and customer reactions, and respond efficiently to competitors' moves, increased stock levels, and other dynamic variables.

Plan options beyond pricing to reduce costs:

Companies must encourage their sourcing and engineering teams to reimagine products most affected by inflation. The aim is to adjust product design, packaging, or even product features while maintaining the functionality customers require.

Track execution relentlessly:

An important key to continuous performance management is providing the newly established inflation council the data and insights it needs to build strong opinions, enforce price increases, and react to customer feedback.

Online Sales Business – Challenges faced in Accounting

Yash Kumat

Inputs by: Piyush Agarwal

Supervising CA: Jitendra Kumar

“Bhaiyaaaaa online sale ka kaam toh shuru karliya par kuch hisaab samajh nahi aara” Looking at the quantum of sales and getting happy about it while wondering where did the money go?

“Online sales mein toh paisa he paisa hoga,

Paisa toh hoga, but milega tab tak nahi jab tak sahi se hisaab nahi hoga”

The most common challenge faced by all the entities is that how to record all the transactions properly to get to know the actual position of the business.

Before going further in discussion of accounting aspects of online sales business we must look at potential growth of online retail sales business in India.



For starters, let us understand who is an E commerce operator (ECO) and an E commerce participant?

An ECO is a person who owns, operates, or manages a digital/electronic facility for the sale of goods and services. He is responsible for making payments to the e-Commerce participant on such sales. Eg: Amazon, Flipkart, Meesho, Myntra etc.



An E-commerce participant is a person who sells goods, services, or both through an electronic facility provided by an E Commerce operator. E-commerce participant must be a resident of India. Eg: Mama Earth, Boat, etc.

We will be discussing on the following areas in detail:

1. Data availability
2. Data Dumping
3. Sales reconciliation
4. Expenses reconciliation

5. TDS deduction
6. Receipt reconciliation
7. TDS receivable
8. TCS on GST
9. Security deposit reconciliation
10. Claim for damages
11. Vendor Reconciliation

1. Data availability

The ECO portal gives the e commerce participant complete detail of all the transactions that it does through that ECO, from sale to remittance, expenses deducted to TDS deducted and so on.

Various data is available on the ECO portal like:

S. No	Data	Details	Date of availability (generally)
1	Merchant Tax Report (MTR)	Order wise details of Sales and Sales Return	7 th of succeeding month
2	Payment Summary	Order wise details of remittance of payments by ECO	Weekly
3	Expenses Bills	Detail of expenses	3 rd of succeeding month



For how long is the data available on the ECO?

The data is available only for a limited time on the ECO portal. For instance, the MTR sheets and payment sheets cannot be downloaded for a period older than 3 months.

So, the original data downloaded from the ECO portal should be kept and maintained in a separate folder, keeping it untouched so that in case of any grievance, it can be referred.

A copy of the above-mentioned data should be made and then used for accounting or other analysis work.

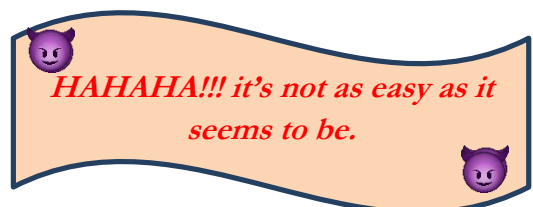
2. Data Dumping:

The most common issue is that of **recording the data properly**. You may have to contact your accounting software provider to assist you in this matter.

If you are doing accounting using tally software, then you will be requiring the latest version of the software and you will be required to purchase an ad-on extension from Tally which would assist in recording the bulky data properly.

This extension would allow you to import the data downloaded from the ECO portal in MS Excel format.

This would ensure **completeness and accuracy of data**.

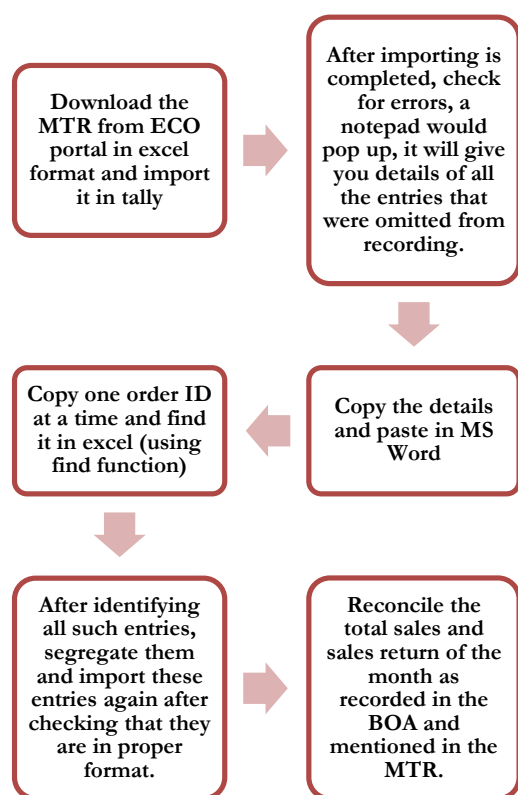


Due to **huge quantum of data and low system specifications** of the device (Computer/Laptop) used, sometimes, errors occur in importing the data and the accountant might not be aware of this

fact, does not cross check it, leading to incomplete and inaccurate data. If the accountant is aware of this fact, then too, sometimes, error of duplicity occurs as the accountant may simply import the whole data again.



Then what is the correct way of data dumping?



3. Sales Reconciliation:

Data required = MTR from ECO portal and Sales data from BOA.

The MTR report contains all the details regarding all the transactions of sales and sales return. There are two ways for recording the sales, first, by recording each entry manually from the MTR sheet into the accounting software or Data

dumping method (the issues faced and correct process of recording has already been explained in Point no. 2). Generally, the second option is adopted due to heavy quantum. Ideally the sales and sales return as per MTR sheet and the BOA shall match.

MTR		BOA
Taxable value	=	Taxable Value
GST	=	GST
TCS	=	TCS

Author's view: The MTR is generated by the 7th of succeeding month so it should be imported properly, maximum, by the 9th of succeeding month and details regarding GSTR 1 should be prepared accordingly.

FUN FACT

MTR contains a lot of details like Order ID, GSTN of seller, GSTN of recipient (in case of B2B sale), Taxable value, GST amount, TCS under GST, etc. Some ECOs provide two separate sheets for B2B and B2C transactions, so beware to check both.

4. Expenses Reconciliation:

Data required = Expense Bills, Debit notes for expenses and details of expenses booked in BOA.

The expenses and debit notes, if any, should be booked in the BOA with the correct expense name like Advertising, storage, commission, etc. These bills and debit notes are issued on the last date of every month. Simply, the amount of bills

and debit notes should match with the expenses booked in the BOA.

Author's view: *These should be recorded maximum by 5th of every succeeding month to ensure correct and timely deduction and deposition of TDS on the same.*

5. TDS Deduction:

Common mistake found in almost all the cases is that of Non deduction of TDS on the expenses charged by the ECO. Generally, auditees don't deduct TDS on these expenses as the full amount of expense is deducted by the ECO before transferring the net proceeds from sales.



So, a query is raised by the clients that is it necessary for them to deduct TDS on such expenses?

Yes, TDS is required to be deducted on all the expenses covered under TDS as per the Income Tax Act, 1961, otherwise 30% of such expense amount would be disallowed for non-deduction u/s 40a(ia) of the above-mentioned Act, some examples are given below:

Expense type	Section	Rate
Commission	194H	5%
Storage/Warehousing	194C	2%
Advertising		

FUN FACT:

Lower Deduction Certificate (LDC) issued u/s 197 in favour of the ECO, if any, can be downloaded from the Traces portal, by entering the PAN of the ECO and relevant F.Y. under the downloads tab.



And what if they deduct TDS on these expenses, how will they recover the same from the ECO?

They must upload Form 16/16A (Declaration for deduction of TDS) on the ECO portal (quarterly basis) and then the amount will be remitted to the client's bank account within few working days.

Author's view: *Even if the amount is not reimbursed by the ECO, it is suggested to deduct TDS to safeguard yourself from disallowance of 30% of the whole expense amount considering the cost benefit analysis.*

6. Receipt reconciliation:

Data required = Payment sheet from ECO portal and receipt details in Bank from BOA.

There are two options for recording the payment by the ECO, either record all the entries as shown in the bank statement or import the payment sheet just like the MTR and it will record all the receipt transactions. Ultimately, the receipts as per ECO portal should reconcile from the amount received in bank.

It is also advised to check for transactions for which payment has not been received by reconciling the receipts report of ECO portal and bank receipts through receipt order ID (as mentioned in MTR and payment sheet)

Author's View: *It is suggested to record the receipts through Bank statement only, as recording receipts by importing payment sheet may become a tedious task as it contains a*

lot of other information and entries relating to expenses deducted which were already recorded through the monthly bills received, might lead to duplicity in recording of expenses, etc.

7. TDS Receivable:

Data required = Payment sheet from ECO portal, Form 26AS and BOA

The ECOs deduct TDS on every transaction u/s 194O @ 1% on the Gross amount of Sales (i.e. inclusive of GST). The details regarding this are available in the Payment sheet which should be recorded accordingly in the BOA as TDS receivable under current assets.

Although, as a general practice, everyone records this TDS receivable as mentioned in the Form 26AS.

Author's View: TDS receivable should be recorded from Payment sheet first (weekly basis) and then must be reconciled from Form 26AS (quarterly basis) to ensure correct TDS credit.

It is not necessary that the ECO is a big company so it cannot make mistakes.

8. TCS receivable under GST:

The ECO is required to collect TCS under GST u/s 52 of the CGST Act. Just like the concept of TCS in Income Tax, where one can take credit of the amount collected in computation of tax payable, here the tax collected by the ECO shall be credited to the cash ledger of the E-commerce participant who has supplied

the goods/services through the Operator. The E-commerce participant can claim credit of the tax collected and reflected in the return by the Operator in his [supplier's] electronic cash ledger. The participant can use this amount only on the GST portal for the purpose of payments made to GST department w.r.t. tax, interest, etc.

9. Security Deposit Reconciliation:

When starting business with ECO, the T&C are set for security deposit, for which 2 options are available: One-time payment of security deposit or deducting some portion of the total remittance amount as security deposit, in every remittance cycle (generally weekly).

Author's view: Option 1 of One-time payment of security deposit should be preferred, otherwise keeping a weekly record of the security deposit deducted on hold and balance amount remitted by ECO would have to be maintained which would be very tough and time consuming activity.

10. Claim for Damages:

In case of replacement/return of the product, sometimes another product or damaged product is received so the seller can make a claim to the ECO by having visual evidence of same through recording the opening of boxes and sharing it with ECO as a proof that the product so received was damaged/different than sold.

FUN FACT:

In case of sales return, expenses are not reversed by the ECO, rather, more expenses are charged. Some businesses have stopped doing online sales business as they were incurring more cost on sales return as compared to the profits they were earning on the sales



What should be the Treatment of such loss in the Books of Accounts of E commerce participant?

All the claims made to the ECO should be shown under current assets and income should be booked thereafter, then as the claim amount is received (which would generally be less than the total amount of claim), the balance amount not received should be debited to P&L as loss. Also, the quantity of stock lost, would have to be considered as consumed from the closing stock (normal loss) and the per unit cost would thereby increase accordingly.

11. Vendor Reconciliation:

After all the above aspect of each transaction are accounted for, in a proper manner, then only, the balance of the ECO as per its portal and BOA would match.



Conclusion:

Proper accounting is the key to get the maximum benefit of the online sale business. One should expend more on the accounting rather than getting unnecessary assets.

Audit would give more qualitative results if the accounts are made in a proper manner and all the relevant documents are readily available.

Author's view: A separate bank A/c should be maintained for doing all the transactions relating to the online business and separate BOA should be maintained to record online sales specific transactions. This would help in showing the actual profitability from the online sale business.

"Customers toh add to cart karke order karte rahenge but aap tab tak hi deliver kar paaoge jab aap stock, sale, receipts, expenses, etc ka sabhi se hisaab laga paaoge aur properly records maintain kar paaoge."

Increasing the sales would not help until and unless proper records are maintained which show the actual profitability from online sale business.

Published on Taxguru

**COMPANY &
ALLIED LAW**

Loan to Directors working as employee in company and their relatives- Will it attract violation of Section 185 or not, whether it will attract provision of Section 186 of Companies Act, 2013 as well?

Aditya Jain

Inputs by: Yamini Agarwal

Supervising CS: Neha Dangayach

Directors of a company are the ones entrusted with the funds of the members of company. At the same time, they are

*Khatraa
khatraa
khatraa.....*

*Directors or
unke relative
ko loan diya to
lagega 25 lakhs
ka phatkaa*

entrusted with the funds of public, lent by Public

Financial

Institutions to the company.

Furthermore, they have the authority of providing loan, corporate

guarantees and securities to financial institutions etc. upto certain extent. This all is built upon the funds of members and with that kind of power, there comes the **risk of misuse** as well like channelizing or diversion of funds in their own personal gains or towards their close relatives, related concerns, etc. Therefore, the need



arose to monitor their powers and keep them under the check.

Therefore, section 185 & 186 of the Companies Act, 2013 were enacted to prevent the higher management of the company from deriving undue benefits of their power.

Section 185 of the Companies Act, 2013 governs over the rules and regulations for providing Loan, Guarantee and Security (including any loan represented by book debt) to the **Directors of the Company** or its holding company or any partner or **relative of any such director**; or any firm in which such director or relative is a partner.

Later on, for ease of doing business, the section relaxed the provision that the company may advance loan, guarantee or provide security to any person (as prescribed in section 185 of the Act) in whom any of the directors are interested, subject to the condition that

1. Special Resolution is passed and;
2. the said loan is utilized for its principal business activities of the said person.

However, as per Section 185 of the Act, these provisions are relaxed **if the loan, guarantee or security is given to**

Managing Director (MD) or Whole Time Director (WTD) as a part of the conditions of service extended by the company to all its employees' i.e.

- as a part of company's policy with regard to remuneration to all its employees, not particularly designed for MD/WTD and;
- is pursuant to scheme approved by the members by a special resolution.
- The Act however does not provide this exemption to the relatives of such directors.

The exemption, been provided by the Act in terms of provision of loan to directors under the name of WTD or MD, shall not be taken as a backdoor for routing the company's funds to these mentioned directors, as the approval for the same has been authorized to shareholders aka through passing of special resolution.

Now talking about independent directors which are only entitled to sitting fees and nominee directors which are only present to monitor the channelization of funds; these are not governed by conditions of services provided all the employees of the company, so as per the intention of law these are not allowed to be provided with any loan, guarantee or security from company's behalf.

But what about those employees of the company, who are the relatives of directors as well?

Since the Act does not provide the clear view point on the above issue:

Let's look at this matter from two focal points:

- On the first hand, giving superior position to the position of the person as an employee and not to being the relative of the director.

By taking this viewpoint;

When the person has been working in the capacity of the company's employee along with being the relative of the directors as well, then, he shall also be entitled to enjoy all the benefits that are being enjoyed by other employees of the company, hereby focusing over the giving loan to employees.

As this would not be justifiable to restrict the above mentioned employees from getting the loan from the company merely because of the fact that they are relatives of the directors.

Thus, in this viewpoints context, the granting of loan to such employee in his capacity of being working as an employee feels legally true and fair.

But let's hear this matter from the other side of the view as well.

If the above mentioned transaction with relatives of directors is permitted then it would defeat the primary purpose for formulation of section 185 i.e.

- The core reason behind formulation of this section is to avoid misutilization of the funds of company by its director and if the above stated transaction is been authorized then this would simply act as a backdoor entry of the funds for the directors through their relatives.
- This would make it super feasible for the directors to route the

funds of company through appointing more and more number of their relatives in company.

- Furthermore, if the lawmakers wanted to permit this transaction of company with director's relative, then they would have clearly included this entry when they provided the exemptions of this section. The exemption entry speaks of WTD/MD merely, in the director's context and not about the relatives of the director.

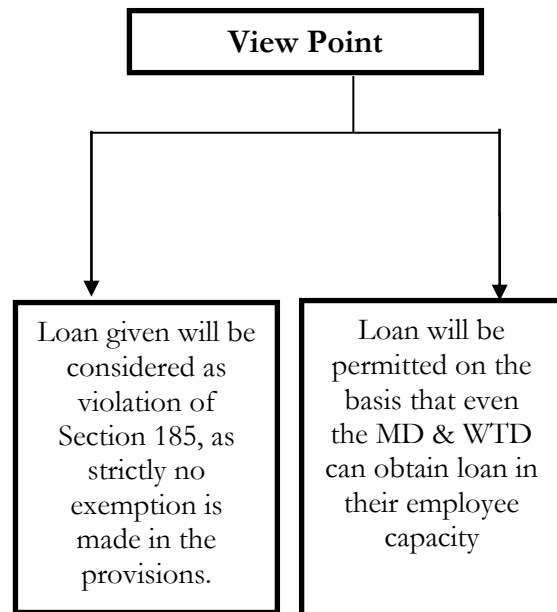
Thus, so as to safeguard the core objective behind the enactment of section 185, granting of loan to the employees who are relatives of the directors shall not be allowed as well, subject to the fact that granting of loan to these employees, streamlining to the policy followed by the company for its employees is allowed.

Let's try to gain clarity over this through an example-

ABC Pvt. Ltd. is a company which is following a policy for all of its employees, to provide loan for the purpose of construction of house, of amount equivalent to 6 month salary of the employee, here the monthly salary of employees is Rs.50,000. Mr. A is the MD of company and Mrs. X, wife of Mr. A, is in full time employment of the company with monthly salary of Rs.2,00,000/-. Now, as per companies policy, company can provide loan to its employees upto 6 month salary i.e. $\text{Rs.}50,000 \times 6 = \text{Rs.}3,00,000$.

Now, salary of Mrs. X of 6 months equals to $200000 \times 6 = 12,00,000$. But, the company can grant loan to Mrs. X only upto the amount of Rs.3,00,000, in

conformity to the company policy. Any loan given over and above of this amount will amount to violation of the Act.



From our perspective, the company is permitted to give loans to its employees, even though they are relatives of directors, subject to the condition that the loan granted is in accordance with the company's policy for its employees, with the interpretation that even the MD and WTD can obtain loans in their employee capacities.

Furthermore, are these transactions covered under Section 186?

Section 186 states that

“Without prejudice to the provisions contained in this act.....”

The section 186 cannot go against other provisions of the Act and hence, these transactions will not be covered under this section.

Consequence of non-compliance –

As a consequence, if any loan, guarantee or security is given or provided in

contravention of the provisions of the Act following fines would be imposed:

- **Company-** Fine Minimum Rs.5,00,000 which may extend to Rs.25,00,000
- **Officer in Default-** Imprisonment up to 6 months OR Fine Minimum Rs.500,000 which may extend to Rs.25,00,000
- **Director-** Imprisonment up to 6 months OR Fine Minimum Rs.500,000 which may extend to Rs.25,00,000 OR Both

In full time employment but policy specifically for Director & his relatives	Yes
--	-----

Concluding the topic,

From the above explanations, we can conclude that, a company CANN give loan to WTD/MD, who has been given exclusive liberty in the Act, subject to the above stated conditions.

Furthermore, giving loan to relatives of the directors, working as an employee of the company can be allowed, subject to the policy, if any, been followed by the company for its employees and going beyond this would be a clear cut violation of the Act. Therefore, company must be careful in providing loan to such employees, as may lead to be a litigative matter for the company. In brief we can summarize through this table:

Relative of Director is :	Violation of section 185
Not in employment of Company	Yes
In full time employment and has company policy for all its employee	No

Can Company consider its own Products to spend on CSR activities?

Nikita Tinker

Inputs by: Prakhar Agarwal

Supervising CS:Neha Dangayach

Indian culture has always been full of generosity; the principle of giving back to society is imbibed in our holy scriptures.

*Karo Samaaj
par thoda
Upkkaar
By undertaking
CSR*

However, with the passage of time, this tendency to serve the society has been decreasing

day-by-day amongst people. So, there arouse the need to come up with a provision for the good cause of society- the provision of CSR i.e. corporate social responsibility.

As the name suggests, this provision was enacted for 'Corporates' and there too specifically for 'Large CORPORATES' as defined under Section 135 of Companies Act, 2013.

The Companies Act specifically clarifies that CSR Policy of the company includes some of the activities relating to areas/ subjects covered under Schedule VII of the Act like eradicating hunger, promoting education, promoting gender equality, ensuring environmental sustainability, promoting



ecological balance, rural & slum development projects except activities undertaken in normal course of business of a company.

Hence, there arises a question what if a company intends to consider its own products to spend for CSR but it relates to activities covered under Schedule VII? Will this be considered as CSR activity or not?

For this, we have to first understand whether CSR in kind is allowed or not. On the above matter, when **FAQs on CSR** were released by the Ministry of Corporate Affairs on 25th August, 2021, the following question was dealt with:

Question: Whether contribution in kind can be monetized to be shown as CSR expenditure?

*Answer: The requirement comes from section 135(5) that states that "The Board of every company shall ensure that it **spends...**" Therefore, CSR contribution cannot be in kind and monetized.*

Also the dictionary meaning of the term 'spend' is to give money to pay for goods, services, etc. (Oxford Dictionary).

This further indicates that the term 'spend' is used in the Companies Act with the intention that CSR expenditure should be made in cash (monetary terms) i.e. **not in kind**.

So, it may be interpreted that as a matter of **general rule**, a company is not allowed to consider its own products for CSR. **However, it is to be noted that a company can buy products from market and then use those products for CSR activities.**

From the above it appears that a hard posture has been adopted somewhat by not permitting the use of own products/services for CSR, particularly in situations where real social benefit may have been pursued.

But, the story does not conclude here. As per the Delhi High Court's instructions in the past, in the case of **Mohd. Ahmed (Minor) vs. UOI W.P. (C) 7279/2013; MANU/DE/0915/2014, Delhi High Court dated 17.4.2014**, the Ministry of Corporate Affairs filed an affidavit on 28th March, 2014, clarifying the scope of the term "normal course of business" used in the Companies (Corporate Social Responsibility Policy) Rules, 2014, by giving the following example:-

"....a pharmaceutical company donating medicines/drugs within section 135 read with Schedule VII to the Act is a CSR Activity, as the same is not an activity undertaken in pursuance of

its normal course of business which is relatable to health care or any other entry in Schedule VII."

"This Affidavit clarifies that an activity carried out by a Company covered under Schedule VII which is a part of its core business, if not done with a profit motive, amounts to a CSR Activity. The aforesaid letter and affidavit of Ministry of Corporate Affairs are taken on record and accepted by this Court. Government of India is held bound by the same."

Here, one phrase which is considerable is '**normal course of business**'. It is to be kept in mind that as per Rule 2 of amended CSR Rules, activities undertaken in pursuance of '**normal course of business of the company**' are expressly excluded from the definition of CSR. This phrase is not defined in the Companies Act; however as per dictionary meaning, it may be summed up as the usual manner and range of a business especially considered in relation to the amount, circumstances, and validity of a particular transfer. Therefore, attention must be given regarding what may or may not be considered as normal with respect to its amount, circumstances and validity, when determining whether a business activity can fall under the domain of CSR.

Taking all the above facts together, it appears that the MCA has taken two conflicting stands on the matter of CSR in kind. On one hand, it has submitted affidavit that an activity of normal course of business, if not done with an object of profit making, may be a CSR activity. And on the other hand, in the FAQs, it has stated that CSR in kind is not permitted.

In our opinion, as the Act uses the term 'spends', so CSR in cash is more intended approach to be taken. Basically the view point of government behind framing CSR provisions in this manner is that if companies are permitted to use their own products freely for undertaking CSR activities, then they may make misuse of CSR provisions. As a result of which, in the shelter of CSR in kind, the real object behind bringing this law would get defeated.

However, it is undeniable that there may be a number of situations when doing so would put a company at a disadvantage, especially in light of the fact that real social benefits would suffer. In other words, even if a company's goods or services are enough to benefit society, whether or not it should be counted as CSR spending would be debatable.

Now, let us take a few instances so as to analyze whether the following cases fall under the purview of CSR or not:

1. Jan-Kalyan hospital is rendering free medical services to 40% of its patients. And let's say as per local government guidelines, it is required to provide free medical services to 25% patients. So, this service will be divided under two parts:
 - a. free medical services up to 25% will not be considered as CSR spend as it is the part of statutory obligation of that hospital;

- b. free medical services rendered beyond 25% i.e. excess 15% (40%-25%) may be considered as CSR spend. This is so because it would fall under the entry relating to healthcare of Schedule VII.

2. Upkari Steel Ltd., a steel rods manufacturer, manufactures steel medical beds. If these beds are **sold** to a hospital, then it is not a CSR spend as this is a profit making activity for the company. The mere fact that it is to be further utilized by a hospital cannot make it fall under the scope of CSR.
3. Sabka Malik Orphanage approached Dayalu Ltd. (a book-seller) for purchasing books for the studies of the orphan children of its orphanage. On this deal, Dayalu Ltd. decided to provide a special discount of considerable amount say 60%.

This is not a CSR activity as the company is selling books in the normal course of its business. In other words, **giving heavy discounts does not tantamount to CSR activity.**

However, another possible view here is that giving a discount beyond usual business practices cannot be considered as an activity of normal course of business. Suppose 10% discount is a normal business practice, then a discount of 60% is

apparently not in the range of usual business practice. Therefore, such an extra discount **may** be brought under the umbrella of CSR.

4. Helping Granites Ltd. is engaged in selling granites slabs. The company proposes to provide granite slabs for the construction of a charitable institution named Grant Charitable Society in their vicinity. Advise whether the company can do so.

According to our assessment, the company cannot do this in light of the wording used in the Act and the MCA's FAQs.

However, based on the affidavit that MCA filed in past, the opposing perspective would also be plausible, provided other conditions relating to CSR are met.

Let us discuss one case: whether an expense made on an obligation of a company would be covered under the purview of CSR or not.

There can be two types of obligations on a company: statutory obligation and other than statutory obligation. For statutory obligation on a company to spend a specific amount, it is specifically mentioned under the **definition of CSR** given under rule 2(d) of CSR rules that activities done for the fulfillment of statutory obligation under any other law in force in India would never be the part of CSR activities.

With respect to other obligations on a company to spend amount on CSR, the law does not specifically refrain an expense made for other than statutory obligations from being recognized under the scope of CSR.

So, it may be inferred that other than statutory obligations of a company to spend amount on CSR falls under the umbrella of CSR.

Example: Awakening Educations Ltd. is an educational institution imparting education in the field of CA.

Case 1: It decides to impart free education for 100 BPL students out of total students taking admission in its classes every year.

Case 2: It decides to contribute Rs.500 per student taking admission in its institution every year for CSR activities.

Will these *individual cases* be considered as part of CSR?

Answer: Educational activities fall under entry (ii) of Schedule VII of the Companies Act, 2013. Now under **case 1**, as imparting education is part of the normal course of business of the company. So, in our view, even if free education is being provided to 100 BPL students, it would not be considered as a CSR activity.

However, another contrary viewpoint may also be taken here considering the fact that imparting free education can never be a usual business practice and hence treating it as a CSR expense.

Under **case 2**, by declaring that contribution will be made for CSR activities amounting Rs.500 per student taking admission in its institution every year, the company has created an obligation and such obligation, not being a statutory obligation, is well within the realm of CSR.

Additionally, it should be remembered that the same would raise doubts about its treatment under CSR if it were a component of its marketing plan used in the regular course of business.

So, here we have to understand that CSR may have in-built tinge of marketing of the business, but in real sense these two terms are altogether distinct.

We can say that in such situations it would be on the part of the company to demonstrate that the real object behind doing the activity is society's benefit in true sense rather than marketing.

Another point to be noted here is that **marketing strategies which are done on sponsorship basis** for deriving marketing benefits for own products or services of a company are already specifically excluded from the definition of CSR, which clearly indicates that the law never intended for companies to be marketed based on CSR activities.

Now, let us look forward towards one special case. What will be the situation if a company proposes to undertake CSR activity in kind through implementing agency?

As per CSR provisions, a company can undertake CSR activities either on its own **or** through implementing agencies **or** through a combination of both methods. Now, what would be the situation if a company proposes to supply its products to **implementing agency** for further undertaking CSR activities on its behalf.

As per rule 4(5) of the Companies (CSR Policy) Rules, 2014, "the Board of a company shall satisfy itself that the **funds so disbursed...**" This indicates that the funds (in cash form) are supposed to be transferred to implementing agencies and does not specifically cover supply of company's products for CSR activities being undertaken through implementing agencies.

However, under rule 4(1) of the Companies (CSR Policy) Rules, 2014, it is stated that "The Board shall ensure that the CSR activities are undertaken by the company itself or **through...**"

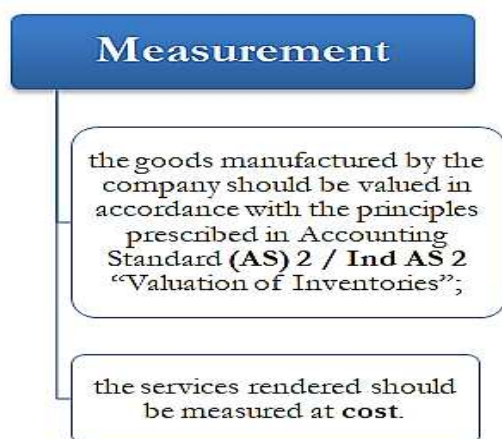
In our opinion, on the study of both the provisions together, an understanding is obtained that **generally a company is not allowed to supply its own products to implementing agencies for undertaking CSR activities on its behalf.**

However, when other viewpoint is taken that CSR in kind can be carried out; a company may consider providing its own products or services for CSR activities undertaken either through the implementing agencies or by the company itself.

Moving further, let's have a look at if a company considers its own products to spend on CSR activities fulfilling all other

conditions then at what **PRICE** the same can be measured?

*Let's no more Keep in Disguise
In Products ki Price...*



Example I: Paropkaari Pharma Ltd. plans to supply Polio medicines free of cost to all hospitals in Jaipur. Let's assume the cost of manufacturing Polio medicines for the month of June is Rs.10 crores, out of which 70% of manufactured medicines are supplied to hospitals in the current month and remaining is unsold. What will be the measurement value in present scenario? Assume Net realizable value is more than the cost.

So, as the company is supplying its own product, measurement will be as per AS2/Ind AS2. CSR expenditure will be equal to cost of the Polio medicines i.e. Rs.7crores (Rs.10 crores*70%). And the medicines in stock will be measured at Rs.3crores in present case.

Example II: Try Ltd. is a company dealing in bricks and cement. Furtherance Ltd. is a subsidiary of Try Ltd. which is constructing

a school as a part of its CSR activities. For this, it purchases bricks and cement from Try Ltd.

Now, at what price this transaction should be recorded in the books of both the companies?

Answer:

In the books of Try Ltd.: Bricks and cement supplied for construction of school is not at all linked with the CSR liability of Try Ltd. So, Try Ltd. should record this sale as a normal sales transaction.

In the books of Furtherance Ltd.: As the construction of school is undertaken as a CSR activity by the company, so CSR expenditure will be recorded at cost to Furtherance Ltd. i.e. the price at which it purchased bricks and cement from Try Ltd.

However, it is to be kept in mind that it is a *related party transaction*, so the provisions relating to related party transactions would be applicable on the same. Hence, transaction should be at arm's length price.

As a matter of conclusion, we can say that though MCA has taken a contradictory stance in the matter of CSR in kind, but it is clear that the government's primary goal in creating CSR regulations is to:

- Ensure *actual spending* of funds for the cause of society;
- Avoid misuse of undertaking CSR activities in the shelter of *group companies*;

- Refrain the companies from discharging their *business obligations* in the name of CSR.

Therefore, it is expected that more **clear** and **better** guidelines will be issued by MCA in the coming times, so that the real-world CSR objectives are achieved i.e. MCA may look forward for specifically covering activities under the scope of CSR **even if** own products/ services are used **provided** the basic criteria of bringing the CSR provisions is met.

Issues on Unspent CSR

Nitin Satani

Inputs by: Parvej Khan

Supervising CS: Neha Dangayach

CSR has been introduced as a measure to assimilate the practice amongst companies to fulfill their responsibilities towards the society of which they are using the resources. The provision states that companies should spend 2% of its profits as a part

*Financial year
mai nahi kara
spent.....
toh phir bann
jayega
unspent*

of their corporate responsibility. For the same, government to establish a firm statement as well as fines are imposed to ensure that companies fulfill their responsibility towards society. This gave a rise to major question of what constitutes as an **unspent CSR**.

As per Dictionary Meaning Unspent Means “Not Spent”

In simple words, if Company(ies) under CSR ambit fails to spend CSR amount due to any reason in any financial year then it will be treated as **UNSPENT CSR**. Even though same is spent after closure of financial year.

As on day to day basis, the cases of unspent CSR are increasing. Companies are using preventive tool namely “Ongoing Projects”



to spend CSR amount in 3 financial years and thus making misuse of the same. So, the lawmakers have taken a harsh view in order to control the same by enacting new provisions regularly like:-

1. Deposit of unspent CSR amount in a specified fund or Unspent CSR account, as the case may be, after closure of financial year vide amendment effective from 22.01.2021
2. In case fund spent through implementing agencies Board shall ensure that funds so disbursed have been utilized for the purposes and in the manner as approved by it by obtaining Chief Financial Officer certificate or the person responsible for financial management shall certify to the effect vide amendment effective from 22.01.2021.
3. Constitution of CSR committee if a company has any balance in **Unspent CSR Account** vide amendment effective from 20.09.2022, which was initially not mandated.

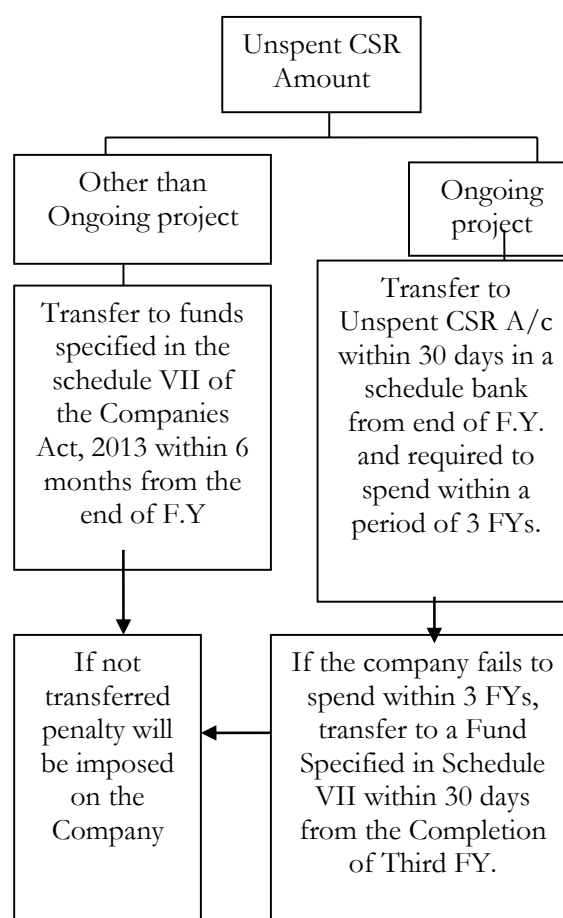
Provisions of CSR provide specific dates for the deposit of a CSR to specific funds or account which compels the complier to interpret when will the qualifying amount measure up as unspent CSR depending the project being ongoing according to the definition of ongoing projects in the Act or not.

Now, the question arise that what constitutes as an ongoing project?

CSR rules specify:

A multi-year project with a timeline not exceeding three years excluding the financial year in which it was commenced.	Project which was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification
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Timelines are specified for the deposition of unspent CSR:-



On the bare reading of the Act, the section clearly mentions that the directors should make sure that the CSR amount is spend in every financial year. This clearly indicates that, the **amount remaining to be spent** out of CSR amount incurred according to the limits in the Act, **either spent after the last date of the financial year or not**, will be categorized as unspent and henceforth, will have to be transferred in respective specified accounts or funds.

Furthermore, keeping in view that unspent CSR is to be spent at an earliest possible time, government has recently mandated on 20th September, 2022, the constitution of

CSR committee if a company has any balance in **Unspent CSR account**. Board report is also mandated to include the particulars of spent and unspent CSR related to concerned year as well as balance of previous three years in case amount is transferred in regard of ongoing project.

Hence, the auditor while auditing or certifying the CSR compliances and the management while spending the CSR amount shall make sure that such amount is spent within the specified period i.e. till the last date of the concerned financial year in which the CSR amount is incurred and should deposit such unspent amount in the respective fund or account within the time limits provided to avoid the penalties to be imposed in its consequence.

Nowadays, it has been observed from various Adjudication order(s) that Government has imposed penalty for not spending the CSR amount within the timeline decided. Presently, Lawmakers has taken strict view to control new emerging situations arise due to Unspent CSR. Now such issues will be looked in softer sense in future to testify genuineness whether spent or not:

- a) Actually spent
- b) For the purpose as mentioned in Schedule VII.

Now let us try to understand Unspent CSR in limelight through different situations:

Situation 1:

XYZ private limited decided to open a school for education of weaker section of society at a concessional rate as CSR expenditure. For this they decided to purchase land. Till the end of financial year no projects have been commenced only initial discussion between board of directors has been done but mere considered of any thought process in the mind of board for future is treated as ongoing project or not?

Answer 1:

Since mere thought process came in mind doesn't constitute as an ongoing project as there is no contract executed by the company for purchase of land. No road map decided how to execute the same. Hence it will not be considered as an ongoing project and same is treated as an unspent CSR.

Situation 2:

Paisa Private Limited has not spent CSR amount of Rs.5 lacs till 31.03.2022, this amount will have to be transferred to Schedule VII fund before 30.09.2022, but what if the Paisa Private Limited spends any amount out of unspent amount during the said six months after close of financial year and transfers remaining unspent amount in Fund? Would the said amount spent after the last day of financial year but before the end of six months from the end of financial year would be considered as spent?

Answer 2:

No, amount is to be spent on or before the last day of the relevant financial year, falling which the company cannot allocate or spend such remaining unspent amount for the same or any other project and shall mandatorily transfer the same to a fund specified in Schedule VII within the said 6 months from the end of the relevant financial year.

Situation 3:

Gareeb Rath Private Limited (GRPL) has to spend Rs.20 Lacs for the purpose of CSR related to financial year -2021 -22 but GRPL spent only Rs. 15 lacs till the end of financial year as a result, GRPL had an unspent amount of Rs. 5 Lacs to be transferred to the Fund specified in Schedule VII (amount is not related to an ongoing project). The GRPL transferred the amount of Rs. 5 lacs to PM relief Fund on 22nd April 2022, but due to some technical error cheque bounced and it remained unnoticed to the officers of the company and the default was made good by the company on 29th March 2023?

Answer 3:

Since the GRPL has not deposited the amount before the specified period of six months, it will be treated as default and the penalty provisions will be attracted.

Situation 4:

Coin DCX Pvt. Ltd., a company has an unspent amount of Rs.15 Lacs as on 31.03.22 and it is undertaking an ongoing project, this amount will have to be

transferred to Unspent CSR A/c till 30.04.2022. Now suppose the company spends any amount out of unspent amount during the said 30 days after close of financial year and transfers remaining unspent amount in the account? What amount would be constituted as unspent CSR?

Answer 4:

Any amount unspent after the end of the financial year would still be considered as unspent, unless it is spent after deposition in the unspent CSR Account, whether spent within the valid deposition period in the same CSR project undertaken within the year.

The default would even further cumulate in case the company transfers the unspent amount in the Unspent CSR account after 30 days of the end of concerned financial year.

Situation 5:

Silver Jewellery Ltd. has to spend amount Rs.40 Lacs in the financial year-2021-22 for the purpose of CSR. They started an ongoing project for fulfilling this compliance and spend Rs.23 lacs till 31st March 2022 & remaining Rs.17 lacs is also transferred to Unspent CSR A/c within 30 days only. Now, the two circumstances may be possible regarding such Unspent amount:-

- (a) Silver Jewellery Ltd spent Rs.17 lacs till 31st March, 2025.
- (b) Silver Jewellery Ltd still has some outstanding balance in Unspent CSR

A/c on 31st March 2025 regarding the CSR amount of FY 2021-22.

Answer 5:

- (a) In this case, the unspent amount has been utilized within the next 3 financial years, hence no further repercussion will arise and this will be considered as a valid CSR expenditure.
- (b) In this case, Silver Jewellery Ltd fails to spend the required CSR expense by the end of 3rd financial year, hence company has to transfer the outstanding balance to the specified fund of schedule VII till 30.4.2025 (within 30 days after the end of 3 FYs)

Situation 6:

A company named Lifecare Hospitals Ltd came under the ambit of CSR recently and its directors started a Hospital Infrastructure Project in the pursuance of CSR provisions. As per a reasonable estimation of Board, it will take about 4 years for the completion of that project.

Would the amount invested in such project will be treated as spent CSR subject to the condition of being utilized in next 3 FY?

Answer 6:

No, the investment in this project will be treated as unspent CSR amount since this is not an ongoing project as per the Act as its expected timeline exceed 3 years from the end of financial year in which it was started.

Situation 7:

Rich People Private Ltd. decided to fulfil its CSR requirements through a different entity, say Sahayata Trust which fulfils all the requirements under the Rules for being entrusted with other companies' CSR funds for the concerned expenses and activities. The entrusted entity failed to spend the amount till the last day of the concerned financial year. Whether Rich People Private Ltd or Sahayata Trust would be held liable for the unspent CSR and consequently will be penalised under law?

Answer 7:

Rich People Private Ltd. would be held liable for the Unspent CSR as Rich People Private Ltd. had the primary obligation to comply with the provisions of CSR and will be subsequently penalised for not spending the required amount. Hence, Sahayata Trust would only be answerable to Rich People Private Ltd. but cannot be penalised under law.

Further rules of CSR also specify that it's the responsibility of the companies' Board for satisfying itself that the funds so disbursed have been utilised for the purposes entrusted with the other entity and in the manner approved by the Board and same should be certified by Chief Financial Officer or the person responsible for financial management of the company.

Situation 8:

A company, Quality ltd. had spent certain amount in a project after 30 days of the closure of financial year, which was considered as an ongoing project despite not been an ongoing. What will be consequence of such transaction?

Answer 8:

In the concerned situation, the Quality ltd has incurred certain amount considering the same as ongoing project under CSR provisions, despite of the fact, that project was not an ongoing project. Thus, there will be cumulative effect of penalty over Quality ltd. because it has:

- Neither spent the amount of CSR in the concerned financial year,
- Nor deposited the same in funds specified in Schedule VII.

Situation 9:

Winter Private Limited is a manufacturer of floor carpets, woolen products like coat, sweater, shawls etc. Now company decided to donate sweater in winters to road side people as a CSR obligation. Whether same is treated as spent or Unspent?

Answer 9:

This is always a matter of litigation if company donates its own products for CSR. Same may be treated as spent if company is able to prove its point if any issue arises.

Three years track record of implementation agency under CSR

Sachin Agarwal

Inputs by: Puneet Airun

Supervising CS: Neha Dangayach

Social responsibility is not merely a duty of a specific set of people or an Organization, but it is the basic responsibility of every individual who is living in this society

*“CSR ka
kharacha hoga
Adhura
Agar 3 saal ka
track record
nhi hoga
Pura”*

In India, Government has already undertaken its duty towards the society but at the same time it wants the organizations, which are the part of high profit domain, simultaneously takes the initiative towards serving the society. For the purpose of ensuring this, CSR activities have been made mandatory for the specific set of companies.

But the question, which is primarily arising here is **“How the CSR activities are to be undertaken?”**

Implementation of CSR projects can be undertaken in any of the following ways:-



- Implementation **by company itself** Or through Section 8 Company/ registered public trust / registered society, registered under section 12A and approved under 80G of the Income Tax Act, 1961, established by the company, either singly or along with any other company.
- **Section 8 company/ registered public trust/ registered society, registered under section 12A and approved under 80G of the Income Tax Act, 1961, not established by the company, and having an established track record of at least three years in undertaking “similar” activities.**

Don't you think it is suspicious, that why it is required to **establish a track record of at least three years in undertaking “similar” activities merely in the case of implementing agency i.e. Third party.**

And the lawmakers provides liberty for not having the track record of three years in similar activities if CSR is done through Section 8 Company/ registered public trust/ registered society established by company itself or along with any other company.

The reason behind this concession is as simple as that when it is allowed for Companies to do CSR expenses directly then, why there is a need of track record for the similar activities if it is done through its group company/entity?

*The **GROUP ENTITY** in the context, refers to the group of company/ies which is established by the company either singly or along with any other company. As per our view company is considered as group entity where either majority of promoters are common in both the entity and where company holds majority of shares of the other company.

If group companies are being restricted in terms of maintaining the track record, then it would not be practically feasible for these companies to ensure such provision of maintenance of track record.

The core principle behind bringing the provision of maintaining the track record in light was to ensure that the activities for social responsibility undertaken by those entities that are actually involved in working for society and have enough experience in serving the society. Therefore, the provision was inserted particularly for having three years of track record in undertaking similar activities if the same activities were conducted by the Section 8 Company/ registered public trust/ registered society not established by the Company.

FOR EXAMPLE:

An NGO working for more than 50 years for welfare of the society, say for imparting

education, despite having the track record of three years of serving the society, is not allowed as third party CSR agency, for undertaking other schedule VII entries due to that **“Similar Activity”** provision but a section 8 company established by the company can work freely for the same, despite of having no track record for the same.

Hence, the lawmaker needs to be more stringent over the provisions concerned with CSR activities implemented by Companies itself.

Moving further, the question of doubt arising here is, what does the similar activities mean?

The Act in this matter has not provided the clarity over the definition of “SIMILAR ACTIVITIES”.

We can take the view over understanding the same in three view points i.e.:

1. Similar activities in terms of grammatical understanding aka not an identical but corresponding or resembling in many respects.
2. As per the entries stated in Schedule VII of the act.
3. As per the activities stated in the object clause of MOA of the company.

Let's analyse these situations as follows.

QUESTION: Firstly, suppose a company wants to spend on the education of children under CSR, but the implementing agency is

engaged in providing vocational training to the children.

Whether the company would be allowed to undertake the CSR activity through this agency.

VIEW POINT: The Answer is Yes, it is allowed to get the CSR activities done from the implementing agency who is not involved in providing education to the children but have a track record of at least three years in providing vocational training i.e. **Similar Activity**.

Hereby clarifying that, similar activities does not mean identical but corresponding or resembling in many respect. Since, vocational training and education are, activities under the same category of enhancement of knowledge and therefore, the same is concluded as similar activity

But if the implementation agency is involved in plantation of trees or any other type of activities which is specified in schedule VII of Section 135 under CSR rules except for the welfare of children. In this case it would not be considered as similar activity because objective of the activity is completely different in comparison to the activity towards enhancement of knowledge.

Taking this view of lawmakers from a positive view point is that, taking these activities as a similar one and not the identical one has granted a feasible and a bit lenient selection modes to the companies for undertaking the CSR activities while

simultaneously ensuring track record. For instance, an NGO involved in organizing health camp, been given free medicines by a company (as a part of its CSR obligation) for distributing it in their camp. Can this be considered as a valid CSR activity?

The answer is yes. Because the implementing agency here, is involved in similar activity of healthcare and the lawmaker has stated “Similar” not “Identical”.

Can we refer the object clause mentioned in MOA of implementing agency for defining established track record of at least three years in undertaking “SIMILAR” activities?

The activities mentioned in the object clause of the implementing agency does not include that mere stating of those activities in MOA defines the same as similar activities. In simple words, suppose the object clause of the company states all the activities mentioned in Schedule VII. But it is conducting merely one of the above stated activities. Therefore, when determining the track record of three years, merely stating of activities in MOA and not undertaking the same shall not be taken in determining track record status of the company.

Hereby, the law has not clearly defined what does track record means. The concern of lawmakers behind stating the provision i.e. **established track record** was to ensure that the company is in real terms conducting those activities.

Therefore, mere stating of activity in object clause does not define it to be a similar activity.

So, it is clear that we should not refer the object clause of MOA for defining **established track record of at least three years in undertaking “Similar” Activities.**

Furthermore, let's take a scenario that a country is facing a pandemic, for E.g. Swine flu and for providing relief to the society the company wants to distribute free medicines and vaccines through schools. For this, it wants to delegate the task to an NGO (registered) involved in providing free education to children. But due to the provisions of similar activity track record governing these transactions, it cannot do so.

This seems to be harsh in terms to social benefit because the primary reason behind all this is to ensure societies welfare.

Now the next issue arising here is whether the company is allowed to get its CSR compliances done through its Group entities?

As per Rule 4(1) of Companies (CSR policy) Rules 2014, the company is allowed to do its CSR activities through its group entities if the same entity is a Section 8 company/ registered public trust/ registered society, registered under Section 12A and 80G of the Income Tax Act, 1961 **established by the company** either singly or along with any other company.

Let's understand this by taking an example.

Bahubali Ltd needs to do CSR activities under CSR Rules, it has a subsidiary named as Devasena Ltd which is not a Section 8 company. Bahubali Ltd gives money to Devasena Ltd for incurring expenditure on CSR activities. Does this expenditure will be considered as CSR activity?

As per Rule 4 of CSR Rules 2014, Implementation of CSR projects can be undertaken through Section 8 company/ registered public trust / registered society, registered under Section 12A and 80 G of the Income Tax Act, 1961, **established by the company**, either singly or along with any other company. In the above case Since, Devasena Ltd is not a Section 8 company. So, it would not be covered under the rule for conducting the CSR activity. **Hence, Activities conducted by Devasena Ltd is not treated as CSR Activity**

Let's understand this example by routing it in a different way. Suppose Devasena Ltd is a Section 8 company and registered under Section 12A and 80 G of the Income Tax Act, 1961 then whether the expenditure is considered as CSR.

The answer is yes, because Devasena Ltd is a Section 8 company and registered under Section 12A and 80 G of the Income Tax Act, 1961. Hence, it is eligible to do CSR activities as per Rule 4(1) of companies (CSR policy) Rules 2014.

Thus, from the above example, we have understood the way by which CSR activities can be done through group companies.

Concluding our topic here,

We have understood that, while undertaking CSR activities through its implementation agency .i.e. third parties, it is prerequisite for such agencies to have at least three years of track record in similar activities. Though the lawmakers in near future may provide restrictions on undertaking CSR activities for Group entities as they, currently, are not restricted with the burden of ensuring the so called track record or any concerned implementation related restriction.

At the same time, the lawmakers may also come up with providing the much needed relaxation to the implementing agency, through deleting some of the stringencies in terms of fulfilling “similar activity” criteria.

In near future, MCA may also provide the clarity over the definition of similar activity.

Can Companies execute business activities not part of its main object? If yes, state the process thereof.

Tamanna Agrawal

Inputs by: Gunjan Gupta

Supervising CS: Palak Gupta

Company is an artificial person which cannot

*“Aasaan nahi h
bhaiya business me
tarrak ki karna,
Har kisi se nahi ho
pata object clause
ko follow karna”*

conduct any
activity without
having any
Object.

Object for
which
company will
be
incorporated
should be
mentioned in

the **Object Clause** in the Memorandum of Association (MOA) of the company. It sets out the scope and extent of the company's power.

Therefore, it can be said that a Memorandum of Association is a document that determines the scope of activities of any company. The MOA allows shareholders, creditors, and anyone associated with the company in any way to know the range of activities undertaken by such company.



What is **Object Clause**?

Object Clause sets out the purpose for which the company is formed. This clause must specify the following:

- (i) The company's main objectives are to be pursued by the company upon its incorporation;
- (ii) Auxiliary or ancillary purposes for achieving the main objectives

Comparing Object Clause under Companies Act, 2013 and the Companies Act, 1956.

As per Section 13 of the Companies Act, 1956, object clause shall be divided into three categories:

- (i) Main Objects
- (ii) Objects incidental or ancillary to the attainment of the main objects; and
- (iii) Other objects.

Whereas, according to Section 4 of Companies Act, 2013, Object Clause contains **two** categories i.e.

1. **Main object:** Main object means an object for which an organization was incorporated.

2. **Ancillary objects:** It means an activity which is carried out to accomplish the main object.

Any activity which is beyond the charter is known as **Ultra Vires** i.e. beyond the power.

An act which is ultra vires is void, and does not bind the company. Neither the company nor the other contracting party can sue on it. The company cannot make it valid, even if every member assents to it. The general rule is that an act which is ultra vires the company is incapable of ratification.

Rule of constructive notice with respect to third party rights

Every person who contemplates entering into a contract with a company is presumed to have knowledge of the powers of the company, the extent to which such powers are delegated to its directors and any limitations or restrictions placed on such powers.

Now the question that arises here is, **why there is the need for omitting the third category of object clause i.e. other object?**

The above stated necessity arises to reduce the scope of object clause and to reduce the probability of companies making misuse of the above stated “**other object**”. Additionally, it would enable shareholders and other interested stakeholders to have a

clear idea of the main business activity of the company.

So, we can say that MOA of the company contains the object clause according to which, the company should conduct its business. Any activity which is beyond the object clause will have no validity and considered void.

Let's understand this situation with the help of an example.

A company, named Happy Ltd., was incorporated under Companies Act 1956, with the ‘main object’ of manufacturing garments as well as with ‘other object’ of manufacturing plastic bottles. As per the 1956 Act, this undertaking was valid, since the act clearly allows the company to have ‘other objects’ in its memorandum.

But let's modify the situation, a company named Bunny Ltd. was incorporated under Companies Act, 2013. Its ‘main objects’ define to undertake “cement manufacturing”. But in this case, it cannot carry out other activities such as textile trading unless such activities are clearly specified in its ‘main objects’ since, as per The Companies Act, 2013 a company can undertake only those activities which have been stated under its ‘main objects’.

As per Section 6 of the Companies Act, 2013,

- (a) The provisions of the Act shall have an overriding effect over anything contained in the MOA or articles of a company, or in any agreement executed by it, or in any resolution

passed by the company in general meeting or by its Board of Directors, whether the same is executed before or after the commencement of this Act; and

- (b) Any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

This implies that if the memorandum of any company registered as per The Companies Act, 1956 contains 'other object' in its object clause, such other objects shall have no relevance as per the Companies Act, 2013.

So, if an existing company (Company Incorporated before 31st March, 2014) is carrying on any business as given in 'Other Objects' of the memorandum of association of the company as per provisions of Companies Act, 1956 then it shall have to take the following actions to comply with the Companies Act, 2013:

Main Object of Memorandum of Association of the Company to be amended to add:

1. All the business activities being carried on by company, being adopted from Other Objects of MOA.
2. Objects to be carried in Future:
To Add Activity of Other Object clause into Main Object clause of company:

To continue with the activities mentioned under Other Object Clause of Company at present, there is need to follow procedure as per Section- 13 of Companies Act, 2013 to alter the Memorandum of Association of company by ADDITION of other objects into Main objects of company.

Let us now understand whether **a company can undertake multiple objects through MOA?**

A company is permitted to have diversified activities in the main object clause i.e. the object clause of the company can have multiple objectives and it can carry out all such specified activities.

For Example,

Happy Ltd., a garment manufacturing company, wants to undertake the activity of cement manufacturing as well. It can do so, since the Act allows the companies to undertake diversified activities.

Now, let's focus over another issue i.e. **how can the object clause of the company be altered?**

Before clarifying the above issue, the primary concern here is, when does the need for alteration in Object clause arises?

Suppose, a company is involved in manufacturing of toys but now this company wishes to discontinue the manufacturing of toys and wants to move into new business with an object of rendering catering services. Now, for doing this, the company is mandatorily required to alter its object clause. It shall have to

remove 'Toy manufacturing' from its object clause and include 'rendering of catering services'.

Let us now understand the procedure of alteration in object clause.

Procedure for Alteration in object clause

1. Passing of Board Resolution for alteration in object clause in Board Meeting.
2. Passing of Special Resolution (SR) for alteration of Object clause in EGM by giving valid notice.
3. Filing of E-form MGT-14 within 30 days of passing such SR to the Registrar of Companies (ROC).
4. Within 30 days of filing of E-form MGT-14, the registrar shall issue a '**Certificate of Registration of the Special Resolution Confirming Alteration of Object Clause**'.

Object clause alteration is not effective until the ROC registers such change and issues the aforementioned certificate.

5. **Incorporating object clause in MOA** - Once the certificate of registration of alteration is received from the ROC, the object clause must be incorporated in all the copies of Memorandum of Association of Company.

Furthermore, can a company invest in the shares of another company?

The answer is simply "YES" because this is merely an investment of the company's surplus funds and the law has not stated prohibition on the same.

Also, can a company having different object undertake the activities of lending and borrowing within the prescribed limit of NBFC for expansion of business?

The answer is **NO** because the activities of lending and borrowing for the company is unrelated with its main object and hence, it cannot undertake multiple unrelated activities simultaneously.

Now let's understand the provisions in regard to object clause, with the help of some practical case scenarios:

a) Main Object Clause

Ratan Salt Limited was engaged in salt business as per object clause mentioned in its Memorandum but during the F.Y 2021-22 it wants to engage in cement business also, can it do so?

Ans. Yes, the company can engage in cement business but only after alteration of its Memorandum of Association in accordance with the procedure specified under Section 13 of the Companies Act, 2013.

b) Ancillary Object

Indra Public School is providing educational services to its students, it also wants to provide renting and accommodation services in the form of Hostels to its students. Can it provide such hostel services?

Ans. Yes, such hostel services can be provided by Indra Public School as this service is for furtherance of the main object i.e. providing educational services.

In continuance of the above example, can Indra Public School start trading in textile market, without altering its MOA, just because it provides school uniform to its students?

Ans. No, trading in textile business is not related to the main object of Indra Public School, hence it cannot enter into such activity.

CONCLUSION.

A company cannot undertake any activity which is not mentioned in its object clause. If a company intends to undertake any activity which is not stated in its object clause, it can be done only after altering the Object clause of the MOA and including such activities in the main objects of the MOA as per the procedure specified under Section 13 of the Companies Act, 2013.

Is it mandatory for statutory auditors to attend AGM?

Vansh Jain

Inputs by: Akansha Agarwal

Supervising CS: Palak Gupta

According to Sec. 146 of The Companies Act, 2013, all notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, **unless**

*“Mere Jasbat ko tu
kuch yu na tod
Company tu
mujhse yu muh na
mod
Agar tu mujhe yu
hi bhulegi
Tu yaad rakhi tere
upar heavy penalty
lagegi!!!!”*

otherwise **exempted** by the company, attend either by **himself** or through his **authorised representative**, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting

on any part of the business which concerns him as the auditor.

So, this clearly states that it is the **right as well as the duty** of a statutory auditor to attend the Annual General Meeting. This section talks about notices and communications relating to “general meeting” which shall be forwarded to the



auditors of the company.

Hence, from the above discussion it clear that it is now **mandatory** for an auditor **to attend the AGM** to discuss the matters related to business which concern him as auditor.

As per Sec 231 of the erstwhile Companies Act, 1956, the auditor was **entitled** to attend AGM i.e., it was his right but not an obligation. However, The Companies Act, 2013 has made it mandatory for auditor to attend the AGM.

Requirement of Notice:

The Section 146 implies that a notice is required to be sent. This imposes a **primary duty** on the part of the company to send notice to the auditor for attending AGM.

Here notice refers to a formal document giving details regarding the place, date, day & hours at which the meeting is scheduled. The notice should also mention the business to be conducted at the AGM.

The notice may be given in writing through:

- speed post or

- registered post or
- via electronic mode.

In case of electronic communication, the notice should be sent to the registered e-mail addresses of the auditor. Also, the notice of the AGM should ***simultaneously*** be placed on the website of the company. This implies that mere placement of notice on website is not sufficient.

Now, what if a company defaults in sending the notice or communication to the required set of persons?

As noted above, it is **mandatory** for a company to send all the notices and other communications relating to General Meeting. So,

If a company contravenes the provisions of the Act regarding the same, then the following penalty shall be levied

the **company** shall be punishable with **fine** which shall not be less than **twenty-five thousand** rupees but which may extend to **five lakh** rupees, and

every officer of the company who is in default shall be punishable with **fine** which shall not be less than **ten thousand** rupees but which may extend to **one lakh** rupees

Objective behind mandating the auditor to attend AGM:

The auditor shall either by himself or through his authorized representative be mandated to attend the AGM so as to reply to any query that may be raised or provide any explanation that may be sought by the members of the company. Earlier, as it was not mandatory on the part of auditor to attend AGM, so it was basically at the discretion of the auditor to attend AGM or not. As a result, it used to be difficult to answer the queries/doubts of the shareholders on the issues pertaining to areas covered under the scope of audit. As AGM is a yearly gathering and platform for shareholders to express their concerns before the management as well as auditors, so it was viewed in the interest of shareholders that auditor should compulsorily be present at the AGM.

Role of Auditor in AGM: As the Section specifically uses the words “...shall have right to be heard at such meeting...”, this implies that:

- the auditor is expected to answer the queries raised by shareholders; and
- no specific right has been provided to the auditor to himself raise questions in the meeting.

Further, the Section states that “...on any part of the business which concerns him as the auditor...”, this means that the auditor is answerable not only for financial matters, but also for non-financial matters if the same falls under the scope of his audit.

Exemption to auditor from attending the Annual general meeting:

Although it is mandatory for the auditor to attend general meeting however, the concerned company may exempt him. The law is silent as to what can be the grounds for such exemption. So, it would be a matter of facts & circumstances depending upon each case. However, in our understanding following can be some possible grounds for exemption:

- Death of close family member;
- Accident of auditor himself or his family member
- Any other unavoidable circumstance

The law being silent brings forth following questions remaining unanswered:

➤ Can the company suo moto grant exemption or auditor is required to apply for such exemption?

In granting exemption, management of the Company should make sure that auditor has genuine and unavoidable reason (e.g. sudden death / accident of family member, ill health of auditor, etc.) to not attend the General Meeting. However, if there is any observation or adverse remark furnished by the Auditor in his report then he should be present there in the General meeting either by himself or through his authorized representative.

➤ From whom exemption is to be sought or what is the procedure of obtaining exemption?

The members of the company may pass a Special Resolution in the AGM held for the immediately preceding financial year and grant permission to the Board of Directors to exempt the auditor from attending the subsequent AGM in case of genuine reasons (if any) for his inability to attend the AGM.

➤ If the auditor applies for exemption, what is the time limit for applying?

The auditor should inform the company about his inability to attend the AGM immediately on occurrence of such event whether or not the notice for the AGM has been served to him.

If for some reason auditor is unable to attend a meeting by himself then he may attend the meeting through an **authorized representative**.

Who can be an Authorized Representative?

It means any person authorized by the auditor to attend general meeting on his behalf. **However**, the authorized person shall be qualified to be appointed as an auditor i.e., must be a CA in practice who is not disqualified as per Section 141 for appointment as auditor.

Example: Can a trainee/intern/employee of auditor attend AGM in his place?

Ans. No, a trainee or an article cannot attend AGM as they are not qualified to be an auditor and they are **not practicing CAs** having Certificate of Practice. Hence, only partners who are CA in practice are authorized to act on behalf of an auditor.

Conclusion:

Hence, we can say that it is mandatory for auditor to attend AGM either by himself or through his authorized representative. However, he may be exempted by the company from attending the AGM in case of genuine hardships.

Moreover, in cases where the auditor is required to attend AGM but he omits to do so without being exempted, then he may attract penal consequences under the Companies Act, 2013, Code of Ethics under The Chartered Accountants Act, 1949 or any other relevant Laws and Regulations. Also, in such case the shareholders may question the authenticity of financial statements which may further affect the approval of financial statements by the shareholders of the company.

DIRECT TAX

Section 144B- “faceless but not voiceless”

Aanchal Rawat

Inputs by: Yash Kumat

Supervising CA: Rakesh Kedia

Well before diving deep into the section 144B, let's first discuss, the very purpose it sought to accomplish.

“Karni thi assessee aur AO ke beech mein duri, isliye govt layi sec 144B”

dynamic jurisdiction. This scheme is introduced broadly due to three reasons: narrowing the grey areas of discretion; limiting human interface in the system of governance by use of technology; and awarding efficiency, integrity and sensitivity in the bureaucracy.



Thereby, the section seeks to bring the much-needed reform revolution to the income tax procedure that encumbered tax filing for the common man, fostered corruption, and aided tax evasion, by



eliminating interaction between the assessing officer and the assessee.

With the introduction of this section, Government sought to bring transparency in the process of assessment.

The section shall have an overriding effect over section 143(3), section 144, and section 147. Means the assessment/reassessment procedures as prescribed in the above sections shall be carried out in the manner as prescribed under section 144B, in respect of such cases which may be specified by the Board.

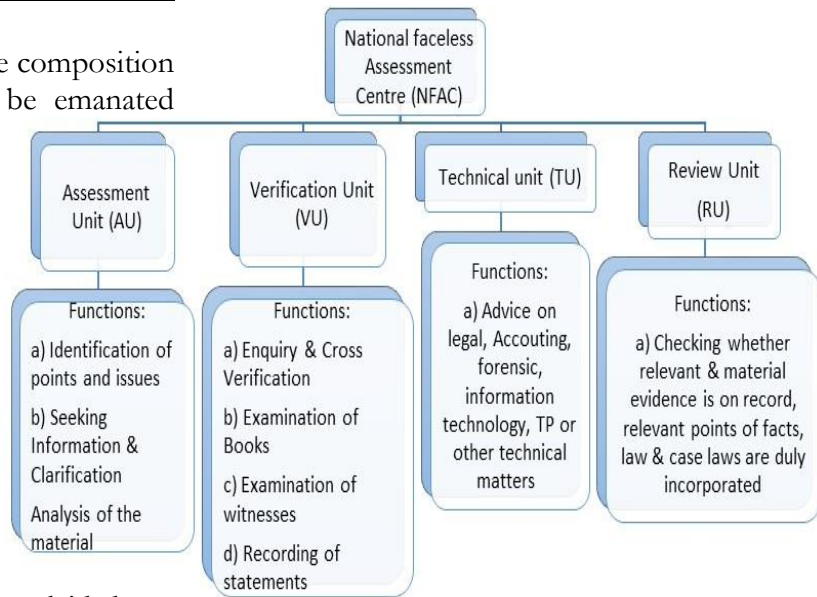
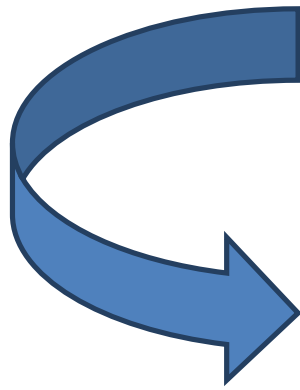
It got further amended by the Finance Act 2022, to make it apt, thereby eliminating the chances of any loopholes it could leave behind. Now, it's time to take deep dive into the section...

Our order of content understanding will be as follows-

- A) Composition
- B) Procedure
- C) Recent Judgment Rulings
- D) Analysis of the recent Judgments

COMPOSITION (AS DEFINED IN THE SECTION)-

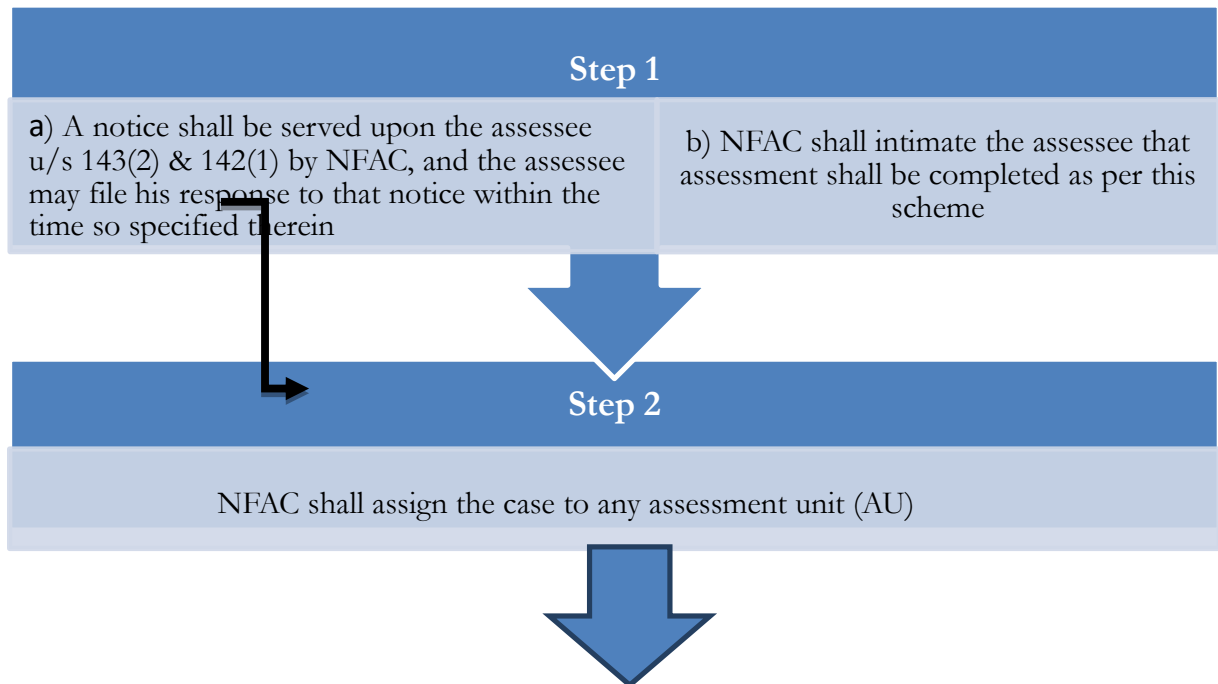
Section 144B has stipulated the composition within its ambit, which can be emanated with the below diagram-

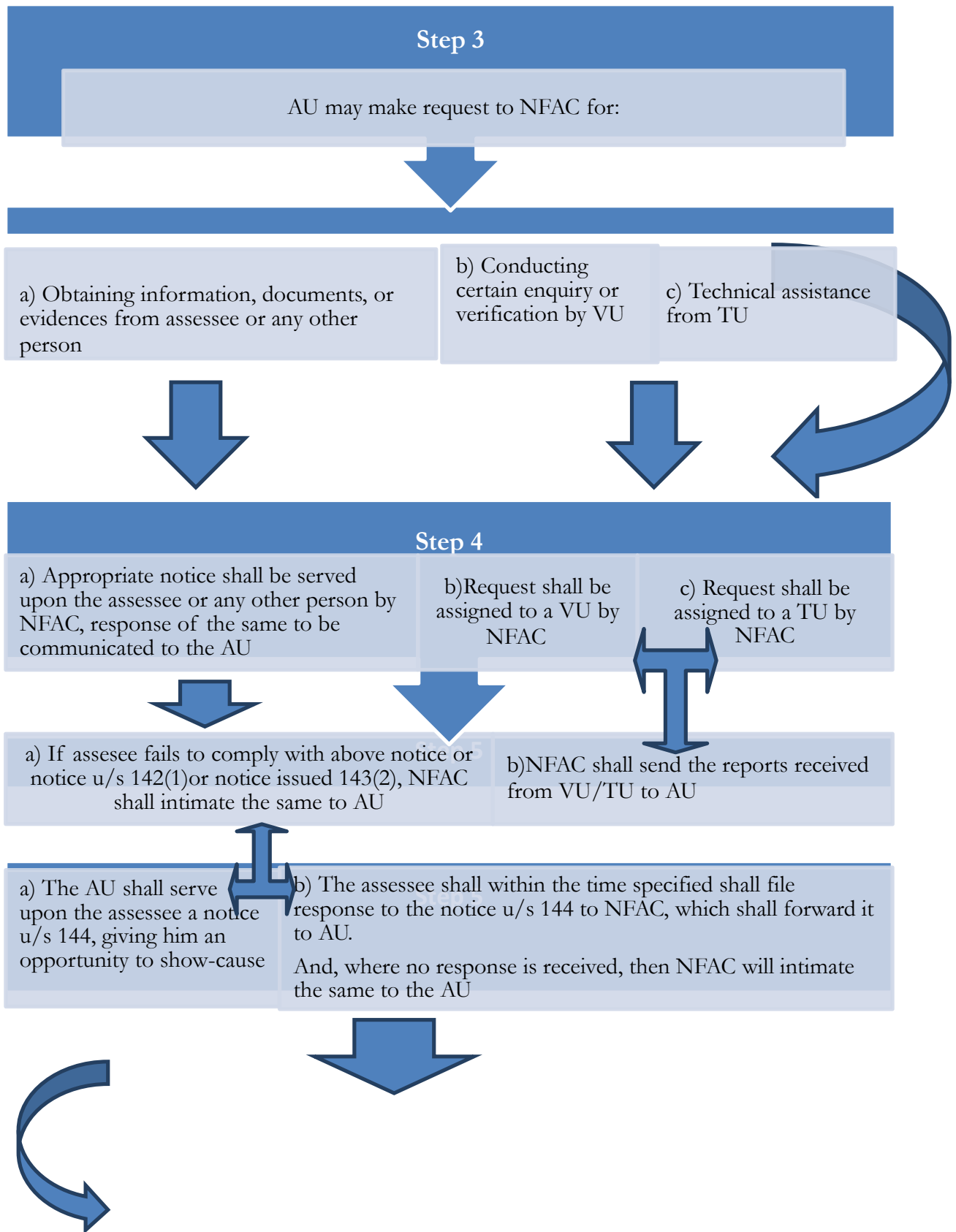


Now, let's discuss the procedure laid down under this section, following which the units

will perform the assessment/ reassessment proceedings

B) PROCEDURE U/S 144B





Step5- The AU after receiving the above response/intimation(where no response is received), from the NFAC shall:

a) prepare income or loss determination proposal, and send the same to the NFAC, where variation is not prejudicial to assessee

b) or, in case where it is prejudicial to the assessee, show cause notice shall be served upon him through NFAC

Step 6

a) The assessee shall file the response to the above notice within the time to NFAC, the same shall be forwarded to AU

b) Where no response is filed by assessee within time, NFAC shall intimate the same to AU

Step 7

The AU shall after considering the response received from the assessee, or after receipt of the intimation from NFAC shall prepare income or loss(I/L) determination proposal & forward the same to NFAC

Step 8

a) Upon receipt of the I/L determination proposal, NFAC shall convey the AU to prepare the **draft order**

b) or, it can assign the I/L determination proposal to RU

Step 9

RU shall review the I&L determination proposal, and will send the review report to NFAC, who in turn will forward it to assessment unit.

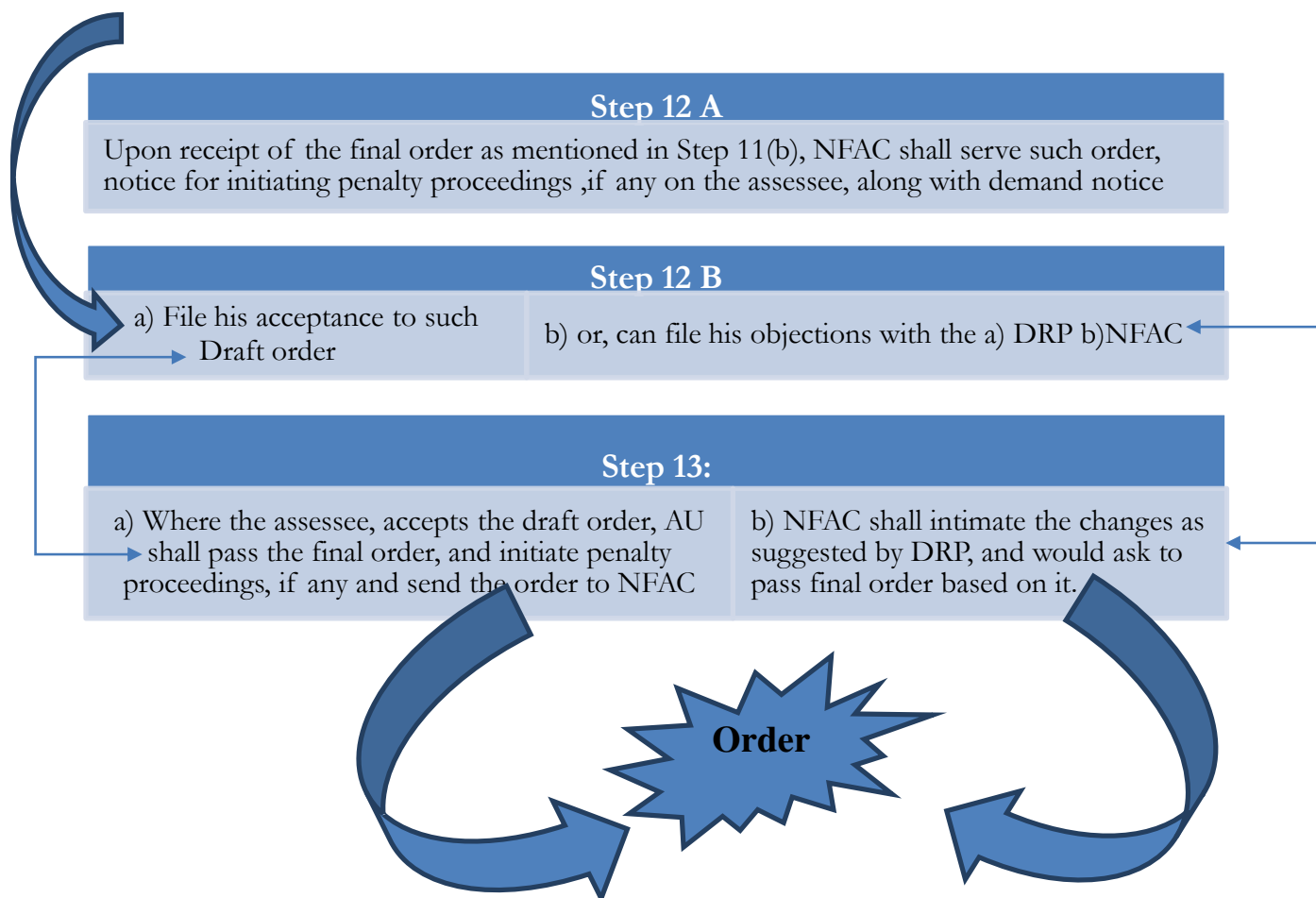
Step 10

AU, after considering Review report, shall prepare draft order, and forward it, or the one prepared under **step 8**, as the case may be to NFAC.

Step 11

a) Where the proposal, includes variation prejudicial to the interest of the assessee, NFAC shall serve the draft order to the assessee

b) in other case, NFAC convey the AU to pass the final order and send it to NFAC



The existing section 144B inserted by the Finance Act 2021, mandating for the conduct of the assessments in a faceless manner and in accordance with the prescribed procedure therein, got amended by Finance Act 2022. In this amended section 144B, a by-default right of personal hearing through video conferencing has been vested in the assesses. This is a welcome amendment aimed at reducing probable tussles and litigations.

LET'S DISCUSS THE INSTANCES OF AMENDMENTS:

a) Under the old provision, 1st notice was required to be replied within 15 days from the date of receipt of notice. Now there is no specific time limit and notice is to be replied within the date specified therein.

b) The scope of technical unit is now specifically provided so as to include technical assistance in respect of determination of arms' length price, valuation of property, withdrawal of registration, approval or any other technical matter.

c) Under the old provision, there was option at the Chief Commissioner of Assessment Unit to grant personal hearing or not to the assessee or to his authorised representative.

Under the amended Scheme opportunity shall be provided, if ask for.

d) The existing sub-section (9) of section 144B, mandating that the entire assessment proceedings shall be considered as non-est in law, if the prescribed procedure of conduct of faceless assessments in section 144B is not being complied with, has been proposed to be omitted.

It is pertinent to mention here that in numerous High Court Judgements, the faceless assessments for the AY 2018-19, have been set-aside, on the grounds of non-adherence to the prescribed assessment procedure in section 144B. Illustrative list of these cases are provided below:

- a) DJ Surfactants vs. National E-Assessment Centre in W.P.(C) No. 4814/2021 dated 3.5.2021 (Delhi High Court);
[2021] 127 taxmann.com 370 (Delhi)
- b) SAS Fininvest LLP vs. National e-Assessment Centre in W.P.(C). No. 5087/2021 dated 4.5.2021 (Delhi High Court);
[2021] 131 taxmann.com 245 (Delhi)
- c) K L Trading Corporation vs. National e-Assessment Centre in W.P. (C) 4774/2021 dated 16.4.2021 (Delhi High Court).

C) RECENT JUDGMENT RULING



a) SUPREME COURT OF INDIA NFAC

v.

Mantra Industries Ltd.*

M.R. SHAH AND MRS. B.V.

NAGARATHNA, JJ.

[2022] 137 taxmann.com 210 (SC)

Brief of the Case:

In the given case, petitioner challenged assessment order passed under section 144B.

The Assessee put forward the case that the, assessment order passed by revenue was an exact reproduction of draft assessment order without considering replies filed by petitioner and petitioner's request for personal hearing.

High Court by impugned order held that since assessment order was passed without application of mind and was not in accordance with procedure laid down under section 144B(9), same was to be set aside. However, it was submitted by revenue that sub-section (9) of section 144B had been deleted with effect from 1-4-2021 and provision to declare assessment as non est if such assessment was not made in accordance with procedure laid down under section 144B, had been deleted. Accordingly, in the given case, observations made by High Court in impugned order were stayed by the Supreme Court.

b) HIGH COURT OF BOMBAY Premlata Ramakant Fatehpuria

v.

PCIT

A.S. CHANDURKAR AND

URMILA S. JOSHI-PHALKE, JJ.

Brief of the case:

On 22-4-2021 a show cause notice was issued seeking a response from assessee as to why assessment should not be completed as per draft assessment order. Assessee was called upon to submit her response by 25-4-2021. In response thereto, assessee on 23-4-2021 made a request for grant of personal hearing after submission of written reply.

Despite this request, assessment order had been passed without granting any opportunity of personal hearing.

In the given case, since the impugned order did not indicate any reason for not granting such opportunity, despite request for same having been made within time and received by the revenue, impugned order of assessment was set aside on ground of violation of principles of natural justice.

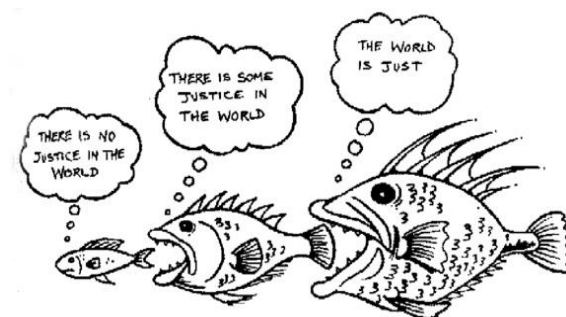
D) ANALYSIS OF THE RECENT AMENDMENTS WITH RELATION TO JUDGMENTS BEING ISSUED:

It is apparent with the *judgment* being made in case a), that the Legislature, in order to provide a predictable assessment regime (probably in favour of revenue authorities), has conveniently chosen to omit, the very same section 144(9), which was inserted by the Legislature, in the first place, to ensure adequate safeguard for adoption of principle of natural justice, in the conduct of faceless assessments, instead of encouraging the concerned assessment

authorities to ensure adherence to the said subsection.

Further, it is to be noted that the in the case (a), the Supreme Court has just stayed the order and has not given the final verdict.

However, if we see at judgment of **case b)**, we could conclude that the principle of natural justice is a principle of common law and has the constitutional backing by article 14 and 21 of the Constitution of India, and as such even after the proposed omission of the said sub section



(9) of section 144B, the faceless assessments conducted in contravention of the principle of natural justice, are still liable to be set aside and considered as nonest in law.

Can a Company gift its entire Assets to any Charitable Trust?

Abhishek Pareek

Inputs by: Sakshi Saini

Supervising CA: CA Rohan Sogani

“Can donation be used as a mode of emptying the company out?”

Whether or not a company can donate its assets to any charitable trust, is a topic of much discussion. There can be two possible modes through which assets of the company can be gifted. First, when the assets are gifted by the company itself to the trust after concurrence from the shareholders, and second, the shareholders can gift their entire or part of shareholding to the trust. In case of donation of shares, the company would remain up and running, and the trust will simply become the owner of the shares. However, if the entire assets of the company are donated, the substratum of the company will disappear as it would not be having any assets and it may just become good for a strike off action under Section 248 (2) of Companies Act, 2013.



In this article, we will discuss that how can a company gift its assets or shareholders can gift entire shareholding to a charitable trust and what will be the requirements & tax implications of the same?

First, we will discuss that can a company give gifts to another entity/person?

Before discussing that a company can make gift or not, first understand that in what all circumstances gift is permissible and legal.

As per the Section 25 of Indian Contract Act, 1872, an agreement made without consideration is void, unless-

- (i) Made on account of natural love and affection between parties standing in a near relation to each other i.e. a gift;
- (ii) Compensation for voluntarily work by a person for promisor;
- (iii) Time barred debt.

It has been further explained in the section that nothing shall affect the validity, as between the donor and donee, of any gift actually made.

From Section 25 we can understand that out of natural love and affection, a gift will be

valid. But can a company i.e. an artificial person and emotionally neutral entity, make gifts out of natural love and affection?

For the same, attention is drawn towards the decision of ITAT, Mumbai Bench in the cases of ***KDA Enterprises Pvt. Ltd, Mumbai [ITA No. 2662/M/2013] and D.P. World Pvt. Ltd. [ITA Nos. 3627 & 3841/M/12]***. In both the cases, the donor and donee were companies, and the Assessing Officer was of the opinion that a gift could not be logically made by one artificial juridical entity to another because the basic condition of **love and affection** for making gifts does not exist between such entities created by law. ITAT Mumbai Bench noted the legal position under Section 25 of the Contract Act which states that the section does not have any effect on the validity of the gifts between donor and donee. **Accordingly, it was held that companies are competent to make and receive gifts and natural love and affection is not necessary requirement.**

So, it can be concluded that a company can make a gift and that will be a valid transaction. **Now let's discuss, whether gift deed will be required to executed in each case of gift or mere transfer will be a valid gift?**

For the above question's answer, attention is drawn towards the definition of Gift as per Section 122 of Transfer of Property Act, 1822, which defines Gift as-

“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to

another, called the donee, and accepted by or on behalf of the donee.

***Acceptance when to be made.*—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving, If the donee dies before acceptance, the gift is void.**

From above definition, it can be concluded that, for a Gift to be valid in nature, following essential elements are required:-

- i) There should be transfer or delivery of assets;
- ii) Intention should be of voluntary transfer, and
- iii) There should be acceptance from the donee.

If above conditions are fulfilled then a gift will be valid even if gift deed is not executed. Although, Gift deed is not required to be executed, but in case if an immovable property is to be gifted then a document, in this regard, will have to be created, which will also have to be registered for the title of the immovable property to be transferred in the name of the donee.

So, it is clear that a corporate entity can make gift to any other entity including a charitable trust. But companies are creatures of their shareholders and governed by its Memorandum and Articles of Association. The disposal of assets by way of gift has the effect on going concern of the company, so the same cannot be done without the express authorization for the same in the Memorandum and Articles of Association of the company and approval of shareholders will also be required. As a best practice unanimous approval of shareholders should be taken.

Before gifting the assets by a company, following points should also be considered:-

- i) Identity of donor, capacity/source and genuineness should be proved;
- ii) The company must be able to pay its debts as they fall due and should have enough assets to cover its liabilities;
- iii) Board resolutions should be passed for giving and receiving gifts;
- iv) The company must ensure that the assets are transferred to the trust in a way that does not unfairly benefit any particular individual or company itself. The transfer should be a genuine gift and not a way of corporate restructuring.

Tax implications of gifting the assets by Company to Trust:

1. Tax implication for Company:

The transfer of assets by way of gift, does not attract taxability under the head 'Capital Gain'. This is for the reason that Section 47 of Income Tax Act, 1961 ("**ITA**") contains list of transactions which are not treated as transfers for the purposes of Section 45 of the ITA. As per the Section 47(iv), any transfer of a capital asset under a gift or to an irrevocable trust is not treated as transfer and therefore, not taxable as capital gains. But it should also be considered that the transfer of assets by way of gift, is a valid gift as per the above-mentioned explanation.

2. Tax implication for Trust:

Section 56 of the ITA taxes certain gifts (both movable and immovable) without consideration beyond specified limit. As per clause (x) of Section 56, gifts (cash/movable property/immovable property) is not taxable upto a certain threshold. Over and above the specified limit, gifts are taxable as

'income from other sources' except when the same qualifies as an exception under the *proviso* to the said clause. Here also, benefits can be availed for the gifts made to a trust or an organization registered under Section 12A, 12AA or 12AB or u/s 10(23C) for charitable or religious purposes, on which Section 56(2)(x) as discussed above doesn't apply.

What if shares are gifted to trust?

As discussed, at the beginning of the article, shareholders also can donate shares held by them in the company to the charitable trust, by way of gift.

In case of gift of shares, there will be no taxability in the hands of shareholders under the head 'Capital Gains' as gifting of shares will not be treated as a transfer under the provision explained above. Also, if trust is registered under Section 12A, 12AA or 12AB or u/s 10(23C), gift of shares is exempted under Section 56(2)(x).

As per the Section 11 of the ITA, income in the form of voluntary contributions made with a specific direction shall form part of the corpus of the trust or institution. Thus, it shall not be included in the total income of the trust. However, as per Section 11(1)(d), as amended vide Finance Act, 2021, applicable from FY 2021-22, shares so received by the trust will have to be converted in one or more of the forms or modes specified in sub-section (5) of Section 11, such as investment in savings certificates, deposit in any account with the Post Office Savings Bank, investment in units of the Unit Trust of India, etc.

It means if a charitable trust receives shares of companies, it will have to liquidate such shares by selling them and the fund will have to be deposited in the aforementioned forms, otherwise the value of shares will be included in the total income of the trust and the same will be taxable in the hands of the trust. Thus, if shares of unlisted company are received by trust, it will be a hassle for trust to sell those shares.

Conclusion

A company can gift its assets or shares to a charitable trust. However, there are certain conditions that must be met in order for the gifting to be considered valid. First, the approval of shareholders should be there. Second, there should be an express authorization in the MOA and AOA of the company for making and receiving the gifts. Finally, the gifting must be done in good faith and with the intention of benefiting the public.

Transfer of assets do not attract taxability for both company and trust, but in case of transfer of shares by way of gift, can be included in the income of the trust, subject to Section 11 of Income Tax Act, 1961.

Accordingly, it is not advisable for the shareholders to transfer the shares held in the company to a charitable trust. Instead of that, entire assets of the company should be transferred to the charitable trust by way of gift.

Current Account transaction – 269 SS/T

Aman Agarwal

Inputs by: Anuj Khandelwal

Supervising CA: Rajeev Sogani

Current account transactions are those transactions which are not in the nature of

loan or deposit

which are

explained under

section 269

SS/269T.

Current

Account

Transactions are

executed

between known

persons and pre-

existing

obligation exists

such that both

the parties will fulfill their obligation towards each other when there is a need to do so.

For example,

Mr. Akash lent an amount of Rs.1,00,000 by giving him cheque to his brother Mr. Pawan for his daily needs with a pre-existing obligation that Mr. Pawan will also help his brother in future when he is in need.



It is to be noted that no such pre-existing obligation exists in the case of Loans & Deposits.

Now let us understand what section 269SS states:

No person shall take or accept from any other person (herein referred to as the depositor), **any loan or deposit** or any specified sum, otherwise than by an account payee Cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if

a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted

earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

c) the amount or the aggregate amount referred to in clause (a) together with the amount or the

Aggregate amount referred to in clause (b),

Is twenty thousand rupees or more:

Here is an important point to consider:

The monetary consideration which will be provided by one party to another can also be in the form of cash, it **need not be only in the forms prescribed in section 269SS/269T.**

Hence, the monetary consideration of Rs. 1,00,000 which has been provided, in the example taken above, by Mr. Akash to his brother can also be in the form of cash, it need not be only in the forms of prescribed in section 269SS/269T.

In other words, Current Account transactions are outside the scope of section 269SS/T, therefore the consideration can be in the form of cash also.

Moreover, if one party lends some money to his relative or any known person **in the form of gift**, then also it is outside the scope of section 269SS/T.

Now let us understand the Overview of section 269T which Income Act defines as follows:

No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the

person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed if

(a) The amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(c) The aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

Is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid:

Clarification:

(i) A loan is a transaction in which borrower approaches the lender for a certain sum of money for a fixed period on

terms & conditions including interest. This term is used from the point of view of borrower

(ii) A deposit is a transaction involving a transfer of money to another party for safekeeping. It can also be referred as a security or collateral amount for fulfillment of an obligation. This term is used mainly from the point of view of lender or Depositor.

The current account transactions are not required to be reported in tax audit report 3CD as there is no case of violation which section 269SS/T addresses.

For more understanding refer to the case laws which are explained below:

This case was held between **COURT OF CALCUTTA** (*Commissioner of Income-tax, Kolkata-1*) and **Gayatri Chakraborty**[2018][407 **ITR 730(Calcutta)**].

Facts of the case: The assessee was a director in a company, **Bright Advertising (P.) Ltd.** in which she held 25.24 per cent equity shares. There were transactions between the assessee and BAPL of giving money by the assessee to BAPL as well as by BAPL to the assessee. The Assessing Officer from the ledger account of BAPL in books of the assessee, took note only of the transactions whereby BAPL gave money to the assessee and was of the view that the same was 'loan or deposit' within the meaning of section 2(22)e by a company (BAPL) to a person who held substantial interest in the company (BAPL) and had to be brought to tax as deemed dividend to the extent the company possessed accumulated profits. Thus, it can be inferred from the

above case that the same would also be applicable in the case of current account transactions in relation to section 269SS/T. In other words, this case can hold good in case of mutual transactions between the two parties and that are not in the nature of "loan or deposit" under section 269SS/T.

Details of the case: Law on this point is clear in the event transactions between a shareholder and a company in which the public were not substantially interested and the former had substantial stake, create mutual benefits and obligations, then the provision of treating any sum received by the shareholder as "**loan or deposit**" would not apply. The company in the instant case fits the description conceived in the aforesaid provision to come within the ambit of section 2(22)e. The controversy which falls for determination is whether the sum received by the assessee formed part of running current account giving rise to mutual obligations or the payment formed one-way traffic, assuming the character of loan or advance.

The Tribunal analyzed the ledger account of the company so far as the payment made to and received from the assessee was concerned and found that a copy of the ledger of the assessee in the books of BAPL was placed. A copy of the statement showing the balance after every transaction in the assessee's ledger in the books of BAPL was placed. A perusal of the statement of balances of transactions between the assessee and BAPL shows that BAPL owed assessee certain sum. BAPL paid the assessee certain sum and the assessee owed BAPL certain sum. The

amounts given in the bracket in the last column of the enclosed balances in the running current account is the amount which BAPL owed to the assessee. **Mutual transactions** go on in this fashion throughout the previous year and as on the last date of the previous year the account is squared i.e., neither the assessee owes BAPL nor BAPL owes assessee any sum. The assessee was **beneficiary** of the sums given by BAPL at some point of time during the previous year and BAPL was the **beneficiary** of the sums given by the assessee at another point of time during the previous year. It was **case of mutual running or current account** which created independent obligations on the other and **not merely transactions which created obligations on other side**, those on the other being merely complete or partial discharge of such obligations and there were reciprocal demands between the parties and the account was mutual.

Conclusion: In the present case, payment of the aforesaid sums to the assessee cannot be treated as loan or deposit that comes under section 2(22) e. **The Tribunal's order, thus, stands confirmed and the question formulated is answered accordingly, in favor of the assessee.**

From the above judgment, it can be concluded that current account transactions between two known parties that are referred here, whether in the form of cash or otherwise, do not fall in the nature of “loans or deposit” within the meaning of section 2(22) e.

Also, it can be said the same would be applicable in the case of current account transactions whether made in form of cash or otherwise, are not “loans or deposits” that fall under the section 269SS/T.

Mis-Reporting of Income – “Penalty under section 270A”

Aman Jain

Inputs by: Siddharth Garg

Supervising CA: Rajeev Sogani

In order to understand the Penalty for Mis-Reporting of Income, we must first understand the following basics related to section 270A:

- Background of Introduction of Section 270A.
- What does Under-Reporting of Income mean?
- Who can impose such penalty?
- What is the quantum of penalty under section 270A?

Let's understand them one by one

1. Background of Introduction of section 270A?

The quantum of the penalty that the Assessing Officer should impose for concealing any type of income has always been a matter of litigation.

Earlier the penalty for concealment of Income was levied under section 271 (1)(c) where the Assessing officer at its discretion levy the penalty equal to 100% or 300% of the tax on such concealed income.



Meaning even though the concealed income was misdemeanour, the Assessing officer can still impose the higher penalty, this gives an excessive power to the Assessing Officer which he may misuse in many ways.

So, to give clarity, certainty & to reduce the discretionary power of the Officer in charge Section 270A was introduced from 1st April 2017.

Finance Minister on her budget speech mentioned as follows:

“At present, the Income-tax Officer has discretion to levy penalty at the rate of 100% to 300% of tax sought to be evaded. I propose to modify the entire scheme of penalty by providing different categories of misdemeanour with graded penalty and thereby substantially reducing the discretionary power of the tax officers”

So, this is clear that the purpose behind the introduction of 270A was to:

- Rationalize the penalty provision; and

- Bifurcation between crime and heinous crime
- to bring
 - Objectivity
 - Certainty; and
 - Clarity
 in the penalty provision

2. What is Under-Reporting of the Income?

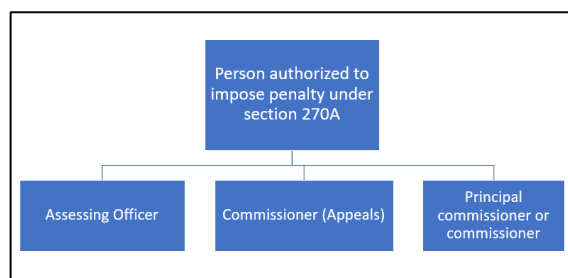
According to section 27A (2) income is said to be under-reported:

- where return is filled: income shown in the return is less than the income assessed by the officer
- where return is not filled: income is more than basic exemption limit.
- when the loss shown by assessee in the return is more than loss assessed by Assessing Officer.
- when income assessed by the Assessing officer is less than income reassessed by Commissioner.

3. Who has the authority to impose penalty under this section?

The following persons are vested with the power to impose penalty under this section

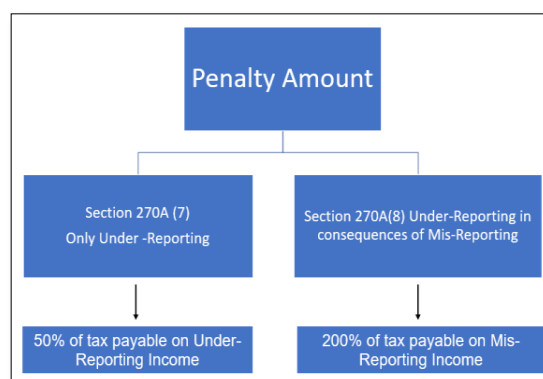
- Assessing Officer
- Commissioner (Appeals)
- Principal Commissioner or Commissioner.



4. What is the quantum of penalty under section 270A?

Section 270A (7) defines that “The penalty referred to in sub-section (1) shall be a sum equal to **fifty per cent** of the amount of tax payable on under-reported income.”

Section 270A (8) defines that “the penalty referred to in sub-section (1) shall be equal to **two hundred per cent** of the amount of tax payable on Mis-reported income in the consequences of under-reporting.



So, after understanding the basic let us understand different cases of misreporting of income

Subsection (9) of section 270A defines 6 instances where the income is said to be Mis-Reported.

***It shall be noted that this definition is an exhaustive definition, so any other case which might be Mis-Reporting in general but not covered under this definition will not be treated as Mis-Reporting of income for this section.**

Let's understand different cases of Misreporting one by one

1. Misrepresentation & Suppression of Facts:

Misrepresentation means a representation which is false in substance and facts. Whereas Suppression is an action of keeping secret or refusal to disclose or reveal.

In case of **State of Tamil Nadu v. Sri Swamy and Company, [(1977) 39 STC 85 (Mad.)]** it was stated that the use of the word “**suppression**” shows that what the assessing officer found was wilful non-disclosure. If it was not a wilful non-disclosure, the assessing officer would have stated as merely omissions. The use of the word “**suppression**” clearly brings out the wilful nature of the non-disclosure by the assessee.

For better understanding let's take the following example:

To avoid the higher bracket of surcharge, Zero Pvt Ltd, a private company, did not include the income of Rs 10 crore in its return; as a result, tax was reduced by Rs 3 crore.

What will happen in this case?

Since Zero Ltd is not revealing the income of Rs 10 crore in its return, it will be considered as suppression of the fact relating to such income and Assessing officer may impose penalty under section 270A (8) on

the same for Misreporting of Income.

Penalty Amount will be equal to 3 Crore* 200% = Rs 6 Crore.

Few other examples are stated below:

- Short-Term Gain is shown as long-term gain.
- Wrong claim of deduction
- Suppression of certain information relevant to compute total income.



2. Failure to record investments in the books of account

The assessee's income is not directly impacted by the failure to record investments but it was taken into consideration under this section as the sources of such investment can be due to under-reporting of income in the earlier period & not disclosing the investment is a misreporting of such income.

Case: Zero Ltd has a Rs 10 Crore investment, which it didn't record in the books of accounts, during the current year, during the assessment it was discovered that this investment was made out of the income which

was not reported in prior period, in this case, the officer could impose a penalty under section 270A (8) for misreporting for income.

3. claim of expenditure not substantiated by any evidence:

There is use of word “any” which means the expense should not have any kind of supporting documentation in order to be covered under this clause.

Case: In exchange for the services received from One Ltd, Zero Ltd spent Rs 10 crore (tax amount: Rs 3 crore). But while doing the assessment the Assessing Officer found that there are no companies registered by the name of One ltd. and Zero ltd have neither provided with any proper explanation/supporting of what services are received from One ltd nor able to provide any other evidence relating to that expenditure.

Consequence: In this case Assessing Officer could impose penalty under section 270A (8) for misreporting of income instead of section 270A (7).

PENALTY = 3 *200% = RS 6 crore

4. recording of any false entry in the books of account:

Recording any fictitious entry in the books that were not, in fact incurred.

Few instances of the same are

- Recording of fake purchase.
- Recording a fake expenditure of advertising.
- Recording a fake travelling expense.

5. Failure to record any receipt in books of account having a bearing on total income; and

Case: Zero ltd is Fast food chain restaurant having several franchisees. The ingredient to make food is supplied by Zero ltd to the franchise at cost plus 15%.

However, during the previous year 2021-22. Zero ltd booked receipt from 15 out of 20 franchises.

The failure to report receipt from the 5 franchises has decreased its income by Rs 10 crore.

Consequence

Penalty under section 270A (8) will be imposed by the Assessing Officer instead of penalty under section 270A (7)

PENALTY = 3 *200% = RS 6 crore

6. Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply

Any transaction between two associated party in which one or both parties are non-residents is defined as an international transaction by Section 92B.

Case: One ltd (registered outside of India) hired Zero ltd, holding of One ltd, to provide an IT service for Rs 1 crore. The same was recorded in the books of account.

However, despite meeting the eligibility requirements under **Rule 10E** for the prior year in which this transaction occurred, Zero ltd failed to disclose the transaction in **FORM 3CEB**.

Now two instances will occur

First, what if Income is not under Reported?

Since the income has not been underreported, section 270A's provisions will not be applicable.

BUT failing to make disclosure under under Rule 10E will be liable for penalty under section 271BA which is **equal to a sum of one hundred thousand rupees**.

Second, what if there is under-reporting of Income?

In this case under-reporting of income would result in misreported income and the Assessing Officer could impose penalty under section 270A (8) instead of section 270A (7).

So, we now understand every situation covered by Section 270A's Subsection 9.

But a question which may arise in our mind is that whether Mis-Reporting of income on which there is no Under-Reporting could be liable under this section?

The Answer is NO.

As the penalty of Section 270A (8) says that the Assessee will only be penalized when there is Mis-Reporting in the consequences of Under-Reporting.

So, any case where there is no under-reporting the provisions of section 270A are not applied.

Let's Understand with the following case:

M/s Zero ltd wants to raise a capital through an initial offer to the public, but the CFO of the company claims that the company revenue is insufficient to draw attention of public. Now as a result of this one of the directors suggested to increase the revenue by the issue of fake invoices of 10Cr.

Now in this case as the income of the M/s Zero ltd was not Under-Reported (As it is Over-Reported) thus the provision of section 270A (8) of Mis-Reporting is not invoked in this case.

Gift to and from Hindu Undivided Family (HUF)

Ansh Gupta

Inputs by: Shreya Pareek

Supervising CA: Rohan Sogani

You all have heard about the Hindu Undivided Family [HUF]. HUF is treated as a 'person' under Section 2(31) of

"Gift them something, they will remember"

the Income Tax Act, 1961 ("ITA"). A Hindu family can come together and form a HUF. HUF has its own Permanent Account Number (PAN) and files tax returns

independent of its members.

Every individual who takes birth in a HUF is eligible to be a **coparcener**, as per the Hindu Succession Act, 1956, and shares equal legal right and liabilities over their ancestral property. It is a body consisting of persons lineally descended from a common ancestor and include their wives and daughters (whether married or unmarried), who are living together.

All the family members in a family are called members of HUF.

The head of the HUF is **Karta** or manager of the joint family and occupies a unique position unlike any other member of the family.



Mr A is Karta of his HUF. He gifted/contributes his savings to HUF. What will be the tax implications in the hands of HUF? What would be the scenario if Mr. A or any other member of HUF receives gift from the HUF? Would it be taxable in the hands of Mr. A or such other member? This is what I intend to discuss in this article, but lets first understand, what are the provisions of the ITA applicable in case gift, whether in cash or kind, is received by any person.

Taxability of Gifts is governed by Section 56 of the ITA.

Section 56(2)(x) is applicable when any person receives: -

- Any sum of money **without consideration**, i.e. as Gift, if the aggregate sum of money exceeds fifty thousand rupees; or
- Such person receives any property other than immovable property without consideration, or for a consideration the aggregate Fair Market Value ("FMV") of which exceeds fifty thousand rupees or;
- Such person receives immovable property without consideration or for a consideration, the stamp duty value of such property as exceed such consideration,

then such amount will wholly be taxable in the hands of such person as Gift under Section 56(2)(x) of the ITA.

As HUF is included in the definition of 'Person', provisions of this section applies to HUF also.

However, gifts received from certain **relatives** are not treated as income in the hands of the recipient, irrespective of the amount involved.

Sub-clause (e) of Section 56 (2)(vii) prescribes definition of Relative, which is also applicable to Section 56(2)(x).

The same is as under: -

"relative" means—

- (i) in case of an individual—
 - (A) spouse of the individual;
 - (B) brother or sister of the individual;
 - (C) brother or sister of the spouse of the individual;
 - (D) brother or sister of either of the parents of the individual;
 - (E) any lineal ascendant or descendant of the individual;
 - (F) any lineal ascendant or descendant of the spouse of the individual;
 - (G) spouse of the person referred to in items (B) to (F); and
- (ii) in case of a Hindu undivided family, any member thereof;

Definition of relative to be tested from the perspective of the 'recipient'.

With effect from Finance Act, 2012, the term 'relative' was enlarged and included 'relatives of HUF'. Therefore, Gift received from members of HUF currently is exempt from Section 56(2)(x).

With this legal position, now let's discuss some of the scenarios of gift to and from the HUF, along with the related judicial precedents.

SCENARIO I - GIFT TO HUF FROM ITS MEMBERS

- **Facts:** Mr. A and Mrs. A are members of Mr. A's HUF; Mrs. A intends to give gift to Mr. A's HUF
- Whether gift by Mrs. A to Mr. A's HUF is covered under the exemptions provided under section 56(2)(x)
- Gifts received by HUF from its members are exempted from Income Tax under **Section 56(2)(x)**, as member, from the point of view of HUF, is included in the definition of relative. Mrs. A is member of A's HUF.

SCENARIO II - GIFTS TO MEMBERS FROM HUF

- **Facts:** Mr. A and Mrs. A are members of Mr. A's HUF; Karta of the HUF intends to give gift to Mrs. A out of HUF funds.
- **Whether receipt of such gift by Mrs. A from HUF is covered under the exemptions provided under Section 56(2)(x)?**
- Definition of relative, as discussed above, is in relation to a scenario when the HUF received gift from any of its members. However, that doesn't cover a reverse situation, wherein, a Gift is given by a HUF to any of its members. In relation to an individual being a recipient of Gift, HUF is not covered in the definition of relative for such individual. Now the question arises, whether in case of such

gifts received by an individual from the HUF of which such individual is a member, the same would be taxable in the hands of such individual or not.

In this regard, attention is drawn towards decision of ITAT, Chandigarh Bench in the case of Pankil Garg [2019] 108 taxmann.com 337 (Chandigarh - Trib.) in which it was held as under: -

- Any amount received by a member of the 'HUF', even out of the capital or estate of the 'HUF' cannot be said to be income of the member exigible to taxation.
- Since such a member himself has a pre-existing right in the property of the 'HUF', hence, it cannot be said to be a gift without consideration by the 'HUF' or by the other members of the 'HUF' to that recipient member.
- In such circumstances, the provisions of Section 56(2)(vii) are not attracted in case an individual member receives any sum either during the subsistence of the 'HUF' for his needs or on partition of the 'HUF' in lieu of his share in the joint family property.

ITAT held that it is because of this salient feature of the HUF that in case of individual, the HUF has not been included in the definition of relative in section 56(2) as it was not so required, whereas in case of HUF, members of the HUF find mention in the definition of 'relative' for the purpose of the said section”

Attention is also drawn towards Section 10(2) of the ITA, wherein gift is exempt

where the following 2 conditions are satisfied:

Firstly, a person must be a member of HUF. Secondly, he/she should receive the sum out of the income of such HUF only.

Hence, gift HUF to Mrs. A would not be taxable in the hands of Mrs. A.

SCENARIO III: GIFTS TO OR FROM NON-MEMBERS BY OR TO HUF

- **If the HUF gives gift to any non-member, or any non-member gives any gift to the HUF, then what would be the taxability.**
- **Facts:** Mr. A and Mrs. A are members of Mr. A's HUF; Mr. B, father of Mr. A, wants to give gift to Mr. A's HUF.
- Whether gift by Mr B to Mr. A's HUF is covered under the exemptions provided under Section 56(2)(x)

For individuals being Non-Member of HUF, gifts will be considered same as it is considered in case of gift received by a person from any non-relative. Similar would be the position in case of gift received by HUF from any non-member. Accordingly, cash gift and gift of movable/immovable property would be taxable for both the HUF as well as for the non-member.

Subodh Gupta (HUF) [2018] 89 taxman.com 418 (Delhi-Trib): In this case mother of Karta of HUF, not being a member of HUF, gifted 75,000 Equity shares to assessee HUF out of natural love and affection. ITAT Delhi Bench held that assessee HUF consist of assessee, his wife and three children only. Mother of Karta is

not a member in the HUF. So gift of equity shares will be chargeable to tax under Section 56 (2) (vii), not being the member of HUF.

CONCLUSION

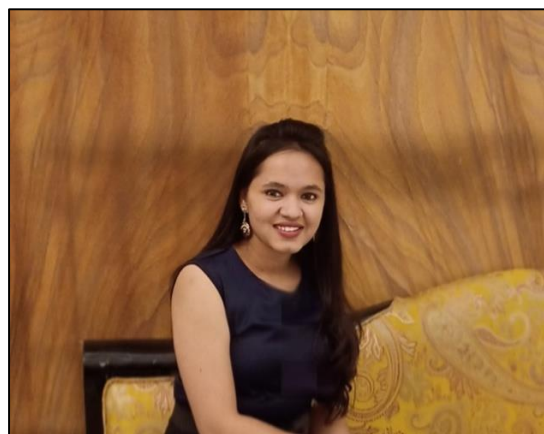
In order to determine the applicability of the provision of Section 56(2)(x) one always should consider the definition of “relative” as applicable to such clause, to come to a conclusion whether the gift would be taxable or not. For HUF it is important to make sure that the person from whom the gift is received or given qualifies as the member of such HUF.

Recognized Provident Fund- Taxability of Contribution and Interest

Anshita Mittal

Inputs by: Sparsh Garg

Supervising CA: Rakesh Kedia



We all are aware that according to the Employees' Provident Funds Scheme, 1952,

'Aisi badi badi income me, chhoti chhoti tax planning zruri hoti h'

every employer contributes 12% of salary, towards Employees' Provident Fund mandatorily for employees having salary below Rs.15,000 per month or employee already

registered in Provident Fund with employee contributing the same percentage. Only an employee whose basic pay is more than Rs. 15,000 per month and who has never contributed to the EPF is eligible to opt out of the programme. When salaries exceed Rs. 15,000 per month, and a contribution is made to Provident Fund, employers and employees must each contribute a minimum of 12% of that amount.

But why Provident Fund contribution is normally not made for Employees having salary more than Rs.15,000 per month or High Paid Employees? Don't they consider this contribution as a useful tool for them?

One might question why an employer should make a contribution to the Provident

Fund for Highly Paid Employees if it is not required by law and instead could simply include the money in the employees' salaries. This argument has a very straight forward solution. This contribution to EPF can be for reducing the burden of Taxes on employees. A Company with a progressive outlook can easily turn this exercise into a practice to benefit their employees.

Let's first talk about provident funds and when they are regarded as Recognised Provident Funds before talking about benefits.

Provident Fund is a retirement saving plan in which both employee and employer contribute a fixed sum every month. The amount accumulated in the Funds and interest earned thereon is paid to the employee on his retirement.

'Recognised Provident Fund' as defined in section 2(38) is a Provident Fund which is Recognized by the Chief Commissioner or Commissioner of Income-tax, by applying the rules contained in Part A of the Fourth Schedule to the Income-tax Act.

The contributions to Recognised Provident Funds are dealt with by Part A of Fourth Schedule to the Income-tax Act, 1961.

Hence, Contributing to Recognised Provident Fund (RPF) can be a part of your Tax planning.

I would give it a tag of '*Triple E' Benefit*. Now let's discuss what are these 3 'E's and how this is beneficial –

First 'E' - Employer's Contribution to RPF

Exemption- Contribution up to 12% of basic salary + DA is exempt from tax.

However, it shall be taxable in the following two scenarios-

- (i) Any contribution in excess of 12% of salary shall be liable to tax according to Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961.
- (ii) Any contribution in excess of Rs.7,50,000 per annum u/s 17(2)(vii).

As per Section 17(2)(vii), above limit of Rs.7,50,000 per annum is the maximum limit for contribution in a Recognized Provident Fund, Pension scheme referred to in section 80CCD(1) and an approved superannuation Fund. The aggregate contribution(s) over Rs. 7,50,000 in a previous year to the above said Funds would be treated as perquisite and taxable under the head 'salaries', in employee's hand.

However, it should be noted that the employer can contribute more than 12% to such Fund but the contributions of employer to the individual account of an employee in any year shall not exceed

the amount of the contributions of the employee in that year u/s 17(2)(vii).

Second 'E'- Employees contribution to RPF

Exemption- Employee can claim deduction under Section 80C of his own contribution towards RPF with a maximum limit of Rs.1,50,000.

Third 'E'- EPF's Withdrawal

At the time of withdrawal of RPF on retirement or termination of his service, he is entitled to the following components, namely-

1. Lump sum payment of accumulated contribution to PF
2. Interest Income on such contribution.

Lump Sum Payment

Lump sum payment received by employee on retirement or at termination of his service is exempt from tax under section 10(12) to the extent provided in Rule 8 of Part A of schedule IV.

As per Rule 8 of Part A of schedule IV, this exemption is allowed in any of the following situations-

- a. Employee has rendered continue service with his employer for a period of 5 years or more, or
- b. If the employee has been terminated because of certain reasons which are beyond his control, or
- c. Employee has resigned before completing 5 years but joins another employer who maintains Recognized Provident Fund and Fund money with

current employer is transferred to the new employer, or

- d. Entire balance standing to the credit is transferred to his account under a pension scheme referred to in 80CCD. The cumulative sum owed to an employee will be exempt in their hands if any of the aforementioned conditions are met. However, if none of the aforementioned requirements are met, the entire accrued balance is included in the employee's total income, and the individual would have been responsible for paying tax on his total income for each of the relevant years. According to section 192 A, tax will be deducted at source from such an accumulated sum.

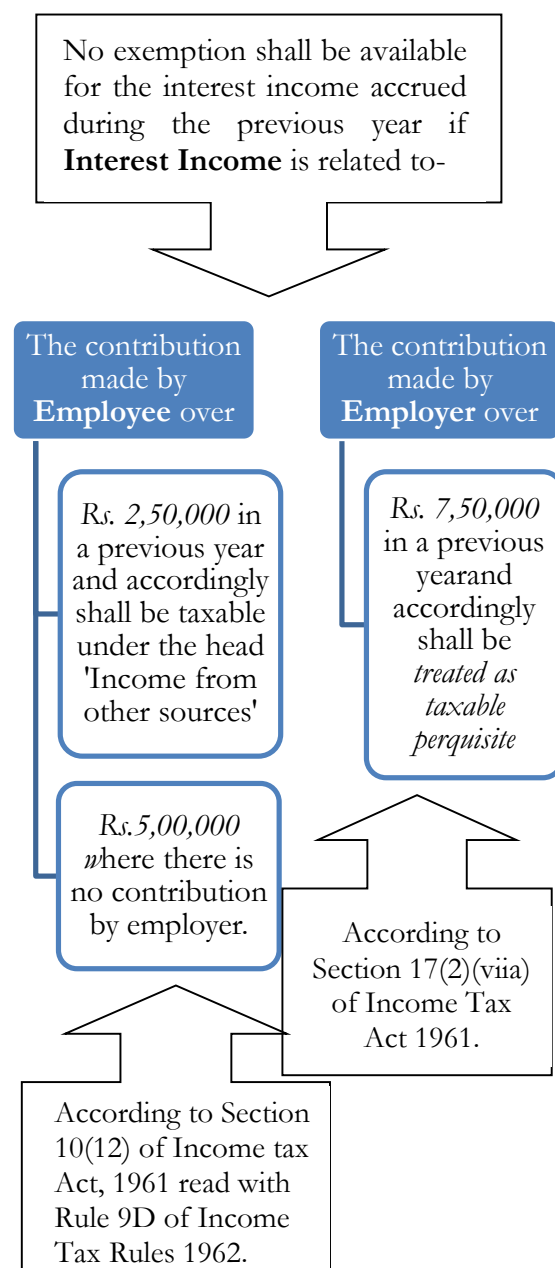
Employees can partially withdraw its PF Contribution under Employee Provident Fund Scheme 1952 subject to some specified conditions and limits[time period cannot be less than 5 years] .



Interest Income

Interest credited on the balance to the credit of the employee in so far as it is allowed at a rate not exceeding 9.5% is exempt from

tax [rate fixed by Central Government in this behalf by notification in the Official Gazette].



Let's take an illustration for understanding this whole article-

Mr Shonti joined the Job on 1st April 2021. He and his employer made the contributions of Rs. 8,00,000 each, every year to the EPF account in next 5 financial years. Assuming the rate of interest on EPF is 8.5% per annum.

A. Computation of interest on employer's contribution to PF

Year	Total contribution by Employer	Tax-free perquisite	Taxable perquisite	Interest on taxable perquisite	Accumulated balance
	(A)	(B)	(C)	(D = E * 8.5%)	(E = C + D)
1	8,00,000	7,50,000	50,000	4,250	54,250
2	8,00,000	7,50,000	50,000	8,861	1,13,111
3	8,00,000	7,50,000	50,000	13,864	1,76,976
4	8,00,000	7,50,000	50,000	19,293	2,46,269
5	8,00,000	7,50,000	50,000	25,183	3,21,451
Total	40,00,000	37,50,000	2,50,000	71,451	9,12,057

Note:

1.	The aggregate of sum computed in column (C) and (D) shall be taxable as perquisites in the hands of the employees.
2.	Interest in Year 1 is computed on the taxable perquisite of Rs. 50,000. Thus, the formula for computation of interest in Year 1 shall be (D = C * 8.5%). From the 2nd year onwards, interest shall be computed on the aggregate of accumulated balance of taxable perquisite (C) and interest credited thereon till the immediate previous year.

B. Computation of interest on employee's contribution to PF

Year	Total contribution by Employee	Contribution on Threshold	Excess contribution	Interest on contribution in excess of Rs. 2,50,000	TDS at the rate of 10% under Section 194A	Accumulated balance
	(A)	(B)	(C)	(D = F * 8.5%)	(E)	(F = C + D - E)
1	8,00,000	2,50,000	5,50,000	46,750	4,675	5,92,075
2	8,00,000	2,50,000	5,50,000	97,076	9,708	12,29,444
3	8,00,000	2,50,000	5,50,000	1,51,253	15,125	19,15,571

4	8,00,000	2,50,000	5,50,000	2,09,574	20,957	26,54,187
5	8,00,000	2,50,000	5,50,000	2,72,356	27,236	34,49,308
Total	40,00,000	12,50,000	27,50,000	7,77,009	77,701	

1.	The interest computed in column (D) shall be taxable as other sources in the hands of the employees and TDS shall be deducted under Section 194A.
2.	Interest in Year 1 is computed on the contribution of Rs. 5,50,000. Thus, the formula for the computation of interest in Year 1 shall be $(D = C * 8.5\%)$..

Conclusion

Let's use an example to further understand the advantages and consequences of PF.

Gulab Kumar, an employee with an annual income of Rs. 1 crore, is unsure whether to agree for RPF Regime or not. Opting for RPF regime would mean Employee Contribution of 12% which will reduce his carry home salary. Employer will also contribute 12%, which will be reduced from his Current package of Rs. 1 Crore.

As agreed, the Cost to Company (CTC) shall not be greater than Rs. 1 crore. If the Company contributes to the Recognized

Provident Fund, it will only do so using the CTC that was previously agreed upon.

Let's analyse which scenario will provide Mr. Gulab Kumar with the greatest advantage and then give him reasons why he should agree to a CTC Structure including contribution towards Recognized Provident Fund.

In first Scenario, Mr. Gulab Kumar keeps himself out of RPF regime. In second scenario, Mr. Gulab Kumar will opt for RPF regime contribute Rs.7,50,000 (less than 12%). An equal contribution is made by the company i.e. Rs. 7,50,000 .

Particulars	<u>Scenario 1</u> No Contribution to Provident Fund	<u>Scenario 2</u> Contribution to Provident Fund by Employee and Employer both
	Amount (in Rs.)	Amount (in Rs.)
Salary	1,00,00,000	92,50,000
Employer Contribution to RPF	-	7,50,000
Gross Salary (CTC)	1,00,00,000	1,00,00,000
Employee Contribution to RPF	-	(7,50,000)
Take Home Salary Before Tax (Salary – Employee Contribution to RPF)	1,00,00,000	85,00,000
Taxable Salary	1,00,00,000	92,50,000

(Gross Salary – Employer Contribution to RPF)		
Less: Tax*	32,00,000	29,43,000
Take Home Salary after Tax	68,00,000	59,95,000
<i>Tax Advantage</i>	2,57,000 (32,00,000-29,43,000)	

* Tax has been calculated as per Normal Slab Rate (with 10% surcharge and 4% Cess). New scheme under section 115BAC is not adopted in above example.

Interest Benefit-

Employee will receive interest income on RPF contributions in addition to the aforementioned savings. The interest rate on provident funds ***ranges from 8 to 10%***, which is higher than the rates offered by banks on fixed deposits and other investments made by an individual, even though the interest income on contributions that exceed the stated maximum is taxable. Additionally, one should be aware that not just this interest income but all interest income is subject to tax. Even if the employer does not offer CTC Packages including Employer Contribution to Provident Fund, Employee himself can make his contribution alone to Provident Fund for availing benefits.

A person can also benefit from a number of non-tax benefits through a provident fund. Let's examine a few of these advantages:

- **Retirement Plan-** It helps in saving money at the time of retirement and gives employees a sense of security for their old age life.

- **Emergency Withdrawal-** Because of specific premature withdrawal rules, it can help an employee financially during an emergency.
- **Monthly Savings-** There is no requirement to make a single, lump-sum investment. Deductions are made on a monthly basis from the employee's salary and it helps in saving a huge amount of money over a long period.
- **Loan against PF-** A PF account holder can take a loan against their PF balance for education, home loan repayment, house construction or renovation, etc.

Therefore, it is advised that all employers redesign their CTC Structure for their employees in a way that maximizes tax savings through contributions to Provident Fund after receiving the employees' approval for the same and help their employees in remunerating employees without inviting the incidence of taxation.



Published on Taxmann

Significant Economic Presence

Anusha Agarwal

Inputs by: Rohan Garg

Supervising CA: Rohan Sogani

The taxability of income earned from cross

*“Saat samundar
paaar,
Tax tere peeche
peeche aa
gayaaa”...
....*

border activities might arise, where the income is earned (source country) or where the entity is established (country of residence).

Source based taxation is based on the principle that the income should be taxed in the country which provides the opportunity to generate such revenues.

Residence based taxation is based on the principle that the entities have to pay tax in the country where they are registered or are a tax resident of.

For instance, Google is established in Ireland/Singapore and earns revenues from India, via online advertisement services. What used to happen earlier was that, because Google is not having a physical presence here in India, it used to dispense out without paying taxes for the huge advertisement revenues generated from India.

To tap these types of transactions which



have economic presence through digital means, but do not have the physical presence, the concept of **Equalisation Levy** was introduced in the Finance Act, 2016.

❖ What is Equalisation Levy?

Equalisation Levy was introduced with the intention of bringing transactions of online advertisement under the tax ambit of India based on economic presence.

The service recipient withholds Equalisation Levy at the time of payment. It is applicable when:

- The payment is made to a non-resident service provider;
- The annual payment made to one service provider exceeds Rs. 1,00,000 in one financial year.

The tax rate was kept @6% and the ambit of Equalisation Levy was kept limited to online advertisement and provision for digital advertising space or facilities/ service for the purpose of online advertisement.



But the scope of EL was extended in Finance Act, 2020:

The key takeaways were:

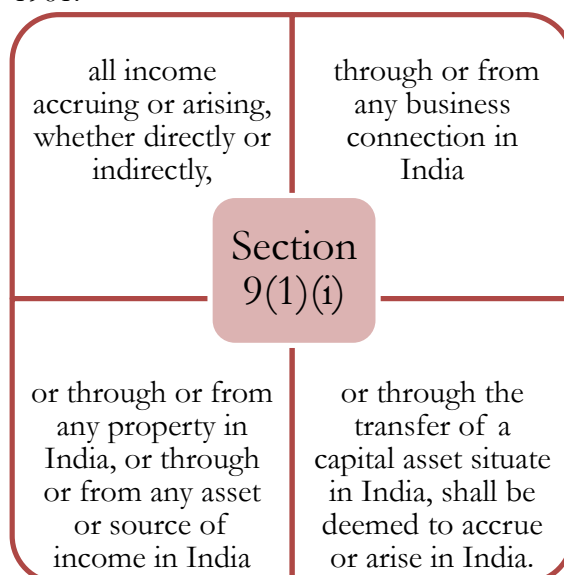
1. Equalisation levy shall be charged at the rate of 2% of the amount of consideration received or receivable by e-commerce operator from e-commerce supply of goods and services made by it
 - to a person resident in India or
 - To a non-resident in the specified circumstances or
 - To a person who buys such goods /services using IP address located in India.
2. Equalisation Levy is not applicable when-
 - E-commerce operator has a permanent establishment in India and such e-commerce supply is conducted with such PE.
 - Sales, Turnover, gross receipts from e-commerce supply or services is less than Rs 2 crore during the previous year.

The scope of the Equalization Levy is very limited. It is restricted only to certain online advertising and related services. Whereas, on the other hand, the ambit of 'Significant Economic Presence' is very wide. It covers every type of digital service provided or every kind digital activity undertaken by an entity through which it generates revenue. Considering the broad coverage of the concept of 'Significant economic service', it also covers services, which are already covered under the Equalization levy regime.

Let us now discuss the concept of Significant Economic Presence:

❖ **What is Significant Economic Presence (SEP)?**

The taxation of digital businesses lead to the concept of Significant Economic Presence. To get a better and in-depth understanding of the topic lets first discuss Section 9(1)(i) of Income Tax Act, 1961.



Further, Explanation 2A was inserted to clause (i) of sub-section (1) of section 9 with effect from 1st April 2022, namely:

Explanation 2A— The **Significant Economic Presence** of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

The CBDT notified **Rule 11UD, in the Income Tax Rules, 1962**, in order to provide for the threshold limits for applicability of SEP:

(a) **Revenue Linked Threshold:**

Transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year **exceeds such Rs. 2 Crores**.

(b) **User Linked Threshold:**

Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed i.e 3,00,000, in India through digital means.

The transactions or activities shall constitute significant economic presence in India, whether or not,—

- (i) the **agreement for such transactions** or activities is entered in India; or
- (ii) the **non-resident has a residence** or place of business in India; or

- (iii) the **non-resident renders services** in India

In addition, the following Explanation was inserted with effect from the 1st day of April 2021, namely:—

Explanation 3A.— The **‘income attributable to the operations carried out in India’**, shall include income from—

1. Such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol (IP) address located in India
2. Sale of data collected from a person who resides in India or from a person who uses internet protocol (IP) address located in India
3. Sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address (IP) located in India

This clarifies that, business connection through Significant Economic Presence can be established even when the non-resident does not have a physical place of business in India.

The implementation of the concept of ‘Significant Economic Presence’ in the Indian Income tax law is a landmark step taken by the Indian tax authority in order to claim the revenues of companies such as Amazon, Netflix, Google, Microsoft.

The above digitally enabled companies operate in various markets internationally without having physical presence in those countries. Countries like India provide these tech giants a huge customer/subscriber base and helps them in earning enormous revenues.



❖ **Trigger points to introduce Significant Economic Presence (SEP):**
BEPS - Action 1: Address the tax challenges of the digital economy:

Base Erosion and Profit Shifting (BEPS) is a project by Organization for Economic Co-operation and Development (OECD), which indicates the tax planning strategies used by Multinational Enterprises that exploit gaps and mismatches in tax rules to avoid paying Tax.

Earlier, the physical presence or the Physical Establishment was the condition, between the source country and the non-resident for the cross border economic transactions and even in the absence of Physical Establishment, the Multinational enterprises (MNE's) could operate remotely in the economy of another country but was not taxed because the physical presence was absent.

So, that position was not acceptable to large number of countries including India, as Multinational Enterprises were getting away with paying much less taxes than they should be paying otherwise.

The physical establishment criteria was outdated and was acting disadvantageous to the source countries.

The OECD recognized the shortcomings of Physical nexus and it started working on identifying any alternative possible so that there is a fair distribution of taxes across countries & introduced new nexus based on 'Significant Economic Presence'.

❖ **CONCLUSION:**

Source based taxation is something, which was primarily targeted with the introduction of Significant Economic Presence. The concept of SEP is inserted in the Income Tax Act. However, no corresponding amendment, similar to this, has been made in the Double Taxation Avoidance Agreement which India has entered with different countries.

As per Section 90 of Income Tax Act, 1961, provisions of the act or the DTAA whichever are more beneficial are to be applied. The DTAA mandates the condition of Physical Establishment for taxation of cross border transactions.

Concisely, SEP provisions would have a limited impact on foreign MNEs as non-residents are still eligible to get treaty protection under DTAA, owing to the restrictive definition of permanent establishment (PE) for taxing business profits of a non-resident.

194J –Technical Service v/s Professional Service

Anushika Garg

Inputs by: Sachin Agarwal

Supervising CA: Rakesh Kedia

As per section 194J:

(a) TDS on professional services is deducted @10%.

(b) TDS on technical services is deducted @2%.

“Confusion hi
confusion
hain....Solution
kuch pata nahi!”

There is great confusion in the definitions of technical services as well as professional services.

As per clause (a) of explanation to section 194J, **professional services** means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or **technical consultancy** or interior decoration or advertising or such other profession as is notified by the Board for the purpose of section 44AA or of this section;

As per clause (b) of explanation to section 194J, **fees for technical services** shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;



As per Explanation 2 to clause (vii) of sub-section (1) of section 9 **"fees for technical services"** means any consideration (including any lump sum consideration) for the rendering of any managerial, **technical or consultancy services** (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

KITNA CONFUSION HAIN
YARR....



The article is all about the confusion in both the definitions. If we read both the

definitions, at first glance it seems overlapping because there is mention of technical consultancy in the definition of “professional services” as well as technical consultancy is also mentioned under definition of “fees for technical services”.



These both definitions is creating lot of problems for the assessee, as they are confused whether TDS@2% will be deducted or TDS@10% will be deducted for technical services and there is no clarification available for this confusion till now.

This confusion can result in deduction of TDS at lower rate or higher rate.

TO FINALLY KARNA KYA HAIN??

For this confusion, the principal difference between the technical services and professional services needs to be understood.

The intent that can be behind levying a higher TDS rate in the case of professional services is that there are higher margins in the case of a profession. In profession, one

earns with the power of the mind, whereas in business there have to be much more overheads and infrastructure involved. Therefore lower margins entailing lower TDS rates in case services are provided in the course of business. The percentage of profit in relation to turnover in business is much less than a profession.

So we can differentiate the technical services and professional services with the help of definition of “business” and “profession” as per Income Tax Act.

As per section 2(13) of the Income Tax Act, "Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

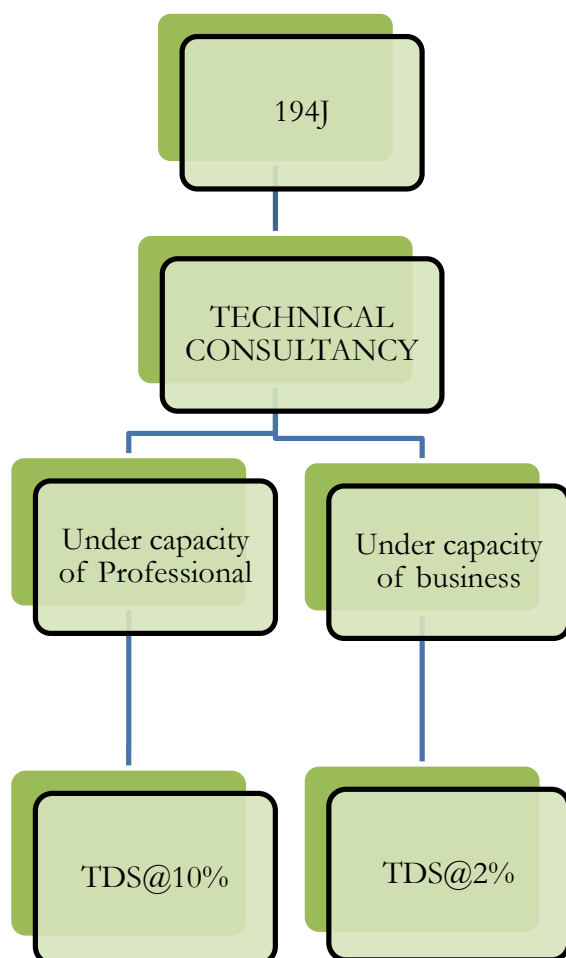
The word 'business' is one of wide important and it means activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The expression "business" does not necessarily mean trade or manufacture only

As per section 2(36) of the Income Tax Act, “profession” to include vocation,

In general terms, the expression "profession" involves the idea of an occupation requiring purely intellectual skill or manual skill controlled by the intellectual skill of the operator.

So if technical consultancy is provided in the course of the profession, it will be considered in the nature of “professional services”. If technical consultancy is not provided in the course of the profession,

then it can be considered that they are provided in the course of business.



Let's understand this with an example:

Chintu a software engineer providing technical consultancy to ABC Ltd. for which he charged fees of Rs. 35,000 from ABC Ltd.

ABC Ltd. is confused whether the TDS is to be deducted at 2% or 10% as the technical consultancy comes under the definition of both technical services and professional services.

As the Chintu is an individual and he is also a software engineer i.e. he is having certified degree providing technical consultancy in the capacity of the professional, in my opinion TDS@ 10% would be applicable.

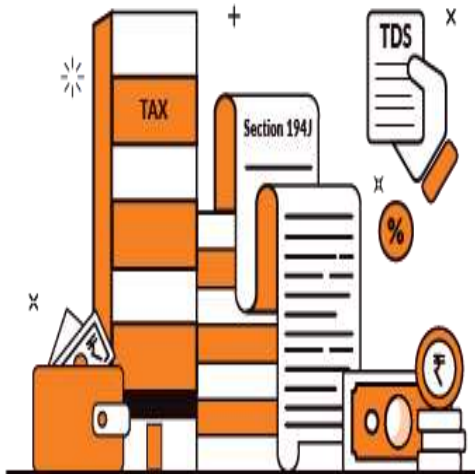
Let's take another example:

Chipmunk Ltd. is providing technical consultancy and employs various fields of professionals for rendering such services, then it cannot be considered as professional services because a company cannot provide these services in the course of a profession and will be eligible for lower rate of TDS i.e.2%.

SYMPTOMS OF A PROFESSIONAL

- Can be an individual or group of individuals having certified degree of profession e.g. doctor, engineer, Chartered Accountant etc.
- Connected with a job that needs a high level of training and/or education.
- Individual who derives their income from his specific knowledge or experience.
- Individual who is engaged in one of the learned professions.

- Individual who works in a specified professional activity.



TO AAIYEIN SHORT SUMMARY SE SAMAJHTE HAIN!!

Technical consultancy provided under the scope of business than it will fall under the definition of “technical services” and TDS@2% will be deducted. If technical consultancy is provided under the capacity of professional, then it will fall under the definition of “professional services” and TDS@10% will be deducted.

Published on Taxguru

Section 154 : Rectification of Mistake and Section 155: Other Amendments

Apeksha Gupta

Inputs by: Saijal Lodha

Supervising CA: Rohan Sogani

Sometimes there may be a mistake in any order passed by the Assessing Officer. In such a situation, mistake which is “**apparent from the record**” can be rectified under Section 154 **within 4 years** from the end of the financial year in which the order sought to be amended was passed.

The word ‘mistake’, has a special significance here. It covers not merely clerical or arithmetical errors but also wrong application of the provisions of law. The expression “mistake apparent on record” is inherently indefinite in scope and subjective in the sense that what may be a mistake for one may not be a mistake for another.

In addition to the above, Section 155 also introduces some instances which deems certain circumstances to be “mistake apparent on record” in the several situation as a result of subsequent events, and then



accordingly Section 154 can be applied by the Assessing Officer.

Object of Section 155-

Section 155 serves **two purposes-**

- (i) It deems the amendments necessitated in the circumstances, mentioned therein, to be mistake apparent from the record warranting the application of Section 154(1).
- (ii) It enlarges the period of limitation available for such action specified in Section 154(7) and provides in each of the cases, a separate time limit of 4 years commencing from different dates mentioned in sub-section (1) to (18) of Section 155.

Section 154: Rectification of Mistake

154(1)- With a view to rectifying any mistake **apparent from the record an income- tax authority** referred to in **Section 116**, such as AO, CIT(A), etc. may,—

- (a) amend **any order** passed by it under the provisions of this Act;

- (b) amend any **intimation or deemed intimation** under Section 143(1);
- (c) amend any **intimation** under Section 200A(1);
- (d) amend any **intimation** under Section 206CB(1).

154(1A)- However, if the matter in the order is **subject matter of appeal & revision**, the concerned income tax authority **cannot amend** the order.

154(2)- Rectification can be made:

- ✓ On his **own motion**, or
- ✓ On application **by the assessee** or where the authority concerned is Commissioner (Appeals), by the Assessing Officer also.

154(3)- Authority concerned should give **Notice and reasonable opportunity of being heard** where rectification has the effect of-

- ✓ Enhancement of assessment;
- ✓ Reduction of refund;
- ✓ Increasing liability of the assessee.

154(4)- An order of rectification must be in writing. Refusal to make rectification shall also require an order under this section.

154(5)- Where any such amendment has **the effect of reducing the assessment** or otherwise reducing the liability of the assessee, the AO **shall make any refund which may be due to such assessee**.

154(6)- Where any such amendment has **the effect of enhancing the assessment** or

reducing a refund already made or otherwise increasing the liability of the assessee, the AO shall **serve** on the assessee, a **notice of demand** in the prescribed form specifying the sum payable, and such notice of demand shall be **deemed to be issued under Section 156** and the provisions of this Act shall apply accordingly.

154(7)- Time limit for Rectification:

Within 4 years from the end of the FY in which the order sought to be amended was passed. However, the time limit shall not apply to a case where amendment is made u/s 155.

154(8)- Time limit for Rectification:

where assessee has applied- Without prejudice to the provision of Section 154(7), the authority shall pass an order **within 6 months** from the end of the month in which the application has been filed, by-

- (a) making the amendment; or
- (b) refusing to allow **the claim**.

Section 155: Other Amendments

Section 155 provides some instances which deems certain circumstances to be mistake apparent on record, for the applicability of Section 154, in several situations as a result of subsequent events, which are set out hereunder:-

Sub-Section of Section No. 155	Initial Event- Order passed by AO	Subsequent Event for Section 154 Application	As a result of subsequent events, Section 154, applied by the AO, within the 4 years from the end of prescribed Financial Year("FY")
(1A)	(a) On the assessment or reassessment of the firm/AOP/BOI	Remuneration to any partner is not deductible under Section 40(b)	AO may amend the order of the assessment of the partner/Member , from the end of the FY, in which the final order was passed in the case of firm/AOP/BOI.
(2)	(b) On any reduction or enhancement made in the income of firm/AOP/BOI (c) On any Order passed under Section 245D(4)	Share of the Member in the income of the AOP or BOI has not been included, or, if included, is not correct	
(4)	Where, loss or depreciation has been recomputed, as a result of proceedings initiated u/s 147.	In consequence thereof, it is necessary to recomputed the total income of the assessee, for the succeeding year or years to which the loss or depreciation allowance has been carried forward and set off.	AO may proceed to recomputed the total income in respect of such year or years, from the end of the FY, in which the Order was passed u/s 147
(7B)	Where, capital gain arising from the transfer of a capital asset is not charged u/s 45 by virtue of the provisions of Section 47(iv) and 47(v).	Subsequently, such transfer is deemed u/s 47A to be income chargeable under the 'Capital Gain' head at any time but within the 8 years from the date of transfer, by reason of- (a) Such capital asset being converted by the transferee company into, or being treated by it, as stock-in-trade of business. (b) When the holding company ceasing to hold the whole of the share capital of the subsidiary company.	AO may recompute the total income of the transferor company , from the end of the FY, in which the capital asset was so converted or treated or in which the holding company ceased to hold the whole of the share capital of the subsidiary company

(10A)	Where, Capital gain arising from the transfer of a long - term capital asset, is charged to tax.	Subsequently, within a period of 6 months after the date of such transfer, the assessee had made any investment or deposit in any specified asset within the meaning of Section 54E.	AO shall amend the order of assessment so as to exclude the amount of capital gain , from the end of the FY, in which the assessment was made
(11A)	Where deduction u/s 10A or 10B or 10BA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India,/ not been brought into India , with the approval of the RBI, or such authority mentioned in the law.	Subsequently, such income or part thereof has been received in or brought into India.	AO shall amend the order of assessment, so as to allow deduction u/s 10A, 10B, 10BA, as the case may be, from the end of the financial year, In which such income is so received in, or brought into India
(14)	Where in any intimation or deemed intimation u/s 143(1), credit for TDS or TCS has not been allowed on the ground that Certificate as required u/s 203 or 206C was not filed with the return	Subsequently, such certificate is produced before the AO within the 2 years from the end of the AY in which income is assessable. Proviso to this sub-section: If assessee does not disclose, income from which tax at source("TAS") has been deducted or on which TAS has been collected, in the return of income.	AO shall amend the order of assessment or any intimation or deemed intimation u/s 143(1), from the end of the FY, in which such credit was liable to be allowed

(14A)	Where in any intimation or deemed intimation u/s 143(1), credit for Income Tax paid in any country outside India or a specified territory outside India referred to in Section 90, 90A, 91 has not been given on the ground that the payment of such tax was under dispute	Subsequently, such dispute is settled; and the assessee within 6 months from the end of the month in which dispute is settled, furnishes to the AO evidence of settlement of dispute and evidence of payment of such tax along with an undertaking that no credit in respect of such amount has been claimed. Proviso to this sub-section: Credit of tax which was under dispute shall be allowed for the year in which such income is offered to tax or assessed to tax in India	AO shall amend the order of assessment or any intimation or deemed intimation u/s 143(1), from the end of the FY, in which such credit was liable to be allowed
(15)	Where capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration is taken as adopted or assessed by any authority of SG for the purpose of payment of stamp duty.	Subsequently, such value is revised in any appeal or revision or reference referred to in Section 2(b).	AO shall amend the order of assessment so as to compute the Capital Gain by taking the revised value, from the end of the FY, in which the order revising the value was passed in that appeal or revision or reference
(16)	Where capital gain arising from the transfer of a capital asset, being transfer by way of compulsory acquisition under any law and the compensation is enhanced or further enhanced as referred in Section 45(5), to be	Subsequently, such compensation or consideration is reduced by any Court, Tribunal or any other Authority	AO shall recompute the total income of the assessee for such previous year, from the end of the FY, In which the order reducing the compensation was passed by the Court, Tribunal or any other Authority

	the full value of consideration for the purpose of computing capital gain		
(18)	Where any deduction in respect of any surcharge or cess, which is not allowable as deduction u/s 40, has been claimed and allowed in the case of an assessee in any previous year.	Such claim shall be deemed to be under-reported income of the assessee for such previous year for the purposes of section 270A(3), notwithstanding anything contained in section 270sA(6). Proviso to this sub-section: Where the assessee makes an application to the AO in the form (Form 69) and within the time(up to 31 03 2023), requesting for recomputation of the total income of the previous year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time.[As per Rule 132]	AO shall recompute the total income of the assessee for such previous year, from the end of the FY commencing on the 01 04 2021

[Note : Only those sub-sections have been discussed in the table above, which in the opinion of the Author of this article may be of use to most of the assesses]

CONCLUSION

As can be seen from the table above, there are numerous circumstances, which have been covered under Section 155, which deems such circumstances to be **“mistake apparent on record”** giving power to the Assessing Officer to rectify the same.

The newest addition in the list, is Sub-Section (18) of Section 155. The said subsection was inserted *vide* Finance Act, 2022. It is in relation to those assessee, who had claimed Education Cess/ Surcharge as

part of their expenses u/s 37. This was based on decisions of certain High Courts including the High Court of Rajasthan and High Court of Bombay.

Subsequently, amendment was made, with retrospective effect, not to allow deduction of the claim for Education Cess and Surcharge, paid by the assessee on their income. In order to recover the tax amount on the deductions claimed by the assessee earlier, for which the time limit for initiating assessment proceedings, had already been expired, sub-section (18) was inserted in Section 155. As a result of the said

subsection, the Assessing Officer directly got the power to add the deductions already claimed earlier to the income of the assessee company without selecting the case of the assessee for scrutiny or reopening the case of the assessee for the particular assessment year.

Section 155 is an important tool which helps the Assessing Officer to make additions to the income of the assessee without taking recourse to assessment or reassessment proceedings.

Charitable Trust - Interpretation of General Public Utility - Section 2 (15)

Ayushi Todi

Inputs by: Arpit Gokhroo

Supervising CA: Naresh Kumar Kabra

The term “General Public Utility” (GPU) is very descriptive in itself but the scope and

जनता का
उद्धार
नहीं
करेगा आपकी
tax liability का
सुधार

amplitude of the same under the Income Tax Act, 1961 for Charitable Institutions has engaged the courts' attention on a multiple occasion.

The recent SC judgement in the case of Assistant Commissioner of Income Tax v/s Ahmedabad Urban Development Authority ([2022] 143 taxmann.com 278) has finally settled the controversy which has been raging for years on laws regarding tax exemption under the GPU category and has given the autonomy, both to assessee and department, to critically examine each case in light of the said judgement.

Let's first discuss the significance of term GPU for Charitable Institutions:



Tax Exemption is available to institutions carrying out activities for 'Charitable Purpose' subject to fulfillment of prescribed conditions.

Section 2(15) of the Income Tax Act, 1961 defines “charitable purpose” to include

- (i) relief of the poor,
- (ii) education,
- (iii) yoga,
- (iv) medical relief,
- (v) preservation of environment (including watersheds, forests and wildlife) and
- (vi) preservation of monuments or places or objects of artistic or historic interest, and
- (vii) **the advancement of any other object of general public utility**

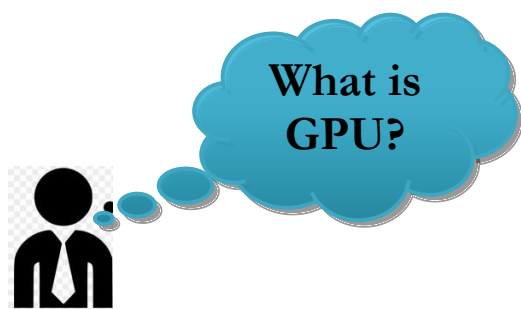
Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of

- trade,
- commerce or business,
- or any activity of rendering any service in relation to any trade, commerce or business,

for a cess or fee or any other consideration, irrespective of the nature of use or

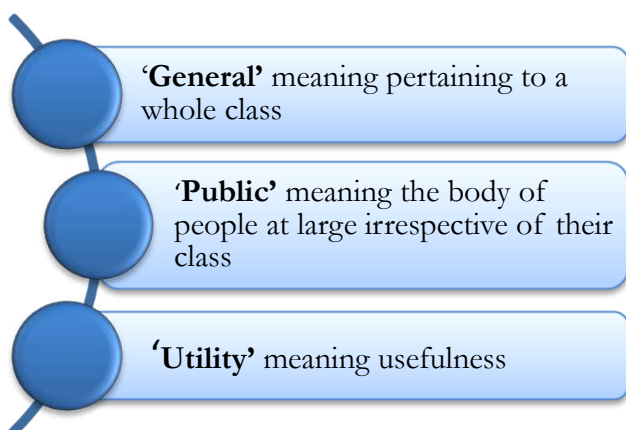
application, or retention, of the income from such activity, **unless**—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; **and**
- (ii) the aggregate receipts from such activity or activities during the previous year do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.



The seventh and residuary limb contained in the above definition of ‘Charitable Purpose’ is **Advancement of any other object of General Public Utility (GPU)**.

Advancement of any other object of General Public Utility comprises an array of combination of three significant words:



The intention of using the phraseology ‘advancement of any other general public utility’ is to negate any private benefit. It is intended that by and large public should

get benefit of the object with wide comprehension of all utilities.

Charitable Objects not falling under the first six limbs as defined u/s 2(15) would fall in this category if it satisfies public welfare.

Legislative History related to Tax Exemption granted to Charitable Institutions

Prior to Amendment in 2008, institutions that were engaged in philanthropic activities availed the benefit of tax exemption under the Act, provided the objective of such institution was charitable in nature.

However, with effect from 1 April 2009, specific exclusion was provided, whereby institutions carrying on trade, commerce or business for a fee, cess or consideration exceeding the prescribed limit would not be eligible for the exemption. Later on, the prescribed limit and conditions were amended vide Finance Act, 2011 and Finance Act, 2015.

The issue under consideration before Supreme Court was:

The CIT had appealed the decisions of various High Courts who had decided in favor of assesses that carrying on of any activity in the nature of trade, commerce or business does not by itself disqualify GPU category Charitable Institutions and allowed the taxpayers’ claim for exemption. The Department appealed primarily on the grounds that the institutions were carrying on business activities which do not qualify as GPU under the amended provision.

Key Highlights/Implications of the Judgement

- **Restriction only for GPU Activities-**

The definition of 'charitable purpose' has undergone several amendments since 2008. A taxpayer advancing GPU cannot engage itself in any trade, commerce or business or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration") subject to quantitative restriction. However, such restriction of carrying on of a business activity does not apply to other limbs of charitable purposes such as relief of the poor, yoga, education, medical relief etc.

Prohibitions for claiming Exemptions for GPU category Charitable Organisations

bar on engaging in trade, commerce or business activities

bar on providing services in relation to trade, commerce or business

above two activities are undertaken for a fee, cess or any other consideration

above mentioned restrictions shall apply even if the income from such activities is ploughed back to feed on charitable objectives.

- **Interplay between amended GPU and theory of incidental business-**

The SC in Ahmedabad Urban case has overruled the principle of "**predominant test**" in the case of advancement of any other object of GPU as laid down by the SC in the Surat Art Silk ruling ([1980] 2 SCC 31).

It was held in Surat Art Silk ruling that what was important is the **predominant object** of the activity involved in carrying out the object of GPU is for the charitable purpose or to earn profit and merely because some profit arose from such activity would not lose its charitable character. The idea of this predominant object among several other objects, is discarded.

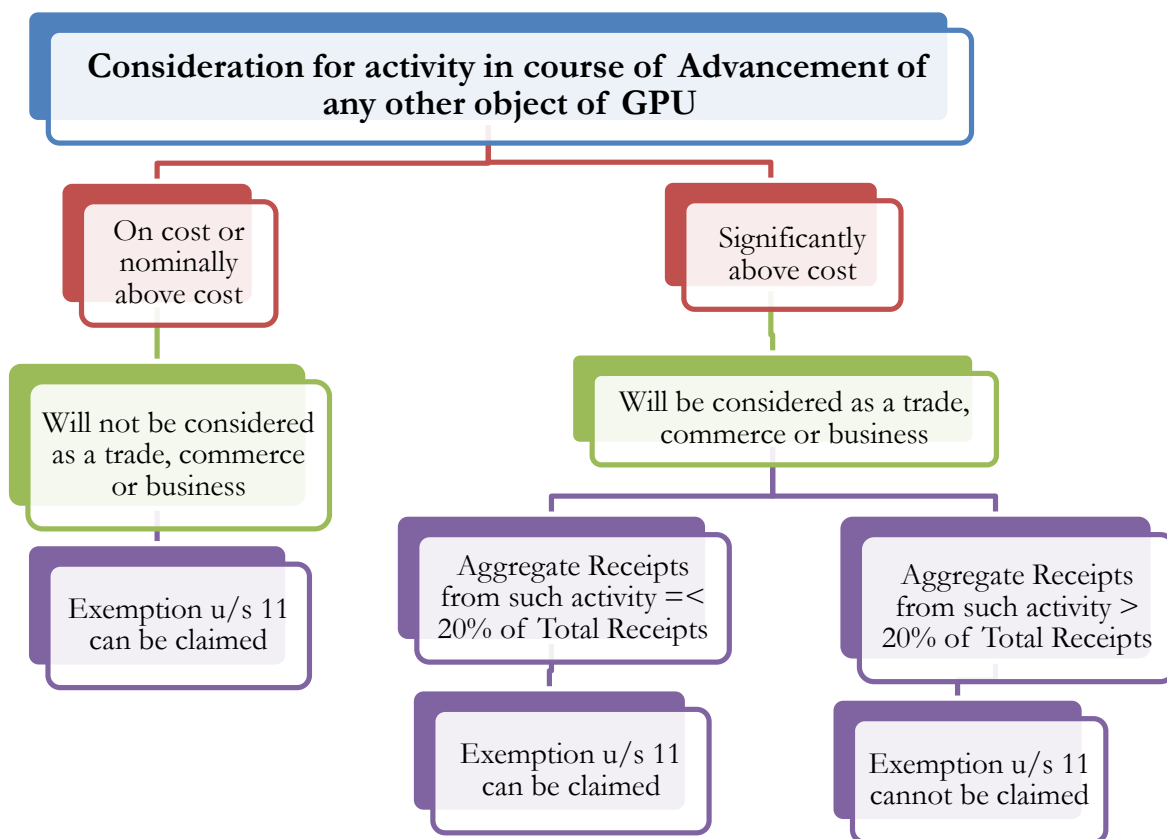
Section 11(4A) of the Act states that business, if any should be incidental to the objectives of the Trust for it to be considered for exemption.

Section 2(15)- The definition of 'charitable purpose' states that the GPU category charitable institutions are generally not permitted to carry on any activity in nature of trade, commerce, or business (incidental or not). However, such activities are permitted only if the same are carried out in the course of attaining GPU objective and receipts are within the prescribed limits.

Section 11(4A) of the Act must be interpreted harmoniously with **section 2(15)**, with which there is no conflict.

Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit, surplus or gains must therefore be incidental.

- **Scope and coverage of trade, commerce or business for a consideration**



EXAMPLE-

Let's take an instance where a trust named “**HOPE**” started a Pharmacy for providing medicines at cost plus basis.

Here, in this case, running a pharmacy will be covered under **Advancement of any other object of General Public Utility (GPU)** and not under fourth limb i.e., “Medical Relief”.

Generally, the charging of any amount towards consideration for such an activity (advancing GPU), which is on cost basis or nominally above cost, cannot be considered to be trade, commerce or business or any services in relation there to. It is only when

the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of “cess, fee or any other consideration”.

So, in this case also, if consideration charged is significantly above cost then it would be construed as commercial activity and quantitative limit of 20% will be checked for claiming the tax exemption. However, if consideration charged is at cost or nominally above cost, then it would be considered as activities related to GPU without applying the quantitative limit.

However, benchmark for nominal or significant markup has not been prescribed in judgment.

Burning Issue

As discussed above, Charitable Institutions under the GPU limb, cannot carry out business, trade or commerce unless it is carried out in the course of actually carrying out GPU, that to up to the prescribed limit of 20%, and also subject to nominal markup above cost and not significant profits. The said provision is applicable on Institutions engaged in advancement of GPU.

However, Supreme Court's (SC) observations in a recent decision in case of

Assistant Commissioner of Income Tax v/s Ahmedabad Urban Development Authority could be used to interpret other definitions of charity, thereby covering other limbs of charitable purpose like education, medical relief, yoga etc. in the mentioned provision. Meaning thereby, a school covered under education limb, with fee structure having significant profits can be viewed as non-charitable and might be stripped off its exemptions.

The anticipation is still a far-fetched one and awaits department's interpretation in the coming years.

Eligibility to claim tax exemption under GPU category for different Taxpayers

S.No.	Type of Organisations	SC Ruling
1	Statutory corporations discharging public functions	<p>The SC held that the amount charged by a statutory corporation or body set up by the government for achieving what are essentially "public functions/services" may not be considered as trade, commercial or business activities since their objects are essential for advancement of public functions/services and be excluded from the mischief of commercial activity.</p> <p>The tax authorities would have to apply their minds and scrutinize the records to determine whether the activities are in the nature of trade, commerce or business and how much mark-up on cost has been charged on a yearly basis.</p> <p>If the consideration or fees charged is significantly higher than the costs incurred, such income would be subject to the prescribed quantitative threshold and may lose benefit of tax exemption.</p>
2	Statutory regulatory bodies/ authorities	<p>The income and receipts of statutory regulatory bodies which are for instance, tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct, are prima facie not commercial receipts.</p> <p>Where the regulatory bodies charges consideration which is vastly or significantly higher than the cost it incurs, such income would constitute commercial or business receipts and would be subject to the prescribed quantitative threshold and may lose benefit of tax exemption.</p>

3	Trade Promotion Bodies	<p>Trade promotion bodies which are set up with the object of purely advocating for, coordinating and assisting trading organizations, can be said to be involved in advancement of objects of general public utility.</p> <p>However, where additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. are rendered, then income or receipts from such activities, would be commercial in nature and consequently, the proviso to section 2(15) of the Act would be applicable.</p>
4	Non-Statutory Bodies (ERNET, NIXI & GSI India)	<p>The fees or consideration charged by such bodies performing important public functions (like development of online educational and research platform, acting as an internet exchange) by adding nominal mark-up above cost may constitute charitable purpose. The tax authority may analyze the nature of functions performed by them on a yearly basis and also determine whether the mark-up charged on cost is nominal or substantially high.</p> <p>A body (GS1 India) is involved in advancement of GPU as its services are for the benefit of trade and business. However, the consideration received for its services are commercial in nature and are also significantly high. Accordingly, its claim for exemption cannot succeed considering the amended provisions of Section 2(15) of the Act. In future, if GS1 is able to prove that the amount charged to its customers is on a cost-to-cost basis with at most a nominal mark-up, the claim for tax exemption should be independently assessed.</p>
5	Sports Associations	<p>The SC rejected the claim of the sports associations that ‘sports promotion’ is “education” and will have to be examined under the residuary limb i.e., the GPU category for tax exemption.</p> <p>The SC, while observing that activities of cricket associations are run on business lines or that sale of media rights and sharing the proceeds amongst different state associations are prima facie commercial, did not conclude the matter.</p> <p>Instead, the tax authority was directed to consider the facts and, based on the same, examine the nature of activities by performing detailed scrutiny of the material on hand.</p>
6	Private Trusts- Tribune Trust	<p>Taxpayer was engaged in distribution/ publication of newspaper and was funded mainly through advertisements. It was held that the activity carried on by the Taxpayer was in the nature of GPU.</p> <p>Furthermore, the trust was also engaged in providing advertisement services which constituted activities in the nature of business and, hence, the threshold would be required to be met to claim the exemption.</p>

FAQs



1. Charitable Trust claiming deduction u/s 11 carrying on hospital and have substantial income from rent and interest on deposit. Is there any issue arising on account of Section 2(15) or GPU?
 - This judgment does not apply to other limbs of charitable purposes defined u/s 2(15) such as medical relief, relief to the poor, education, yoga, etc. Since, hospitals are covered under Medical Relief i.e. fourth category of Charitable Activities, therefore, advancement of GPU does not apply to Charitable Trust running a hospital & claiming deduction u/s 11.
2. A trust is having a community hall, which it gives on rent to general public. Whether such activity will be considered as business? If yes, whether it can be treated as in the course of actual carrying out the object?
 - If the amount charged for renting of hall to general public by the trust is at cost or marginal mark up on cost, then it will not be treated as an activity in the nature of trade, commerce or business. It will be covered under the residual limb of charitable purpose i.e. advancement of GPU.
 - But, if the trust charges substantial amounts- over and above the cost from those who can afford to pay, by providing extra services, far above the cost plus nominal mark up, then such activity would fall within “commercial activity” and receipts from such activity should not exceed the quantitative limit.
3. A Charitable Trust running a school for visually impaired kids, will this activity be covered under ‘education’ limb of Section 2(15) or under any other object of GPU?
 - As per Section 2(15), Education is the process of training and developing the knowledge, skill, mind and character of students by Formal Schooling. If in the given case, trust is providing formal schooling to visually impaired kids then this activity will fall within the category of ‘education’ of Sec. 2(15).
 - But, if the trust is only providing vocational training to visually impaired kids which would ensure them to acquire skills to boost their confidence and realize their residual abilities & usefulness, hence technically it is not education, therefore it will be covered under any other object of advancement of GPU.
4. Do different profit centers/cost centers tantamount for separate books of accounts?
 - As per this Supreme Court Judgement, if business is not held under the trust, income would qualify for exemption only if such business is actually carried out in the course of attainment of objects of the trust and separate books of account are

maintained. Furthermore, the requirement of maintaining separate books of account is also in line with the necessity of demonstrating that quantitative limit (20% of the total receipts) prescribed is not breached.

Therefore, it is beneficial to maintain separate books of accounts for different cost/profit centers that are running sound & recognized principles of business.

Conclusion



- This judgement will have far reaching implications for the entire world of Charity. The present SC ruling, being law of the land, will be highly useful to both taxpayers as well as tax authorities in interpreting the statutory provisions and approaching the claim of charity exemption.
- Institutions will be required to modify their memorandum or constitution of incorporation to align them to include only those activities that are actually related to carrying out the objects of the GPU charity.
- It seems that the decision would give autonomy to the Revenue to question activities of charities from the lens as to whether the same have been carried out with motive of profit judged from whether the services have been provided at cost / nominal mark up over cost or not and to initiate detailed scrutiny on the activities carried by such charitable trusts.
- This would therefore become extremely subjective aspects, potentially inviting a fresh round of litigation. Also, there is ambiguity surrounding the “interpretation of cost”. The determination of what constitutes a ‘nominal markup’ at the sole discretion of the Revenue (without any legislative approvals) seems like a hanging sword on the taxpayers.
- The aforesaid decisions have far-reaching complications which may lead to denial of exemption provisions where activities are perceived to be carried on with a profit motive beyond what is permissible under the law, possible withdrawal of registration granted under the Act and penal consequences.
- One may also have to be mindful of the provisions of section 115TD of the Act, which levies tax on the accreted income (excess of market value of assets over liabilities) of the charitable trusts where registrations are cancelled.

Power of enhancement CIT(A) and ITAT

Bhumika Khandelwal

Inputs by: Aanchal Rawat

Supervising CA: Shivangi
Samdhani

As per Income tax Act, if the assessee is aggrieved by the order passed by Assessing Officer (AO), he may file an appeal for seeking relief.

*“Improvement
sabko pasand
hai par
Enhancement
nahi”*

However, is it necessary that assessee will get relief only?

Can appeal lead to increase in income?

I have heard of Powers of CIT(A) which is the first appellate authority and the same are contained in Section 251 which provides that the CIT(A) can ¹**confirm**, ²**reduce**, ³**enhance** or ⁴**annul the assessment** and he may also **confirm, cancel, enhance or to reduce** the penalty.

Is CIT(A) having a power to enhance income?

It is the settled legal proposition that the powers of CIT(A) are co-terminus with that of the Assessing Officer due to which CIT(A) has power of enhancement of

1 Confirm- Upheld the order of AO, **2 Reduce**- Lessen the quantum of order of AO to some extent, **3 Enhance**- Increase the quantum of order of AO to some extent, **4 Annul**- Reducing the quantum of order of AO to some extent



assessment, and penalty, and can also reduce the amount of refund which AO also can do. Such proposition is more elaborated in various pronouncements. For more information refer article “Restriction on Co-Terminus Powers of CIT(A)” published in Between Us 2017 (Page 49-53).

Co-Terminus Power \cong Power of Enhancement

Now question arise what does the word ‘Enhance’ means?

The word "Enhance" is not defined in the Income tax or any other Act. Its dictionary meaning is “An increase or improvement in quality, value, or extent”.

Meaning thereby, what income was assessed by AO can be further increased by CIT(A). There is no guarantee of relief, appeal can backfire also.

But can enhancement happen in a very casual manner or are there any riders attached to it.

Let us understand this power, checks and balances with the help of examples-

EXAMPLE 1- Tapu Sena Co. Ltd.(TSCL) in A.Y. 2021-22 earned business income of Rs. 800, income from house property of Rs. 200 and long term capital gain of Rs. 300. So, the total income was Rs. 1,300. The case of TSCL was picked up for limited scrutiny for the matter of Depreciation claimed by it. In the order of AO, Depreciation claimed by TSCL of Rs. 100 was not allowed.

Aggrieved by the order of AO, TSCL filed an appeal before CIT(A).

Case 1- CIT(A) along with confirming the order of AO also increased the income of house property to Rs. 300. Whether CIT(A) can consider the a new source of income, which was not subject matter of Scrutiny and which was, thus, not considered by AO?

→ Supreme Court in case CIT vs. Shapoorji Pallonji 44 ITR 891(1962) and CIT vs. Rai Bahadur Hardut Roy Motilal Chamaria 66 ITR 443 (1967) held that the CIT(A) cannot consider a new source of income which is not considered by Assessing officer during the course of his proceedings.

In case of TSCL, AO conducted limited scrutiny and did not considered income from house property. Therefore, CIT(A) cannot consider a new source of income i.e. income from house property. Thus, income will not be enhanced in such case.

Case 2- CIT(A) reclassified income from house property of Rs. 300 as business income thereby increasing the business income to Rs. 1,100 (800+300). Whether the same amounts to enhancement of assessment?

→ Hon'ble ITAT, Pune in case of Naresh Sunderlal Chug – 171 ITD 116, held that CIT(A) has power to reclassify the income of assessee but the same will **not amount to enhancement** of total income.

In case of TSCL, CIT(A) can reclassify income from house property as business income but the same shall not amounts to enhancement.

EXAMPLE 2- Mr. Uday Shetty earned business income of Rs. 500 from Welcome Co. a partnership firm and Rs. 600 from house property and Rs. 200 from long term capital gain. So, the total income declared by him was Rs. 1,300. AO conducted the scrutiny and after considering the facts he disallowed expense of Rs. 50 and also raised issue related to long term capital gain but no addition was made for the same.

Aggrieved by the order of AO, assessee filed an appeal before CIT(A).

Now, have a look at the CIT(A) ruling's in the aforementioned matter. –

CIT(A) after considering all the facts confirmed the order of AO and assessed the total income of Mr. Uday Shetty is Rs. 1,300 And reclassified the long term capital gain of Rs. 100 as business income (total LTCG was Rs. 200). Resultantly, on Rs. 100 additional tax of # Rs. 10 was due. Whether

increase in tax liability by CIT(A) results in enhancement of assessment.

Calculation of tax of Rs. 10 ($100 \times 10\%$):

Tax rate on business income is 30%

Tax rate on capital gain is 20%

Tax rate difference is 10%

- **Yes**, even increase in tax liability by the CIT(A) also amounts to enhancement even though there is no increase in the total income. And in the given case since reclassification of long term capital gain to business income leads to increase in tax liability same shall amount to enhancement.

EXAMPLE 3- Mr. Majnu in A.Y. 2014-15 earned business income of Rs. 1,000 from M/s. Miracle & Co. and long term capital gain of Rs. 1,200 and short term capital gain of Rs. 500. The total income of Mr. Majnu was Rs. 2,700 in which income of Rs. 1,200 (LTCG) was exempt under section 10(38). So the tax paid by Mr. Majnu was Rs. 450. AO conducted the scrutiny and made an addition of Rs. 600 to the total income of Mr. Majnu as he considered that exemption claimed u/s 10(38) of Rs. 600 to be bogus (total LTCG was Rs. 1,200). Therefore, addition u/s 68 was made. Resultantly, the demand of Rs. 180 ($600 \times 30\%$) was raised. But no penalty proceedings were initiated by AO.

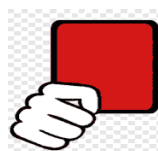
Aggrieved by the order of AO, assessee filed an appeal before CIT(A).

Check out the CIT(A) order's in the matter mentioned above-

Case 1- CIT(A) in above case stated that the order passed by AO is correct. Since, AO failed to initiate penalty, CIT(A) levied penalty of Rs. 180 (100% of tax evaded). Whether the power of enhancement also

extends to levy of penalty which was not levied by AO.

- No, CIT(A) does not have power to levy penalty on the addition made by AO which AO has not levied.



During the appellate proceedings for penalty, CIT(A) may increase the penalty.

Case 1- If in the above case if AO initiated the penalty proceedings and imposes the penalty of Rs. 180 on Mr. Majnu. Thereafter, CIT(A) increased the amount of penalty to Rs. 200. Whether increasing penalty also tantamount enhancement of penalty.

- Yes, increasing the amount of the penalty also results in enhancement and CIT(A) has a power to do so.

EXAMPLE 4- Ms. Naina Talwar filed return disclosing total net loss of Rs. 1500 and claimed refund of Rs. 300. The AO assessed the total income and made addition of Rs. 200 in respect of expenditure not allowed. Due to which refund of Ms. Naina decreased by Rs. 40. Aggrieved by AO order Ms. Naina filed an appeal before CIT(A).

Par ye kya...

CIT(A) passed an order in which he increased the amount of disallowance to Rs. 500 and resultantly, the amount of refund decreased. *Ab aap yeh toh samajh gaye ki* CIT(A) can increase the amount of income. But the question here is whether reducing

the amount of refund is also an enhancement.

→ The answer to this question is Yes, CIT(A) has a power to reduce the amount of refund which will also tantamount to enhancement.

In this background we can say that CIT(A) has a power of enhancement on the basis of record but he cannot directly pass an order of enhancement without informing or without issuing show cause notice to assessee and providing opportunity of being heard [Section 251(2)].



Second Appellate Authority is ITAT.

Is ITAT also having such Powers of Enhancement?

Power of ITAT are contained in Section 254 of Income Tax Act, 1961-

It provides that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders **thereon as it thinks fit**.

As we can see clearly Enhancement is not mentioned. However, the word “thereon” and “as it thinks fit” are to be analyzed. No interpretation is given for such words in the

IT Act, 1961. So, we have to take aid of judicial pronouncements.

Hon’ble Supreme Court in the case of Hukumchand Mills Ltd. vs Commissioner of Income-tax [1967]63 ITR 232 held that –

“The word ‘thereon’ in section 33(4) of 1922 Act restricts the jurisdiction of the Tribunal to the subject-matter of the appeal. The words ‘pass such orders as the Tribunal thinks fit’ include all the powers (except POSSIBLY the power of enhancement) which are conferred upon the AAC by section 31 of 1922 Act. Consequently, the Tribunal was authority under this section to direct the AAC or the ITO to hold a further enquiry and dispose of the case on the basis of such enquiry.”

Thereafter Karnataka High Court in case of Fidelity Business Services India (P.) Ltd. vs ACIT [2018] 257 Taxman 266 referred the aforementioned decision of Supreme Court and interpreted that SC itself expressed its doubt over the power of enhancement as the word “possibly” is used.

Hon’ble Karnataka High Court also held that-

- *The word 'thereon' only relates to the 'subject matter' of the appeal in first part of the Sub-section (1).*
- *The powers under Section 254 of the Act with the Tribunal to pass such Orders 'as it thinks fit' cannot be lesser than the powers conferred upon the lower and first Appellate Authority, viz., the*

Commissioner of Income Tax (Appeals)
who under Section 251(1)(a) of the Act has power to dispose of an appeal against the Order of assessment.

Thus, since Supreme Court did not rule out the Power of Enhancement Karnataka High Court in case of Fidelity held that the tribunal has a power to pass an order as it thinks fit such as it may confirm, reduce, enhance or reduce the assessment and penalty but the said power is limited to the subject matter of appeal.

Let us understand all this with the help of examples.

I am continuing with the same examples as we discussed for CIT(A). Now, aggrieved by the order of CIT(A), further, appeal before ITAT is filed.

1. In case of Tapu Sena Co. Ltd.-

Case 1-Tribunal confirmed the order of CIT(A) of disallowing depreciation. But during the during course of proceedings while considering the issue of depreciation it finds out that Building recorded in the books was actually sold out during F.Y. 2020-21 and TSCL also earned capital gain of Rs. 100 on the same but not recorded the capital gain in the books. Whether Tribunal can consider the new source of income which was not subject matter of Scrutiny and which was, thus, not considered by CIT(A).

→ Tribunal can pass such order related to subject matter of appeal.

In the case of TSCL as the subject matter of appeal was depreciation and not capital gain. Therefore, tribunal cannot consider the new source of income which was not the subject matter of appeal.

2. In case of Mr. Uday Shetty-

ITAT after considering all the facts reclassified entire long term capital gain of Rs. 200 as business income (CIT(A) classified just Rs.100). Therefore, increasing the tax liability by Rs. 20 against the total income of Rs. 1,300. Whether reclassification of income and increase in tax liability by ITAT results in enhancement of assessment.

→ Tribunal has power to reclassify the income of assessee which may also results in increase or decrease in tax liability.

In case of Mr. Uday Shetty due to reclassification the Tribunal assessed the total income of Mr. Uday Shetty as Rs. 1,300. But the same will not amount to **enhancement** of total income.

But due to such reclassification the tax liability of increases and the same amounts to enhancement. In case of Mr. Uday Shetty increase in tax liability by Rs. 20 results in enhancement of assessment. It is well within the powers of tribunal to do so.

3. In case of Mr. Majnu-

Case 1- Tribunal stated that order passed by CIT(A) was correct. Since, no penalty is levied by CIT(A) and AO, it has started the new proceedings against Mr. Majnu and levied penalty of Rs.180. Whether the power

of enhancement also extends to levy of penalty.

- **No**, Tribunal did not have any power to initiate and levy penalty if no penalty was levied by the AO or CIT(A) during the course of proceedings

Case 2- If in the above case if AO initiates the penalty proceedings and imposes the penalty of Rs. 100 against Mr. Majnu. And, thereafter, CIT(A) confirmed such order . And Tribunal increases the amount of penalty to Rs.200. Whether increasing penalty also tantamount to enhancement of penalty.

- Yes, increasing the amount of the penalty also results in enhancement and ITAT has a power to do so but only if such increase was pursuant to considering the subject matter of appeal.

4. In case of Ms. Naina Talwar-

Tribunal after examination of records placed before it, passed an order in which it increased the amount of disallowance to Rs. 600 on the subject matter of appeal and thereby decreasing the amount of refund. Whether reducing the amount of refund is also an enhancement.

- Tribunal has a power to reduce the amount of refund which also tantamount to enhancement.

Conclusion-



Both the appellate authority i.e. CIT(A) and ITAT have the power of enhancement, but

with some riders attached to it. When any income is not brought to tax by the Assessing Officer, CIT(A) by exercising his powers can make an addition of such income, based on the record, in the total income of the assessee. And if income is not brought to tax by both AO and CIT(A), tribunal may consider the same but only when such addition of income is related to subject matter of appeal.

The intention of law behind such powers of appellate authorities is that the income of the assessee should be correctly assessed.

Prosecution for TDS Defaults

Dhruv Khandelwal

Inputs by: Nitin Satani

Supervising CA: Rakesh Kedia

Prosecution is an act of initiating a criminal suit against a person to prove him guilty in court for his/her wrongful act. It is an act for punishing the person for his/her wrongful act which is unforgivable in the eyes of law.

*“Bachna
of
defaulters,
Section
276B
aagya”*

Prosecution means to officially charge someone with a crime in court.

Offences u/s 276B i.e. Failure to pay tax deducted at source (TDS) to the credit of Central Government.

Under Income Tax Act, 1961, a person can be prosecuted under section 276B, when a person fails to deposit TDS within due date to the government.

As we all are aware of the word “TAX Deducted at Source i.e. TDS”. TDS was started by the government to increase the tax collection by collecting tax from payer at the time of income being generated.

The main motive of its introduction is to stop or minimize tax evasion by taxing the

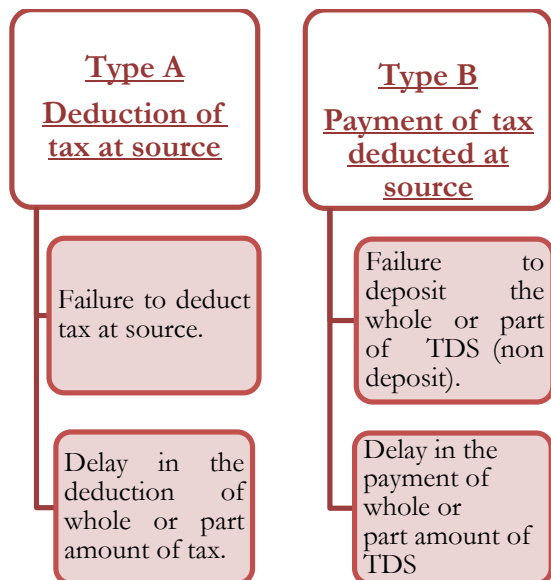


income at the time of its generation rather than on a future date. TDS is applicable on various income such as salary, dividend etc. TDS is deducted on specified payment transaction with a specified rate prescribed under the Income Tax Laws and this amount has to be deposited on prescribed due date to the government. Collection of TDS helps the government to collect the tax amount of different persons from a single person.

As per section 276B, where a person fails to pay the tax deducted by him to the Government, then as per section 276B he shall be punishable with rigorous imprisonment for a period which shall not be less than 3 months but which may extend to 7 years and with fine.



There are two Categories of making TDS defaults which are given as below:-



As per section 276B, prosecution proceedings can be initiated only for type B default i.e. Failure to deposit the TDS amount after deduction within due time.

Failure to deposit the TDS amount is more serious as compared to failure to deduct tax at source. Once, payer deducts tax at source, the deducted tax amount is retained by him as a trustee of government. It is the duty of payer to deposit it to government within the specified timeline.

Prosecution cannot be made where TDS is not deducted at all or where after late deduction of TDS, it is deposited within the due time.

To understand the above provision, **hum ek example ko different situations se samajte hai –**

Mr. Ghajini has taken a house on rent for a year on which he paid the rent of Rs. 1,00,000 p.m. So, now he is liable to deduct TDS @ 10% u/s 194 I i.e. Rs. 10,000 p.m. Now, it leads to two situations:

Situation 1: Mr. Ghajini passed monthly entry for deducting the TDS amount of Rs. 10,000 but made default in payment of it to the government. He deposited the TDS amount of Rs. 1,20,000 on 30th April.

In the given situation, Mr. Ghajini has deducted the TDS of Rs. 10,000 p.m. but has made default in payment of it to the government.

So, now prosecution proceedings against Mr. Ghajini shall be initiated u/s 276B for late deposit of TDS amount.



Situation 2: Mr. Ghajini deducted the TDS amount of Rs. 1,20,000 on 31st March by passing a single entry for it. The same was deposited on 30th April.

In the given situation, Mr. Ghajini has not deducted the TDS of Rs. 10,000 p.m. but has deducted the whole amount by passing a

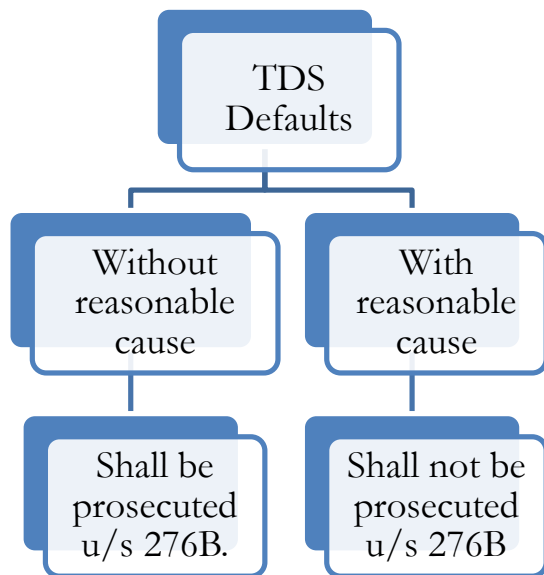
single entry of Rs. 1,20,000 at the last month of the year and the same was deposited before due date.

So, prosecution proceeding u/s section 276B will not be applicable against Mr. Ghajini for late deduction of TDS. He will be liable to pay only interest for late deduction.

❖ **Reasonable cause for TDS default**

Ek or tarike se 276B ke prosecution proceedings se bacha jaa skta h and i.e. reasonable cause for TDS default.

As per section 278AA, no person is punishable for any failure under section 276B if he proves that there was **reasonable cause** for such failure.



Reasonable cause would mean a cause which prevents a reasonable man of ordinary prudence acting under normal

circumstances, without negligence or inaction or want of bona fides.

Let us try to understand the above mentioned provisions through some **case studies** given below-



Case 1: TDS Default made with reasonable cause:

Sonali Autos Private Limited vs State of Bihar and Others, [2017] 396 ITR 636 (Patna)

In the given case, the petitioners i.e. Sonali Autos Private Limited could not deposited TDS amount within specified time due to oversight on the part of the Accountant, who was appointed to deal with the Accounts and Income Tax matter. This mistake was detected by statutory auditors of the petitioner company. Thereafter, the petitioner immediately deposited the amount of tax along with interest itself.

On the basis of given explanation, Honourable Patna High Court held that the petitioner has been able to prove the reasonable cause for not depositing the aforesaid tax amount within the specified time limit and hence he is **not convicted for the offence punishable u/s 276B.**

Case 2: TDS Default made without any reasonable cause:

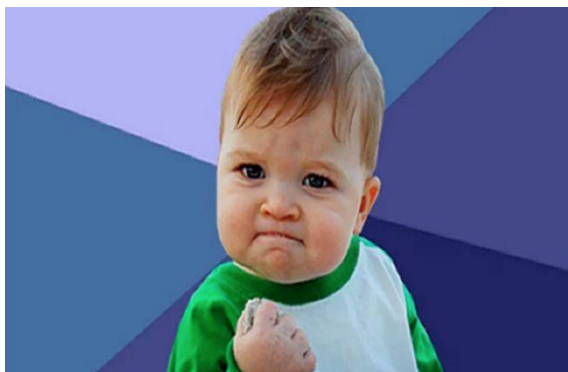
Firoz Abdul Gafar Nadiadwala
Case No.95/SW/2014.

In this case, the chief metropolitan magistrate, Mumbai observed that during trial, the taxpayer was not able to provide

any satisfactory justification against the contention. The court held that the payment is made belatedly and hence it will be treated as default and **appropriate action can be taken under section 276B.**

❖ **CBDT Circular No. 24/2019 dated on 09.09.2019**

TDS default can be of any amount but to ensure that only deserving cases get prosecuted, CBDT has issued **Circular No. 24/2019 dated on 09.09.2019** stating that cases where non-payment of TDS is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, **shall not be processed for prosecution in normal circumstance.**



❖ **Conclusion**

Late deduction or non- deduction of TDS will not lead to the prosecution proceedings u/s 276B. But late payment of TDS will leads to prosecution proceedings.

However, if assessee proves that the late payment of TDS is on account of any reasonable cause, then the prosecution proceedings can be dropped.

ECL model as per IFRS 9/ Ind As 109 & its implications on “Banking Institutions”

Garvit Gupta

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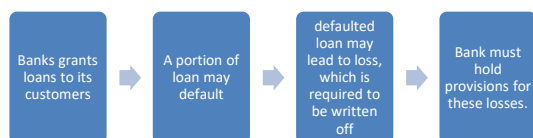
“Expected credit loss model (ECL)”,

हमे जो मिलेगा
उसे करेंगे
“Estimate”
हम तो है
“Fair
Valuation” के
भक्त

you must be thinking what does this means and what will be its implications on the banking provisions.

ECL is a kind of a provision. Now, the question arises what is a provision?

A provision is usually an amount that is set aside from an entity's profits, usually to cover an expected liability or a decrease in the value of an asset, even though the amount may not be definable. Accordingly, a bank is required to create a provision because:



Before the introduction of ECL, incurred loss model used to prevail and incurred loss model requires an entity:

(a) To recognize impairment loss if a credit loss has been incurred,



(b) Only past events and current conditions are to be considered while determining the amount of impairment (i.e., the effects of future credit loss events cannot be considered, even when they are expected).

It means that the banks were required to recognize the credit losses only when evidence of loss was apparent.

Based on the following major drawbacks, Incurred Loss model was replaced by ECL:

- After initial recognition, the incurred loss model does not permit the lender to recognize an impairment until a loss is ‘incurred’. This has two consequences:
 - (a) The lender accrues interest at the full contractual rate, even though the lender expects not to receive the full amount.
 - (b) The lender does not account for subsequent changes in that expectation until a loss is deemed to have been incurred.

This model is criticized for being less prudent, as it does not estimate the future expected credit losses. Due to which, loss allowances are not recorded on timely basis and businesses were not able to plan carefully about dealing with the significant credit losses.

Considering the above disadvantages “Expected Credit Loss Model” was adopted, which states that expected credit losses (ECLs) are recognized at each reporting period, even if no actual loss events have taken place. In addition to past events and current conditions, reasonable and supportable forward-looking information that is available without undue cost or effort is considered in determining impairment.

ECL should be applied on:

- Debtors
- Loans given to group companies
- Debt investments
- Loan commitments
- Financial guarantee contracts
- Lease receivables

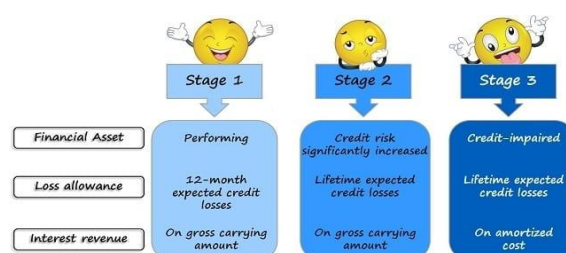
Credit Loss: Credit losses are defined as the difference between all the contractual cash flows that are due to an entity and the cash flows that it actually expects to receive ('cash shortfalls'). This difference is discounted at the original effective interest rate to determine the present value.

ECL establishes 3 stage impairment model, based on whether there has been a significant increase in the credit risk of a financial asset since its initial recognition. These 3 stages will determine the amount which needs to be recognized as expected credit loss at each reporting date. Following are the ECL requirements:

1. Under ECL model, all financial instruments are allocated to stage 1 on

initial recognition. However, if a significant increase in credit risk is identified at the reporting date compared with initial recognition, then an instrument is transferred to stage 2. If there is objective evidence of impairment, then the asset is credit - impaired and transferred to stage 3.

2. For financial assets in stage 1, the impairment has to be calculated based on defaults that are possible in the next 12 months, whereas for financial instruments in stages 2 and 3 the ECL calculation considers default events over the residual lifespan.
3. To determine whether there has been a significant increase in credit risk, Ind AS 109 requires a comparison of the risk of default estimated on initial recognition with the risk of default estimated at the reporting date(31st march), using the change in the risk of default occurring over the expected life.
4. Evaluation of whether there has been a significant increase in credit risk needs to be carried out at each reporting date. An asset can move into and out of the lifetime ECLs category based on its performance at the reporting date.



How to determine whether the credit risk is significant or not?

Ind AS 107 defines “credit risk” as the ‘risk that one party to a financial instrument will cause a financial loss to the other party by failing to discharge an obligation’.



Factors

Internal indicators

- A significant change in the quality of the guarantee provided by a shareholder
- Significant increases in credit risk on other financial instruments of the same borrower
- Reduction in financial support from parent/ group company
- **External indicators**
- change in Financial instrument's credit rating
- Actual or expected significant change in the operating results of the borrower (declining revenues)
- Changes in economic, regulatory or technological environment of the borrower.

Current Expected Credit Losses

Factors to consider

Historical Events



Current Conditions



Future Expectations



loss allowance at an amount equal to lifetime ECL at initial recognition and throughout its life) or it can apply the general mode.

ECL measurement shall reflect:

- unbiased probability : weighted amount
- Time value of money
- Reasonable & supportable information

➤ **Simplified Approach:** (Provision Matrix)

Following table shows the amount of trade receivables due to the bank and the provision made thereof at the default rate. We are required to calculate the provision based on the expected credit loss model, i.e. considering the future impacts.

Trade receivables	Gross carrying amount (A)	Default rate (B)	Expected credit Loss (A)*(B)
Current	5,000	2.5%	125
31-60 days	1,300	2.5%	33
61-90 days	1,200	2.5%	30
More than 90 days	800	2.5%	20
Total	8,300		208

Step 1: Define the period of trade receivables by the bank and bad debts related to them. (Historical data)

- Amount of trade receivables for the period. (let's say INR 20,000)
- Amount of bad debts incurred related to them. (let's say INR 500)

Step 2: Calculate the payment profile of the borrowers.

➤ **Measures to calculate ECL?**

Let's take an example to understand the same.

Note: An entity can choose either of the following accounting policy for trade receivables. It can either apply the simplified approach (that is, to measure the

	Trade receivable amounting INR 20000	Total received (cumulative)	Ageing profile of borrowers (Total amount-amount repaid)
Paid in 30 days	4,500	4,500	15,500
Paid between 31-60 days	7,000	11,500	8,500
Paid between 61-90 days	6,000	17,500	2,500
Paid after 90 days	2,000	19,500	500 (written off)

Step 3: Calculate the historical default rate as follows:

Payment period	Current Sales	Amount outstanding after 30 days	Amount outstanding after 60 days	Amount outstanding after 90 days
Ageing profile (as per step 2) (A)	20,000	15,500	8,500	2,500
Loss (B)	500	500	500	500
Historical default rate (B)/(A)	2.50%	3.26%	5.88%	20%

Step 4: Adjust the loss percentage for forward-looking information.

Since ECL is based on considering the forward-looking information and incorporating the same. Therefore, entity is required to consider macro-economic factors, technological changes, industrial impacts, etc.

Based on the above, the bank has estimated the historical loss of Rs. 700 instead of Rs. 500, considering higher level of default. Now, calculate the adjusted default rate.

Payment period	Current loans granted	Amount outstanding after 30 days	Amount outstanding after 60 days	Amount outstanding after 90 days
Ageing profile (as per step 2) (A)	20,000	15,500	8,500	2,500
Loss (B)	700	700	700	700
Historical default rate (B)/(A)	3.50%	4.51%	8.23%	28%

Step 5: Use the above adjusted default rates to determine the expected credit losses for current trade receivables.

Trade receivables	Gross carrying amount (A)	Default rate (B)	Expected credit Loss (A)*(B)
Current	5,000	3.5%	175
31-60 days	1,300	4.51%	59
61-90 days	1,200	8.23%	99
More than 90 days	800	28%	224
Total	8,300		557

Conclusion: It is required to be noted that the total expected credit loss of INR 557 is significantly different from impairment calculated using standard default rate of 2.5% to the current period balances. i.e., INR 208.

After calculation of the impairment loss the entity under Ind As 109 is required to write - off the impairment loss, i.e., reducing the gross carrying amount of financial asset.

➤ **General Approach:**

There are 3 Components of this model which are as follows:

- Probability of default (PD): is the likelihood of the counter-party to a financial asset defaulting over a given time period. This input varies with the time period involved.
- Loss given default (LGD): Loss given default is the percentage of the amount at risk that would be lost if default is certain. It equals 1 minus the recovery rate. Recovery rate is the percentage of total asset value which a company would recover even if default occurs.
- Exposure at default (EAD): Amount outstanding with the obligator at the time of default. It equals to the amount of risk at the time when default would occur minus the value of any collateral which can be used by the company in the event of default.

Let's take an example to understand the same.

Bank A lends INR 1,00,000 lakh to B ltd and B ltd is required to pay the loan in 5 years as given in the following table:

Year	Opening Balance 1 April, 2022	Interest in P/L	Cash flow	Closing Balance 31 march, 2023
2023	1,00,000	7,930	(25,000)	82,930
2024	82,930	6,576	(25,000)	64,506
2025	64,516	5,115	(25,000)	44,621
2026	44,621	3,539	(25,000)	23,160

2027	23,160	1,840	(25,000)	(0)
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Assume recovery rate is 80% (LGD=100-80) & Effective interest rate is 7.93%.

Calculate 12-month ECL & lifetime ECL.

reporting date	EAD	PD (marginal) (%)	LGD (%)	EIR (%)	Marginal ECL*
01-04-2022	1,00,000	3	20	7.93	556(12 months ECL)
31-03-2023	82,930	3	20	7.93	427
31-03-2024	64,506	3	20	7.93	308
31-03-2025	44,621	4	20	7.93	263
31-03-2026	23,160	4	20	7.93	127
Grand Total (Lifetime ECL)					1680

12-Month ECL amounts to INR 556 and lifetime ECL amounts to INR 1680.

$$*ECL = \frac{(EAD_n * PD_n * LGD_n)}{(1+r)^n}$$

For example:

ECL for 12 months ending on 01-04-2022 is calculated as follows:

$$ECL = \frac{1,00,000 * .20 * .03}{(1+.0793)^1} = 556$$

The equation above shows that since there is a 3.0% probability of the company losing 20% of its total receivable, its cash shortfall would be INR 600. This when discounted at the effective rate of interest (7.93% in this case) equals INR 556.

➤ **Disclosure requirements:**

Banks under IFRS 7 are required to disclose the following information:

- Inputs, assumptions, techniques used to estimate ECL, increase in credit risks, etc.
- Company's policy of writing off the impairment loss.
- Description of collateral held as security.
- Write - offs, recoveries and modification.

➤ **Conclusion:**

The main objectives of ECL model is to provide users of financial statements with more useful information about an entity's expected credit losses on financial instrument as this approach is used to recognize the impairment losses accurately and on timely basis, which earlier was a huge challenge to the banking institution. Thus, resulting in the reduction of delayed recognition of such losses. Therefore, with the implementation of IFRS 9 rules, classification and measurement of financial assets will achieve greater comparability and will help the institutions to plan strategically and carefully its risk management policies.

Since, the timely recognition of provision for credit losses promote safe and sound banking system. Therefore, ECL Model plays an important role in bank supervision.

Liability of legal representative when Property was transferred by the deceased in his lifetime before v/s after the demand was created

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Supervising CA : Shivangi Samdhani

Chapter XV of the Income Tax Act, 1961 provides for 'Liability in Special Cases'. One of those special cases is described under Section 159 which creates a legal fiction holding the legal representatives of the deceased assessee in the capacity of an 'assessee'.

*"BAAP-
DADA sabka
tax bharna
padega re
Faisal..."*

In this article we will look into section 159 and section 281 of the Income Tax Act about what will be the position of the legal representative on the death of the deceased when a demand is created by the Assessing Officer under the provisions of Income Tax Act, 1961

Before going further, let us discuss what does a legal representative and Income Tax demand means:



Legal Representative

The Section 2(29) of Income Tax Act, 1961 defines legal representative as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued:

Analysis of the above definition:

- The above definition implies generally a person on whom certain rights and obligations of the deceased devolve.
- The legal representative may or may not be the beneficial owner before the death of the deceased i.e a legal representative may be a person's legal representative (his son / daughter) or his executor or administrator.
- The concept of the legal representative arises only when the deceased has left some property after his death. If the deceased has not left but instead had transferred his all

properties to his son / daughters or even strangers for a valid consideration, the concept of legal representative will not arise.

- The words mentioned 'intermeddles with the estate of the deceased' implies that it is not necessary that the legal representative will continue to be in the possession of the assets represented by him/her i.e. he may discharge or dispose the property in the same capacity as he is the owner of those assets but he will continue to be liable for the act of the deceased to the extent of the value of such assets disposed by him.

For Example: Akshay inherited assets worth Rs. 100 lakhs on the death of his father, Mr. Raju. Now he may continue to hold the possession of those assets or he may sell such assets as he wish but his character as the representative of his father would not be affected by him selling such assets.

Income Tax Demand

As a result of assessment or reassessment of the income, the person is required to pay any tax, interest, cess etc. On the adjusted income computed by the AO in addition to the tax paid while filing the return of income u/s 139 of the Income Tax Act, 1961.

The additional tax / interest / cess payable is referred to as Income Tax Demand.

Liability of the legal representative

With the above background let's understand the liability of legal representative if the following three alternative situations occur:

1. When the proceedings were going on, the assessee died and the property of the deceased automatically devolved on the legal representative. Subsequently demand was raised.
2. Where the assessee has transferred his properties after the issue of demand notice and subsequently died.
3. Where the assessee has transferred his properties to his relatives before the issue of demand notice and subsequently died.

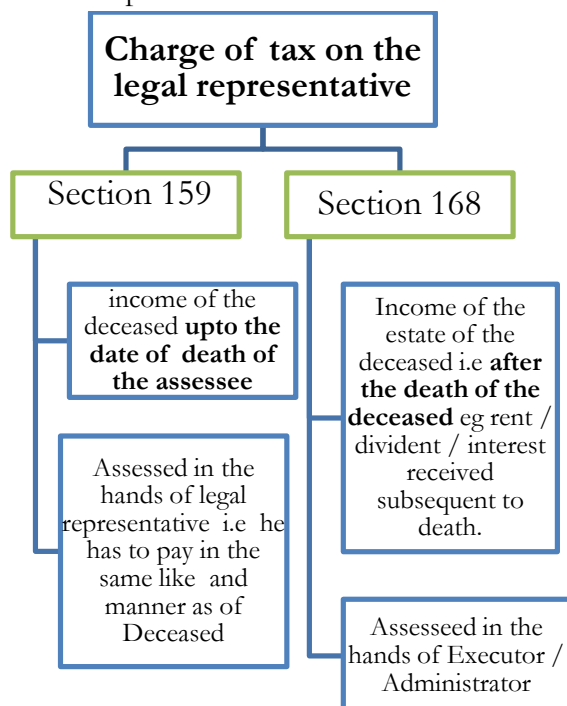
Case (1): When the proceedings were going on, the assessee died and the property of the deceased automatically devolved on the legal representative and Subsequently demand was raised.

The liability of payment of tax by the legal representative in the event of the death of the assessee is governed by section 159 and section 168 of the Income Tax Act, 1961.

As per Section 159, in the event of the death of the deceased, **the legal representative will be liable to pay any sum which the deceased would have been liable to pay in the like manner and to the same extent as the deceased.**

The important implications of section 159 are as under:

1. Legal representative will be deemed to be assessee for the purpose of paying any accrued tax/ interest / penalty not paid by the deceased.
2. The liability of the legal representative shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.
3. Any proceeding before the death of the assessee shall be deemed to have been taken against the legal representative also.
4. Any proceeding which were not started against the deceased but would be started if he had not died can be started against the legal representative.



However, in order to hold the legal representative liable for all the acts of the deceased, the assessing officer has to notify the legal representative on becoming aware

of the death of the deceased since any order on the deceased after his death will be considered as nullity (Void-ab-initio). Assessment has to be made clearly in the name of the legal representative such as “Akshay, successor of Late Mr. Raju.

Let’s understand the application of section 159 with the help of an example.

Mr. Raju is engaged in the business of selling lottery tickets and has been carrying on this business since last 21 years. In AY-2021-22, The A.O assessed that Mr Raju has an outstanding tax liability in relation with AY. 2019-20 amounting to Rs. 150 Lakhs

However Mr, Raju suffered a heart attack and died, his entire property with a fair market value of Appx. 100 Lakhs devolved on his son Mr Akshay.

Now his son Mr. Akshay would be liable to pay the outstanding demand when the demand notice will be served upon him by the A.O but his liability will be restricted to maximum Rs. 100 lakhs i.e. the value of assets inherited by Mr. Akshay from Mr.Raju.

Case (2): Where the assessee has transferred his properties after the issue of demand notice and subsequently died.

Before discussing the example it is important to understand the provisions of section 281 of the Income Tax act, 1961 which provides as under:

- If any person has transferred his property after a demand order has been served on him and the proceedings have been completed or still undergoing the said transfer will be considered as nullity i.e. void-ab-initio and for the purpose of recovery of the taxes, it will be considered that such transfer never happened
- The transfer shall not be void if the said transfer is
 - For a valuable consideration ,and
 - without the notice of the pendency of the proceedings, and with the prior permission of the assessing officer.

Now, if in a case the assessee dies in the above situation before a final order could be issued to him / her, the said order will be issued on the name of his legal representative and he shall be responsible for it in the like manner & to the same extent as the deceased as of the deceased which we have already studied u/s 159 of the act.

For example

The A.O. served a notice of demand to Mr. Raju for Rs.150 lakhs. On getting its intimation, Mr. Raju made an appeal for the said order with the CIT (A). He also gifted assets worth Rs. 200 lakhs to Mr. Shyam his brother on the same date.

Subsequently he suffered from a heart attack and his remaining assets worth Rs. 100 lakhs automatically devolved on his son Mr. Akshay.

Impact of section 281 and 159

- **The transfer by Mr. Raju to Mr Shyam will be treated as nullity.**
- **Mr. Akshay will also be liable for the demand of Rs. 150 lakhs if the demand for any reason could not be met with the assets transferred to Mr. Shyam but since the assets inherited are of Rs. 100 lakhs , his liability will be restricted to Rs. 100 Lakhs**

Case (3): Where the assessee has transferred his properties to his relatives by way of gift before the issue of demand notice and subsequently died.

For example

Mr. Raju gifted his properties worth Rs. 150 Lakhs to his relative Mr Babu Rao. However on this date no demand notice was issued to him.

He subsequently died and assets worth Rs. 100 lakhs devolved on his son, Mr Akshay. Assessment of deceased assessee was completed and demand of Rs. 250 lakh was created.

Since, no demand was pending at the time of transfer of assets to Mr. Babu Rao , such transfer would be considered as a valid transfer. Nothing shall be recovered from Mr. Babu Rao. However, Mr. Akshay shall be liable to pay off the demand of Mr. Raju upto Rs. 100 lakhs i.e. upto the value of assets inherited by him.

Now let us compare and summarize the 3 situations discussed in the following table.

Liability of the legal representative if assets transferred			
Case	(i)	(ii)	(iii)
	On the death of the assessee	After order of demand is issued	Before Order of demand is issued
Liability of legal representative	Will be liable to the extent of the value of such assets inherited.	Will be liable to the extent of the value of assets since transaction of sale will be considered as nullity.	Transfer shall be valid and nothing can be recovered from the transferee

Conclusion:

Demand can be raised by the department after the death of the deceased and the legal representative will be liable to pay off such demands raised.

The Legal Representative will only be liable to the extent of asset inherited. He shall not be personally liable and would not have unlimited liability.

The Income Tax department has the first right to claim any property belonging to the deceased assessee. The legal representative will be able to have benefit once all departmental dues have been paid in full.

Conversion from firm to Limited Liability Partnership

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Supervising CA: Rohan Sogani

1. Introduction

Since years, there was only concept of Partnership Firm which was governed by the Indian Partnership Act, 1932, but from 2008, a new concept was introduced of Limited Liability Partnership (“LLP”) which is governed by the Limited Liability Partnership Act, 2008 (“LLP Act, 2008”). Partnership firm as per Indian Partnership Act, 1932 and LLP as per LLP Act, 2008 having the following key difference:-

*“Ek kadam
aazadi ki
or”*

Basis	Partnership	LLP
Separate Legal Entity	No.	Yes.
Liability	Unlimited. Personal assets of the partners are also liable.	Limited to the extent of their capital contribution.
Books of Accounts	Not mandatory.	Should be prepared according to the provisions of the LLP Act.
Number of	Maximum 20. In	No limit on



Basis	Partnership	LLP
Members	the case of a banking business, the maximum number is 10.	the maximum number of partners.
Digital Signature Certificate (DSC)	No such requirement.	All designated partners of the LLP should have a Digital Signature which is a prerequisite for e-filing.

One major difference between Partnership firm and LLP is that, in partnership firm, partners have **UNLIMITED LIABILITY** and in LLP, partners have **Limited Liability** to the extent of their capital contribution.

2. Can a Partnership Firm converted into LLP ?

Due to the existence of limited liability and also considering other benefits of doing business in LLP, a question arises as to whether an existing partnership firm be converted into Limited Liability Partnership. An existing partnership firm can be

converted into LLP. Indian Partnership Act, 1932 does not say anything related to conversion of firm into LLP. Guidance in this regard, is provided in the LLP Act. As per Section 55, 58 and Schedule II of the LLP Act a partnership firm can be converted into LLP.

Section 55 of the LLP Act states that, a firm may convert into a Limited Liability Partnership in accordance with the provisions of this Chapter and Schedule II. As per the schedule II of the LLP Act, "**convert**", in relation to a firm converting into a limited liability partnership, means transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the limited liability partnership in accordance with this Schedule.

3. Effects on conversion of partnership firm into LLP

Section 58(2) of the LLP Act provides that upon such conversion, the partners of the firm, the LLP to which such firm has converted, and the partners of the LLP shall be bound by the provisions of the Second Schedule of the LLP Act.

A. Transfer of Licenses, Registrations and Property

- Licenses, approvals, permits or registrations issued in the name of the Partnership firm will not be transferred automatically to the LLP.
- If there were any properties registered under the Partnership firm prior to the conversion, the LLP must approach the

concerned authorities and take steps as prescribed to transfer the assets to the LLP.

- It is important for the Entrepreneur to keep in mind various other aspects and comply with the procedural aspects with the concerned licensing or registration authorities prior to beginning the process for conversion into LLP.

B. Pending proceedings:

As per Paragraph 9 of the Second Schedule of the LLP Act provides that all the proceedings by or against the firm which are pending before any Court or Tribunal or before any authority on the date of registration may be continued, completed and enforced by or against the LLP. In other words, all proceeding by or against the erstwhile firm shall stand vested into the LLP, as it is.

C. Partner liable for liabilities and obligation of a firm before conversion

Clause 16(1) of the Second Schedule of the LLP Act provides that every partner of a firm that has converted into a LLP shall continue to be personally liable for the liability and obligation of the firm:

- Which were incurred prior to the conversion.
- Which arose from any contract entered into prior to the conversion

4. Capital Gain tax & stamp duty on conversion:

Conversion of firm into Limited Liability Partnership does not give rise to capital gain since no transfer of asset is involved in conversion.

Section 47 deals with certain transactions which are not regarded as “transfer” and are thus not exigible to Capital Gains Tax. Unfortunately, there is no clause in Section 47 which specifically renders conversion from firm to LLP out of the purview of transfer. Although, conversion from Firm into Company and Company into LLP has not been considered as transfer in terms of **Clause (xiii) and (xiiib)** respectively, as contained in Section 47.

As per Section 58(4) of LLP Act, 2008, when Partnership Firm is converted into Limited Liability Partnership, all the properties of firm shall vest in the LLP. Hence Section 45(1) relating to capital gain is not applicable to the Limited Liability Partnership. Further, as there is no transfer of Asset involved in case of conversion from firm to LLP. Further, As per Rajasthan Stamp Act, stamp duty on immovable property during conversion of firm into LLP is 0.5% on the market value of immovable property.

5. Procedure for conversion of partnership firm into LLP



A separate LLP deed will have to be executed at the time of conversion from firm to LLP

6. Wheather firm and LLP should be considered as a separate person under Income Tax Act?

According to section 2(31) of Income Tax Act, 1961:-

"person" includes -

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Firm includes both Partnership firm under the Indian Partnership Act, 1932 and also LLP, under the LLP Act.

7. Treatment of Depreciation during conversion of firm into LLP

Treatment of depreciation during conversion has to be as per fifth *proviso* to Section 32(1) of Income Tax Act, 1961.

- **Explanation of fifth *proviso* to Section 32(1)**

The fifth *proviso* to Section 32(1) of the Act applies in the year in which both the predecessor and the successor claims depreciation on the same asset, i.e., in the year of succession, and if there is no claim by both in a particular year, this *proviso* does not apply

- The aggregate deduction of depreciation shall not exceed the depreciation as per prescribed rates.

- Depreciation to be apportioned between firm and the converted LLP **on the basis of number of days** for which assets were used by them.

8. Treatment of 80JJAA claim during conversion of firm into LLP

- Section 80JJAA of the Income Tax Act, 1961 is a tax incentive for employment generation and provides for deduction from INCOME FROM BUSINESS AND PROFESSION of an assessee for the employment of new employees by the assessee.

- There is as such no specific provision has been given under relevant section related to treatment of 80JJAA claim during conversion of firm into LLP.

Accordingly, 80JJAA claim to be apportioned between firm and converted LLP **on the basis of number of days** for which employee had worked.

9. Treatment of Unabsorbed Depreciation and Carry Forward Losses

There is no formal succession as there is statutory vesting on transfer of assets, liabilities and undertaking. In Substance, there is only a change in the legal form and set up of the entity carrying on the business which has incurred a loss. Hence, on conversion of the firm into LLP such unabsorbed business loss would be available for carry forward in the hands of the successor LLP.

10. GST Implications during conversion of firm into LLP.

In the Goods and Services Tax (GST) Act under Schedule II, it's specified that, while a partnership is being converted into an LLP, the transfer of stocks or any other additional assets are exempted, as these are usually used to continue the same business.

Conclusion: It is advisable for all the partnership firms to get themselves converted into LLP so that they enjoy the benefit of being insulated with any possible future liabilities. Also, on conversion from firm to LLP there is no tax incidence.

Whether Interest Cost Incurred for Acquisition of Asset Amounts to Cost of Acquisition and Cost of Improvement

Harsh Agarwal

Inputs by: Khushi Khandelwal

Supervising CA: Shivangi Samdhani

As the use of credit or loan facilities is increasing every day, have you wondered if the interest you are paying for the borrowed fund can also help you in saving your taxes?

“Everyday may not be good but there is something good in everyday”

While calculating income under the head House Property assessee can claim a deduction u/s 24(b) of the Income Tax Act of interest, up to Rs. 2,00,000 per annum in case of self-occupied and upto the amount of interest paid in case the property which is let out. Hence, assessee can take benefit of interest paid while calculating taxable income every year.

Will there be any other benefit also of such interest cost to the assessee?

Sochoo Sochoo kyaa benefit hai woh !!



Can assessee consider such interest cost as Cost of Acquisition (COA) / Cost of Improvement (COI) while calculating capital gains tax liability.

Let us understand this with an example. Mr. Rajesh, has constructed a house for which he has incurred the following expenses at the time of acquisition in A.Y. 2005-06:

PARTICULAR	AMOUNT
Cost of Land	Rs. 10,00,000
Cost of constructing the First Floor	Rs. 5,00,000
Interest paid on funds borrowed for the purchase of Land & for the construction of the First Floor (during AY 2005-06)	Rs. 1,00,000
Claim of interest expense u/s 24(b) in ITR of Ay 2005-06	Rs. 1,00,000

Query 1: Whether Interest Cost of Rs. 1,00,000 incurred for purchase of land and construction will form part of COA while calculating Capital Gain if such property is sold?

Section 55 of Income Tax Act contains the meaning of Cost of Acquisition (COA)

However, it is not expressly provided u/s 55 whether interest cost will form part of cost of acquisition or not? So let's take help of judicial precedent in this regards.

Different courts have dealt with this issue as under:

View I: Income under the head capital gains is to be computed as per section 48 which does not specifically exclude the interest cost. Therefore, Mr. Rajesh can include interest paid on housing loan while calculating COA for computing capital gain on sale of asset irrespective of the fact that such interest amount has already been claimed as deduction under section 24(b) in various years while computing income from house property.

To support the above view the following judicial precedent, are relied upon:

**ACIT Vs. C.Ramabrahmam [2013]
57 SOT 130 (Chennai - Trib.)**

**Parvati Devi Totlani Vs.
The ITO 120/JP/2019**

**Subhash-Bana-Vs.-ACIT, ITA No.
147/Del/2015 (Delhi-Trib)**

View II: Interest paid on the loan will not form part of COA as the deduction of the same has already been claimed under section 24(b) while computing income under the head house property of various years. Allowing interest on loan as COA would lead to double deduction/ benefit to the assessee. To support the above view the following judicial precedent, are relied upon:

**Captain B L Lingaraju Vs. ACIT in
2016 ITA No. 906/Bang/2014**

**Shree Bal Properties & Finance P.
Ltd Vs PCIT ITA No.
2848/Mum/2019**

Since there are conflicting opinions, claiming interest paid on a housing loan as COA invite call litigation.

Query 2: Whether Interest Cost of Rs. 1,00,000 for the acquisition will form a part of COI while calculating capital Gain?

Section 55(1)(b)(2) provides as under

in relation to any other capital asset, —

(i) where the capital asset became the property of the previous owner or the assessee before the 1st day of April, 2001, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

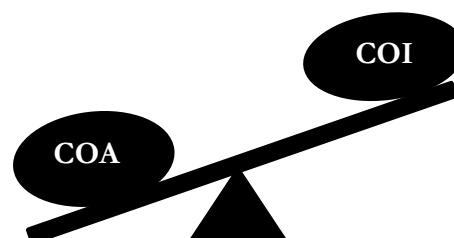
(ii) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvement" shall be construed accordingly.

Hence, Cost of Improvement is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset. It includes all those expenditures, which are incurred to increase the value of the capital asset. **However, any expenditure which is deductible in computing the income under the heads Income from House Property, Profits and Gains from Business or Profession or Income from Other Sources (Interest on Securities) would not be taken as cost of improvement.**

When the income is calculated under capital gain, the definition of Cost of Improvement specifically states that if any expenditure which is claimed in computing the income under any other heads the same would not be taken as cost of improvement.

Hence, Mr. Rajesh would not be able to claim the deduction of interest on housing loan as cost of improvement because he has already claimed deduction of such interest under the head house property u/s 24(b).



We have discussed the treatment of the interest cost, the benefit of which has been already claimed u/s 24(b). Now let us understand the treatment of interest cost on the purchase of shares/securities or like assets the benefit of which have not been taken under any section.

Let us try to understand this with an example. Mr. Mukesh, an individual assessee, had purchased shares worth Rs. 5,00,000 in A.Y. 2017-18 for which he incurred the following expenses:

PARTICULAR	AMOUNT
Cost of shares	Rs. 5,00,000
A loan is taken for the purchase of shares	Rs. 5,00,000
Interest paid on loan	Rs. 1,20,000

Note : No dividend income have been received till date on such shares.

Query 1: Whether Interest Cost of Rs. 1,20,000 taken for the purchase of shares can be considered COA or COI ?

For COA, as discussed above section 55 does not specifically include or exclude interest cost paid on borrowed funds. Also, in the case of shares no deduction for such interest cost under any other section could have been claimed. Therefore, relying on the decisions quoted in preceding paras it can be concluded that interest cost can be considered as COA. To support the above view the following further judicial precedent are relied upon, wherein it has been held that while calculating COA of shares interest cost will be considered.

***Zuari Investments Ltd. Vs Income-tax Officer 92 (Delhi - Trib.)
ITA Appeal No 4854 (Delhi)***

***Commissioner of Income-tax VS
Maithreyi Pai
[1984] 18 Taxman 75
(Karnataka)***

So in the present example, Mr. Mukesh can claim the interest cost of Rs.1,20,000 as cost of acquisition while calculating income under the head capital gain. This appears to be less litigative as deduction of such interest cost have not been claimed in any previous year under any other head.

For COI, as discussed earlier, section 55 provides that COI is a cost which improves the asset but cannot be a cost for which

deduction have been claimed under any other head. Now in the present example, although deduction of interest have not be claimed under any other section, however, the interest cost does not lead to addition in asset or improvement in asset.

Therefore, in my view it would be better to consider interest cost as cost of acquisition and not cost of improvement.

Conclusion

Details of capital gains are to be provided while filing of return. Therefore, very easily department can pick up the case for assessment or reassessment.

Once it is done the fact of inclusion of interest cost in COA or COI may call for litigation as the section is not clear and also no verdict on said issue have been given by High Court or Supreme Court (based on my research).

Therefore, in my opinion it is preferable to consider interest cost as part of cost of acquisition and not as part of cost of improvement. Also deduction should be claimed only where no deduction of such interest cost has been claimed under any other head of income in any previous year.

House Property- Maintenance & Brokerage Charges

Harshita Agarwal

Inputs by: Kartik Nagar

Supervising CA: Shivangi

Samdhani

In this world, most of people have dream of owning a house one day out of their savings.

On the other hand, there are some people who invest in house property, not to reside there but to earn money.

*"A fine is a tax
for doing
something
wrong. A tax is
a fine for doing
something
right."*

However, owning a house property is not without responsibilities.

Paying taxes on house property annually is one of them. The scope of the income

chargeable under the head "House Property" is defined under section 22 of the Income Tax Act, 1961. The computation of income falling under this head is governed by Sections 23-27 of ITA.

In the recent era, apart from construction of house property on their own, people prefer to live in Flats/ Apartments which they either purchase or take on rent.



This era is not of row houses anymore but is of villas and flats in townships/societies where amenities like parking, guard, garden, lift, club house, conference hall, etc. are available. So along with rent expense, one of the major expenses is maintenance charges as everything comes with cost.

There are common areas which require maintenance. The common areas include the following:

Swimming pool, community facilities, basements, common entrances, elevators, staircases, water tanks, parks, etc.

Let us understand what maintenance charges is all about:

MAINTENANCE CHARGES

Maintenance charges are the operating charges levied on residents of a housing society. The residents or owners of a particular property in an area are charged for the maintenance of a commonly owned property area. It is collected periodically i.e., monthly, semi-annually, or annually depending upon the project.

Maintenance charges can be received by landlord in two ways:

➤ **First Scenario:**

Tenant pays the amount of-

- Rent to landlord and
- Maintenance charges directly to the society.

Rental income from a property being building or land appurtenant thereto of which the taxpayer is owner is charged to tax under the head “Income from house property”. In this situation, landlord is receiving rental income which will be taxable under House property. He will also be eligible for statutory deduction of 30% u/s 24 and deduction of municipal tax paid to local authority u/s 23 of ITA.

Since maintenance charges are directly paid to society by tenant, hence, no treatment of maintenance charges will be made in the hands of landlord.

➤ **Second Scenario**

Tenant pays the amount of rent and maintenance charges directly to landlord

- ✓ Punjab & Haryana High Court, in case of Sunil Kumar Gupta v. ACIT [Appeal No. 369 of 2015] held that-

“..The ambit of the term **"rent"** in these sections is wide. **It includes any amount which is paid in consideration of the property being let.** The maintenance charges must form a part of the rent.”

“The maintenance charges must **be included as part of the rent** for the purpose of computing the annual value of the property.”

- ✓ ITAT Mumbai, in case of Asha Ashar v. ITO [2017] 81 taxmann.com 441 (Mumbai- Trib.), held that-

Society maintenance charges, which is the obligation of the lessee, the same is duly included in the rent received by the assessee. Also, assessee is entitled for deduction of such Maintenance Charges u/s 23(a) of ITA apart from Standard Deduction u/s 24.

From the above case laws, it can be concluded that **amount of maintenance charges received by Landlord will form part of ‘Rent’ and will be taxable under head ‘Income from House Property’.** Further, if maintenance charges are further paid by the Landlord, then deduction is allowed to landlord apart from standard deduction u/s 24(a).

- ✓ But ITAT Delhi, in case of DCIT VS Jagatjit Industries Ltd. [ITA No.3631/Del/2014], And Hon'ble High Court of Karnataka in the case of CIT vs. Shanti Kumar Narayana Hotel Pvt. Ltd. [201 ITR 138 C.O. No.53/Del/2015] have taken a **different opinion.** It held that-

“...wherein it was held that even if there is a composite agreement in respect of building and amenities and **if the services provided are separable then the income derived from the amenities can be treated as income from other sources.** .”

“...It is our considered opinion that **only the rental income should be charged to tax under income from house property** after allowing deductions in respect of the Municipal taxes paid and of the 30% standard statutory deduction u/s 24(a) of the Act. On the other hand, **the income from maintenance services should be brought to tax under income from other sources after allowing benefit of deduction towards expenditure incurred on maintenance charges...**”

Now, we have two options. In one hand, amount received for maintenance is taxed under head Income from House Property and on other hand, it is taxable under head Income from Other Source.

Since in both the options, taxpayer is eligible for deduction of Maintenance Charges, the impact is tax neutral. Any option can be adopted by the taxpayer.

Treatment in the hands of Tenant:

In both the scnerios, as discussed above, **Tenant** is not eligible to avail deduction of payment of maintenance charges at the time of computation of income because the property against which maintenance charges are paid does not belong to taxpayer (i.e. tenant).

BROKERAGE CHARGES

Landlord and tenant need a common platform to initiate letting out house. Cost

incurred by both the parties is in nature of Brokerage and commission paid to broker.

Let us understand that, whether Landlord is eligible for deduction of Brokerage paid or not.

Case 1: Brokerage paid in percentage

ITAT Mumbai, in case of Radiant Premises (P.) Ltd. V. ACIT [ITA No.5494/Mum/2013], held that-

“...The word 'rent' connotes a return given by the tenant or occupant of the land or corporeal hereditaments to the owner for the possession and use thereof...”

“...If there is charge directly related to the rental income or for the property without which the **rights in the property cannot be enjoyed by the tenant** then it can be construed as part and parcel of enjoyment of the property from where rent is received then such charges can be held to be allowable from the rent received or receivable.

However, the **brokerage** paid to the third party **has nothing to do with the rental income paid** by the tenant for enjoying the property to the owner. Brokerage cannot be said to be a charge that has been created in the property for enjoying the rights and at best it is only an application of income received/receivable from rent...”

From the above case law, it can be concluded that brokerage cannot be allowed as deduction either u/s 23 or u/s 24.

Case 2: Brokerage paid as part of rent

ITAT Delhi, in the case of Tube Rose Estates Pvt. Ltd v. DCIT, held that-

“...where part of the rent may become payable to a third party before the same accrued to the assessee in terms of some overriding charge. In such cases, there may be diversion of rent at the source and the rent to that extent could be claimed as deduction while computing the income from house property.”

It means that if part of rent is paid as brokerage, then taxpayer will get deduction while computing income from House Property.

CONCLUSION

Maintenance charges paid by assessee is to enjoy the property itself. Whereas, brokerage has nothing to do with the property or the rent which is given to a third party who has facilitated the landlord and the tenant on agreeable terms to rent the property. So, in general, taxpayer is eligible for deduction of maintenance charges but no deduction allowed for brokerage charges.

Residential House Property u/s 54 and 54F of Income Tax Act, 1961

Kartik Nagar

Inputs by: Kavita Sharma

Supervising CA: Shivangi
Samdhani



Section 54 to 54H of the Income Tax Act (“ITA”) contains deductions allowable in calculating income under head Capital Gain. Section 54 and 54F of ITA specifies the **deduction** from Long Term Capital Gain (“LTCG”) if such capital gain or sales consideration is invested in Residential House Property, subject to some conditions specified therein.

The objective and scheme of granting deduction under Section 54 and 54F is promoting Investment in the Residential House out of the capital gain/ proceeds from sale of Long term Capital Asset/ Residential House.

In this article, we are going to understand meaning of ‘Residential House Property’ and what amount will be considered as ‘Investment’ for claiming deduction.

Before that, let’s have basic understanding of Section 54 and 54F of the ITA:

Particulars	Section 54	Section 54F
Who is eligible of deduction	Individual/ Hindu Undivided Family	
Which capital asset is eligible for deduction	Long Term Capital Asset	
Which specific asset is to be sold for claiming deduction	Residential House Property	Any Long Term Capital Asset (other than Residential House Property) Provided- on the date of transfer, taxpayer does not own more than One Residential House (except the new purchased or constructed)
Which asset taxpayer should acquire to avail deduction	*One Residential House in India. (*in Section 54, if amount of LTCG does not exceed Rs.2 Crore, assessee can purchase/ construct Two Residential	

	House Property)	
Time limit for acquiring new asset	<u>For Purchase:</u> within 1 year before or 2 years after the date of transfer of Residential House Property/Long Term Capital Asset. <u>For Construction:</u> within 3 years from the date of transfer of House Property/ Capital Asset.	
Deduction amount	Amount invested in Residential House Property or LTCG, whichever is lower.	[Amount invested in Residential House Property ÷ net sales consideration] x Capital Gain

After reading Section 54 & 54F, we can observe that the entire deduction revolves around the “Residential House property”. So, what is mean by it?

MEANING OF RESIDENTIAL HOUSE PROPERTY

Income Tax Act does not specify any definition of Residential House Property. But there are some case laws which can be referred, to understand the meaning of Residential House Property.

- Punjab & Haryana High Court, in case of Dr. A. S. Atwal v. Commissioner of Income Act, (2005) 146 Taxman 171(Punjab & Haryana) held :
House was one which could be used by assessee for his residence and

putting up of tin sheds for being used by somebody to reside without there being basic living amenities like bathroom, kitchen, electricity etc., would not pass the definition/ test of “dwelling unit” or “house”.

- Punjab & Haryana High Court, in case of Ashok Syal v. CIT [ITA No. 566 of 2005] held :
The term “house” has not been given any statutory definition and, thus, has to be assigned meaning as understood as common parlance. As per dictionary, it means abode, a **dwelling place or building for human habitation**. A building, in order to be habitable by human being, is ordinarily required to have **minimum facilities of washroom, kitchen, electricity, sewerage etc.**
- Mumbai Tribunal, in case of Saleem Fazuebhoi v. DCIT [2006] 9 SOT 6 (Mum.), held :
An inhabitable premise, in our opinion, cannot be equated with a residential house. If one person cannot live in a premises, then such premises cannot be considered as residential house.
- Hyderabad Tribunal, in case of ITO v. Smt. Rohini Reddy [2009] 313 ITR (AT) 346 (Hyderabad) held that, a plot of land with temporary structure not put up with intent to use it as residential house either for self –occupation or letting out could not be treated as residential house.

Hence, for any premise to be categorized as Residential House Property, it should have-

- Permanent structure,
- Habitable for human use,
- Basic amenities like bathroom, kitchen, etc.

HABITABLE V/S COMFORTABLE

- ✓ There is distinction between expenditure incurred on making house habitable and the expenditure on making it comfortable. Assessee may buy a habitable house but he may like to incur expenditure by way of renovation to make it more comfortable.

He may not be happy with the quality of material used by the builder and, therefore, he may incur expenditure on improvement of the house. Such expenditure cannot be equated with the expenditure on making the house habitable.

However, in case, assessee purchased **semi-finished house**, investment would be complete only when such house becomes habitable. Accordingly, **expenses like flooring, wooden work, sanitary work, etc. done by assessee to make house habitable** should be **considered as investment** in purchase of a house.- Saleem Fazalbhoy v. CIT [2006] 9 SOT 603 (Mum.).

- ✓ Mumbai Tribunal, in case of Meher R. Surti v. ITO [2014] 61 SOT 5 (Mum.), held that- If an assessee chooses to purchase a house and incurs bona fide expenditure on improvement **for making it habitable**, it would be eligible as investment in new house.

- ✓ But, just renovation or modification in existing house **does not lead to deduction u/s 54 & 54F**- Pushpa v. ITO [2013] taxman 191 (Ker.).

- ✓ Mumbai ITAT, in case of Rustom Homi Vakil v. ACIT [2016] 69 taxmann.com 42 (Mumbai - Trib.) held:

“The tax-payer keeping in view his socio-economic position and status in the society has to define as to what is 'habitable' residential house required to make the house fit for living/abode for the tax-payer for his residential purposes.

Revenue cannot deny the benefit u/s 54 of the Act on the ground that expensive marble floorings or tiles are used in place of ordinary flooring or tiles etc. or a high quality expensive construction material is used by the tax-payer or more amenities are required by the tax-payer to make the house 'habitable' and more so when Section 54 of the Act itself does not stipulate any such restrictive conditions, thus, benefit u/s 54 of the Act cannot be denied to the tax-payer on these grounds as statute does not provide for such conditions/restrictions.”

Hence, any investment in Residential House Property to make house habitable will constitute part of value of investment. But, any expenditure done on luxury or other items to make life comfortable would not qualify for availing deduction under the said section.

WHICH AMOUNTS WOULD BE AGGREGATED FOR CALCULATING VALUE OF INVESTMENT FOR AVAILING DEDUCTION

Cost of Land:

- As per Circular No. 667, dated 18.10.1993, **Cost of new house also includes cost of land.**
- If only land is purchased and house is not constructed, it will not be considered as investment in Residential House Property.
- If Residential House Property is constructed on a land which is not owned by assessee, then cost of land will not be considered calculating value of investment. Also, if only land is owned by assessee and construction of house is done by any other person, then no deduction will be available to assessee.
- Land, on which construction done by assessee, **can be agricultural land or any other land. The only condition for claiming exemption under Section 54F is construction of**

residential house. This has been held by ITAT Jaipur in case of CIT v. Om Prakash Goyal [2012] 53 SOT 158.

- **Cost of vacant land appurtenant to, and forming part of,** a Residential House Property, is to be **considered for claiming deduction** under Section 54F, even if no construction has been done on appurtenant land.

Delhi Tribunal, in the case of CIT v. Narendra Mohana Uniyal [2009] 34 SOT 152 (Dehli), held that- “When the land is purchased and building is constructed thereon, it is not necessary that such construction should be on the entire plot of land, meaning thereby a part of the land which is appurtenant to the building and on which no construction is made, there is no denial of exemption on such investment.”

For example, if garden area is also there, within the boundary of new Residential House Property, such vacant part will also form part of cost of new Residential House Property.



- Delhi Tribunal, in case of Mahavir Prasad Gupta v. CIT (2006) 5 SOT 355, held that- even a farm house can be a Residential House Property and investment is eligible for benefit under section 54F of the IT Act.

Cost of Construction:

To construct a house, basic materials like bricks, mud, cement, iron rod, etc. and also labour force is required. All such expenditure on purchasing material and building a permanent establishment will be aggregated in the value of investment.

After the construction of basic structure, interior work including flooring, wooden work, sanitary work, electricity, sewerage, paint etc. will also constitute part of investment.

Necessary items v/s Luxury items:

The term 'Necessary' and 'Luxury' are completely subjective. Meaning of such terms is evolving from time to time and is also dependent on person to person depending upon the socio economic status and standing of taxpayer in the society. An item can be necessity for one and luxury for the other.

Expenditure on necessity is done to make life habitable, and expenditure on luxury is done to make life comfortable.

In general, we can conclude that expense done on basic requirements, without which any person generally cannot live, is to be

considered as expenditure for human habitation.

So, no deduction under Section 54 and 54F of ITA will be allowed to assessee for the amount spent on luxury items at the time of construction or after purchasing Residential House Property.

LET'S BUILD OUR DREAM HOME

Assuming all the basic conditions specified u/s 54 and 54F are satisfied, you purchased one land and decided to construct Residential House Property which includes Bedroom, Kitchen, Living Room, Washroom, etc. Also, it is decided to keep some land area vacant for Garden and Swimming Pool.

Interior work of home includes- High Quality electrical fittings, sanitary work, flooring, furniture, paint, etc.

Apart from basic interior work, you decided to add few more items to make home more luxury and beautiful, like- Chandelier in Living Room, Jacuzzi in Bathroom. Also, you have decided to purchase Entrance Gate and other articles of Temple Area made up of Gold and silver.

After completion of construction and interior work, other items also purchased like- television, oven, A.C. sofa set, bed, carpet, etc.

Now, question arises that whether investment in all the above expenditure will be aggregated in value of investment for the

purpose of deduction under Section 54 and/or 54F?

Assessing Officer can deny the deduction for investment in items like Jacuzzi, Chandelier, Swimming Pool and precious articles of Gold and Silver because all such expenditure is for Luxury and it is not necessary to make habitable house.

Also, Mumbai ITAT, in case of *Rustom Homi Vakil v. ACIT* [2016] 69 taxmann.com 42 (Mumbai - Trib.) held that- **“the items of comfort purchased or installed in the new residential house so purchased or constructed by the tax-payer such as consumer electronic and entertainment equipments, air-conditioning equipments, furniture, beddings, electrical and other equipments etc. per-se does not fit into the definition of purchase or construction of the residential house entitling these items to the benefits u/s. 54 of the Act. As, these are items of comfort and are not part of the purchase or construction cost of new residential house property within the meaning of Section 54 of the Act and hence, **benefits u/s 54 of the Act cannot be allowed** for these items of comfort so purchased/installed by the tax-payer in the new residential house so purchased or constructed.”**

With reference to the above case law, it can be concluded that purchase of items like Television, A.C., etc. will also not constitute part of investment for availing deduction.

CONCLUSION

With reference to Section 54 and 54F of ITA, intention of law makers was to promote investment in Residential House Property. Tax payers cannot fool the Income Tax Department by doing excessive unreasonable investment in new Residential House Property. Additional investments on luxury items and to make house more comfortable is not appropriate tax planning for availing more deduction in the said section.

Place of Effective Management (POEM)

Kavita Sharma

Inputs by: Shivi Akar

Supervising CA: Rohan Sogani

❖ Introduction

Taxability of income of any person or entity in any

“Aao sikhai tumhe POEM ka funda, Ye ni pyare koi maamuli banda”

jurisdiction/country depends upon that person's residential status in that jurisdiction /country.

If any person is said to be resident in India

during the previous year, then that person's global income is taxable in India. Residential status of a person is defined under Section 6 of Income Tax Act, 1961 (“ITA”). Residential status of a company is defined under Section 6(3) of ITA.

Section 6(3) was amended, *vide* Finance Act, 2015. Such sub-section prior to the amendment and after is as under: -

A Company is said to be resident in India in any previous year, if: -



Particulars	Before Finance Act, 2015	After Finance Act, 2015
Scenario 1.	It is an Indian company; or	It is an Indian company; or
Scenario 2.	If during that year, the control and management of its affairs is situated <u>WHOLLY</u> in India.	Its <u>PLACE OF EFFECTIVE MANAGEMENT</u> (POEM), in that year, is in India.

POEM means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, **in substance made**. **POEM** does not apply to Company having turnover less than Rs. 50 crores

We shall now understand the need for bringing the provisions, in relation to POEM, under the ITA with the help of an example: -

Let us date back to the year 2014. Mr. A wants to incorporate a company. If he incorporates the company in India, company will be resident in India such that its whole Income is taxable in India.

To avoid payment of tax, he incorporates the company 'ABC INC' in Singapore instead of India, as tax rate is relatively lower in Singapore. Some meetings were held in Singapore although it's Control and Management is based in India. Now, it cannot be said that Control and Management is **wholly** situated in India as some meetings were conducted outside India as well. Hence income earned by ABC INC is not taxable in India. As ABC INC would not be considered resident in India.

Let us discuss the above example taking into consideration the amendment made in 2015. The POEM of the ABC INC is in India as it's Control and Management is in India. Hence the income earned by ANC INC is taxable in India.

❖ **Substance Over Form**

This provision put substance over form. The object is to target companies which are created for retaining income outside India to avoid taxation, even though real control and management of affairs is in India.

In the above example- Company ABC INC is in substance resident of India, as Control and Management is wholly situated in India and

only few board meetings were conducted outside India but in form incorporated outside India.

Final guidelines for the POEM was issued in Circular No.6 of 2017, dated 24-1-2017.

A company which is registered outside India will have its POEM in India if it is having Active Business in India.

A company shall be said to be engaged in "Active Business Outside India" ("ABOI") if all the followings conditions are fulfilled: -

If the passive income (income from the transaction where both purchase & sale from Associate enterprises, Income by way of royalty, dividend, capital gains, interest or rental income) is not more than 50% of its total income; **and**

Less than 50% of its total assets are situated in India; **and**

Less than 50% of total number of employees are situated in India or are resident in India; **and**

The payroll expenses incurred on such employees is less than 50% of its total payroll expenditure

For the purpose of determination of active business outside India data related to 3

previous years have to be taken into account, if the company has been in existence for shorter period, then data of that period have to be considered.

Determination of POEM of any foreign company also depends on the facts and circumstances and it is to be determined on yearly basis.

As per the circular, if any company satisfied all condition of conducting ABOI then POEM will be presumed to be outside India if majority meetings of the board of directors of the company are held outside India.

In case if any company satisfies all the test of the ABOI but majority meeting of the board of directors of such company was held in India, then POEM shall be considered in India.

Also, in case where all the meeting of board of director is held outside the India, but major decisions are taken by the holding Indian company or other persons resident in India then the POEM shall be considered to be in India.

For instance-ABC INC is incorporated in USA is a subsidiary of Indian Company. In the year of incorporation, ABC INC has assets valued at Rs.30 crores located in India out of total assets of Rs.120 crores. Total receipt of the ABC INC is amounting to Rs. 60 crores. Breakups of receipts are as under: -

(i) 40 crores from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises,

(ii) 10 crores from transaction where purchases are made from parties which are associated enterprises and sold to associated enterprises,

(iii) 5 crores from dividend income,

(iv) Interest income of Rs. 5 crores
100 employees working for the company, 75 are located in USA and remaining in India. The total annual payroll expenditure on these 100 employees is of Rs. 20 crores out of which 12 cr. related to 75 employees located in USA.

There were total 5 BOD meetings which were held during the year out of which 3 meetings were held in India and the decisions during the meeting were taken by Mr. A who is Resident in India.

For determining POEM of ABC INC, we check whether ABC INC satisfied all the conditions of active business outside India

(1) Passive income of the ABC INC is Rs. 20 cr. i.e. 10 cr. from the transaction where both purchase and sale is from / to its associated enterprises, dividend income of Rs.5 cr. and 5 cr. from interest.

ABC INC has satisfied first condition for the test of active business outside India.

(2) 25% of total assets (30 cr. /120 cr. *100) are located in India. So, company also satisfies second requirement of the test.

(3) 75 employees located in USA, so we can say third requirement is satisfied.

(4) 8 cr. (20-12) which is less than 50% of the total payroll paid to employees located in India. So, this condition has also been satisfied by ABC INC

But out of five BOD meetings, three were held in India and the decisions during the meeting were taken by Mr. A who is Resident in India.

Conclusion:

So as per circular no. ABC INC satisfies all the test of the active business outside the India but majority meeting of the board of directors of company was held in India and also the major decisions were taken by Mr. A who is resident in India. Hence, POEM of ABC INC shall be considered in India.

Therefore, company will be considered as foreign company having its POEM in India. Hence the whole income earned by ABC INC taxable in India.

In case of company other than the company having its active business outside the India, (it means the company

not satisfying all the conditions of active business outside India) then the determination of POEM on such company will be following two stage process: -

Stage 1: Identification or ascertaining of persons who actually make the key management and commercial decision for conduct of the company's business as a whole.

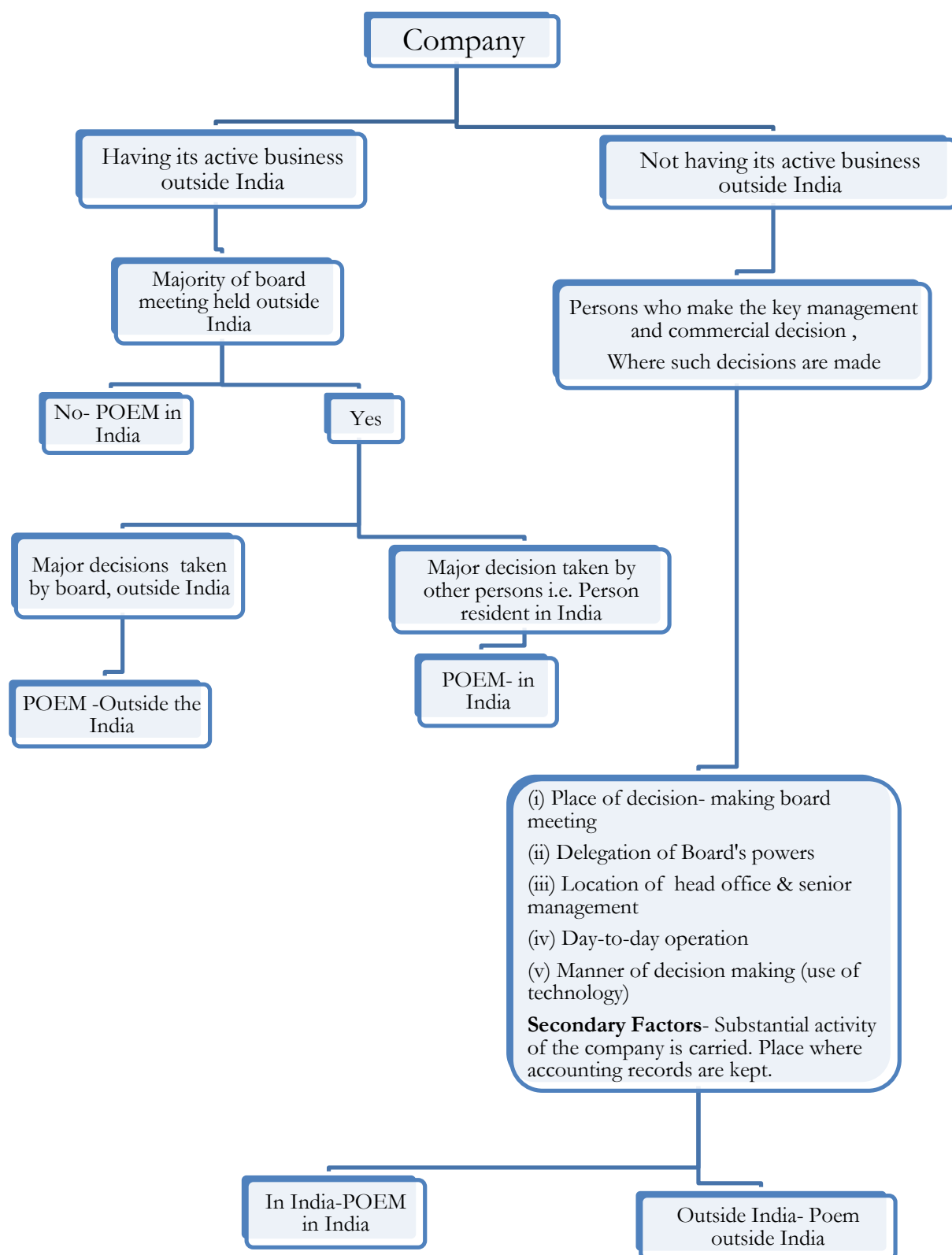
Stage 2: Determination of place where these decisions are in fact being made.

Place where these management decisions are taken would be more important than the place where such decisions are implemented for the purpose of determination of POEM.

❖ If it is not possible to determine POEM from the above factors, following secondary factors can be considered: -

- (i) Place where main and substantial activity of the company is carried out; or,
- (ii) Place where the accounting records of the company are kept.

Summarized position of the provisions in relation to POEM is as under:-



In the below mentioned circumstances it is **not a conclusive** evidence that the POEM is in India: -

- Foreign company completely owned by Indian company,
- One or more director of a foreign company resident in India,
- Local management of a company is India,
- Existence of support functions in India.

If due to the fact and circumstances, it is determined that in the previous year POEM of any company was in India and outside too, then in such case according to guidelines, POEM is presumed to be in India.

After reading the above paragraph a question arises, whether the Company have to pay double Tax?

The answer is no, in such situation **Double Taxation Avoidance Agreement (DTAA)** would come into play.

❖ **Conclusion**

The major POEM amendment would have a crucial impact on the MNC's wherein the majority decisions for the foreign entities taken by the officials in India. Moreover, multinational groups having any common directors on the board of foreign as well Indian enterprises would be susceptible to the applicability of POEM in India. It is likely that going forward Income Tax Department would invoke provisions related to POEM considering that in Work from Home scenario, people, sitting in

India, can work for any company anywhere in the world, which can even include taking key decisions.

FUTURES & OPTIONS UNDER INCOME TAX ACT, 1961

Khushi Khandelwal

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Supervising CA: Rakesh Kedia

Naturally, those who are dealing in financial and commodity markets will be concerned

“Don’t underestimate the power of Futures and Options”

about price fluctuations, since changes in prices can mean losses – or profits. To protect themselves, they resort to

derivatives like Futures and Options.

Futures are financial agreements or derivative contracts between two parties to purchase or sell an item in a certain quantity at a fixed price and date. It renders the parties to the agreement legally obligated to settle the transaction, regardless of whether they make a huge profit or suffer a substantial loss.

Options trading refers to a contract between the buyer and the seller, the option holder is making a prediction about the price at which an underlying securities or index will eventually trade. The holder may buy or sell



at the strike price on the expiration date, but isn’t obligated to do so.

Primarily, there are two forms of options—

Call Option and Put Option

The call option holder gets into the contract with the writer to purchase or sell a security if the price goes up to the strike price—on the expiration date. Thus, a call buyer has a bullish view of the underlying stock or index, while a call seller thinks the prices will either stay the same or drop.

In a put option, the buyer bets on a lower future price on the expiration date. Here, the put buyer is bearish and feels that the underlying stock or index price will fall on the expiration date. In contrast, the put seller assumes that the price will remain unchanged or rise in the future.

Derivative trading (F & O trading) has become normal now-a-days. Most of the people do Futures& Options trading without having knowledge about its taxability, or required to maintain books of accounts or not.

Let’s dig deep into this.

Under what head Futures and Options are taxable?

Trading in Futures and Options is a business transaction. Yes, you read it correctly. The derivatives transactions constitute business on the basis that:

- Futures and Options neither have voting rights nor right to control
- Futures and Options would have a short life of about 3 months. It can't be held as investment
- Trading in Futures and Options is an adventure in nature of trade

To support the same, there are following judicial precedent-

CIT v. Blue Berry Trading Co. (P.) Ltd. [2022] 143 taxmann.com 140 (Mumbai - Trib.)

DCIT, Cir-6, Kolkata, Kolkata v. Loknath Saraf Securities Ltd., Kolkata ITA 695/KOL/2008

Deepak Sogani v. DCIT-24 [2016] 68 taxmann.com 332 (Mumbai - Trib.)

From the foregoing discussions it is apparent that trading in Futures and Options is not considered as Long-Term Capital Gain as the term of future and options is 3 months.

Business Income versus Short Term Capital Gain

Trading in Futures and Options is business income and not short term capital gain. Following are the effects that results when futures and options income is considered as business income rather than short term capital gain-

- As per section 44AA, in case of business assessee is required to maintain books of accounts. However in case of short term capital gain there is no requirement of maintenance of books of accounts. Therefore, keeping books of accounts becomes challenging for small assessee.
- As per section 44AB, a tax audit is necessary if business turnover or gross receipts exceed the permissible limits. This increases the burden on the small assessee. As per section 271B of the Income Tax Act, if you fail to get your accounts audited, the Assessing Officer may levy a penalty equal to Rs. 1,50,000 or 0.50% of gross turnover, whichever is lower.
- Income tax returns for business income must be filed using ITR Form 3, which calls for additional details like preparation of a balance sheet and a profit and loss statement among other details.

Speculative or Non Speculative?



The business income is normally divided into speculative and non-speculative income. **Section 43(5)** defines a speculative transaction to mean an eligible transaction in which a contract for purchase or sale of any commodity, including stocks and shares is periodically or ultimately settled otherwise

than by actual delivery or transfer of the commodity or scrip.

Explanation to section 43(5) provides that an eligible transaction in respect of trading in derivatives carried out on a recognized stock exchange shall not be treated as speculative transaction subject to compliance of prescribed conditions.

Hence, if trading in Futures and Options are carried out on a recognized stock exchange and provisions of section 43(5) are complied with, then income from Futures and Options shall not be considered as speculative business.

How to Calculate Futures and Options Turnover ?

It is important to determine turnover in order to determine the applicability of tax audit as per Section 44AB of the Income Tax Act, 1961 or declaring income u/s 44AD.

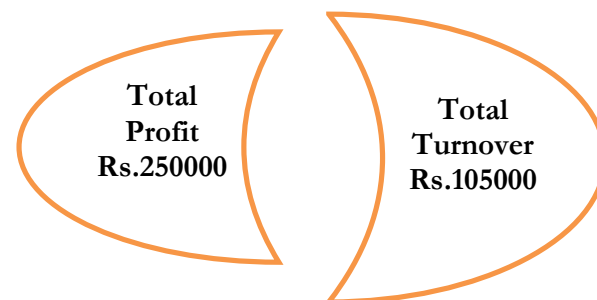
In order to determine the total turnover derived from the trading of Futures and Options, it is necessary to take into consideration the following factors:

1. While calculating the turnover, the total of positive and negative differences are to be considered.

The following example of Mr. X will help us to understand better :

Script Name	X Future	Y Future	A Option	B Option
Purchase Value	4,00,000	6,00,000	5,00,000	700,000

Sale Amount	3,80,000	6,35,000	5,30,000	680,000
Gain/Losses	(20,000)	35,000	30,000	(20,000)
Turnover	20,000	35,000	30,000	20,000



2. The premium received by the trader while selling the options has to be included.

For example - Mr. Y buys 200 units of options @ Rs 300 and sold for Rs 290. Then, total loss is Rs.2,000 and total turnover is Rs.60,000 [Loss 2000 +Premium of option 58,000(200x290)]

3. In case of reverse trades entered by the trader, the difference thereafter will also be a part of the turnover.

In above example, Mr. Y made reversal of the sold options at Rs.280. Then, the loss on reversal of sold options of Rs.2,000 would be included in calculation of turnover.

The net amount receivable or payable is mentioned at the end of the contract note:

	EQ-CASH	Total
PAY IN / (PAY OUT) OBLIGATION	-943.81	-943.81
[CGST 9% On Brokerage]	1.31	1.31
[CGST 9% On Charges]	1.30	1.30
[SGST 9% On Brokerage]	1.31	1.31
[SGST 9% On Charges]	1.30	1.30
[STT-SQUP]	3.64	3.64
[STT-DEL]	0.88	0.88
[STT-RND]	0.48	0.48
[TURNOVER CHG*]	0.97	0.97
[SEBI FEES]	0.01	0.01
[DEMAT TRAN CHG*]	13.50	13.50
Net Amount (-) receivable by client / (+) payable by Client	-919.11	-919.11

GST Taxable Value of Supply:- Brokerage: Rs. 14.54 , TURNOVER CHG : Rs. 0.97 , DEMAT TRAN CHG : Rs. 13.50 = Total: Rs. 29.01

Futures and Options- The Road Ahead in 44AD/Turnover/Business

Section 44AD provides that a sum equal to 8% /6% of the total turnover or gross receipts or a sum higher than the 8% /6% claimed to have been earned by the assessee shall be deemed to be the profit and gains of such business.

Section 44AD was inserted in the Income Tax Act with a view to provide method of estimating income from the business of civil construction or supply of labour for civil construction work. **The scheme, when introduced, was optional** and an assessee could offer that his income at presumptive rate.

The benefits of presumptive taxation scheme were further extended to all businesses w.e.f. 1-4-2011 except in case of income from profession, commission, brokerage and agency.

Section 44AD doesn't specifically exclude transactions in derivatives – Futures and Options as not eligible business.

In Futures and Options transactions, profit or loss of each transaction is considered as turnover. In the above example of Mr.X turnover is calculated as under :

$$\text{Profit (30,000+35,000)} = 65,000$$

$$\text{Loss (20,000+20,000)} = \underline{40,000}$$

$$\text{Total Turnover} = \underline{1,05,000}$$

So if presumptive rate of 6% is applied on the turnover it will be 6% of Rs.1,05,000 i.e Rs.6,300 whereas its actual income is Rs.25,000.

Thus, choosing the presumptive basis results in absurdity. **Hon'ble Supreme Court, in the case of CIT vs Sri J.H. Gotla, Yadagiri on 29 August, 1985 AIR 1698, 1985 SCR Supl. (2) 711** has observed that any interpretation which leads to absurdity or unintended consequences that interpretation has to be ignored. The interpretation which justify the purpose of legislation (purposive interpretation) has to be applied.

CONCLUSION

The presumptive taxation scheme was introduced to simplify the law for small business/ profession. However, the legal position to certain aspects of these sections is still subject to multiple views and interpretation. But as per my opinion a assessee can't choose presumptive taxation scheme for Futures and Options.

Income of Futures & Options is considered as business income. Therefore, assessee is also liable for maintenance of accounts as per section 44AA and for audit under section 44AB if the prescribed limits in respective sections are exceeded.

Section 144A and 263 in Faceless Regime

Madhukar Pareek

Inputs by: Mohit Sharma

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INTRODUCTION

Up till now, any proceedings carried out by the Income Tax Department against the assessee were carried out in a **physical manner**, through in-person meeting and physical submission of documents. This means that whenever any assessee's case was selected by the Income Tax Department for scrutiny for the purpose of verification of the correctness of the income offered for tax, the assessee had to go to the Income Tax Department and physically submit all the evidences and submissions.

Subsequently, in the year 2020, Government of India introduced a scheme for carrying out the assessments in a **faceless manner**. This Faceless Scheme was introduced so as to cut down on the interface between the assessee and the Income Tax Department. This was also done to bring in more efficiency in the entire assessment proceedings.

For such Faceless Assessment, **Section 144B** has been inserted in the Income Tax Act, 1961 ("**ITA**"). All the assessments now have to be carried out as per Section 144B.



There have been significant amendments to Section 144B. The section was recently amended vide Finance Act, 2022, bringing in more changes to the entire Faceless Regime of carrying out assessment and reassessment by the Income Tax Department.

SECTION 144 B

As per Section 144B, the entire assessment and reassessment proceedings is to be carried out by the **National Faceless Assessment Centre ("NFAC")** in a Faceless Manner. This means that the Officer from the Income Tax Department carrying out the assessment would not be known to the assessee. This is similar to a process wherein examination copies are checked by the teachers. The student appearing for the exam does not know who the ultimate person is and who is checking his/her answer sheet.

The entire assessment or reassessment proceedings have to be carried out by the Income Tax Department which has been divided into the **Assessment Unit**,

Verification Unit, Technical Unit and Review Unit.

Assessment Unit would be the one carrying out the assessment proceedings in the case of a particular assessee. The allocation of the cases to a particular Assessment Unit would be done by the NFAC. NFAC would play the role of connecting all the units together during the assessment or reassessment proceedings. During the course of assessment, if any verification is required to be done of any evidences or documents then the same will have to be done by the Verification Unit. For this, request would be raised by the Assessment Unit to the Verification Unit through the NFAC. At the same time, if any technical input regarding understanding of any law or for any other matter is required by the Assessment Unit request would be raised by the Assessment Unit to the Technical Unit through the NFAC. Both the Verification Unit and the Technical Unit are then required to give a report to the Assessment Unit based on whatever has been requested by the Assessment Unit.

In the entire proceedings, the notices for fixation of the case and notice requiring for details and documents from the assessee would be issued by the Assessment Unit through NFAC, on the basis of the information or details submitted by the assessee. In such process, if the returned income of the assessee is accepted by the Assessment Unit then, the Assessment Unit can pass the order. However, if any additions are to be made to the income of the assessee or any loss of the assessee is proposed to be reduced by the Assessment Unit then, the NFAC has the option to get

the case reviewed from the Review Unit. This mechanism of getting the case reviewed from the Review Unit is not a mandatory condition. If the NFAC feels that the case is to be reviewed then, the case can be transferred to the Review Unit. The Review Unit, thereafter, if the case is reviewed by it, can submit a report on the modification proposed by the Assessment Unit. The Assessment Unit shall have the power to either accept or reject the report of the Review Unit. The Assessment Unit thereafter will have to pass the order in the case of the assessee.

As can be seen from the above, the entire procedure has been changed by way of introduction of the Faceless Regime by the Income Tax Department. Earlier, what was done by a single Assessing Officer is now carried out by a group of Officers or through a team of different units or officers of the Income Tax Department.

The different units forming part of the NFAC, such as Assessment Unit, Verification, Unit, Technical Unit and the Review Unit consist of various officers of the Income Tax Department like Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner, etc.

Accordingly, the entire hierarchy of officials of the Income Tax Department are involved in carrying out assessment in a faceless manner, forming part of the NFAC.

SECTION 144 A

Prior to the faceless regime, when the assessments were carried out by the Officers of the Income Tax Department and if the assessee felt that the same was not carried out in accordance with law or through proper appreciation of the factual position involved, then the assessee could make an **application under Section 144A to the Joint Commissioner**, who is in the hierarchy was higher the officer carrying out assessment or reassessment in the case of assessee. This could even be done by Joint Commissioner, on his own motion, i.e. out of his own discretion, or pursuant to the reference made by the Assessing Officer. Under Section 144A, the Joint Commissioner could call for and examine the records of the proceedings carried out by the Assessing Officer. The Joint Commissioner under Section 144A has the power to issue directions, as he may think fit, for the guidance of the Assessing Officer to enable him to complete the assessment in a timely manner and such directions are binding on the Assessing Officer.

If the directions given by the Joint Commissioner are against the assessee or prejudicial to the assessee, then an opportunity were required to be given to the assessee of being heard.

IMPLICATION OF SECTION 144A UNDER FACELESS REGIME

However, as seen from the Faceless Regime, the entire assessment proceedings is not being singularly carried out by the Assistant Commissioner or Deputy Commissioner of Income Tax, but is carried out by a team of

officers. The team of officers also includes the officers of the rank of Additional Commissioner and Joint Commissioner.

In such a scenario, when the Joint Commissioner himself is involved in carrying out the assessment proceedings, being part of the Assessment Unit or the Verification Unit or the Technical Unit and the Review Unit, then there would not be any use of making an application under section 144A of the ITA by the assessee.

This is for the reason that if any assessment is carried out in a faceless regime, then it will be implied that the officer of level of Joint Commissioner must have worked on the particular assessment being part of any of the four limbs of the NFAC. Accordingly, there would not be of any use if an application is made under Section 144A by the assessee. As Joint Commissioner himself would be involved in the entire proceedings, then there would also not be any instance where out of his own motion he will give any direction to the Assessing Officer, him being very much part of the team carrying out assessment.

Accordingly, **in a Faceless Regime, Section 144 A is not of much use to the assessee.** Although, as per the legal position, as in force, after the introduction of the faceless regime under Section 144 B, Section 144A has not been repealed and is still in force. However with the entire mechanism being converted from a singular person carrying out the assessment to a team based assessment, the entire procedure of Section 144A has been rendered of no use.

SECTION 263

Another tool which is used by the Income Tax Department whenever any order is passed by the Assessing Officer is the power given to the Principal Commissioner of Income Tax ("PCIT") under Section 263.

As per Section 263, if PCIT finds that any Assessing Officer, under his jurisdiction, has passed any order which is erroneous and also prejudicial to the interest of the revenue, then he may set aside the order passed by the Assessing Officer. In this case, both the conditions have to be fulfilled-

- The **order has to be erroneous** i.e. it should be passed by the Assessing Officer based on wrong application of law; and
- Also, it should be **prejudicial to the interest of the revenue** i.e. it should result into some loss of revenue to the Income Tax Department.

Under such circumstances, PCIT can call for the assessment records of the Assessing Officer and can pass an order setting aside the order of the Assessing Officer. The PCIT can direct fresh proceedings to be initiated for such assessments by the Assessing Officer.

However, before passing any order under Section 263, the PCIT has to give proper opportunity to the assessee of being heard and thereafter, considering the submission of the assessee, the PCIT can pass the order under Section 263.

IMPLICATION OF SECTION 263 UNDER FACELESS REGIME

In the Faceless Regime, as can be seen from the above provisions of Section 144B, the entire assessment is not carried out by a single person but a team work is involved in carrying out the assessment during the assessment proceedings. Also, the assessment is carried out by one unit. However, the Assessment Unit is then helped by other units for the purpose of verification of the factual position and also for the purpose of providing any technical inputs for the purpose of carrying out the assessment proceedings.

In such a scenario, it can be argued that the order can neither be erroneous nor resulting into loss of revenue for the Income Tax Department for the reason that, the no single person was involved but a group of individuals were involved in the entire proceedings.

This section has also not been repealed by the Income Tax Department in a Faceless Regime and is still in force.

However, it is anticipated that going forward, such type of cases will be reduced for the purpose of Section 263.

CONCLUSION

In a faceless regime, since the intention of the Income Tax Department is to carry out team based assessment and to pass the order after proper application of mind, it will result in efficient working of the

Income Tax Department. Also, there would be lesser chances of proceedings initiated against the assessee under Section 263. As regards Section 144A, since the Joint Commissioner himself would be involved in the entire assessment proceedings, there would not be any fruitful outcome of the application filed by the assessee under such Section.

Charitable Purpose – Relief of the Poor (ROP)

Muskan Agarwal

Inputs by: Nishita Jain

Supervising CA: Naresh Kabra

Before starting our discussion on Charitable

*‘Poverty is a
condition,
not destiny!
It can be
corrected.’*

Purpose - Relief of poor (ROP), let us shed some light on the term Charitable Purpose.

Section 2(15) of the Income Tax Act, 1961 defines ‘charitable purpose’

to include

- relief of the poor (ROP),
- education,
- yoga,
- medical relief,
- preservation of the environment (including watersheds, forests, and wildlife)
- and preservation of monuments or places or objects of artistic or historic interest,
- and the advancement of any other object of general public utility (GPU).

From above, we can analyze that the ‘Relief of the Poor’ is the first limb of the charitable purpose.

However, neither ‘Relief’ nor ‘Poor’ are defined in Income Tax Act, 1961. We therefore in this article will make efforts to



define these two above mentioned words with the help of dictionary meaning and judicial precedents.

Brief Introduction

The dictionary meaning of the term ‘Poor’ means those who have little or no money, goods, or other means of support.

Any initiative taken to assist them in any manner would constitute a ‘Relief to the Poor’.

The expression ‘Relief of the Poor’ implies all actions to assist the Poor who are needy and who deserve to be addressed. It is however difficult to define the form in which there can be Relief for the Poor. No rigid formula can be deduced for this purpose.

It is difficult to make any exhaustive list of what is ‘Relief of the Poor’

In our daily lives, we come across many people who we think are Poor. They could be landless laborers in villages or daily wage workers at construction sites.

Let us first try to understand who can be termed as Poor with the help of the following two case studies: -

Case Study 1: Urban Case

Ram works as a laborer in a wheat flour mill in Ranchi (Jharkhand). He manages to earn around Rs. 5,000 a month. The money is not enough to sustain his family. He lives in a one-room rented house outside in the outskirts of the city. They can manage a meagre meal of dal and rice twice a day, but that is never enough for all of them. The younger kids are undernourished. They have no access to proper healthcare when they fall ill.

Case Study 2: Rural Case

Lakha belongs to a small village in Uttar Pradesh. He and his other family members do odd jobs for the big farmers. Work is erratic and so is income. At times, the family is not able to manage two square meals a day. They live in a Kuchha hut on the outskirts of the village.

From the above two cases, we can illustrate many different dimensions of poverty. Poverty includes hunger and lack of shelter. It also includes:

- a situation where parents are unable to send their children to school,
- Lack of access to clean water and sanitation facilities.

Above all, it means living in lack of basic necessities including healthcare, education.

Thus, there is no rigid definition quantifying or describing who all are Poor.

Scope of 'Relief of Poor'

The scope of Relief of Poor is wide. There is no exhaustive list to limit the activities that are subsumed under the heading Relief of Poor. Taking an example of a SC ruling in the case of **Thiagarajar Charities v Additional Commissioner of Income Tax & Anr (1997) 225 ITR 1010 (SC)**, the **SC** studied the objects of Thiagarajar Trust and concluded that below-mentioned objects shall be considered under 'Relief of Poor.'

- I. To establish, maintain, run develop, etc. and assist in the establishment, maintenance, running, development, etc. of the following:
 - a. Elementary Schools, Secondary Schools, High Schools, Colleges, Universities, and Hostels for the benefit of students
 - b. Libraries, reading rooms, recreation centers
 - c. Hospitals, clinics, dispensaries and all similar institutions
- II. To build, and to aid and assist in the building of houses, and places of residence for the Poor, needy, deprived, etc.
- III. To help, assist, and give:
 - a. food and clothing to the Poor, needy or deprived and to grant donations for the support of the inmates of orphanages.

- b. promote, rural reconstruction work, cottage industry and all other matters incidental thereto in India

Conditions to constitute for Relief of the Poor

To fall within the first limb in the definition of charitable purpose,

1. Firstly, it must be for the Poor, and
2. Secondly, there must be Relief for the Poor. Relief for the Poor assumes different forms. It is hard to put it all into one single form.

What is considered in the Income Tax Act, 1961 is that the object of providing Relief to the Poor is necessary. The act did not specify in what form and in what manner it has to be provided for.

The most important ingredient to satisfy the Relief of the Poor is that the person to whom the Relief is provided should be from a section of the Poor class, such as those in poverty and there is a dire need of helping them and those who deserve to be provided for.

It can be addressing the necessities of the people. The necessities focus on food, shelter, and clothes. As long as these needs are focused on, an objective to assist Poor people, it falls within the meaning of 'Relief of the Poor'.

Let us read the following examples:

Example 1: "Help All" is an NGO established on 1st April 2021.

Case 1: It conducts educational activities in several elementary and high schools in different areas of Haryana for the benefit of students. Apart from educational activities, it conducts certain short-term orientation courses such as land development, banking, cooperative credit, etc.

Case 2: "Help All" aims at providing financial help to only those children who are Poor and deserving. It provides such students with the necessary scholarships for continuing further studies.

Let us now discuss both cases simultaneously,

In case 1, the trust aims at training and developing the knowledge, skill, mind, and character of all students. Then, in such cases trust is providing benefits to society as a whole not, particularly to poor students of the society. This can't be categorized as 'Relief of the Poor'. It can however be categorized under 'Education' which is the second limb of 'charitable purpose'.



In case 2, The trust is providing reimbursement of educational expenses including Hostel fees for Poor students who wished to go the urban cities to complete further graduation.

Help All introduced such a reimbursement program only for those students who are Poor or needy and the sole benefit of such a program is available to them.

In such case, the activities undertaken by Help All trust can be classified as 'Relief of Poor'.

Example 2: 'Happy Club' is a trust. Its major objective is to encourage and provide help to the people of the rural sector. To accomplish its objective, it has established a cottage industry in one of the rural areas of Rajasthan. This industrial setup requires strong participation of women across rural areas. The purpose of this industry is to start reconstruction in the villages and provide a source of income to the weaker section of such villages by creating employment opportunities.

Whether such work can be classified under 'Relief of Poor'?

Happy Club established a cottage industry that has the objective to start rural reconstruction work and assemble weaker sections of unemployed people.

Such work carried out by Happy Club will be considered as relief of poor for the following obvious reasons:



Rural Reconstruction involves upliftment of rural masses

It is directed towards the welfare of rural people

Majority of such people belong to the Poorer sections of society

Cottage industry is a small and simple enterprise requiring the assistance of usually Poor section of the society.

Relief of Poor – Judicial Interpretation

Facts: A trust named Karim Bros. Charity Fund provides benefits to the Mohomedan community. Income earned by the trust was allocated under 3 categories in such a way that:

- 34% of net income of the trust was referred to as 'Family Charity Fund' - for maintenance, support or well-being of the Poor, needy, destitute, distressed, disabled or unemployed members of the families.
- 33% of net income which was known as 'the Education Fund' – for providing education to members of the Mohomedan community, and
- 33% of Net income known as the 'Charitable and Religions Fund' - for the Relief of Poor Mohomedans and for

contributions to religious charitable institutions.

The trust claimed a refund of the tax deducted at source on its complete divided income.

However, ITO allowed a full refund in respect of 66% of the income but did not allow a refund in respect of the remaining 34% allocated to the 'Family Charity Fund' on the ground that it was not entitled to exemption.

An appeal was filed in the Bombay high court which later came to be known as **[1943] 11 ITR 603 (Bombay) HIGH COURT OF BOMBAY Commissioner of Income-tax v. Karim Bros. Charity Fund**

Held: Assessee contended that the Court should read 'unemployed members of the families' ejusdem generis with the words which have gone before, namely, 'Poor, needy, destitute, distressed, disabled'.

The main reason for ITO to hold trust refund on Family Charity fund is because the objective of the trust is maintenance, support or well-being of the Poor, needy, destitute, distressed, disabled or unemployed members of the families. The word 'unemployed' went beyond people who are Poor, needy, destitute, distressed, or disabled.

Many persons are unemployed, not because they are Poor, but because they are wealthy enough not to need employment. There is a further difficulty in that the income of this fund may be spent on ceremonial occasions,

for example on marriage ceremonies of persons who happen to be unemployed.

Judgement: The court gave judgment in the favour of revenue. On the grounds, that the view of the ITO and the Commissioner that the fund was not held solely for charitable or religious purposes was correct. Trust providing support to unemployed members is classified as a charitable activity not 'Relief of Poor'.

Onus to prove that the activities are carried out for 'Relief of Poor'

The assessee himself has to prove that a particular objective stated in either trust deed or the registration form satisfies the definition contained in section 2(15) of the Income Tax Act, 1961.

Undoubtedly, the objectives covered under 'Relief of Poor' can overlap with other limbs given in definition of 'charitable purpose', defined u/s 2(15) of IT Act.

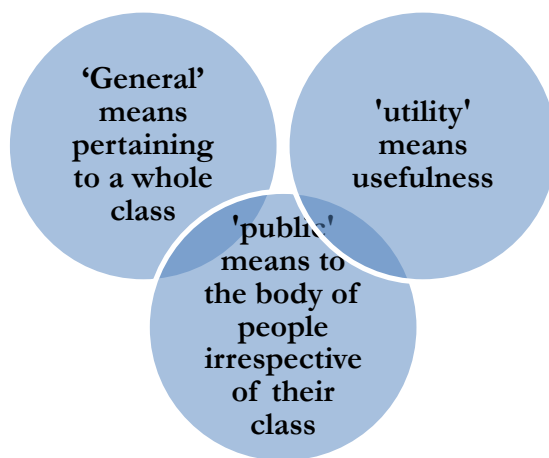
As long as the objectives overlap under the following limbs: 'relief of poor (ROP)', 'education', 'yoga' and 'medical relief', similar provisions are applicable on assessee. However, if the assessee fails to prove that the objects of trust, although charitable, falls within the first six major limbs of definition given u/s 2(15), then the assessee's object will be considered under the residuary clause i.e., 'advancements of general public utility' which has challenges of its own since specific provisions applicable to GPU get attracted.

The interplay between ROP v/s GPU

The seventh and residuary limb contained in the definition of 'charitable purpose' under

section 2(15) is 'Advancement of any other object of General Public Utility'. It comprises all those in which the public is interested and covers all objects that promote the welfare of the general public.

As this is the residuary clause, those charitable objects that are not falling under any other head as defined in section 2(15) of the act would fall in this category if it satisfies public welfare.



There is a thin line difference between objectives covered under Relief of Poor and General Public Utility.

Let us read the two examples below to understand further:

Example 1: We all are aware of the Kerala floods. In the year 2018, there was excessive rainfall in the state of Kerala. This disaster was considered one of the biggest natural disasters in the history of India. Thousands of people lost their home and their family members.

A trust named 'SAHAYTA' executed a Relief project for all those people who bore the brunt of such a natural calamity. The project aimed to support Relief work in

affected areas of Kerala in coordination with different volunteers & non-profit organizations in the worst-hit areas.

To provide **URGENT RELIEF** to the flood victims, they provided Relief Kits (Dry Ration: Lentils, Species, Rice, Pulses, Spices, Sugar, Tea, Rava), Bed Kit (Sleeping Mats & Blankets), Kitchen Sets (utensils), torches, solar lanterns, mosquito nets. Also, the trust arranged helicopters and boats to rescue such people.



Now, the question arises whether providing immediate help to people who are victims of such natural calamities affected by flood shall be covered under 'Relief of Poor' or 'General Public Utility'?

The Motto of trust is:

*'Pareshan hai jo, Amir hai ya Garib,
Humse na kabhi ye Bhedh Hua,
Jab desh Ne di Aawaj hume, Humne
sabka haath tham liya.'*

Let's understand the answer to this question in light of the provisions of the Income tax act, 1961.

Referring to the case, Thiagarajar Charities v Additional Commissioner of

Income Tax & Anr (1997) 225 ITR 1010 (SC) as discussed in the Scope of Relief of Poor section of this article:

The Supreme court stated a list of objects that are covered under 'Relief of Poor' one of which is: -

‘To conduct feeding the Poor and generally to give food and clothing to the Poor, needy and deprived and to afford Relief to Poor in distress and affected by earthquake, flood, famine, pestilence and other accidents and conduct or grant donations for the support of the inmates of orphanages.’

In the above scenario, the trust 'SAHAYTA' provided Relief to **ALL** victims of the flood irrespective of the fact whether they are Poor or not.

Thus, it shall NOT be covered under '**Relief of Poor**'.

However, such an objective shall assume the character of **General Public Utility**.

Example 2: India is facing one of the biggest problems of unemployment in the last decade. This problem has drastically increased post the onslaught of the COVID pandemic.

After realizing such problems on a vast level, five members of a group decided to start a trust named 'JAN SURAKSHA'. The sole purpose of the trust is to employ all those who are unemployed.

The trust also focuses on handicapped and widowed women. To achieve the above-mentioned objectives, trust conducted education& orientation programs and a

training session for the people where they can develop soft skills and technical skills required for the jobs and start their businesses.

The JAN SURAKSHA trust, in association with other small and medium enterprises, provides employment to such unemployed people. They also provide requisite funds to people for starting their businesses.

The procedure for registration is simple. Anyone can apply by way of submitting an online application on the website.

In the above case, the trust aims at providing help to unemployed people. Here, the word 'unemployed' does not restrict to only those unemployed who are:

- needy, or
- Poor, or
- who can't get employment because of a lack of education.

It also refers to those unemployed who are educated, and belong to a medium-class family but still do not have jobs because of a lack of certain skills required to carry out a specific job.

Thus, even in the above case, objectives of trust shall be constituted under **GPU** since they are obviously for charitable purposes.

In general, the object 'Advancement of General Public Utility' is intended to serve public at large touching general utilities.

If the object or purpose is not regarded as charitable in any one of the limbs of the definition of charitable purpose, but if it leans towards the benefit of public, it shall

be included in the definition of 'Charitable Purpose' under the head 'advancement of General Public Utility'.

For e.g. organizing and conducting Family Planning Programmes, Social Awareness Programmes like Blood Donation Campaigns, Tree Plantation Campaigns etc. aim towards the benefit of public at large, irrespective of whether they are poor or not. The predominant objective is charitable thus shall be considered under **GPU**.

Conclusion

The term 'Relief of Poor' has to be understood from a wider perspective. The object doesn't need to be for the betterment of all the poor people living in a particular country. It would be sufficient if the objects are for the benefit of poor people. Within its ambit, Relief of Poor includes purposes such as Relief to the destitute, orphans or handicapped, disadvantaged women or children, small and marginal farmers or senior citizens in need of aid and what not.

Power of Income Tax Appellate Tribunal (ITAT) to Grant Stay

Muskan Nebhwani

Inputs by: Gaurav Doultani

Supervising CA: Shivangi
Samdhani

Sometimes, the Assessing Officer (AO) disallows certain expenses/deductions taken or makes certain changes in calculation of the total income during the assessment of return which leads to the increment in total income of the assessee. Due to this increment, a demand notice is served to assessee for deposition of additional tax amount raised in assessment.

*“Nishpaksh
Sulabh Satvar
Nyay”
Means
Impartial,
Easy & Speedy
Justice*

Time Limit for payment of Tax:

Sec
220(1)

- The amount of such tax shall be payable by assessee within a period of 30 days of service of notice

Sec
220(2)

- In case where payment is not made within 30 days, interest shall be payable @1% for every month or part of the month of the delay



However, the assessing officer may extend the period for payment of tax on an application filed by the assessee.

What if assessee is not happy with the Order and resultant Demand?

At times the assessee may not be satisfied with the order passed by the AO. As measure of remedy, the assessee may file an appeal against the order of AO before the Commissioner of Income (Appeal) Tax i.e. CIT(A) and, thereafter, before ITAT if permitted under the law.

What will happen to demand if appeal is pending?

Demand shall be still payable. However, assessee can file “Stay of Demand”.

Assessee be like:



Abhi maza ayega na bhidu

What is Stay of Demand?(Kyaaa hai ye, kyunn hai ye...)

Stay of Demand is a benefit given to assessee as he will not be required to deposit the entire amount of outstanding demand till the disposal of appeal.

Who can grant Stay of Demand?

Sec 220(6) of the Act, provides that AO has the power to grant stay.

Sec 254(2A) of the Act, provides power to ITAT to grant stay.

Whether assessee will be treated as assessee in default as payment has not been made within 30days but stay is obtained from ITAT?

He will be treated as assessee in default and interest u/s 220(2) shall continue to be levied.

However, no recovery shall be made till the validity of Stay Order.

Powers of ITAT to Grant Stay:

Finance Act, 2020 has made two amendments to proviso to section 254(2A) of the Act. The relevant extract of the amended provisions to section 254(2A) of the Act is reproduced and compared as under:

Particulars	Provisions Prior to Finance Act,2020	Provisions after Finance Act, 2020
Basic principal for granting stay of Demand	ITAT may grant stay after considering the merits of the case(facts of the cases) and accordingly pass an order for stay.	ITAT may after considering the merits and subject to collection of 20% of outstanding amount may pass an order for stay.
Extension of period	If the appeal is not disposed off within the period specified, the ITAT may extend the period of stay on an application filed by the assessee, subject to the condition that the total period including such extension does not exceed 365 days	If the appeal is not disposed off within the period specified, the ITAT may extend the period of stay on an application filed by the assessee and has complied with the condition referred to in the first proviso, may extend the period subject to the condition that the total period including such extension does not exceed 365

		days
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In nutshell, we can conclude that the condition of depositing 20% of outstanding demand is mandatory to be fulfilled, then only ITAT can grant stay and allow extension (if required) now.



- Amount of Tax
- Interest u/s 234A, 234B, 234C and 220 (2)
- Penalty, if any

Is recent amendment curtailing the Powers of The ITAT?

In recent past there have been many discussion over this amendment. Few people are of the view that the amendment is not constitutionally valid because of the following reason:

1. Independence:

Before such amendment, the granting of stay was decided by the tribunal considering the facts available before it. The amendment directs a judicial body to adjudicate matter in a particular manner i.e. 20% paisa do aur stay lo...

Facts of the cases be like:



2. Arbitrary and unreasonable:

Even in most deserving cases where tribunal itself finds it fit to grant 100% stay, it would not be able to. The purpose of appeal would stand frustrated. The remedy of stay would not remain an effective and efficacious remedy anymore.

3. No proper reason assigned:

Where the amendment was introduced, no specific reason for bringing the amendment was explained in Finance Bill, 2020.

In spite of the above issues the provisions remain valid as on today and are not stuck down by any court of law.

It is worth noting that in the recent decision of Hon'ble Mumbai ITAT in the case of **Hindustan Lever Limited vs Deputy Commissioner of Income Tax Circle 1(1)(1), Mumbai SA No. 116/Mum/2022** held that ITA No. 2125/Mum/2022, the provision of 254(2A) as amended are valid.

The Hon'ble Tribunal did not find that its power has been diluted /curtailed or narrowed down.

The tribunal is a creature of the statute and therefore, held that it cannot question the reasonableness of the provisions and ignore statutory provisions. Hence, it declined the stay application filed before it where the assessee failed to deposit 20% of the outstanding demand.

Let's understand the provisions of stay with an example. Babuchak, an assessee seeks a stay on recovery of income tax demand and interest thereon aggregating to Rs. 5,00,000/-raised by AO and confirmed by CIT(A) for A.Y.2019-20.

Now in order to obtain stay Babuchak would have to deposit 20% of the outstanding demand i.e. Rs. 1,00,000/- (5,00,000*20%) and then explain to the tribunal that his case has strong merits.

Conclusion:



The only silver lining with this proposal would be that the assessee will not in a position to opt for not making payment of 20% of outstanding demand. On the other hand, tribunal will not be in position to grant stay on the basis of facts and considering the difficulties faced by assessee. AO will take all the steps to recover taxes.

Deemed Dividend under Section 2(22)(e)

Naman Jhanwar

Supervising CA: Rakesh Kedia

Inputs by: Harsh Agarwal

Companies are required to pay tax on its income like any other assessee. When

*“Tu
dividend
hai, tujhe
pata nhi
hai, lekin
tu hai”.*

profits of the company are distributed to shareholders by way of dividend, such dividend income is taxed in the hand of shareholder as income from other sources.

To avoid this taxation in the hand of shareholders, the companies are tempted to distribute its profits by way of loan instead of dividend.

To curb this possible tax evasion, the government inserted section 2(22)(e) whereby, if, the company pays any loan or advance to a shareholder who is beneficial owner of shares having more than 10% of voting rights, then such loans or advances shall be treated as deemed dividend, to the extent of which the company possesses accumulated profit up to the date of payment.



The said provision is not applicable in case where public are substantially interested in the company. In other words, it is applicable only in the case of closely held company.

Where the closely held company pay loans or advance to any person, in which such shareholder has substantial interest, then such loan/advance shall also be treated as deemed dividend.

As per explanation 3 to section 2(22)(e), person shall be deemed to have substantial interest in a concern if he at any time during the previous year, has beneficial interest and such interest, is not less than 20% of the income of such concern.

Any payment by closely held company on behalf or for the benefit of any such shareholder, will also be treated as deemed dividend under section 2(22)(e) of the Act.

For example, Mr. X is holding 11% voting rights in XYZ Pvt Ltd. He received Rs. 10Lacs as advance from the XYZ Pvt. Ltd. Such advance was returned by Mr. X to XYZ Pvt Ltd within 5 days. Accumulated profit i.e. General Reserve and Profit &

Loss Account showed credit balance of Rs.50,50,000 on the date of such advance. .

Such advance received by Mr. X shall be considered as Deemed Dividend in the hands of Mr. X u/s 2(22)(e) of the Act.

TDS on Deemed Dividend

In case, any loan or advance falls in the ambit of deemed dividend, then section 194 will also come into force and company will be required to deduct TDS on such dividend u/s 194.

Auditor's responsibility for reporting under clause 36(A) in Form 3CD:-

Under clause 36(A) of Form 3CD, Tax Auditor is required to report details of amount received in nature of deemed dividend.

Exclusion

Any loan or advance by closely held company in the ordinary course of business, where lending of money is the substantial part of the company business, will not be part of dividend under section 2(22)(e).

the assessee carried the matter before the CIT(A). Before the CIT(A) the assessee claimed that he stood as a guarantor for some of the loan facilities taken by the company and had also pledged his personal property to the bank to borrow money for the company. Relying upon the judgment of the Jurisdictional High Court, the assessee submitted that provision of section 2(22)(e) of the Act related to deemed dividend would not be attracted. The Tribunal observed that the Jurisdictional High Court under similar circumstances has held that compensation paid to the assessee for keeping his property mortgage on behalf of the company to avail the benefit of loan is not hit by the provisions related to deemed dividend within the meaning of Section 2(22)(e) of the Act. It was observed that the fact that the assessee had given his personal property as collateral security for enabling the company to obtain loan and other credit facilities was not disputed. Therefore, following the proposition of law as laid down by the Jurisdictional High Court the Tribunal upheld the order of CIT(A) and dismissed the appeal filed by

Some of the judgement in the context of deemed dividend are discussed as under: -

Situation 1:

[Vikram Krishna v. PCIT (2020) 114 Taxman.com 197 (SC)]

Mr. X, director of C Pvt Ltd, holding 50% of shares, received advance of Rs.50Lac for sale of Land to company. But sale agreement could not be executed. So amount received was refunded to company.

Assessing officer made addition to Mr. X's income u/s 2(22)(e) in respect of advance received from company.

Hon'ble Delhi High Court held that the advance given by C Pvt. Ltd. To Mr. X shall be treated as Deemed Dividend u/s 2(22)(e).

After High Court Judgement, SLP has been filled before the Supreme Court, which was dismissed by the Supreme Court.

Situation 2:

[CIT v. NS Narendra (2021) 129 taxman.com 335 (Karnataka)]

Mr. A owned a land that was offered as collateral security for mortgage against credit facility availed by N Pvt Ltd. Later on company granted loan to Mr. A against the security extended to the company.

The Assessing Officer was of view that the amounts received by Mr. A from the

company was liable to be taxed under section 2(22)(e) as deemed dividend.

Hon'ble Karnatka High Court held that the loan or advance given in return for an advantage conferred upon the company by such a shareholder could not be treated as deemed dividend u/s 2(22)(e).

Situation 3:

[Pallava Resorts (P.) Ltd. v. Income-tax Officer (2022) 143 taxman.com 208 (Chennai – Trib.)]

NAV Private Limited holds 70% of shares in its subsidiary company VRS Private Limited. NAV Private Limited transferred Rs.1.50 Crore as advance for expenses of subsidiary company. The Assessing Officer treated such advance as deemed dividend.

Tribunal held that transactions between subsidiary company and holding company were in the nature of current account and not in the nature of advances. Hence it does not fall in the ambit of deemed dividend u/s 2(22)(e) of the Act.

Situation 4:

CIT vs Amrika Singh ITA No. 347 of 213

Forte Pvt Ltd gave advance to its shareholder for installing plant & machinery at the shareholder's premises to enable him to do the job work for the company.

It was held that assessee was able to prove business expediency for such advance extended to him. Such payment was not covered under section 2(22)(e) of the Act.

Situation 5:

CIT vs. Atul Engineering Udyog [2014] 51 taxman.com 569 (Allahabad)

Crown Pvt Ltd, received security deposit against the use of electricity generators from FNB Pvt Ltd, which is a sister concern of Crown Pvt Ltd. FNB Pvt. Ltd. used such generators and supplied electricity to Crown Pvt Ltd, at concessional rates.

It was held that the security deposit made by FNB Pvt. Ltd. to Crown Pvt Ltd was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) of deemed dividend.

Central Board Circular dated 12/6/2017

Central Board in its circular dated 12/6/2017, considering the various judgement, directed that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of word 'advance' in section 2(22)(e) of the Act.

Conclusion

It can be concluded that this section aims to discourage the practice of transferring funds from a company to its shareholders in the form of loan or advances in order to avoid the payment of tax. However, loans or advances in the ordinary course of business will not be considered as deemed dividend u/s 2(22)(e) as held by various courts and confirmed by CBDT also.

Analysis of “Goods” for 194Q Applicability

Nandini Bhargava

Inputs by: Khushi Agarwal

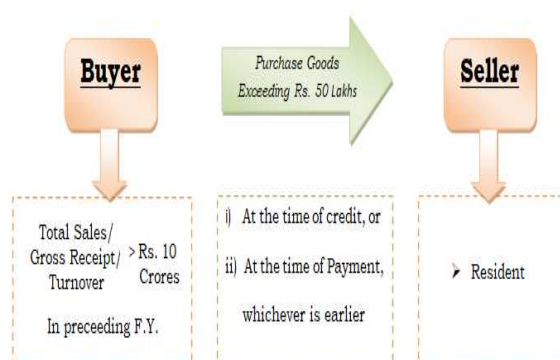
Supervising CA: Rohan Sogani

The Finance Act 2021 inserted a new Section 194Q, w.e.f. 01.07.2021, requiring

“Is it a coincidence or an irony that TDS and Tedious sound similar?”

Tax Deduction at Source by the buyer on the purchase of certain goods. Before understanding the scope of “goods” covered under such

Section, let us have an overview of the provisions of Section 194Q.



Applicability of Section 194Q, considering the residential status of the Buyer and the Seller is as under:



Buyer	Seller	Applicability of Sec. 194Q
Resident	Resident	Yes
Resident	Non-Resident	No
Non-Resident	Resident	No

However, the section does not provide clarity on what comprises of ‘GOODS’. Even the Income Tax Act, 1961, does not define ‘goods’.

Deciphering the scope of ‘GOODS’ – A Complex Task

So, in absence of any definition of ‘goods’, what shall be construed as a purchase of goods?

The scope and ambit of ‘goods’ has always been a contentious issue from a taxation perspective.

The Sales of Goods Act, 1930 (“SOGA”) is a specific statute that deals with the ‘sale of goods’. The term ‘Goods’ has been defined under Section 2(7) of SOGA. The definition

starts with the word ‘means’, suggesting an exhaustive definition of goods under SOGA. Thus, goods as per SOGA means:

- Every kind of movable property;
- Including:
 - stock and shares,
 - growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale

- Excluding actionable claims and money.

Subsequent to the introduction of Section 194Q, CBDT, *vide* Circular No. 13 of 2021, dated 30th June, 2021, clarified on what shall be excluded from the purview of “Goods”. The said Circular (“Circular No. 13”) has been discussed at appropriate paras as set out hereinafter.



Applicability of Section 194Q in Certain Scenarios

Let us now look at the detailed analysis of some of the items covered under the definition of ‘goods’ and check the applicability of 194Q on them.

i. Purchase of Capital Goods:

Since “goods” means every kind of movable property, subject to certain inclusions and exclusions, Capital Goods also fall within the scope of this definition. Hence, TDS is to be deducted on the purchase of Capital Goods.

ii. Purchase of Immovable Property by a Real Estate Developer:

Immovable Property is outside the definition of “Goods” under SOGA. Thus, immovable property shall not be treated as ‘goods’. Consequently, the TDS shall not be deducted on the purchase of immovable property by a Developer.

Attention is also drawn towards Section 194 IA, which specifically requires TDS to be deducted in case of purchase of Immovable Property above a particular limit, by any person.

Although there would not be any applicability of 194Q, but TDS will have to be deducted by any purchaser, including a Real Estate Developer, on purchase of Immovable Property.

iii. Purchase of Securities, including Equity Shares:

Under SOGA, stock and shares are included in the definition of “goods”.

Now the question arises whether in case of purchase of securities, there would be any applicability of Section 194Q.

In this regard, CBDT has issued a Circular to provide guidelines for

applicability of Section 194Q on purchase and sale of shares and other securities through recognized Stock Exchange.

It has been clarified that there would be **No Applicability** of this Section on purchase of shares through recognized Stock Exchange for the reason that there is no direct contract between the Buyer and the Seller.

Further, transactions entered through recognized Stock Exchange located in International Financial Service Centre (IFSC) have also been exempt.

Since stocks and shares are covered in the definition of goods, transactions in **Unlisted Securities**, including shares, would get covered under the provisions of Section 194Q.

iv. Transaction in Electricity:

Section 194Q provides for the deduction of tax on the payment made for the purchase of goods. The Supreme Court in the case of *State of Andhra Pradesh v. National Thermal Power Corporation (NTPC)* (2002) 5 SCC 203, held that electricity is a “Movable Property” though it is not tangible. Hence, it is covered in ‘goods’. Further, the Customs Tariff Act has covered ‘Electricity’ under heading 2716 00 00, which also clarifies that Electricity is considered as “Goods”. Thus, it can be concluded that the tax would have to be deducted from the payment made in respect of the purchase of electricity.

A transaction in electricity can be undertaken either by way of direct

purchase from the company engaged in generation of electricity or through power exchanges.

CBDT, *vide* Circular No. 13, has clarified that transaction in electricity, renewal energy certificates and energy saving certificates traded through power exchanges registered under Regulation 21 of CERC shall be out of the scope of TDS under the provision of Section 194Q.

Thus, Buyer will be liable to deduct tax u/s 194Q on electricity purchased from JVVNL, Adani Electricity, Tamil Nadu Generation and Distribution Corporation Limited, etc.

v. Purchase of Software:

Softwares are generally of two types, one which is a customized software, customized to the requirements of the end user or the purchaser, and the other being Off-The-Shelf software, wherein no or minimal customization is done by the seller of such software.

In case of customized software, there is involvement of technical services, as the same is customized for the purchaser looking into his needs and requirements. Accordingly, the same is covered under Section 194J or under Section 195 read with Section 9, if the payment for software is made outside India to a non-resident.

However, an Off-The-Shelf software or Canned software does not include any such customization.

In this regard, attention is drawn towards the decision of Honorable Supreme Court in the case of *Tata Consultancy Services v. State of A.P* [2004] 141 Taxman 132 (SC), wherein it has been held that Off-the-Shelf computer software are 'goods' and as such assessable to sales tax..

Accordingly, Off-The-Shelf software or Canned software are covered in the definition of "Goods." Hence, Section 194Q would become applicable and there would be no applicability of Section 194 J or Section 195, read with section 9 on purchase of such software.

vi. Amount Advanced as a Loan:

The deduction under Section 194Q is to be made at the earliest of payment or credit for the purchase of goods. Since the loan advanced is not a payment towards the purchase of goods, it shall remain outside the purview of this provision.

Hence, there is no requirement to deduct TDS on loan advanced.

However, if at any future date, such loan amount is settled against purchase of goods, the liability to deduct TDS shall arise. The tax shall be deducted on the date on which parties agreed to adjust the loan amount against the outstanding liability.

vii. Purchase of Goods by one Branch from Another:

The TDS under Section 194Q is required to be deducted by any person,

being a buyer, responsible for making payment to the seller for the purchase of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase. The condition of purchase is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.

viii. Works Contract if Single Invoice issued:

If a single invoice is issued for works contract, without any bifurcation into value of goods and services, a question then arises whether the provisions of Section 194Q would be applicable on the invoice amount?

Section 194Q (5)(a) provides that the provisions of 194Q shall not be applicable if tax has been deducted under any other Section of the Act.

Section 194C provides to deduct TDS on the whole invoice value, if single invoice is issued for Works Contract.

Hence, since TDS is deducted under another section (i.e. 194C) on the full invoice amount, so TDS under 194Q is not applicable.

ix. Transfer of Goods for the purpose of Testing to Third Parties:

At times, there are cases wherein goods are sent for testing purposes to third parties, before they are actually supplied to the customer. Now the question arises that when there is transfer of such goods to the testing agency for the

purpose of testing, would there be any applicability of Section 194Q or not.

Section 194Q provides that buyer shall deduct TDS on the purchase of goods. Considering that the goods have been transferred for the purpose of testing and no actual purchase made, this section will not apply.

For instance, if any Company engaged in manufacturing of transformers, subsequent to manufacturing a particular transformer, sends it to any agency for the purpose of testing, there would not be any requirement for deduction of tax at source under Section 194Q.

x. Additional, allied and out-of-pocket expenses:

When these expenses have been reflected in the purchase invoice itself, these should form part of purchase value. However, if these are charged through a separate invoice, it should not form part of purchase value.

To conclude the topic, the government's intention in introducing this Section is to create a trail of high-value sales and purchases of goods. There are several additional provisions that allow for the deduction of tax at source on various transactions; however, the deduction of tax on the purchases of goods has been made relevant by introducing Section 194Q into the Income Tax Act of 1961.

TDS under Section 194R- Certain Instances

Narayan Gagar

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Supervising CA: Rohan Sogani

Finance Act, 2022 inserted a new Section 194R in the Income

Tax – Tax Act, 1961 (“ITA”), with effect from 1st July 2022. This section was inserted to bring to the forefront, incomes which were covered

under Section 28(iv). Section 28(iv) states that all benefits and perquisites received in course of business and profession should be chargeable to tax under the head “Profit and Gains of Business and Profession”.

Uptill now, Section 28(iv) had seen no or minimal reporting, even though benefits and perquisites, on a large scale, were received by assessee, during the course of business or profession. This is for the reason, that since, such benefits or perquisites were being transferred in kind, through mechanisms other than usage of banking channel, such transactions missed the radar of the Income Tax Department. To plug this gap, Section 194R was introduced.

Section 194R states that any person providing, any benefit or perquisite to a resident, whether in cash or in kind, in course of business or profession shall



deduct tax at source (“TDS”) @10% on the value of benefit or perquisite provided in course of furtherance of business. This section is applicable only when benefit or perquisite is provided in course of business or profession of the recipient.

For instance, when a doctor provides free medicines to his patients, then Section 194R would not be applicable as the recipient, i.e. the patient doesn’t receive the benefit, i.e. free medicine, in the course of his business or profession. On the contrary, if a Pharmaceutical Company provides free medicines or benefits/perquisites, such as free trip to medical consultants/doctors, then there would be applicability of Section 194R as such free medicines/benefits in the form of free trip is received by the medical consultant/doctor, in the course of his medical profession.

Now, where the benefit or perquisite is wholly in kind or partly in cash and partly in kind but cash is not sufficient to meet the liability of tax in respect of whole of such benefit or perquisite the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, has to ensure that tax required to

be deducted has been paid in respect of the benefit or perquisite

For instance, where benefit or perquisite is provided in kind such as medicines provided to medical consultant then TDS on such benefit or perquisite should be deposited before releasing the benefit.

Section 194R is not applicable in case where the value or aggregate of value of the benefit or perquisite provided or likely to be provided during the financial year does not exceed **twenty thousand rupees.** Accordingly, for any Financial Year, if the benefit or perquisite provided is greater than Rs. 20,000, then there would be applicability of Section 194R. However, if FY 2022-23 is considered, since Section 194R has been made effective from 1.07.2022, benefits/perquisites provided prior to such date would not be considered for the purpose of the aforementioned threshold.

For instance, specifically for FY 2022-23, a Pharmaceutical Company provided benefits to doctor of Rs. 2000 every month from 1st April 2022 till 31st March 2022 and gifted a watch of Rs.3000 on 31st March 2022. While calculating whether the aggregate amount of gift exceeded Rs.20, 000 or not, the amount gifted in month of April, 2022 to June, 2022 will not be considered. Accordingly, the benefit/perquisite said to have been provided as per Section 194R would be Rs. Rs.18, 000+Rs. 3000, i.e. Rs. 21,000. Thus, the limit will be exceeded and the Pharmaceutical Company would be required to deduct TDS on the whole amount of Rs. 21,000 @ 10% i.e.Rs.2,100. Since, cash is not sufficient to meet the liability of TDS;

accordingly, before releasing the benefit/perquisite, Pharmaceutical Company would be required to ensure that TDS under Section 194R is deposited.

Who will be treated as a person responsible for providing benefits or perquisites?

Every person who has agreed to provide benefits and perquisites to third party excluding the individual or Hindu Undivided Family (HUF) whose turnover does not exceed Rs.1 Crore in case of business and Rs.50 Lakh in case of profession. However, this provision shall not apply to government entity.

Who will be considered as Payee?

Every resident except the following will be considered as payee:

1. In case of Employer-Employee Relationship Section 194R will not be attracted and TDS will be deducted under Section 192.
2. In case recipient of benefit/perquisite is Non-Resident then TDS will be deducted under Section 195 and not under Section 194R.
3. In case benefit/perquisite is not provided in course of business or profession then Section 194R will not be attracted.

How the benefit or perquisite will be valued?

The valuation of benefit or perquisite will be at Fair Market Value and GST will not be

included in valuation of benefit/perquisite. In certain other cases, it will be valued as follows:

1. Where the benefit/perquisite is purchased before providing the benefit/perquisite then it will be taxable at purchase price.

Example - Star hospitals provided flight tickets of Rs. 50,000 to Doctor A, consultant of Star Hospitals, then the TDS @ 10% will be deducted on the purchase price of tickets i.e. Rs 50,000.

2. Where the benefit/perquisite is provided by manufacturer of such benefit/perquisite then TDS will be charged on the amount it charges from its customer.

Example- a manufacturer Star Labs Ltd. provided free samples of its medicine to doctors then TDS will be deducted on the amount which Star Labs Ltd. charges from its customer for the medicine.

Whether Sales Discount, Cash Discount and Rebates are to be treated as benefits or perquisites?

As per **Circular No. 12 of 2022** Sales Discount, Cash Discount and Rebates allowed will not be treated as benefits or perquisites provided under Section 194R.

Example – Sun pharma provides medicine of Rs. 25,00,000 to Star Hospitals at a price of Rs. 20,00,000 then discount provided by

Sun pharma will not be treated as benefit or perquisite under Section 194R. However, in case these medicines were provided for free then it will not be treated as discount and seller will be liable to deduct tax under Section 194R.

Whether reimbursement given for out-of-pocket expenses will be treated as benefit or perquisite?

Any reimbursement to Service Provider for out-of-pocket expense such as travelling expenses, lodging expenses etc. is provided in course or furtherance of business or profession then it will be treated as benefit provided under Section 194R. However, in the following cases reimbursement will not be treated as benefit under Section 194R:

1. The invoices for out-of-pocket expenses are obtained in name of Service Recipient.
2. A person acts as a **pure agent** (as defined in GST) then it will not be treated as benefit or perquisite under Section 194R.
3. If TDS on out-of-pocket expenses are chargeable for TDS under Section 194C and 194J.

Example- Star Hospitals requested Dr D who is a Medical Consultant to visit there Hospital. During such visit Doctor incurred Rs. 60,000 as out-of-pocket expenses, travel and stay, which were to be reimbursed by the hospital. The invoices amounting to Rs. 25,000 were directly in the name of the Hospital and rest of the invoices of Rs. 35,000 is in the name of Dr. D. Accordingly,

the amount Rs. 35,000 as reimbursement paid by the hospital will be treated as benefit under Section 194R and TDS will be deducted @ 10% on Rs. 35,000. No TDS under Section 194R will have to be deducted on Rs. 25,000, whose invoices are directly in the name of the Hospital.

Whether any conference conducted by a manufacturer to educate its dealers about the product of the manufacturer treated as benefit or perquisite?

Any expenditure incurred by the manufacturer for conducting a conference for the prime object of:

- (i) New product being launched.
- (ii) Discussion as to how the product is better than others;
- (iii) Obtaining orders from dealers/customers;
- (iv) Teaching sales techniques to dealers/customers;
- (v) Addressing queries of the dealers/customers;
- (vi) Reconciliation of accounts with dealers/customers.

However, in the following cases expenditure for Conference will be treated as benefit or perquisite:

- (i) Where conference is held with an object for providing benefit/perquisite;
- (ii) Expenditure is incurred for providing leisure trip to dealers;
- (iii) Expenditure incurred for family member of dealers attending the conference;

- (iv) Expenditure incurred on stay of dealers which was for days prior or succeeding stay of the conference.

Example – Star Labs held a 5 days conference for its medical consultants/doctors with an object of addressing their queries. This conference was conducted in Pune and consultants were provided travelling and lodging facilities in such case the object can be treated as resolving queries and all the expense will not be treated as benefit. However few consultants stayed for 10 days and Star Labs paid for their stay, now the amount paid for 5 days will be treated as benefit and TDS will be required to be deducted.

Conclusion: Introduction of Section 194R has been a master stroke on the part of the Income Tax Department. This has given a new life to Section 28(iv). As discussed at the start of the article, many of the assesses till now were deriving huge benefits, from their clients/customers, in the course of their business/profession, without reporting such benefits, as their income. Section 194R would be a trigger point for them to disclose incomes covered under Section 28(iv), as the TDS deducted under Section 194R would now get reflected in Form 26AS forcing correct disclosure of such income.

Charitable Trust - Managing Application of Income on Actual Payment Basis

Nikhil Agarwal

Inputs by: Anushika Garg

Supervising CA: Naresh Kumar
Kabra

We know that tax is one of the major sources of government revenue. But, Charitable Institutions (CIs) are enjoying a huge tax benefit for a long time.

*“Ab toh sach
mai kharida
karna hi
padega”*

The CI covered under section 10(23C) and section 11 of the Income Tax Act, 1961 are exempt from paying income tax, after fulfilling certain conditions.

Key Abbreviations	
Abbreviation	Full-form
AOI	Application of Income
CI	Charitable Institutions
F.Y.	Financial Year
BOA	Books of Accounts
CFS	Cash Flow Statement
WIP	Work In Progress



The CIs have to apply 85% of their income towards charitable objectives, however before the **introduction of the Finance Act, 2022**; there was no specific condition in the law that this application of income has to be calculated on an accrual basis or actually paid basis. It was the choice of CI, if CI is maintaining its Books of Accounts (BOA) on an accrual basis, then 85% of income was to be applied on the accrual basis and if BOA is maintained on a cash basis, then 85% of income was to be applied on actual payment basis.

Let's understand the above scenario with an example.

For example, Dayalu Trust is maintaining its BOA on the accrual basis and the following is the data for F.Y 2021-22

Particular	Amount
F.Y. 2021-22	
Income(A)	5,00,000
Exemption(15%) u/s 11(B)	75,000
Expenditure incurred (actually paid in F.Y 2021-22) (C)	3,25,000
Expenditure incurred (booked in F.Y	1,00,000

2021-22 but paid in F.Y 2022-23) (D)	
Total Expenditure (C+D)	4,25,000

In the above example, AOI is 85% which meets the threshold for claiming tax exemption, and hence the Tax payable is Nil.

However, with the introduction of the **Finance Act, 2022**, an amendment has been brought which has completely changed the law of Taxation of CIs which was in existence since its inception. Now, only those expenses which have been actually paid during the relevant F.Y. will be considered for the calculation of AOI to the tune of 85%. [Explanation 3 to clause (23C) of section 10 and Explanation to section 11].

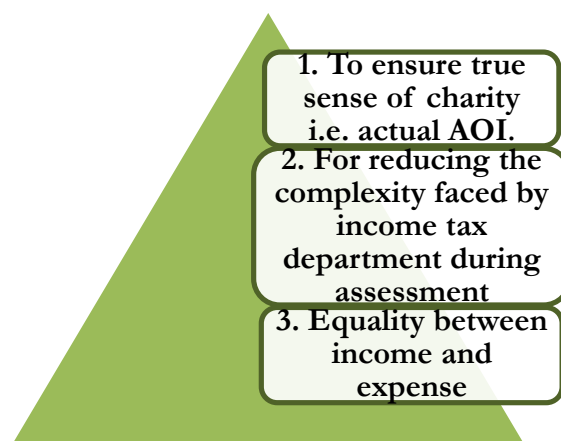
Now referring to the same example but considering only those expenses which are actually paid for the calculation of AOI:

Particular	Amount
F.Y. 2021-22	
Income(A)	5,00,000
Exemption(15%) u/s 11 (B)	75,000
Expenditure incurred (actually paid in F.Y 2021-22) (C)	3,25,000
Expenditure incurred (booked in F.Y 2021-22 but paid in F.Y 2022-23) (D)	1,00,000
Total Expenditure (C+D)	4,25,000

In the above example, the expenditure actually paid is Rs. 3,25,000. Hence, AOI is 65% which does not meet the threshold required to claim tax exemption. There is a shortfall in AOI which can be corrected through other mechanisms without paying any amount of Tax.

Par iss amendment ki zarurat kya hai Bhai???

The following are the benefits cum reasons why the changes are being incorporated into the law.



1. **To ensure a true sense of charity i.e. actual AOI** – What does charity means in reality – “*the booking of the expenses only or actually paying amount towards the charitable purpose?*”

Before this amendment, trusts had a practice of booking the expenses by increasing the payables in their BOA instead of actually paying those expenses. Also, these payables remained outstanding in the BOA of CIs for a long time.

Now, only those expenses which have been actually paid during the relevant F.Y. will be considered for the calculation of AOI

2. For reducing the complexity faced by the Income Tax Department during assessment –

As different CIs follow different methods of accounting i.e. mercantile basis or cash basis, it was creating a problem for the department to calculate AOI across different cases.

3. Equality between income and expense –

Application shall now be considered only for the expenses actually paid but what about income which has not been received, how can CI spend the money when CI has even not received the same? For the income side, the CI always has the option to file Form 9A as per section 11(1) of the Income Tax Act, 1961, for that part of income that has been accrued but not received by the institution or could not be spent due to some other reasons.

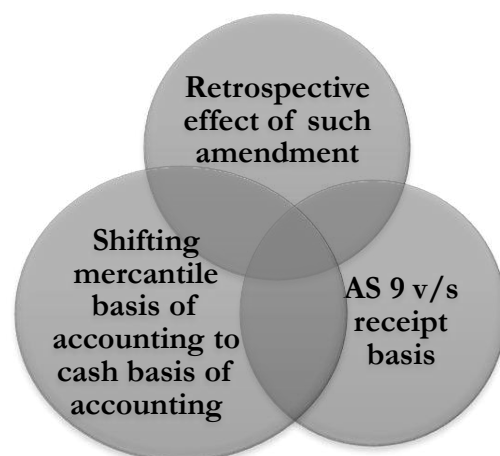
Also, according to Section 11(2) of the Income Tax Act, 1961, the CIs can file Form No. 10 and make an investment in modes specified u/s 11(5) to set aside income for greater Capex to be undertaken in the future, this option is generally taken if 85% of the application is not achieved by the institution. But for the expenses, there are no such provisions, i.e. to fill any form for that part of expenses that are not

actually paid, therefore such an amendment has been made.

Now this amendment will create problems for those CIs who are maintaining their BOA on accrual basis because they were claiming income tax exemption benefits without actually paying 85% of income.

However, those CI which are maintaining BOA on actual payment basis, are already in the practice of availing Income tax benefits only when they have actually applied 85% of their income. So, they are not affected by this amendment.

Par Benefits se zyada toh samasyaein nazar aa rahi hai!!



Jab CI ko is naye law ke bare mai pata chala:



Every coin has two sides. In the same manner, this amendment also has some drawbacks. Let's put some light on these drawbacks:

- **Retrospective effect of such amendment** – Finance Act, 2022 was passed in the Lok Sabha on 25/03/2022. There is a misconception that since this amendment is brought through Finance Act, 2022, it should be applicable from A.Y. 2023-24. **Instead of this, the amendment is applicable from A.Y 2022-23 i.e. it is applicable for F.Y 2021-22.**

Because of this, the CIs have to face many difficulties as they have already prepared their BOA on accrual basis for 11 months and no such calculation has been done in advance as required by the new law.

Author's View: Many of the CIs have filed their return for the F.Y. 2021-22 on accrual basis which is totally against the law because they are not aware of the amendment and it creates a lot of litigation matters from the department side for many of the unknown

issues. The CIs should be prepared for such litigations in advance.

- **Shifting from the mercantile basis of accounting to the cash method of accounting** – As per the amendment, the CIs are forcefully required to maintain their BOA on actual payment method in order to calculate AOI from BOA itself.

Author's View: The BOA can be maintained on accrual basis then calculation has to be prepared separately in addition to the BOA for calculation of AOI on actual payment basis, as per the amendment under discussion.

Itna bhi aasan nahi hai, jitna dikh raha hai, kyuki:



- **Proper tracking of all expenses** – The CIs are required to keep proper track of all the expenses whether revenue or capital, as regards the year in which these expenses or assets are booked in the BOA and in which years the payment for the same has been made.

- **Ensuring Cash Flow Management** – The CIs have to ensure proper management of cash inflows and outflows i.e. CFS. Although it is not mandatory in the case of CIs, however, as per the new law it seems that CIs must prepare CFS for strict compliance required by the new law.

Author's View: It is suggested to the CIs that from now onwards, they should discharge their liabilities in the same year in which it has been booked.

As the preparation of a cash flow statement is not compulsory under the law, it can be prepared in the following format instead of the actual format of CFS (used by Companies)

Particulars	Amount
Opening liability (can be claimed as AOI) as on 01.04.20XX	XXX
Add: Expenses booked in Income and Expenditure during the relevant F.Y.	XXX
Less: Closing liability (can be claimed as AOI) as on 31.03.20XX	XXX
Net amount paid during the year i.e. AOI	XXXX

Complexity in the law – Section 11(6) of the Income Tax Act, 1961 v/s AOI on actual payment basis:

Section 11(6) of the Income Tax Act, 1961 states that *where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an AOI under this section in the same or any other previous year.*

This section states that depreciation on an asset will not be allowed in the calculation of AOI if the cost of acquisition of such assets has been claimed as an application of income.

Let's discuss an **unforeseen issue** created by the amendment introduced in the Finance Act, 2022 which has a serious impact on provisions of section 11(6). For this, the facts are as under:

Situation 1: Asset purchased through the trust's own funds (i.e. without availing any credit assistance from outside):

- **The facts are as under:**

Cost of Asset purchased	Rs. 1,00,000
Depreciation	10% under SLM

1. When the trust chooses for claiming Capital Expenditure for AOI:

Assuming the whole amount is paid in the year of purchase, the amount paid i.e. Rs. 1,00,000 will be treated as AOI.

2. When the trust chooses for claiming Depreciation as AOI:

Assuming the whole amount is paid in the year of purchase, Depreciation of Rs. 10,000 (Rs. 1,00,000*10%) will be treated as AOI each year for 10 years.

Situation 2: Asset purchased through Borrowed Funds (i.e. by availing credit assistance from either money lenders or Financial Institutions):

- The facts are as under:

Cost of Asset purchased	Rs. 1,00,000
Depreciation	10% under SLM
Rate of Interest	Nil
Amount paid in the year of purchase	Rs. 50,000
Amount of Borrowed funds	Rs. 50,000

1. When the trust chooses for claiming Capital Expenditure for AOI:

Amount paid i.e. Rs. 50,000 will be treated as AOI in the year of purchase and the balance of Rs. 50,000 will be claimed as AOI as and when the Loan is repaid.

2. When the trust chooses for claiming Depreciation as AOI:

In continuation of the above facts, let us consider some additional information as under:

Cost of Asset purchased	Rs. 1,00,000
Depreciation	10% under SLM
Rate of Interest	Nil
Amount paid in the year of purchase	Rs. 50,000
Amount of Borrowed funds	Rs. 50,000
Amount of Loan Installment paid	Rs. 5,000 each year (Repayment starts from the year of purchase itself)

Year	As per Books of Accounts		As per Income Tax Act	
	Carrying Amount of Asset purchased	Depreciation	Cumulative amount paid	Depreciation
1	1,00,000	10,000	55,000	5,500
2	90,000	10,000	60,000	6,500
3	80,000	10,000	65,000	7,500
4	70,000	10,000	70,000	8,500
5	60,000	10,000	75,000	9,500
6	50,000	10,000	80,000	10,500
7	40,000	10,000	85,000	11,500
8	30,000	10,000	90,000	12,500
9	20,000	10,000	95,000	13,500
10	10,000	10,000	1,00,000	14,500

From the above situation (when an asset is partially purchased from borrowed funds), it can be inferred that the recent developments in the law have compelled CIs to forcefully claim Capital Expenditure as AOI on actual payment basis rather than claiming depreciation as AOI since it shall complicate the process of record maintenance. Also, it can be seen from the table above, in any year, the amount of depreciation as per BOA and Income Tax is not equal. In initial years, the amount of depreciation claimed as AOI is lower than the depreciation booked in BOA but in later years, the amount of depreciation claimed as AOI is higher than the depreciation booked in BOA. Hence, if a tie-breaker between BOA and Income Tax isn't achieved, that would result in a constant struggle of reconciliation. However, the total amount of depreciation claimed as AOI is Rs. 1,00,000 which is equal to the total amount of depreciation booked in BOA for 10 years.

For ease of understanding, in framing the second situation, the following assumptions have been taken:

1. Depreciation under the SLM method and not the WDV method has been considered.
2. The loan is considered to be interest-free.
3. No Moratorium period has been considered.
4. Only 1 asset has been purchased during the year

Author's view: In a nutshell, it is recommended that the CIs must think twice before adopting Depreciation as AOI when the Asset is acquired partially through borrowed funds, considering the work culture and style of operating of most of the CIs in India.

Inn sawalo ke jawab abhi aana baaki hai:



Report since the last 10 years or more.

- **A loan is taken to repay an existing loan:** The amendments are being made to the return form, but there are no adjustments available in the return form for repayment of such loan.

- **Income received in advance or any other amount received as a deposit** – There is no provision for adjusting the Advance income received by the CIs, and no form is available for the same, like Income accumulation or deemed application of Income. The answer to the same is still untapped from the lawmakers' side.
- **Expenses paid in advance or if any deposits are made by CIs** – The same situation is in the case of expenses; i.e. what will be the treatment for advance given to the supplier or any deposits made during the year?
- **An issue regarding amendment in Auditor's Report** – As the law has changed tremendously since the last 5 years; some changes have been made in the return form too. However, the format of the Auditor's Report is different than the return form because no change has been incorporated in Auditor's

Changes in Return Form (ITR-7) regarding this amendment:

Let's understand both cases with the help of excerpts from the Return Form (ITR-7):

1. Row G:

G	Amount which was not actually paid during the previous year out of F
----------	--

For ex., Dayalu Trust made purchases of Rs. 2,00,000 from Mr. Patel in F.Y. 2021-22 and made a payment of Rs.90,000 during the same year. The amount of Rs. 1,10,000 has to be filled in G Row as it is not actually paid during the P.Y.

2. Row H:

H	Amount actually paid during the previous year which accrued during any earlier previous year but not claimed as application of income in earlier previous year
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For ex., Dayalu Trust has booked the salary of Rs. 50,000 in the F.Y. 2018-19 and has not utilized such amount in AOI because the CI has already exhausted the limit of 85%. Now, in F.Y. 2021-22, the trust has paid such an amount actually. The amount of Rs. 50,000 has to be reported in H Row and will be included in the calculation of AOI.

Key takeaways of the above discussion – The way forward:

Demanding Systematic Corporate Governance, even for CIs.

Preparation of Cash Flow Management for AOI on actually paid basis.

Robust monitoring and record keeping of liability paid in future v/s claimed as AOI – This will be more typical for capital expenses in comparison to revenue expenses.

Ensure payment of liability at the maximum or reduce the same as on the Balance Sheet Date – It will ensure less complexity for CIs.

The increased complexities involved in accounting and taxation require Institutions to adopt good governance practices.

They need to adopt modern ways of operations and sound legal support.

These all amendments changed the whole scenario, which requires total shift in the working style of these Institutions (CIs), with immediate effect.

Section 10(23C)(vi)- The Way Forward

Nishita Jain

Inputs by: Dhruv Khandelwal

Supervising CA: Naresh Kumar Kabra

The Supreme Court of India in a landmark judgment in case of **New Noble**

*"Paisa to har
koi kama leta
hailekin
TAX
EXEMPTION
kamana sabke
bas ki baat nahi*

Educational Society v/s The Chief Commissioner of Income Tax 1 and ANR ([2022] 143 taxmann.com 276) has overruled its own previous

judgments (American Hotel and Lodging Association v/s CBDT [2008] 10 SCC 509B and Queens Education Society v/s CIT [2015] 8 SCC 47) and addressed many interpretational issues relevant to Educational Institutions claiming exemption u/s 10(23C)(vi) of Income Tax Act, 1961 .

This includes correct meaning of word "solely", clarification on profit motive, compliance with other/local laws and scope and extent of inquiry by Prescribed Authority.

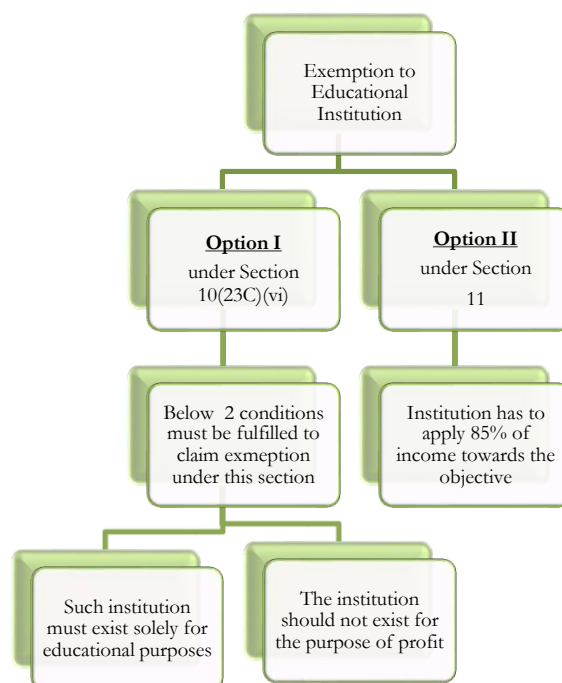
In addition, the Supreme Court (SC) has also explained the meaning and scope of term 'education', permissible activities for



educational institutions, incidental activity etc.

Brief Introduction

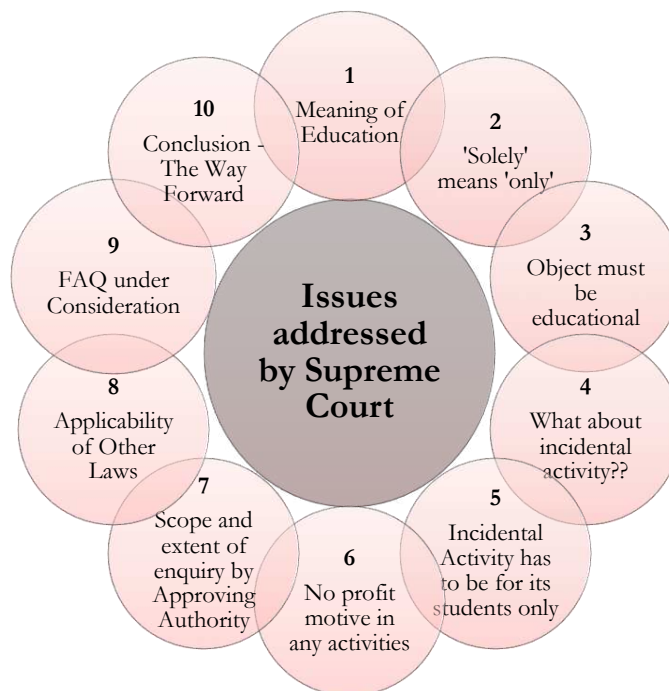
Educational Institutions (Institution) in order to claim exemption under Income Tax Act, 1961 have two options:



It must be looking convenient for Institution to claim exemption u/s 10(23C)(vi).

“Par Kya ye sach me itna aasaan hain??”

Through this article, an attempt has been made to bring the discussion on the following issues addressed by the SC related to Section 10(23)(vi) in the most lucid style:



1. Meaning of Education

Education in its natural sense means any activity which is sought to increase any knowledge.

But while

granting approval to

institution,
meaning of

education
becomes

narrower and

is limited to only formal schooling.

Education means mainstream curriculum – based education and not education as is

broadly or commonly understood.



The SC in its judgment has defined “Education” in narrow sense and has taken the base as explained in *Loka Shikshana Trust v. CIT*, [(1976) 1 SCC 254] as:

“Process of training and developing the knowledge, skill, mind and character of students by formal schooling.”

Education i.e., imparting formal scholastic learning is what the Income-Tax Act provides for under the head of ‘charitable purposes’ u/s 2(15).

2. 'Solely' means 'only'

Institution should be “solely” for the purpose of education.

SOLELY:

The plain and grammatical meaning of the term 'sole' or 'solely' is 'only' or 'exclusively'.

Earlier, Supreme Court in the context of education in following two cases interpreted solely as ‘predominantly’:

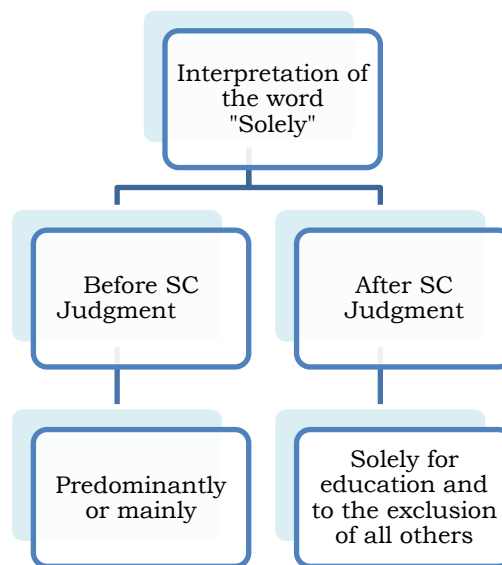
- American Hotel and Lodging Association v CBDT (2008) 10 SCC 509 B)
- Queens Education Society v Commissioner of Income Tax (2015) 8 SCC 47

In above judgments, while determining whether an institution is engaged ‘solely’ for education, the court has considered the objects in a wider sense by applying the predominant test, which means that education should be the predominant object and major activities are around to this object.

However, the meaning and conclusion of both the judgments are overruled by this SC judgment.

The SC has interpreted ‘solely’ as ‘solely for education and to the exclusion of all others.’

The same can be understood through the following chart:



Let's take an example to understand meaning of solely interpreted as “Predominantly”

A school named “Doon School” rented its premises to Election Commission of India (ECI) for organising electioneering activities like voting in its campus. Revenue generated from this activity of renting out of premises to ECI is applied in respect of object of providing education. Here, since the main object of the school is imparting education and revenue from other activities is applied towards the main objective, the school will be eligible to claim exemption.

But now, after SC judgement made on New Noble Educational Society v/s Chief Commissioner of Income Tax 1 and ANR, interpretation of the term “Solely” has become restrictive and any institution u/s 10(23C)(vi) having objects other than education and other than incidental to education shall be denied to claim exemption.

3. Object must be educational

The SC has held that the application of 'predominant object' test was clearly inapt in the context of charities set up for advancing education.

In simple words, all objects of trust, society etc. claiming exemption u/s 10(23C)(vi), must relate to either imparting education or be related with educational activities.

“Toh is interpretation ke baad kya Doon School exemption claim kar payegi????”



Now, the institution rendering service of renting premises of the school to ECI for elections will not be eligible to claim exemption as condition of “existing solely for educational purpose” is not fulfilled.

Further, the institution, even if, has not rented out its premises but has mentioned the renting as one of its objects, then also the institution will not be eligible to claim exemption.

This arbitrary law defies business logic and blatantly ignores dynamic environment where institutions function. This is like turning a blind eye to the practical world, which is full of unexpected threats and opportunities. Interpretation like these would now, make it difficult for any institution to make important decisions and haunt them throughout of the possible tax impact.

4. What about incidental activity??

Institutions undertaking activities 'incidental' to education would be eligible for exemption, that is, institutions may take up other activities in furtherance of education for the benefit of students.

The SC in its judgment described the word '**incidental**' as follows:

The word 'incidental' means according to **Webster's New World Dictionary**:

"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:"

"Something incidental to a dispute" must therefore mean something happening as a result of or; in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it.

Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct."

'Incidental' therefore, means, in the context of the present case, something connected with the activity of education. Such incidental activities alone, in the absence of the actual activity of imparting education by normal schooling and normal conduct of classes, would not suffice for the purpose of qualifying the institution for the benefit of section 10(23C)(vi).

Dealing in text books and journals for school and college students is an incidental activity to education.

“Now, what if Doon School instead of renting its premise is dealing in text books and journals, to kya Doon School exemption claim kar payegi????”

So, Doon School will be eligible to claim exemption as condition of “existing solely for educational purpose” is fulfilled because the activity discussed above is incidental to education.

6. No profit motive in any activities

Institution should not exist for the purpose of profit.

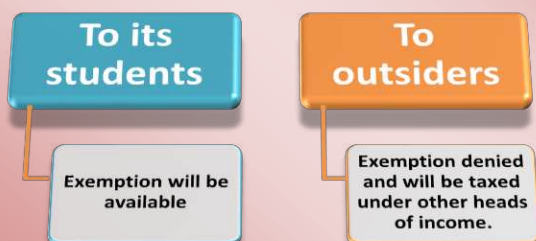


5. Incidental Activity has to be for its students only

The SC judgement also clarified the ambiguity that while imparting education, institution can provide other activities, which are incidental to imparting education like:

- Workshops
- Seminars
- Educational Courses (Relating to computer etc.)
- Hostel
- Summer Camp
- Transportation
- Catering

In this situation, the exemption under 10(23C)(vi) can be availed in the following manner:



The interpretation of Section 10(23C) is that the trust or institution must solely exist for the object it professes (in this case, education, or educational activity only), and not for profit.

However, the seventh proviso of Section 10(23C)(vi) carves an exception to this rule, and permits the trust or institution to record (or earn) profits, provided the ‘business’ which has to be read as education or educational activity that is incidental to the attainment of its objectives.

In simple words, if surplus accrues in any year or set of years per se (when profit is not a motive), it is not a bar, provided such surplus is generated through or incidentally through the course of educational activity.

If, incidentally, while carrying on those objectives, the trust earns surplus, it has to maintain separate books of accounts.

Any “commercialization of education” would result in loss of the benefit of tax exemption, which an institution would otherwise be entitled to claim legitimately as a Charitable Trust.

What all criteria tantamount to “commercialization of education” is the matter of debate and litigation after this SC judgment.

7.Scope and extent of inquiry by Approving Authority

The judgement also clarifies regarding the scope and extent of inquiry to be undertaken by Prescribed Authority (PA) or Commissioner at the time of granting approval u/s 10(23C).

Judgment clarified that while considering the application for exemption u/s 10(23C), the PA or the Commissioner is empowered to call for audited accounts, evidence and other documents to satisfy itself about the nature of income earned and whether it is for education or education related objects of the institution.

The PA cannot be forced to restrict to verify only objects of the institution.

Verification of surplus or profits – criteria for approval

If the surplus or profits are generated in the hands of the assessee applicant in the imparting of education or related activities, disproportionate weight ought not be given to surpluses or profits, provided they are incidental. At the stage of registration or approval, the focus is on the activity and not the proportion of income.

So, if the income generating activity is, per se, part of education, the Commissioner or PA may not reject the application alone on that basis.

8. Applicability of Other Laws

The SC states that the requirement of registration of every charitable institution is mandatory under respective state/local laws while seeking approval. Wherever registration of institution (trust, society, section 8 company, non –trading company etc.) is obligatory under state or local laws, the concerned institution seeking approval u/s 10(23C) should also comply with provisions of such state laws.



As per author's understanding, only 5 states (Rajasthan, Andhra Pradesh, Madhya Pradesh, Gujarat and Maharashtra) have respective state laws for registration of Charitable Institutions in India.

So, if a Charitable Institution is situated in Rajasthan, it has to be mandatorily registered under Devasthan Vibhag as per the requirement of "The Rajasthan Public Trust Act, 1959" (The State Law), irrespective of the fact that there is no such requirement under the Income Tax Act, 1961.

9. FAQ under consideration

Now, do we still think that claiming exemption u/s 10(23C)(vi) is beneficial or Section 12AB?

AUTHOR'S VIEW



After this landmark judgment, institutions will tend to shift from approval u/s 10(23C)(vi) to registration u/s 12AB. This is because due to the following reasons:

- The interpretation of section 10(23C)(vi) now will be strictly restricting the institutions to not do any other activity other than education and other than incidental to education.
- There is no gap between the provisions of both the sections, section 10(23C) and 12AB after Finance Act, 2022.
- The only gap is deemed application of income accrued but not received or not applied for any other reasons u/s 11, which makes 12AB registration more beneficial in comparison to 10(23C).

10. Conclusion – The Way Forward

- This SC Judgment has made institutions to have a total introspection on its purview of activities.
- The Institutions approved u/s 10(23C)(vi) are required to check its objects and if required, amend its objects to ensure only educational activities & activities incidental to education.
- Institutions have to identify income from activities solely for purpose of education and in relation of other activities incidental with educational activities.
- Extent of verification by the AA, for providing approval of 10(23C), now, cannot be restricted to objects only and has significantly increased to multiple folds. They can ask for audited accounts and other documents, as required.
- Institutions are now mandatorily required to comply with the provisions of state law also.
- In order to maintain the lucidity of the article, author has only explained the scenario from the perspective of education as covered u/s 10(23C)(vi), however, the complete article shall verbatim hold true for medical institutions approved u/s 10(23C).

CARO 2020 & Schedule III Impact on I-T Assessment

Piyush Agrawal

Inputs by: Bhumika
Khandelwal

Supervising CA: Shivangi
Samdhani

You must be aware about the applicability
of Companies

*“Kaun kehata
hai kanoon
andha hota
hai”*

(Auditor’s
Report) Order,
2016 (CARO) and
Schedule III on
the financial
statements of a
Company.

Recently, Ministry of Corporate Affairs has notified amendments in CARO, 2016 and Schedule III by the virtue of which CARO 2016 has been amended to CARO 2020. Amendments in CARO, 2016 and Schedule III were notified by MCA on 25th February, 2020 and 24th March, 2021 respectively. In this article we will be seeing the impact of these amendments on Income Tax assessment.

Applicability of CARO 2020 & Amended Schedule III:

CARO 2020 was initially applicable w.e.f. 1st April, 2019 however, its applicability was postponed and was made applicable from 1st April, 2021. Independent Auditor’s Report issued for the F.Y. 21-22 was prepared in



accordance with CARO 2020. MCA has provided 21 clauses in CARO 2020 (divided into 51 sub-clauses) out of which **17 clauses have been substantially amended.**

MCA amended Schedule III with an objective to increase transparency and provide additional disclosures to the users of the financial statements. These amendments were made effective from 1st April, 2021, therefore, applicable to the Financial Statements prepared for the F.Y. 2021-22 and onwards.

Some of the amendments in Schedule III are in line with the amendments prescribed in CARO 2020. Schedule III amendments propelled the makers of the financial statements to provide additional disclosures which were earlier never made and compiled. These amendments in my understanding will not only affect the proceeding before ROC but also Income Tax.

A number of amendments have been prescribed by MCA, however, in this article we will keep our discussion confined to the amendments which would readily call for an I-T assessment.

Overview of Major Amendments:

- Reconciliation statement of quarterly current assets such as Closing Stock submitted to the banks with financial statements to be provided
- Ageing schedule of Trade Payables to be provided in the financials
- Relationship with Struck off Companies to be disclosed in financial statements
- Disclosure of Loans or Advances in the nature of loans granted to promoters, directors, KMPs and the related parties

Reconciliation Statement to be provided in Schedule III and CARO 2020:

Each one of the reader must be aware of the fact that whether it be manufacturing entity or a service sector entity, it requires working capital to meet its day to day operational requirements. Now the question is how do the Companies with low funds manage to meet their working capital requirements? The answer to this question is Loans. Companies take working capital loans from the financial institutions such as Banks. Banks provide loan to the Companies and charge interest on such loan. Apart from charging interest, banks are keen to know the position of the current assets of the Company on quarterly basis to protect their interests. Based on the position of current assets of the Company, banks decide the drawing power. Drawing Power is the limit up to which a Company can withdraw from the working capital limit sanctioned.

For example: Company A needs a working capital loan of Rs.200. Current assets of the Company are of Rs.100. In such a case Banks would not lend Rs.200. Instead, it will decide the drawing power based on the current assets held by the Company. Bank would lend the maximum of $\text{Rs.100} \times 80\% = \text{Rs.80}$. Banks would keep Rs.20 as margin money.

As we have understood the role of current assets in deciding the drawing power and how it can impact the amount of money lent by the banks, now we are going to discuss how the Companies can manipulate availing these limits by overstating their current assets.

Suppose the current assets of the Company as on 30th June i.e. first quarter end of the financial year is of Rs.1000 and Company needs a Working Capital loan of Rs.1200. To meet its working capital requirement, Company will report its current assets as of Rs.1500 in its quarterly statement submitted to Bank.. Based on this value of current assets, bank would lend Rs.1200 ($\text{Rs.1500} \times 80\% = \text{Rs.1200}$).

You are now in a position to judge how Companies can easily manipulate the drawing power and borrow the loans beyond its repaying capacity. This practice of manipulating drawing power has become common in today's era. Banks fail to verify the authenticity of stock submitted to them vide stock statements. Banks rely on the statements submitted by the Companies without any cross verification and extend the credit based on such statements. As a result, Companies are widely taking advantage of this situation and are borrowing beyond its repaying capacity. To curb such practices, MCA vide its amendments prescribed specific disclosure of Current Assets

submitted to the banks and Current Assets as per books of account to be provided for in the financial statements as well as to be reported in CARO 2020.

Now we are going to see the climax of this whole discussion.

Current Assets	Submitted to Bank	As per books	Difference
Stock	Rs.1000	Rs.700	Rs.300

Since the above disclosure is required to be provided for in the financial statements as well as in CARO, it is readily visible to the IT department also. *“BANG BANG, ab Income Tax waale karenge total income mai addition”*.



The I-T department would see the difference as investment in excess stock out of books as per the stock statement submitted to bank and would make an addition as per **section 69 of the I-T Act**.

As per the said section, where the Company has made investments which are not recorded in the books of account, if any, maintained by it for any source of income, and the Company offers no explanation about the nature and source of the investments or the explanation offered by it is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial

year. In our example, the excess stock of Rs.300 would be considered as investments not recorded in books and would lead to an addition. However, if the Company provides sufficient reasons for the deviation in stock as per books and stock as submitted to bank then in that case I-T department after paying due consideration to the reasons for deviation as provided by the Company would not make an addition.

It is worth noting that Hon'ble Punjab and Haryana High Court in the case of *CIT vs Sidhu Rice and General Mills [2006] 281 ITR 428 (P&H)* and Hon'ble Delhi ITAT in the case of *ITO vs Ramesh Chand [2022] 97 ITR (Trib) 421 (Delhi)* held that the Assessing Officer cannot be assumed to make additions only on the basis of statement furnished to third party i.e. bank as the same is without substantial valid evidence of having undisclosed income. Therefore, if no further evidence for undisclosed investments is found, additions if any, made by the Assessing Officer will not be able to stand for long.

In my opinion, drawing power is decided by the banks based on stock statements submitted to them, therefore, the same should be considered as a valid evidence else Companies would easily take benefit of this situation and for drawing more loans will submit inflated figures. However, before making any addition, department should consider the challenges faced by the Company in maintaining stock records. Further, assessee also needs to be really vigilant and conscious as addition can be made and matter is litigative.

Ageing of Trade Payables to be provided in Schedule III:

Disclosure of Ageing of Trade Payables is now required to be provided for in the financial statements. Amended Schedule III has prescribed the format for disclosure of ageing of trade payables as under:

Trade Payables	Less than 1 year	1-2 year	2-3 year	More than 3 years
MSME	XX	XX	XX	XX
Others	XX	XX	XX	XX
Disputed Dues – MSME	XX	XX	XX	XX
Disputed Dues – Others	XX	XX	XX	XX

Readers are requested to pay heed to the column **“More than 3 years”**. Can you believe that in today’s era where businesses have operating cycles of 1-2 years, have creditors outstanding for a period of more than 3 years?? Do you still expect its payment?? No right (exceptions are always there). Likewise I-T department would doubt such creditors outstanding for a period of more than 3 years and consider that such liabilities cease to exist. Also, because of Limitation Act, 1963, which provides that any suit cannot be filed before the court after 3 years for recovery of a sum from a person, the view of I-T department would get firm that the liability ceases to exist. Accordingly, the I-T department would make an addition under **section 41(1) of the I-T Act**.

As per the said section, where an allowance or deduction has been made in the assessment for any year in respect of

trading liability (purchases) incurred by the assessee and subsequently during any previous year the assessee has obtained some benefit in respect of such trading liability, by way of remission or cessation thereof, the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year.



In a recent judgment, the Chandigarh ITAT in the case of *M/s IOL Chemicals and Pharmaceuticals Ltd v. Addl. CIT Range-7, Ludhiana*, ITA NO. 1419/Chd/2019 has ruled that any outstanding dues beyond the period of 3 years have to be treated as cessation of liability under section 41(1) of the Income Tax Act.

In my opinion, Companies should frequently check for Creditors and write them back in the books from time to time.

Relationship with struck off Companies to be provided in Schedule III:

As per the amended Schedule III, where the company has entered into any transactions with companies struck off under section 248 of the Companies Act,

2013 or section 560 of Companies Act, 1956, the Company shall disclose the following details in the financial statements, namely:

- Name of struck off Company
- Nature of transactions with struck-off Company
- Balance outstanding
- Relationship with the Struck off company, if any

We will understand the transaction with struck off Company with the help of an example. Suppose a Company ABC Pvt. Ltd. took loan from XYZ Pvt. Ltd. on 31st March, 2022. Subsequently, the Company XYZ Pvt. Ltd. is struck off under the Companies Act on 30th June, 2022. Based on disclosure made in Financial Statements the I-T department would consider such loan as an accommodation entry and would doubt the identity, genuineness and creditworthiness of the loan and lender. Such a transaction would attract the applicability of **section 68 of the I-T Act**.

As per the said section, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.



In our example, even if the Company tries to explain the authenticity of the transaction of loan taken from the struck off Company it will still lead to an addition as department would not consider such loan as genuine loan.

In my opinion, Companies should frequently check the legal position, identity, credit worthiness, etc. of the Companies with which they are entering into any transaction. MCA portal provides the data as to whether a Company is struck off under the Companies Act or not. This will help the Companies to avoid entering into any kind of transaction with companies which cease to exist and remains unnoticed while entering into any transaction with it.

Disclosure of Loans or Advances in the nature of loans to be provided in Schedule III:

As per the amended Schedule III, following disclosures shall be made in the financial statements where Loans or Advances in the nature of loans are granted to promoters, directors, KMPs and the related parties (as defined under Companies Act, 2013,) either severally or jointly with any other person, that are:

- (a) repayable on demand or
- (b) without specifying any terms or period of repayment

Type of Borrower	Amount of loan or advance in the nature of loan outstanding	Percentage to the total Loans and Advances in the nature of loans
Promoters		
Directors		
KMPs		
Related Parties		

According to Section 2(22)(e) of I-T Act, when a company, not being a company in which the public are substantially interested, extends a loan or an advance to:

- any of its shareholders who has more than 10% voting power in the company or
- to any concern in which such shareholder is substantially interested or
- for the individual benefit of such shareholder or
- on behalf of such shareholder to the extent the company has accumulated profits,

such payment would be deemed as a dividend upto accumulated profits of the Company under **section 2(22)(e) of I-T Act**.

Let us understand this with an example. Suppose ABC Pvt. Ltd. is a company, not being a company in which public is substantially interested. Mr. X is one of the company shareholders, who hold 15% shares. The company has accumulated profits of Rs.25 lakhs as on 31st March, 2021. The company granted a loan of Rs.100,000 to Mr. X, by way of an account payee cheque on 31st March, 2021. He repaid the amount on 5th May

2021. In this case, even if the loan has been repaid by Mr. X, it will stand outstanding as on 31st March, 2021 which will be disclosed in the financial statements as per the amended Schedule III requirement. Such a disclosure would trigger the I-T department and the department would examine such loan granted for the purpose of deemed dividend and if found, would make an addition in the hands of such person (Mr. X).

In my opinion, before advancing any loan to a person, the Companies should check whether such a person holds any substantial interest in the Company or not. Also, where a loan is being granted to any other concern, the Company should ask from it the list of persons who hold substantial interest in such concern. The Company should then check that whether any person who holds substantial interest in that concern has more than 10% voting power in the Company or not. If such a case is affirmative then loan should not be advanced to such a person/concern to avoid the applicability of section 2(22)(e) of I-T Act.

Conclusion: Amendments in Schedule III and CARO 2020 have rigorous consequences and far reaching impact. The disclosures prescribed by Schedule III and CARO are going to be used by each and every government department whether it be GST, Income Tax or MCA. Every Company should ensure true and fair presentation of its books of account to avoid addition to the income, imposition of penalties and punishments. One should be, thus, vigilant and conscious while preparing its financial statements.

Purchase of Immovable Property / Share Possible on Credit or Post-Dated Cheque: Its Implications

Puneet Airun

Inputs by: Aman Jain

Supervising CA: Rajeev Sogani

In today's era, everyone knows about immovable property and shares. Purchase and sale of immovable property is

"The way to get started is to quit talking and begin doing."

governed by the Transfer of Property Act, 1882 while purchase and sale of share is governed by Companies Act, 2013 and in case

of listed shares by SEBI regulations.

We always tend to purchase shares from Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). Normally the purchase of shares/ immovable property is undertaken by making immediate payment but we can also do the same on credit and by giving postdated cheque.

And as per section 54 of Transfer of Property Act 1882 which define the meaning of "sales" as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised

Our topic is purchase of immovable property / shares and its implications.



- The first question arising is what will happen if after purchase of property and its registry, if buyer fails to pay the consideration amount (which he had promised to pay)?
- Second question is what will be the legal consequences of this?

Let's try to understand this issue.

If a seller sells any immovable property to any buyer for a consideration and for the consideration buyer paid part payment in cash at the time of purchasing property and for the remaining amount buyer issued post-dated cheque and in consideration of this seller makes a sale deed and register in favor of buyer.

And at the time of maturity date of post-dated cheque it was found that cheque was dishonored then as per law Sale Deed can't be cancelled automatically due to non-payment of consideration, as per Section 54 of Transfer Of Property Act 1882, Sale is valid sales and it can't be cancelled due to non-payment as in Case of **Dahiben vs. Arvinbhai Kalyanji Bhanusali** in Civil Appellate Jurisdiction vide Civil Appeal No. 9519 of 2019, the brief facts of the said case are that agricultural land situated in District Surat owned by the **Dahiben (Plaintiff)**

were transferred by them through a registered sale deed dated 02-07-2009 to **Arvindbhai Kalyanji Bhanusali (Respondent-1)** for a consideration of Rs. 1,74,02,000/-

The purchaser issued 36 cheques for Rs.1,74,02,000 towards payment of the sale consideration in favour of the Plaintiffs, the details of which were set out in the said registered Sale Deed. The Respondent No. 1 subsequently sold the said land to Respondent Nos. 2 and 3 herein vide registered Sale Deed dated 01.04.2013, for a sale consideration of Rs. 2,01,00,000. The Plaintiffs thereafter filed Special Civil Suit before the Principal Civil Judge, Surat against the original purchaser i.e., Respondent No. 1, and also impleaded the subsequent purchasers i.e., Respondent Nos. 2 and 3 as defendants praying that the Sale Deed dated 02.07.2009 be cancelled and declared as being illegal, void, ineffective and not binding on them, on the ground that the sale consideration had not been paid in entirety by Respondent No. 1.

In this Supreme court held that even when the entire consideration has not been paid, it could not be taken as a ground for cancellation of the sale deed. But seller of property has the right to appeal to court for the cancellation of sale deed but the decision of whether to cancel the sale deed or not is with the court.

Hence though a sale deed can't be cancelled this does not mean that seller of property doesn't have any legal right. Seller can file a case **under IPC section 420** which define Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person de-ceived to deliver any property to any person, or to make, alter or destroy

the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.



And Seller can also file a money recovery lawsuit against buyer for the recovery of balance amount of property which he failed to pay under **Order IV of the Civil Procedure Code of 1908**. In case buyer gave seller a post-dated cheque and on maturity date it gets dishonoured then seller can file a case against buyer **under section 138 of Negotiable Instrument Act**.

As per **Section 138 of Negotiable Instrument Act**, dishonoring of the issued cheque by the bank may be either due to insufficient funds in the issuer's account or if the specific amount on the cheque is more than the amount arranged to be discharged by the issuer. Making such an agreement with the bank is considered a criminal offence and is punishable, provided:

- One presents the cheque within 6 months before the bank from the date mentioned on the face of the instrument or it is dated cheque validity, whichever is earlier.
- The beneficiary demands of the drawer to make the payment as specified in the cheque within the due time period. Such a demand should be in writing within 15 days from the date. The bank then informs about the return/dishonor of the given cheque by the drawer.

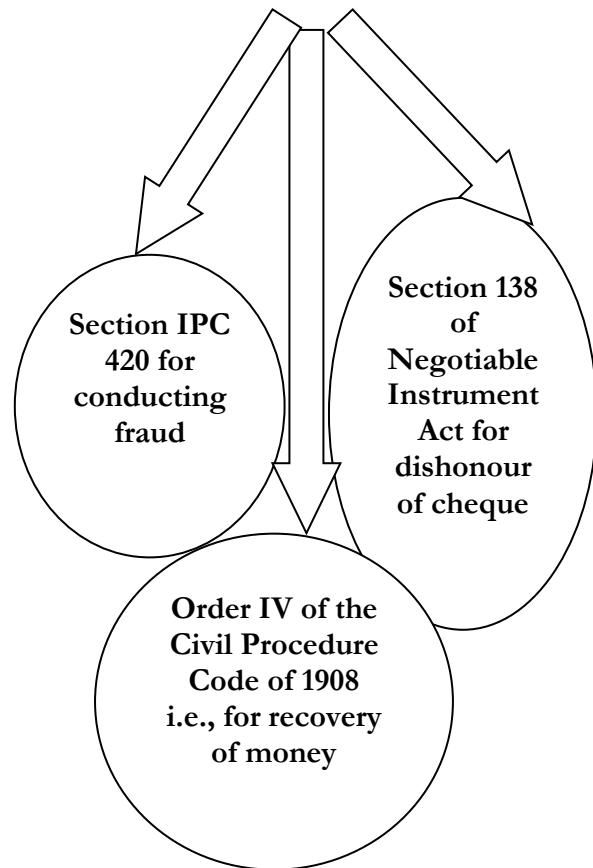


- The drawer of the dishonor of cheque couldn't make the payment of the amount to the drawee within the due period of the cheque or within 15 days of acknowledging the notice, as the case may be.

The legal punishment for dishonoring of PDC is:

- Imprisonment for maximum up to 1 year,
- A fine equivalent to two times the amount mentioned on the dishonored cheque or
- Both, as decided by the authority.

**Remedy available
for seller against
buyer under**



For Example, Mr. Ram sell a land to Mr. Shyam on 1-11-2022 for the consideration of Rs.40 Lakhs, Mr. Shyam transfer Rs.10 Lakhs through NEFT into the account of Mr. Ram and for the remaining amount Mr. Shyam issued post-dated cheque which mature after 30 days i.e. on 30-11-2022 and Mr. Ram make a sale deed and registry in favor of Mr. Shyam But on the maturity date Mr. Shyam cheque was dishonored due to insufficient fund So Mr. Ram approach court to cancel a sale deed but court said sale deed can't be cancelled on the ground of nonpayment of consideration but advised to Mr. Ram that he can file a case under IPC section 420 for doing a fraud and also file a money recovery lawsuit against Mr. Shyam for the recovery of Rs.30 Lakhs and Mr. Ram can also file a case under Section 138 of Negotiable Instrument Act for the dishonor of postdated cheque.



Now in case of Purchase of Share and after its transfer, if buyer fails to pay the consideration amount, then seller of Shares has the same implication for the buyer which has in case of non-payment of consideration on purchase of immovable property, as under the Transfer of Property Act 1882, Property also includes movable property with the immovable property.

As we have understood that whether we purchase immovable property or shares, the implication for non-payment of considerations will be same for the sellers.

FUTURE OF VIRTUAL CURRENCY V/S PHYSICAL CURRENCY

Puneet Motwani

As we all know that India has already taken lead position in the area of digital

"Rishta wahi"

Soch nayi"

payments because developing, adopting and scaling the UPI technology in a very short span of

time has been done only by India and Covid 19 just help by adding fuel to the fire.

Innovation aur disruption ko aakhir kon kaid kr skta hai kyonki aaj hr ik problem hr ik nayi opportunity ke liye hazaro raste kholti hai aur usi tarah jb globally cryptocurrency ka boom phase chala tha aur crypto ki itni demand thi aur bs usi opportunity ko use krke India bhi apni digital currency leke aa gya!!

Before getting into detail of topic "FUTURE OF VIRTUAL CURRENCY V/S PHYSICAL CURRENCY", let's first understand what is virtual currency and physical currency?

Let's take an example:



If you have a Rs. 500 note in your wallet, the same is physical currency and if you have Rs. 500 in your Paytm wallet, will the same becomes virtual currency or amount equivalent to Rs. 500 kept as Bitcoin (a crypto currency) whether the same is virtual currency or Digital- Rupee of Rs. 500 which is launched by RBI is virtual currency?

Ho gye na confuse, paiso ka chakkar hai Babu Bhaiya !!!!!!!!

Let's understand one by one:



Physical Currency:

Physical Currency refers to the amount of cash—in the form of paper notes or coins—within a country that is physically used to conduct transactions between consumers and businesses.

Digital Currency:



Digital currency is a form of currency that is available only in digital or electronic form. It is also called digital money, electronic money, electronic currency, or cyber cash.

Virtual Currency:

Virtual currency, or virtual money, is a digital currency that is largely unregulated and issued and usually controlled by its developers and used and accepted electronically among the members of a specific virtual community.

A digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically. They are not legal tender as the same is not issued by Central Bank.

Ex: Crypto currency is a example of digital currency like bitcoin, ethereum, etc

Cryptocurrencies:

Cryptocurrency, sometimes called crypto, is any form of currency that exists digitally or virtually and uses cryptography to secure transactions. Cryptocurrencies don't have a central issuing or regulating



authority, instead using a decentralized system to record transactions and issue new units.

Central Bank Digital Currencies:



Central bank digital currencies (CBDCs) are regulated digital currencies issued by the RBI of a country. A CBDC can be a supplement or a replacement to traditional fiat currency. Unlike fiat currency, which exists in both physical and digital form like in our example Rs. 500 note and Rs. 500 in Paytm wallet, a CBDC exists purely in digital form.

The Reserve Bank of India (RBI)'s prime objective for launching the pilot project on the digital currency is to advance India in the race for virtual currencies. This is also because crypto currencies are becoming more and more popular.

The e-rupee replaces cash and coins and is available in the same denominations.

It resides on your mobile phone and we can make payments using a smartphone and scanning QR code but the difference is it that the entire balance is not in some wallet but in account which is held by RBI not by any commercial banks.

Now the Question is whether amount of Rs. 500 in your Paytm wallet is a virtual currency?

Amount of Rs. 500 in Paytm wallet is not a variant of virtual currency or digital currency but the same is categorized as a physical currency because amount of Rs. 500 in Paytm wallet came when you deposit 500 note in your bank means Central Bank has originally issued Rs. 500 note which is a physical currency.

What Central Bank Digital Currency achieves?

- It can get rid of all paper cash and metal coins. That saves trees.
- It eliminates the hassles of going to an ATM to withdraw cash.
- It can be used even by those who do not have a bank account and who just stores cash in their cupboards or under their mattress.
- It is more secure and efficient.

But the point is all this were already being achieved by UPI based payments like Paytm, Gpay etc. then what is the need of digital currency as most people have gone cashless by using UPI. The success of UPI has been stupendous and UPI-based transactions have grown by 1000% in just three years. People use UPI to pay amounts from as low as a few rupees like paying Rs. 10 for chai to few thousands like making payment for purchase of Car.

Okay well let's take an example to understand this:



Payment of Rs. 30 made

Tea and Samosa





Many of you had make payment at Tapri for chai and samosa through online mode. Now say Rs. 30 was paid by Student A (having SBI Bank) to Chai wala (having BOB Bank) and the transaction was taken place yesterday. So, when A got a message that Rs. 30 was debited from his account whether the same was transferred from SBI Bank to BOB bank.


The answer is **No** and here comes the **Interesting fact** that amount of Rs. 30 not actually transferred at the moment the payment was made because in reality there are millions of transactions takes place in a single day through UPI and it is not possible to exchange money for each and every transaction. Therefore, banks exchange money on a specified interval for settling the transactions means there is a time lag between time of settlement and time of transaction.

So now if the same transaction was carried out using RBI Digital currency, then there is no requirement for settling the transactions as the time when amount of Rs. 30 is debited the same will be transferred from A RBI Bank account to Chai wala RBI Bank Account. It means it is same like cash but in digital form or I can say **"Rishta wahi soch nhi"**.

That's why the Reserve Bank's upcoming digital currency is so important and so different.

Other differences of UPI and CBDC:

-  UPI is just a payment mechanism whereas e-rupee is actually cashless digital currency.
-  The UPI still requires you to have a bank account for know your customer (KYC) compliant and so on.

 The e-rupee is stored directly in an account with the RBI. It is based on blockchain technology, the same used by Bitcoin which uses decentralized ledgers.

Benefits of Virtual Currency over Physical Currency:

1. Central banks believe that cost of issuing digital currency is much lower than the cost of printing and distributing physical cash.
2. The Central banks can track the transactions of digital currency as it is based on block chain technology, unlike the physical currency which may be a hurdle to adopt for people as it may affect their privacy concerns. According to a recent report, 81 countries, representing over 90% of global GDP, are exploring launching their own central bank digital currencies.
3. The International Monetary Fund (IMF), the World Bank, and the Bank of International Settlements (BIS) say CBDCs "have the potential to enhance the efficiency of cross-border payments, as long as countries work together."
4. Promoting financial inclusion by providing easy and safer access to money for unbanked and underbanked populations;
5. Introducing competition and resilience in the domestic payments market, which might need incentives to provide cheaper and better access to money.
6. Increasing efficiency in payments and lowering transaction costs;

Whether Virtual Currency will be able to replace Physical Currency?

As even after 6 years of Demonetization, no doubt UPI and Digital payments had gained the pace but dependency on cash has not yet reduced till now. The currency with the public, which was at Rs 17, trillion just before the demonetization exercise, was at a record-high Rs 30.8 trillion as on October 21, 2022.

So, it will be wrong to say that virtual currency will replace physical currency any time sooner however as like RBI had already backed Rs. 2000 currency notes and in current market, we hardly see any 2000 currency note. Just like that it might be possible that RBI will back remaining currency and replace the same with digital currency and make the complete system online.

Future of Crypto currencies:

Cryptocurrencies like bitcoin have exploded in value, but they are largely used for speculation or to buy other speculative assets. Although there have been some signs of merchant adoption in countries like El Salvador, the high volatility and complexity of these currencies make them impractical for most daily applications.

Another possible application is in central bank digital currencies, which could be issued by a country's bank or monetary authority. These would be used and stored in online wallets, similar to cryptocurrencies, but allowing the central bank to issue and freeze tokens at will.

Future of Digital Currency:

Digital Currency Is Not Private Crypto:

CBDC will be different from cryptocurrencies because compared to CBDC, they are not authorized means of payment and do not have a legal backing.

Clarity on ownership:

In case of digital currency as the same is backed by Central Bank so even if something go wrong — say, in the IT system, or some other unforeseen contingency — the holder of that bank's currency, whether in physical or digital form, has confidence that the value of that currency will be available to him at all times.

Retail Payments in India:

In recent years, India's retail payments system has grown more sophisticated, more dynamic, and much larger. The broad payment space includes several payment system operators, wallet companies, and the providers to operators and card companies. These companies have grown more profitable as customers enjoy more choice.

Conclusion:



- ✚ As we have seen different versions of money from Barter system to physical cash to digital cash and each time money has change a lot.
- ✚ Managing physical cash becomes a challenging task for us as well as for government as we all know that

during the course of demonetization, various black money fraud instances were caught. As we all are aware that UPI has made our life much easier.

✚ RBI clearly said that right now digital rupee will not replace current monetary system but compliment current monetary system and Just to test waters, 1 CBDT pilot launched for wholesale banking segment and probably the same will be launched for the Retail sector by next month.

✚ If India's goal is to become a superpower with a large GDP, the faster the movement of money the better, and if speed is the goal, digitization is the route. Newer digital forms that are safe, secure, convenient, and easy to use will power India into the future. The coming digital currency from India's central bank will be a major step in that direction.

Updated Return- where search is carried out at other person

Rohan Garg

Inputs by: Apeksha Gupta

Supervising CA: Rakesh Kedia



Did you ever forget to report an income or make a mistake in your ITR?

For updating your income tax return, a new Form 'ITR-U' has been introduced. The government brought the concept of updated returns in the Union Budget 2022.

Section 139(8A) under the Income Tax Act provides you an opportunity to update your ITR within two years. The said two years will be calculated from the end of relevant assessment year.

*Der
aaye,
Durust
aaye.*

ITR-U was introduced to optimize tax compliance by taxpayers without provoking legal action.

Any person who commits an error or omits details of certain income in any of the following returns can file an updated return:

- Original return [Section 139(1)], or
- Belated return [Section 139(4)], or
- Revised return [Section 139(5)]

Note:

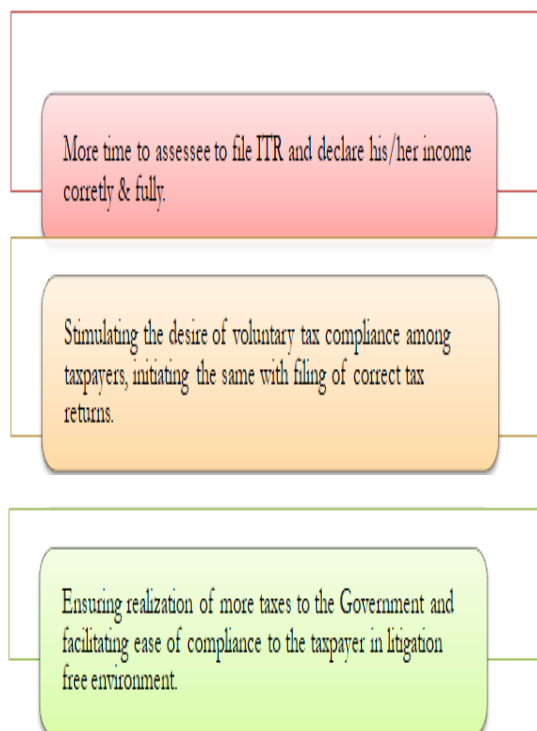
A taxpayer could file only one updated return for each assessment year (A.Y.).

ITR-U cannot be filed in the following cases:

- a) Updated return is filed already.
- b) For filing loss return.
- c) For claiming/increasing the refund amount.
- d) Filing of ITR-U has the effect of decreasing the total tax liability.
- e) Search proceeding u/s 132 has been initiated against assessee.
- f) Where books of accounts or other documents or any assets are requisitioned under Section 132A in case of the assessee.
- g) When a survey is/has been conducted u/s 133A against assessee.

- h) a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned u/s 132 or section 132A in the case of any other person belongs to assessee
- i) a notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such assessee.
- j) If the assessment/ reassessment/ revision/ recomputation is pending or completed for the relevant assessment year against the assessee.

Purpose of Updated Return

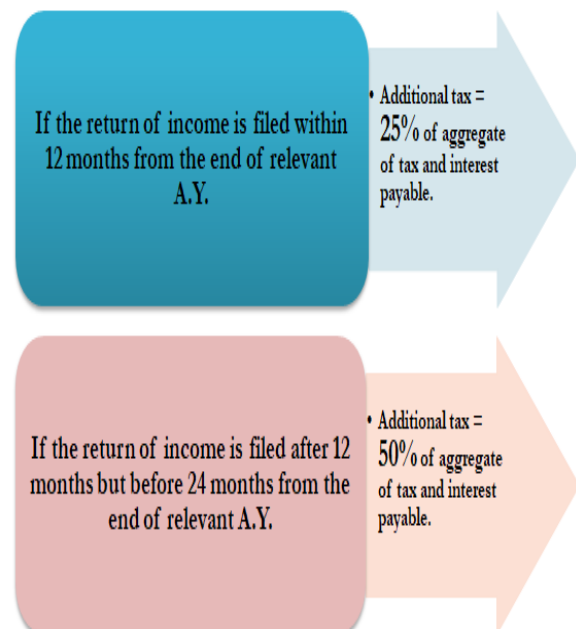


Is it so straight-forward to file Updated Return?

Ruko Zara, Sabar Karo.....

If an assessee opts for filing return of income under **Section 139(8A)** i.e. files updated return, then he is required to pay additional tax as per **section 140B** which ranges from **25% to 50%** in the following manner:

Additional Tax Liability as per Section 140B



Based on above provisions, we can conclude that in case search has been conducted and documents or valuable article or thing has been found and it belongs to any other assessee, which in the opinion of Income tax department might have the effect of increasing the tax liability of that other assessee, that other assessee may take the benefit of **Section 139(8A)** to file an updated return, so to avoid any penalty or prosecution under the **Income Tax Act, 1961**.

Since updated return cannot be filed if a notice has been issued by the Income

Tax Department. So in case that other assessee files an ITR-U before notice has been issued to him, he can avoid any future consequences.

Let us consider one Example:

There are two friends: Shinchan and Kajama. A search has been conducted by Income Tax Department at Shinchan's business premises (A well known builder).

During the search at Shinchan's premises, a diary was found which indicated that Shinchan allotted a flat to his friend (Kajama) worth Rs 1 Crore and received 40 Lakhs in cash and could result in increasing Kajama's tax liability.

Now before issuing notice to Kajama, he (Kajama) came to know the facts of this case and he very wisely took the help of Section 139(8A) and filed an updated return and paid all the tax and additional tax which were to be borne by him as per Section 140B.

Had notice been issued to Kajama by the Assessing officer, he would have been subjected to Penalty under section 270A and imprisonment under section 276C.



Based on this, we can say that Kajama avoided the Penalty under 270A and

Imprisonment under 276C by availing the option under Section 139(8A).

Had a notice been issued by the Assessing Officer to Kajama, he would not have been able to avail the benefit of filing updated return.

Let us discuss something which is out of the books.

While drafting this particular section of updated return, the government left a lacuna in this section.

To be precise, Kajama came to know the facts of this case well before a notice is issued to him by Income Tax Department. Because practically it takes long time for the Income Tax Department to serve a notice to the other person (Kajama) whose transactions are detected while search has been conducted on some other person (Shinchan).

Without any doubt, this particular law needs amendment and we may indeed hear this very soon.

As per our understanding - The amendment can take the following form: Updated return filed by the other person (Kajama) in relation to transactions detected while search has been conducted on a other assessee (Shinchan) will be deemed as invalid.

Since Kajama has taken advantage of ITR-U to cover up the transactions which were in first place not known to the Income Tax Department.

Now let us look at one another perspective of this particular example discussed above.

Kajama when came to know about the facts of this case, can indeed use the option to file updated return to disclose his undisclosed income and can pay tax accordingly.

But there can be some twist as well, in case due date of original return [Section 139(1)] for the respective assessment year is still not expired then he can definitely, disclose his undisclosed income in the original return of that assessment year and can pay tax accordingly.

Say suppose, he has filed his original return under Section 139(1), still he has the option to revise his return of income under Section 139(5), in case the due date of revised return is not expired.

If the assessee can file original return or revised return as discussed above, he can avoid the incidence of additional tax which he will indeed have to pay under Section 140B as discussed above.

Section 54 and 54F- Capital Gain Deduction: Post Compliances

Saijal Lodha

Inputs by: Anusha Agarwal

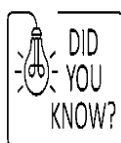
Supervising CA: Shivangi
Samdhani



“Invest in property now, keep it for a few years and then sell it off for a higher price”. This has been the mantra for individuals looking for secured, certain, and less volatile investments. However, while designing their strategies, many a times the most important component – tax planning is often forgotten. You can plan a sale of immovable property and reinvestment with planning for tax deductions.

*“Dhang
se invest
kar warna
tera
deduction
jainga”*

Sections 54 and 54F of the Income-tax Act, 1961 contain the provisions for claiming deduction while calculating capital gains on the transfer of long-term capital assets being residential house property or any other long-term capital asset respectively if the capital gain or sale proceeds are



With effect from A.Y. 2020-21, if the capital gain on transfer of assets is **not more than Rs. 2Cr.**, then an assessee can claim deduction u/s 54 for purchasing two residential house properties.

Being some of the most beneficial and widely availed deductions, provisions of the Income-Tax Act, Sections 54 and 54F have certain conditions attached therein to avoid their misuse.

People usually think that they just need to reinvest the capital gain earned on the transfer of the original asset (the asset which was sold) in new residential house property for claiming deduction u/s 54. Further, they need to reinvest the sale consideration of the original asset in the new residential house property for claiming deduction u/s 54F. But are not aware of the other necessary conditions that are needed to be taken into consideration to keep the deduction claimed u/s 54 and 54F intact.

The conditions that must be taken into consideration to enjoy the deduction under sections 54 and 54F have been discussed in this article.

1. What if the New Residential property is sold before 3 years of its acquisition or construction?

For Sections 54 and 54F

Another important condition that should be kept in mind while investing the capital gains earned on the transfer of an asset in

order to keep the deduction intact is, that the new residential house property must be held for **at least 3 years** after its purchase or construction as the case may be.

If a taxpayer purchases/constructs a house and claims deduction under sections 54 and 54F and then transfers the new house within a period of 3 years from the date of its acquisition/completion of construction, then the benefit availed under sections 54 and 54F will be withdrawn. The ultimate impact of the restriction would be that at the time of computation of capital gain arising on the transfer of the new house, the amount of capital gain claimed as exempt under section 54 or 54F will be deducted from the cost of acquisition of the new house.

Now in the case of Mr. Raju, let's assume that he invested capital gain of Rs. 50 lakhs in construction of a new residential property and claimed deduction of Rs. 50 lakhs in his return of income for the AY 2022-23. The house was fully constructed in September 2023 and the total cost of construction was Rs. 62 lakhs. Due to certain unavoidable conditions, Mr. Raju had to transfer the newly constructed house in January 2026 i.e., before the lock-in period of 3 years for Rs. 70 lakhs. What will happen now?

Since Mr. Raju transferred the house before 3 years from the date of completion of construction, the amount of deduction u/s 54 earlier allowed to Mr. Raju will be revoked. The amount of Rs. 50 lakhs shall be deemed to be the income of Mr. Raju under the head "Capital Gains" in the year in which such transfer of property took place. Hence, Mr. Raju will have to pay tax on Rs 50 lakhs in the AY 2026-27 since the transfer took place

in AY 2026-27. Moreover, the amount of capital gain on the transfer of new residential house property will be calculated as under:

Particulars	Rs. in lacs
Full value of consideration	70
Less: Expenditure on transfer	NIL
Net sale consideration	70
Less: Cost of acquisition of house*	12
Taxable short-term capital gains	58

*Cost of acquisition = Total cost of construction - Amount of capital gain invested (62L - 50L = 12L)

What if the cost of construction of the new asset was just 40L? The income in case of transfer of new property before 3 years from the date of its acquisition shall be taxable in the following manner:

- In A.Y. 22-23 deduction of Rs. 50L was claimed by Mr. Raju u/s 54.
- In the AY 23-24 and 24-25 no amount shall be charged to tax and deduction shall stand intact.
- In AY 25-26 (3 years from the date of transfer i.e., July 24) since Rs. 10 lakhs could not be invested, the same shall become income.
- In AY 26-27 since the new house is sold in January 26 i.e., prior to three years of its construction, the amount not charged u/s 45 shall be deemed to be the income. The amount not charged to tax u/s 45 is Rs. 40 lakhs (50L – 10L). Hence, from the cost of acquisition of the new asset Rs. 40 lakhs shall be reduced and the COA shall be NIL (40L – 40L).
- Net deduction u/s 54 remained to be NIL.

Have you ever wondered, what will happen if Mr. Raju transfers the residential property? How will the Assessing Officer (AO) trace such transfer? How will the deduction be revoked?

One of the ways to trace such transfer of asset is through ITR Form. The ITR Form contains Schedule AL which has to be filled by an assessee whose Gross Total Income is Rs. 50 lakhs or more. In this schedule details of all the assets and liabilities of the assessee are to be filled. So, only through this Schedule AL, AO can trace a transfer of asset. However, in case of an assessee whose income is less than Rs. 50 lakhs, transfer of asset within the lock in period is not traceable. Therefore, department easily would not come to know that condition of lock in period of three years has been violated.

2. Other conditions under section 54F

The deduction u/s 54F cannot be claimed if:

If the assessee purchases within one year another residential house property apart from the new house purchased or constructs another residential house apart from the new house within 3 years from the date of transfer and income from such residential house is taxable under the head “Income from House Property”

Let us understand this with the help of an example:

Mr. Raju sold his urban land on 7th November 2021 (AY 22-23) for consideration of Rs. 30 lakhs which he invested in purchasing a residential house property in July 2022 (AY 23-24). Mr. Raju, thus, claimed a deduction u/s 54F of the entire amount of capital gain.

Scenario 1.

What will happen if Mr. Raju purchases another residential house property in February 2022 and uses it for rental purposes?

In this case, the deduction claimed by Mr. Raju in AY 22-23 will be deemed to be the income under the head “Capital Gain” relating to the long-term capital asset in the year in which another residential house was purchased i.e., AY 23-24 because the income from house property purchased other than the new house, within a period of one year from the date of transfer of the original asset, is the income chargeable under the head “Income from House Property”.

Net deduction u/s 54F remains to be NIL in such a scenario.

Scenario 2.

In case instead of purchasing a pre-constructed house, Mr. Raju had purchased a land in March 2022 and intended to construct a house other than the new residential property he had already purchased for putting it on rental income. However, the construction of the property cannot be completed until November 24 (3 years from November 21). In this case, the deduction claimed by Mr. Raju will not be deemed to be the income under the head “Capital Gains” relating to the long-term capital asset in the year in which land for the purpose of construction of another residential house was purchased i.e., AY 22-23 because the residential house other than the one owned is not yet eligible for being provided for rental services. Hence, there is no income earned under the head “Income from House Property” from such a house.

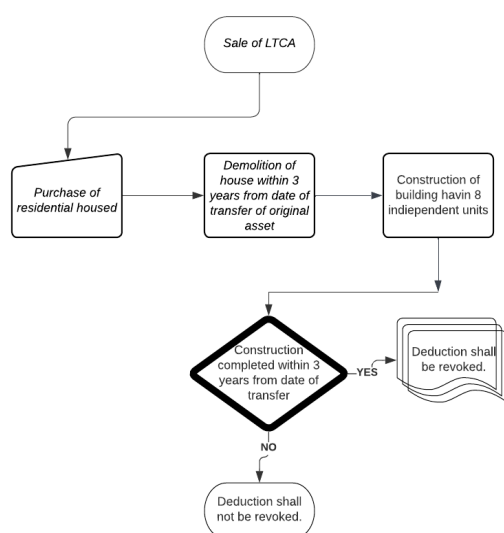
In this case, the net deduction u/s 54F remains Rs. 30 lakhs.

How will the department come to know about a breach in this condition?

Again, the AO can trace a purchase of another residential property either through Schedule AL of the ITR Form filed by the assessee. Another way by which such a purchase/construction can be traced is income from “house property”. If assessee shows income from any new house property, AO shall come to know about the violation.

Now that we are aware of the conditions necessary to keep the deduction intact, let us understand them with the help of a comprehensive example covering both the conditions:

What would have happened if Mr. Raju had demolished the newly purchased residential house within 3 years and constructed a multi-storied residential building having 8 flats?



In this case, Mr. Raju had complied with the initial condition of reinvesting the capital gains on sale of land in one residential house property within 3 years

from the date of transfer of the original asset (Sec 54F). Thereafter, demolition of the house would not result in transfer of ownership of the residential house property because the definition of transfer as contained under section 2(47) does not include demolition. Hence, the deduction claimed shall remain intact.

Now, in respect of multiple units built, there can be two situations:

If the construction is completed after the end of 3 years from the date of transfer of the original asset, then the deduction so claimed at the time of purchasing the residential house property shall remain intact as no violation of any condition is made.

But, in case the construction of the 8 residential units, being flats, is completed within 3 years from the date of transfer, then this shall tantamount to a violation of the condition u/s 54F. The deduction shall be revoked.

So, far we have read about the conditions laid down in order to claim the deduction u/s 54 and 54F. But what could have been the motive of the government to put such pre and post restrictions for claiming the deduction?

The compliances must have been introduced to limit the misuse of benefits of sections 54 and 54F. These deductions were introduced to encourage people to invest in residential house property. But, the richer sections of society must have taken them as a business opportunity. Buying and selling houses to earn tax-free profits would have become a normal phenomenon. So, to restrict such misuse, the scope of sections 54 and 54F must have been restricted by the legislature.

Conclusion

From the above discussion about the post-compliance conditions of sections 54 and 54F, we can conclude that mere reinvestment in the residential house of the amount of Capital Gains or Sale Consideration as the case may be, arising from the transfer of assets is not enough for enjoying the benefit of deductions under these sections. An assessee will have to comply with all the conditions post-investment also to save their taxes.

Foreign Tax Credit

Shreya Pareek

Inputs by: Ansh Gupta

Supervising CA: Rohan Sogani

Do you know, there are two principles to tax income. One is **Residence Based**

Taxation and other is **Source Based Taxation**.

*"Tax par Tax,
Tax par Tax,
Tax par Tax,
Lekin insaaf
nahi mila
Lord! "
Mili toh sirf
Demand."*

As per Residence based Taxation, the country taxes persons based on their "residential status".

Source Based Taxation gives importance to the

source (country) from where income is generated. There may be individuals/entities whose "residence" is in one country but their business is actually carried on in another country and their income is earned in the latter country.

Every country has its own taxation rules. Some countries follow Resident based taxation, some follow Source based taxation and some follow both.

Can you think, it can create problems for taxpayer?



Suppose **Mr. A** is a resident of India. He has total income of Rs. 10,00,000 from India. He has given some services to a company based in USA, from which he receives professional income of Rs. 2,00,000. The USA Company, has made payment after deducting tax at source in, accordance with USA tax laws, let's say Rs. 20,000.

Mr A, being resident in India, will have to offer his global income, i.e. income earned anywhere in the world to tax in India. Accordingly, his taxable income in India would be Rs. 12,00,000 (10,00,000+2,00,000). Considering, 30% slab rate, Mr. A's tax liability would be Rs. 3,60,000.

Would **Mr. A** be required to pay tax of Rs. 60,000 on Rs. 2,00,000 as per Indian Law, for which he has already paid tax of Rs. 20,000, or can he claim credit of such tax paid?

When an income, which is taxed in its Source country, i.e. the country from where such income originates and such income is offered for tax again by the recipient of such income, in his country of residence, there is **Double Taxation**.

To prevent Double Taxation, different countries enter into Double Taxation Avoidance Agreements (“**DTAA**”) with each other. India has also entered into DTAA with various countries around the world.

Where India has entered into DTAA with a country, relief is granted as per the relevant DTAA, in accordance with **Section 90 of the Income Tax Act, 1961 (“ITA”)** and where no such agreement has been entered relief is granted as per **Section 91 of ITA**.

Under various DTAA, different methods of providing credit have been prescribed which are as under:-

- a. **Exemption Method**: In this method right of taxation is given to either Source State or to the Resident State. So, only one country can tax a person.
- b. **Credit Method**: In this method credit is allowed for the tax paid by a taxpayer in the Source State by way of reduction from the tax payable in the Resident State. DTAA between India and USA provides Credit Method.

Example:

Particulars	Amount
Income in India	1,50,000
Income in foreign country, i.e. USA	1,00,000
Global Income	2,50,000
Tax Rate in India	30%
Tax in foreign Country	25%
Total Tax in India	75,000
Credit Method – Relief of Tax paid in Foreign Country (25% of 1,00,000)	(25,000)
Net Tax Liability in India	50,000

- c. **Deduction Method**: In this method, the tax paid in the Source State is allowed as an deduction, similar to expenses incurred, in the Resident State.

Section 91 of ITA also provides for **Credit Method**.

Credit Method is majorly divided into **Full Credit Method** and **Ordinary Credit Method**.

Under **Full Credit Method**, credit of the entire amount of tax paid outside India is available.

However, in **Ordinary Credit Method**, credit is available only to the extent to which tax is collected on such income in the Resident Country.

Ordinary Credit can be understood with the following example:-

Particulars		Amount
Income in India		1,50,000
Income in Foreign Country		1,00,000
Global Income		2,50,000
Tax Rate in India		30%
Tax in Foreign Country		35%
Working		
Indian Tax on global Income	(A)	75,000
Indian Tax on Foreign Income	(B)	30,000
Foreign tax on Foreign Income	(C)	35,000
Relief as per Ordinary credit Method - lower of (B) and (C)	(D)	30,000
Tax Payable in India (A) - (D)	(E)	45,000

Section 91 also follows ordinary credit method.

Apart from this, attention is also drawn towards **Rule 128, of the Income Tax Rules 1962 in relation to Foreign Tax Credit ("FTC")**.

As per Rule 128, FTC shall be allowed subject to following conditions:-

- * The credit of foreign tax is available against the amount of tax, surcharge and cess payable under the ITA but **not in respect of any**

sum payable by way of interest, fee or penalty.

- * No Credit of Foreign Taxes paid is allowed to a person in respect of any amount of foreign tax or part thereof which is **disputed in any manner**.
- * The credit is to be determined by conversion of the currency of payment of foreign tax at the **telegraphic transfer buying rate** on the last day of the month immediately preceding the month in which such tax has been paid or deducted.
- * The taxpayer needs to file **Form No. 67** electronically from his Income Tax portal to avail the benefit of Foreign Tax Credit.
- * **Form 67** is to be furnished on or before the end of the assessment year relevant to the previous year in which the income has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time.
- * FTC is allowed on furnishing the following documents by the assessee, namely:
 - (a) a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;
 - (b) certificate or statement specifying the nature of income and the amount of tax deducted

therefrom or paid by the assessee—

- a. from the tax authority of the country or the specified territory outside India; or
- b. from the person responsible for deduction of such tax; or
- c. signed by the assessee:

Provided that the statement furnished by the assessee in clause (c) shall be valid if it is accompanied by—

- (A) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
- (B) Proof of deduction where the tax has been deducted.”

Conclusion :

There is no double taxation on the same income, as a result of the DTAA which India has entered with various countries and also in accordance with Section 91 of the ITA. However, one has to take into account the method under which credit of tax paid, outside India, would be available while paying taxes in India. Also, the tax payer needs to comply with the requirements as prescribed under Rule 128 of the Income Tax Rules.

Sale of Know How, Software in – house developed/Data – Capital Gain or Business Receipts

Siddhant Tholia

Inputs by: Aman Agarwal

Supervising CA: Rakesh Kedia

- I. Many organizations use Computer Software to execute transactions with their

“Software and temples are much the same — first we build them, then we pray”

customers, dealers, vendors, etc. These softwares play a vital role in an organization's operational success. They

assist in maintaining a complete trail of a transaction so as to facilitate smooth conduct of business.

- II. Similarly, many organizations have a technical know-how/expertise in performing a specific operation, which is related to production, rendering of service, etc.

- III. Also, in a digital economy, every interaction we have with a government agency or a private entity can be reduced to a data point. This data can then be used to target us, whether for:

1. Advertising, or
2. For the purpose of surveillance.

Before proceeding further w.r.t Income Tax Act, 1961 provisions on sale of:



1. An in-house developed software,
 2. The know-how of any business operation and
 3. Data associated with the customers
- let us first discuss what exactly the above 3 mean. We shall discuss as regards their recognition in books of accounts and the taxation aspects upon their transfer.

In-house developed Software

Whenever we think of a Software, it is presumed to be an Intangible Asset. Well, for it to be treated as one, it should meet the definition of an Intangible Asset as per AS-26 and the recognition criteria contained therein. As per AS-26,

1. An **Intangible Asset** is an identifiable non-monetary asset, used in the production or supply of goods or services, for rental to others, or for administrative purpose.
2. For an asset to qualify as an Intangible Asset, it must satisfy the following criterion:
 - (a) Such an asset must be identifiable, and
 - (b) the organization must have a control over it, and
 - (c) The organization must have expectation of future economic benefit flowing to it.

3. An intangible asset should be recognized if, and only if:

- (a) It is probable that the future economic benefits that are attributable to the asset will flow to the enterprise; and
- (b) The cost of the asset can be measured reliably.

On reading of the above criteria given in AS-26, it is self-explanatory that any software which is used by an organization for carrying out its operations shall be classified as an Intangible Asset if and only if it satisfies the definition set out in AS-26 and must be recognized if it meets the recognition criteria set out in the above-mentioned AS-26.

But, what about a software which has been



internally developed by an organization's workforce, i.e., Software Engineers,

Developers, IT assistants, etc. **without incurring any specific cost on its development.**

It is just the **salary (in the normal course of employment)** which was paid to the staff during the development stage of the software. That is to say that the organization didn't spend on the following:

- Technology
- Licenses
- Coding
- Market Research

We might ponder that how such a software would be recognized in the Books of Accounts when no such specific cost is incurred on its development. More

so, the salary paid to staff can't be allocated to the software development cost. The basic requirement of recognition set out in AS-26 isn't met when such software is developed by the in-house engineers without incurring the above costs. Hence, such software isn't accounted for in the Books of Accounts of the organization.



Let us now proceed further as regards the Taxation provisions under the Income Tax Act, 1961, when such software is sold

by an assessee to any other person for a consideration.

Income from sale of software will be covered either under:

- Profit and Gain of Business or Profession (PGBP), or
- Capital Gains

Business Income on sale of Software:

Software is usually used to ease the business operations with the use of technology. If an income is earned by a person on transfer of such software, it shall be construed as any sum received in consequence of impairment of profit earning apparatus which is in the nature of capital receipt. Hence, it can be concluded that income on sale of software, being a profit earning apparatus, shall not be taxable under the head PGBP.

Capital Gain on sale of Software:



For any income to be considered as a Capital receipt taxable under the head Capital Gains, capital receipt should be against the transfer of a Capital Asset. First we shall look at what Capital Receipt is and then we shall touch

upon the meaning of Capital Asset under IT Act, 1961.

Capital Receipt is not defined in the IT Act, 1961. As per general accounting parlance, Capital Receipt is differentiated with Revenue Receipt as under:

Capital Receipt	Revenue Receipt
Capital receipts are usually of non-recurring nature.	Revenue receipts are usually of recurring nature.
Capital receipts are not obtained in the course of normal business activities.	Revenue receipts are obtained in the course of normal business activities.
An amount received for surrender of certain right under an agreement is a capital receipt.	Amount received by way of compensation of loss of future profits is a revenue receipt.

- The nature of a receipt is determined exclusively by its character in the hands of the receiver.
- In the case **Oberoi Hotel (P) Ltd. Vs. CIT (1999) XI SITC 109 (SC)**, the Hon'ble Supreme Court has held that the question whether the receipt is capital or revenue has to be determined by drawing the conclusion of law ultimately from the facts of the particular case and it is not possible to lay down any single test as infallible or any single criterion as decisive.

Capital Asset, as per Section 2(14) of IT Act, 1961 includes any kind of property held by an assessee, whether or not connected with business or profession of the assessee.

The above meaning of Capital Asset doesn't specifically include an Intangible Asset. Therefore, we shall take the general inference of the word **"Property"** since it is not defined in the IT Act, 1961 itself. A

Property is generally construed as one which is:

1. An object that belongs to someone, or
2. The legal right to own and use something, etc.

The word **"Property"** signifies every possible interest which a person can clearly hold and enjoy. The expression **"Property of any kind"** is of such wide amplitude so as to take in tangible and intangible assets of any kind.

A person can be said to be the owner of a Property if he/she has a control over it in a manner that he/she can transfer its possession to someone else.

Taking into account the following,

Definition of an Intangible Asset set out in AS-26

Meaning of Capital Receipt

Meaning of Capital Asset u/s 2(14) of IT Act, 1961

General meaning of Property

it can be concluded that Income from Sale of an In-house developed software shall be considered as **Income under the head Capital Gain**.

Income from sale of Technical Know-how

According to AS-26, an enterprise may have a team of skilled staff leading to future economic benefits from training.

Usually, an enterprise has insufficient control over the expected future economic benefits arising from a team of skilled staff to consider that it meets the definition of an intangible asset.

For a similar reason, specific management or technical talent is unlikely to meet the definition of an intangible asset, unless it is

protected by legal rights to use it and to obtain the future economic benefits expected from it.

Thus, it can be concluded that any income arising to an assessee on account of sale of a technical know-how shall be taxable under the head **PGBP** and not **Capital Gains** because such a technical expertise cannot be considered as an Intangible Asset, as specified in the previous para.

Income from Sale of Data pertaining to Customers trapped in Software



As explained in the previous section, data of customers also can't be construed as an Intangible Asset because the organization generally has insufficient control over the economic benefits from customer relationships and loyalty to consider the same as Intangible Assets. Hence, sale of such data should also be taxable under the head **Income from Business or Profession**.

However, there could be two possible ways to consider such income taxable either under the head PGBP or under Capital Gain. Let us have a look at those for instance.

CASE -1: Sale of Customer database when the business to which it is concerned is sold/discontinued

If a business is discontinued in such a manner that the buyer agreed to purchase the assets in terms of the agreement and the assessee firm has agreed to transfer all rights/interest entitled



in the specified assets, then consideration received for such transfer shall be entitled

to be covered under the head **Capital Gain**.

Let us take the reference of the case **J.C. Bhalla & Co vs Addl. CIT [(2019) 177 ITD 1 (Delhi Trib.)]** to discuss further.

Facts:

1. M/s J.C. Bhalla & Co. (hereinafter referred to as Assessee) is a Chartered Accountant Firm in New Delhi.
2. By agreement dated 03/11/2010, it discontinued its business of Internal Audit by transferring it to an international firm.
3. The buyer agreed to purchase the specified assets in terms of the above agreement and the assessee firm has agreed to transfer all rights/interest entitled in the specified assets such as "Client relationships and Goodwill".
4. The assessee filed its ITR claiming the amount received from transferring its Internal Audit vertical as sale of a long-term capital asset and claimed deduction under section 54EC of the Act by way of investment in specified bond.



ITAT, Delhi Bench held as under:

1. The client list, contracts are property of the assessee firm which is connected with the profession of the assessee and falls into the definition of capital asset according to section 2(14) of the Act.
2. The assessee has transferred capital asset, therefore, it is chargeable to tax under the head capital gain.

CASE - 2: Consideration received for sharing of Customer database:

Mere sharing of customer database without any discontinuance of business

shall be regarded as a business receipt taxable under the head **PGBP** because the assessee had just shared the database without transferring of such rights in the database.

ITAT, Bangalore Bench in the case of **IBM India Ltd v CIT (A) [(2007) 105 ITD 1 (Bangalore)]** held as under:

1. There was no prohibition that such database would become the absolute property of the transferee and the assessee could not utilize the database for its own purpose.
2. The sum received could be attributed to the activities carried on by the assessee and hence was to be considered as revenue receipt and not capital receipt.
3. By sharing, there was not an impairment in the trading structure or there was no loss of source of income and hence the amount received was to be classified as revenue receipt chargeable to tax.

Set off of Capital Gain on Sale of Software – Can it be set off against Brought forward Business Losses?

1. Carry forward and set-off of business losses

Under section 72(1), business loss, other than speculative business loss, which remains unadjusted against income under any head of income in accordance with the provisions of section 71 be carried forward to the following assessment year, and-

- it shall be set-off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year;
- If the loss cannot be wholly so set-off, the amount of loss not so set-off shall

be carried forward to the following assessment year and so on.

2. Set off of capital gains from sale of software and brought forward business losses

The asset to be sold is clearly capital asset and has to be offered to tax under the head 'capital gains'. However, this capital asset is held for the purpose of business. Therefore, capital gain arising in the case of sale of such asset is business income, although not taxed under the head Business income. In order to claim set-off of carried forward business loss under section 72 of the Act, it is not necessary that the business income is to be taxed under the head business income only.

The Karnataka High Court in the case of **Nandi Steels Ltd [2021] 128 taxmann.com 267** held that assessee is entitled to set-off of brought forward loss u/s 72 against income which has the attributes of business income even though the same is assessable to tax under a head other than profits and gains from business.

Based on above discussion, the author is of the opinion that assessee can claim deduction of brought forward business losses against capital gain arising on sale of software, provided the business is carried out in the year of sale.

All said and done, let us now reflect back on what all we have discussed up till now. For this, we shall go through an example to conclude the fate of taxability on sale of:

1. In-house developed Software
2. Technical know-how
3. Customer database

Facts:

1. **M/s Brahmansh Ltd**, a wholesaler of Garments, is looking for buyers in Market for selling its in-house developed Software called **Brahmastra**. This software was developed by the employees who are well versed with technology without disturbing the treasury of the company.
2. The management is of a view that due to discontinuance of its Garments vertical, the software will no more provide the best utility as required.
3. Brahmastra provides a platform to integrate and automate tasks between M/s Brahmansh Ltd and its dealers. This software is capable of being modified to suit the purpose of any other organization with some slight technical advancements.
4. After serious deliberations with **M/s Dev Ltd**, the deal got finalized in April, 2022 for Rs. 15 Lakhs, which can be further bifurcated as under:

Consideration for	Amount (in Rs.)
Software	10,00,000
Sale of Technical know-how relating to few operations	2,50,000
Sharing of Database of Customers	2,50,000
TOTAL	15,00,000

5. The development of Brahmastra commenced in April, 2015. Thereafter, it was put to use in July, 2018.

The only expense incurred was in the form of Salary paid to the staff (being in the normal course of employment) which had already been claimed as an expense in the AYs 2016-17, 17-18, 18-19 and 19-20.

Conclusion:

From the above facts, the following can be inferred:

1. Income from Sale of Software developed by the staff of the assessee itself shall be considered as Capital Receipt taxable under the head Capital Gain since the software is a property of M/s Brahmansh Ltd. It shall be taxed under the head Capital Gains considering **Nil** Cost of Acquisition.
2. Income from Sale of technical know how shall be treated as Income under the head PGBP and not Capital Gains. This is because an assessee's team of skilled staff is not protected by legal rights to use it and obtain the future economic benefits expected from it and hence it is not considered a Capital Asset.
3. Similarly, Income from Sale of Customer's Data shall be considered as Income under the head PGBP because the organization generally has insufficient control over the economic benefits from customer relationships and loyalty to consider the same as Intangible Assets. Also, it is mere sharing of database and not absolute sale of rights to use the database.

Amendments in Finance Act, 2022: Related to Charitable Trust

Siddharth Garg

Inputs by: Nikhil Agarwal

Supervising CA: Naresh Kabra

The Finance Act, 2022 has made some amendments w.r.t. provisions of trust

Change is the only constant

अर्थात् परिवर्तन ही संसार का नियम है।

approved under section 10(23C) and registered under section 12AA/12AB for ensuring their effective monitoring and implementation as well as providing

clarity on taxation in certain circumstances.

For the ease of understanding of amendments in trust law via Finance Act 2022, trusts approved under section 10(23C) and registered under section 12AA/12AB are categorized as Regime 1 and Regime 2, respectively in this article:

Category- Regime 1

- Any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10

Category- Regime 2

- Trusts registered under section 12AA/12AB



Through this article, an attempt has been made to have a detailed discussion of the amendments made with the object to bridge the gap between Regime 1 and Regime 2.

However, some gaps are still present in both regimes which is restricting streamlining of Regime 1 and Regime 2 at the equal level which are also discussed at the end of the article.

AFTER SEEING AMENDMENTS OF FINANCE ACT 2022:

TRUST SANTA 🙄 :

AMENDMENT PE AMENDMENT,
PEECHLA TOH SAMBHLE NAHI -
NAYE AUR AAGYE

TRUST BANTA 😊 : KYON
THAK RAHE HO BHAI, SAMAJNA
TOH PADEGA HII!!!!!!

Snapshot of the key changes made in Finance Act 2022:

S. No.	Amendments	Effective from P.Y.
Amendments inserted under both the regimes		
1.	Maintenance of books of accounts	2022-23
2.	Application of income will be treated only if “Actually paid”	2021-22
3.	New Section – 271AAE	2022-23
4.	Section – 115BBI	2022-23
5.	Computation of income in cases of denial of exemptions(such as no audit carried out, no ITR filed, commercial receipts >20% of total receipts)	2022-23
6.	Voluntary Contributions for the renovation and repair of temples, mosques, gurudwaras, churches, etc.	2020-21
Amendments for streamlining the provisions of both the regimes		
7.	Provisions for accumulation streamlined	2022-23
8.	Taxability of Unreasonable benefit	2022-23
9.	Section 115TD	2022-23
10.	Filing of ITR to claim exemption	2022-23

***P.Y. here is referred to as a year preceding the Assessment year i.e. Financial Year**

AMENDMENTS INSERTED UNDER BOTH THE REGIMES

MAINTENANCE OF BOOKS OF ACCOUNTS:

Where the total income of the trust or institution, under both the regimes, exceeds the maximum amount which is not chargeable to tax which is Rs. 2,50,000, such trust or institution shall keep and maintain such books of accounts and other documents as notified by CBDT under Rule 17AA, notification no. 94/2022 dated 10.08.2022

But what is the requirement of such provision?

Earlier, when no such provision was there, the same type of trusts who are registered under the same section used to maintain different types of books of accounts as per their convenience.

All this was leading to high complexity for the AO to examine the books of accounts.

This change is effective from P.Y. 2022 -23.



This is a step towards better governance of trusts.

Currently, there is no explicit provision determining the manner of reckoning the

APPLICATION OF INCOME WILL BE ALLOWED ONLY ON ACTUALLY PAID BASIS:

application of income (i.e., on the accrual basis in the case of trusts/institutions following the mercantile system of accounting or on a payment basis).

Now, as per amended provisions, the application of income shall be reckoned only on a 'payment' basis.

For example, if in the books of Jethalal Charitable Trust, a creditor name Champaklal appeared in the Year 2022 but the payment to Champaklal was made in the Year 2024 then such amount will be treated as an Application of income in the Year 2024, not in 2022.

Also if any amount which is already claimed by the trust or institution in the year in which the liability to pay such amount was incurred, such amount will not be allowed as an application of income in that P.Y. when such payment is made.

Referring to the above example, If Jethalal Charitable Trust claims the amount to be paid to Champaklal as an Application of income in the year 2020 then such trust cannot claim the amount as an application of income in the subsequent year in which the said amount is actually paid.

Some charitable trusts are like: -

Are itni jhanjhat Chohdo Yaar isko Dekhenge araam se 2022-23 mein

Then Finance Act be like:-



This change was effective from the P.Y. 2021–22 itself.

Whether these amendments act as undue hardships for trust and institutions?

Yes, it became undue hardship for trust/institutions as ideally, amendments specified under Finance Act 2022 should be applicable from P.Y. 2022-23. However, this amendment was applied retrospectively from P.Y. 2021-22.

Therefore, this leads to a critical situation for the institutions/trust as already 11 months were surpassed and they had only 1 month to comply with this amendment. As a result, expenses which cover 85% on an accrual basis now create a shortfall to achieve 85% and ensure that expenses which will be treated as application of income are actually paid. by 31 March 2022.

As, most of the trusts are in the practice of calculating the application of income through an accrual basis but as soon as this amendment came, these trusts were left with only 1 month to either be required to maintain separate books for this purpose or shift towards cash basis of accounting.

(For detailed discussion of this amendment, kindly refer to our Between Us Article on the Topic "Managing

Application of Income on Actual Payment Basis”)

Trust/ Institutions has to ensure effective planning to achieve 85% by:

- Paying maximum liability by Balance Sheet Date
- If Books of Accounts are maintained on accrual basis, then separate working for calculation of income for 85% has to be maintained on cash concept basis.

SECTION 271AAE

Where any trust/institution passes on unreasonable benefit to the trustee or any other specified person, it shall be liable to pay the penalty which is as follows:

First time Violation:	Subsequent Violation:
<ul style="list-style-type: none"> Penalty of a sum equal to 100% of amount applied for benefit of such person 	<ul style="list-style-type: none"> Penalty of a sum equal to 200% of amount applied for benefit of such person

This change is effective from P.Y. 2022 -23.

Trust needs to ensure that whatever benefit given to specified person is reasonable and for same, they should maintain some justification or arm length price i.e. some comparable.

NEW TAX RATE PRESCRIBED FOR SPECIFIED INCOMES - SECTION 115BBI

Earlier, where trust makes any violation with the condition to avail exemption, such as accumulation of funds for prohibited purposes, partial application of accumulated funds, deployment of funds in prohibited investments, and diversion of income/provision of excessive benefits to trustees/other specified persons, the registration and complete exemption of the trust was at stake.

In order to avoid undue hardships, concept of **specified income** has been introduced. Specified income means the quantum of amount involved in the different types of violation as mentioned above.

As per Finance Act 2022, such specified income is liable to tax at a **flat rate of 30 percent** under section 115BBI (plus applicable surcharge if any and cess) **without reduction of any expenditure or allowances or set off of losses.**

Normal provisions will apply to income other than above, to avail income tax exemption subject to terms and conditions as prescribed u/s 11.

This change is effective from P.Y. 2022 -23.



Trust needs to be alert for any violation of the condition as it will attract section 115BBI.

COMPUTATION OF TAXABLE INCOME RESULTING ON ACCOUNT OF CERTAIN PRESCRIBED NON- COMPLIANCES

Earlier, there was no explicit provision determining the manner of computation of taxable income resulting on account of non-compliance.

Now, the taxable income resulting on account of prescribed non-compliances (such as not maintaining prescribed books of accounts, not filing the Return of Income, and carrying on commercial activities for consideration beyond the prescribed threshold) shall be computed **after allowing deduction of revenue expenditure** incurred in India, but subject to the following conditions:

- Expenditure should not be a donation or contribution to any person.
- Expenditure incurred without withholding appropriate tax or expenditure incurred in cash beyond the prescribed threshold shall not be allowed.
- Expenditure incurred from the corpus or any loan or borrowing shall not be allowed.
- Depreciation on an asset, the cost of which is claimed as an application of income in any year, shall not be allowed.

This change is effective from P.Y. 2022 -23.



This is a welcome change where small violations are not taxed disproportionately.

**VOLUNTARY CONTRIBUTION
FOR THE RENOVATION AND
REPAIR OF TEMPLES,
MOSQUES, GURUDWARAS,
CHURCHES, ETC NOTIFIED
UNDER CLAUSE (b) OF SUB
SECTION (2) OF SECTION 80G**

As per this amendment, if any voluntary contribution is received by the temples, mosques, etc., for the renovation and repair, then it is **at the option of trust and institutions** (as per explanation 3A in section 11), **to treat it as corpus donation** or not. However, for treating it as a corpus donation, certain **conditions** have to be fulfilled:

1. Applies such corpus amount for the purpose for which such contribution is received.
2. Not to apply such an amount for making a contribution or donation to any person.
3. Such corpus amount should be separately identifiable in books of accounts.
4. The corpus amount has to be invested in modes specified under section 11(5).

If any of the above conditions are violated, such corpus amount shall be included in the income of that P.Y.

This change is effective from P.Y. 2020 -21.



It is a welcoming change as the notified trust, now has an option to treat the voluntary contribution as a corpus from P.Y. 2020-21 but it has really become meaningful and effective from P.Y. 2021-22.

**AMENDMENTS FOR
STREAMLINING THE PROVISIONS
OF BOTH THE REGIMES**

**PERIOD OF UTILIZATION OF
ACCUMULATION**

A trust/institution is required to apply at least 85 per cent of its income towards charitable activities in a particular year. However, in the event this threshold is not met, the law allows for the accumulation of funds to be applied for charitable purposes in future years (not exceeding 5 years), subject to certain conditions.

Earlier, such accumulated funds can be applied even in the year subsequent to the P.Y. of accumulation i.e in the 6th Year even if it is not used at the end of the 5th Year.

As per the new provision, now unutilized income will be treated as income of such trust or institutions in the 5th year only in both regimes.

This change is effective from P.Y. 2022 -23.

Further, conditions for accumulation for 5 years through filing of Form 10 which was earlier covered under Regime 2, are also

applicable in respect of trusts governed under the specified institutions' regime as well i.e Regime 1.



Trust needs to ensure that accumulated funds should be utilised for the objective within 5 years.

Trust under category regime 1 now has to file form 10 for accumulation of income.



Trust under regime 1 has to ensure that the benefit to the specified person shall not be in excess of what may be reasonably paid.

Issue worthy to be noted, that in addition to tax, penalty under section 271AAE may be imposed in hands of trust as explained earlier in this article.

TAXABILITY OF UNREASONABLE BENEFIT

Earlier under regime 2, trusts or institutions are not required to pass on any benefit (unreasonable) specified under section 13(2) to any person specified under section 13(3), otherwise the same will be taxable in the hands of trust and will not be considered as application of income.

Therefore, to bridge the gap, "**twenty-first proviso in clause (23C) of section 10 of the Act**" is inserted according to which:

If any income has been applied for the benefit of any person specified in section 13(3) then such income shall be deemed to be the income of trust or institutions approved under regime 1 in the P.Y. in which it is applied.

SECTION 115TD

This section basically is referred to the Exit tax for the trusts or institutions.

Any trust or institution carrying on any charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization.

But what is the need for such provision?

A specific provision in the Act was brought about for imposing a levy like an exit tax to ensure that the intended purpose of exemption availed by trust or institution is achieved.

The said provision is already present in regime 2 so the provisions are amended to make the above provision applicable in regime 1 also.

Ab bologe ki bhai tax rate toh bata de kam se kam, apna jawab ek hi h:



Tax @42.744% (inclusive of surcharge and cess) will be applicable as exit tax for trusts or institutions. The same is calculated on difference of Market Value of Assets and Book Value of Liability.

Trust approved under regime 1 has to be more cautious now because with respect to this stringent provision, there is no difference between both regimes.

Filing of ITR was made compulsory under regime 2 for trusts or institutions to claim

FILING OF ITR TO CLAIM EXEMPTION

exemptions but there was no such provision in the case of regime 1.

As per the amendment, filing of ITR has been made compulsory under the regime 1 as well.

In the recent Era, return form has been changed drastically as now detailed feeding of balance sheet items, loans, borrowings, corpus fund and their utilization is required.

The return form has been designed in such a way that each detail can be extracted from a single form.



Trustees need to ensure that the return of trust should be filed promptly and on time.

तो अब क्या ये कहना सही होगा की इन amendments के बाद अब ये दोनों Regimes बराबर हो गयी है?

No, there is one of the most important gap which still exists in Regime 1 and Regime 2, which is with respect to deemed application of income. This exists as a loophole between 12A and 10(23C) and probably the Finance Act 2023 will be able to bridge this gap between these 2 sections and helps to avoid undue hardships which are currently faced by trust/ institutions approved under regime 1.

DEEMED APPLICATION OF INCOME

Where the whole or any part of the income has not been received during the year, the assessee has the option to apply such income for such purposes during the P.Y. in which it is received or during the P.Y. immediately following the said P.Y.

But where the assessee fails to apply the whole or any part of the income received during the P.Y. in which it is received, the assessee has the option to apply such income for such purposes during the P.Y. immediately following the P.Y. in which the income was derived.

This option can be exercised by the trust registered under regime 2 by furnishing Form 9A to the AO under section 11(1)

This option is still not present under regime 1 which creates a gap between the two.

Another burning issue related to the Companies Act is the eligibility to file form CSR-1

Earlier, institutions undertake registration under both the sections i.e. 12A as well as 10(23C) and take CSR benefits through 12A Section. However, as a result of the amendment brought through the Finance Act 2020, a trust/institution has to opt for either 12A or 10(23C).

This act is an undue hardship to the genuine trust having registration u/s 10(23C) and also it significantly defeats the very purpose of CSR law specifically due to the following two core reasons:

1. The unfortunate exclusion of 10(23C) approved trusts/ Institutions may curtail or defeat the very purpose of this registration requirement, to a significant extent.
2. If 10(23C) registered Institutions wish to do CSR activities by obtaining CSR funds, they would be forced to forego 10(23C) approval and will have to apply for fresh registration u/s 12AB, which will be provided after detail enquiry, scrutinize and verification of various data, information etc. by the respective authority of income tax.

PROFESSIONALS TO TRUST BE LIKE:



Roadmap to ensure Compliance:

- Trusts should shift their vision and working style from manual to automation for smooth working.
- Trust should educate and train its staff for effective compliance
- Trust needs to employ experience person or professional so as to ensure compliance of trust laws, which has been amended drastically in last few years
- Proper Fixed asset registers and prescribed books of accounts should be maintained.

INDIRECT TAX

Pre-Deposit using ITC

-Credit ledger

Akansha Agarwal

Inputs by: Vansh Jain

Supervising CA: Keshav Gupta

Right to appeal is a statutory right. Such a right is subject to certain conditions provided under the law. One such condition

*Pre deposit jama
nhi krwaoge,
To sirf
department ke
chakkar hi lgate
rh jaoge*

is that an appellant must first deposit a certain percentage of the disputed sum before filing the appeal. The appeal should not be admitted

unless a requisite pre-deposit is made by the appellant to the Government exchequer.

Post Finance Act, 2014, requirement of making pre-deposit as a percentage of tax has been made mandatory for filing appeals by taxpayers under indirect tax laws. The main purpose of pre-deposit is to ensure:

- Abate litigation relating to stay proceedings, grant deemed stay from recovery and collect specified percentage of tax upfront in a uniform manner; and
- Acts as a stoppage of unnecessary litigation which may be preferred by the taxpayers to delay the payment of the demand amount.



Now, let us first understand the provisions of Pre-deposit **under GST Law** which need to be satisfied while filing an appeal before both the **Appellate Authority** and the **Tribunal**.

Section 107(6)(b) of the CGST Act, 2017 mandates the condition for payment of the pre-deposit amount for filing an appeal **before the first Appellate Authority**.

The conditions are stated below:

No appeal shall be filled unless the appellant has paid –

Order type	Admitted/ Disputed	Pre-Deposit required
Any order	Admitted liability	100%
	Disputed tax	10% (max. Rs. 25 Cr.)
Order passed u/s 129(3)	Disputed penalty	25%

Similarly, section 112(8) of the CGST Act, 2017 mandates the condition for payment

of pre-deposit amount for filing an appeal **before the Tribunal.**

The conditions are stated below:

No appeal shall be filed unless the appellant has paid -

Order type	Admitted/ Disputed	Pre- Deposit required
Any order	Admitted liability	100%
	Disputed tax	25% (max. Rs. 50 Cr.)

This can be understood through an example:

ABC Ltd. received a show cause notice demanding of tax of Rs.20 lakh, penalty of Rs.20 lakh and interest of Rs.4 lakh. The Adjudicating Authority passed an order confirming the entire demand. While ABC Ltd. admits the tax liability of Rs.10 lakh and interest of Rs.1 lakh, latter wishes to file an appeal to challenge the balance demand amount.

Now the question rises, what is the amount of pre-deposit to be made by ABC Ltd. for filing an appeal to the Adjudicating Authority?

The whole amount of tax, interest and penalty as admitted by the company i.e. Rs.11 lakh and 10% of the tax in dispute, i.e. Rs.1 lakh (10% of Rs.10 lakh). Therefore, total pre-deposit to be made by the company is Rs.12 lakh.

As per the provisions contained in Section 107 and 112 of the CGST Act, 2017, the recovery proceedings for the balance amount shall be deemed to be stayed on payment of such pre-deposit.

Now, moving ahead, here comes the main question and the matter of doubt, i.e. whether the payment of pre-deposit can be made through Electronic cash ledger or the electronic credit ledger can also be utilised?

ECrL is a ledger maintained on common portal wherein every claim of ITC under the CGST Act is credited. Section 49(4) of the CGST Act limits the utilization of ECL for making payment towards output tax. section 2(82) of CGST Act defines 'output tax' as tax chargeable on taxable supply of goods or services or both but excludes tax payable under reverse charge basis. On combined reading of section 49(4) and section 2(82), it appears that scope of utilization of ECrL is limited to payment towards output tax only.

Since, Section 107 and section 112 uses the phrase 'sum equal to percentage of tax' and not 'tax', it is necessary to analyze whether the pre-deposit is in the nature of output tax or is merely an amount.

Dealing with this issue, the **Orrisa High Court in the case of Jyoti Construction v. Dy. Commissioner of CT & GST [2021] 131 taxmann.com 104 (Orissa)** held that the credit balance in the electronic credit ledger cannot be used for paying the pre-deposit amount. However, recently the **Bombay High Court** and the **Allahabad High Court** have held it otherwise (i.e. credit balance in electronic credit ledger can be used for paying the pre-deposit amount.).

The legal analysis under above cases was as under:

- ❖ The **Hon'ble Bombay High Court** in the case of **Oasis Realty v. Union of India [2022] 143 taxmann.com 5 (Bombay)**, accepted that pre-deposit is in the nature of tax. The Court harped on the fact that expression used in section 107 is '**paid**' and not '**deposited**'. In common parlance, tax is paid, and not deposited. Also, the provision states that specified percentage of tax has to be **paid**.
- ❖ The **Hon'ble Orrisa High Court** in the case of **Jyoti Construction v. Deputy Commissioner of CT & GST** examined the very issue and held that it is impossible to equate the '**output tax**' payable to the amount of pre-deposit required to be made for the filing of an appeal. The Hon'ble Bombay High Court didn't comment on the observation in this judgment and instead referred to CBIC's circular ("GST Circular") in which, among other things, it clarified that ECL balance may be used for payment of output tax arising as a consequence of any proceedings instituted under the provisions of the GST Law.

At this juncture, it is also important to refer the jurisprudence prevailing in the erstwhile regime. Section 35F of the Central Excise Act, 1944 requires that the Tribunal or the Commissioner (Appeals), shall not entertain any appeal unless the appellant has deposited **percentage of the duty**.

Jurisprudence on the issue of payment of pre-deposit through Cenvat credit evolved from Circular No. 15/CESTAT/General/2013-14 dated 28-8-2014 issued by CESTAT. It clarified that for filling appeals, mandatory deposit of duty confirmed can be made from CENVAT account.

However, the language of section 35F of the Excise Act is different from section 107 of the CGST Act. Section 35F of the Excise Act used the phrase '**seven and a half per cent. of the duty**' which is not in similar to the phrase '**sum equal to ten percent of tax**' used in section 107 of the CGST Act. The phrase used in section 35F clearly shows that taxpayer is depositing duty and not a sum equal to duty. Thus, the rationale in erstwhile jurisprudence may not be of help under the GST regime.

Conclusion:-

Points in favour: Furnishing pre-deposit through cash is not desirable where the taxpayer has accumulated ITC available at its disposal. ITC is equivalent to tax paid and the rationale to not permit its usage for payment of pre-deposit for maintaining an appeal is quite unreasonable and devoid of logic. It could not be understood that when the entire payment of tax could have been made from ECL then why a part of it (10%) cannot be made from it. Legislation has clearly stated that ECL cannot be used for payment of interest, fee and penalty etc. and payment of taxes due under reverse charge.

Conceptually, the law merely requires a certain amount to be pre-deposited before filing an appeal which for the sake of

convenience, has been fixed as a percentage of the tax amount in dispute. Such pre-deposit does not attain the character of tax but remains an amount. It may be argued that if any demand gets finally confirmed, the amount deposited towards pre-deposit gets adjusted against the confirmed demand, thereby attaining the character of tax.

Circulars issued under erstwhile regime allowing pre-deposit using CENVAT credit issued would also be supporting the case.

Points in against: Although CBIC issued Circular No. CBIC-20001/2/2022-GST dated 6.7.2022 regarding utilization of the amounts available in the ECrL for payment of tax and other liabilities. CBIC clarified that any amount towards output tax payable, **as a consequence of any proceeding** instituted under the provisions of GST Law, can be paid by utilization of the amount available in the ECL of a registered person.

Circular refers to the consequential liability arising from the conclusion of the proceeding and pre-deposit is surely not a consequential liability, rather it is a pre-condition to file an appeal. Thus, the Circular nowhere permitted payment of pre-deposit through ECrL

Thus, it can be concluded that the issue of Payment of pre-deposit from electronic credit ledger still needs a transparent clarification from CBIC, Tribunal or Courts and till the same is issued, it will surely be tested at multiple forums.

However, as per Income Tax Act, there is no requirement for deposition of a certain

percentage of the disputed sum before filing the appeal.

Secondment of Employees

Aryan Agarwal

Inputs by: Saloni Jain

Supervising CA: Keshav Gupta

Introduction

Secondment of Employees is a practice in which

“Team Spirit means you are willing to sacrifice personal consideration for the welfare of all. That defines a team player.”

multinational companies i.e. Parent Company deposes its manpower resources to subsidiaries companies for particular projects, assignments or

otherwise. The manpower is generally deputed for a specific span of time (say 5 years). Once the assignment/projects get completed, the employees returned to their native territories.

Secondment of Employees is on temporary basis and it does not affect the employment relationship between the employee and the transferring company (Employer). This is so even if the host exercises control and direction in the manner in which the employee carries out his or her work, and pays the employee's wages during the secondment period, it is still up to the employer to make such arrangement (e.g.



the employer reimburses the host for the wages paid) with the host.

In these arrangements, the remuneration is generally paid by the home company (Parent) directly to their employee in local currency which is later reimbursed by the Subsidiary Company.

Employee still remain an employee of the employer, it is the employer (not the host) who has the right to dismiss the employee. While the host may exercise control and give direction to employee during the Secondment period, if the employee fails to do so, the host cannot dismiss the employee but can complain to the actual employer. Then it depend on the employer whether to dismiss the employee or not.

As the secondment does not result in a change in the employee's employment relationship with the employer, the end or termination of the secondment does not automatically result in the termination of the employee's employment. When the secondment is terminated or comes to an end, the employee will return to the original employer and continue their employment as normal before the secondment.

Tax Implication

Secondment of employees is a simple transaction of Man-Power Supply by one entity to other, as the other entity does not become the employer of the Seconded Employee. So, the question arises whether the Service Tax is applicable or not.

Also under the earlier Service Tax regime, the department has issued Show Cause Notices ('SCN'), to various Indian MNCs demanding service tax on the reimbursement amount paid by the Indian Subsidiary company to its parent company. In few cases, the SCNs were also issued to the domestic companies whereby the employees are deputed on project basis.

High Court

In Pre Negative list it was argued by the Department that the given services would cover within the meaning of Manpower Recruitment or Supply Agency's Services and thus services tax would be applicable on the same. However, various Tribunals and High Courts in various cases have held that the given supply would not qualify as Manpower Recruitment or Supply Agency's Services. Few cases in this regard can be referred as under:

(i) *Arvind Mills Limited* [2014] 45 *taxmann.com* 376 (Gujarat)

(ii) *Target Corporation India (P.) Ltd.* [2014] 45 *taxmann.com* 376 (Gujarat)



It is noteworthy, negative list era of regime of service tax all services were made taxable except those covered under negative list or unless otherwise specifically exempted. The services by an employee to the employer in the course of or in relation to his employment were kept outside the ambit of service tax by explicitly excluding it from the definition of Services.

In a recent judgment of *M/s Imasen Manufacturing India Private Limited* [2021] 128 *taxmann.com* 255 for the negative list period, the Commissioner (Central Excise & CGST, Jaipur) held that reimbursements made by Indian Company to its parent company for employee Secondment is not taxable. The Commissioner in its order confirmed the employer-employee relationship between the seconded employee and the Indian Company.

In this regard one may also refer the case of *Franco Indian Pharmaceutical (P.) Ltd.* [2016] 69 *taxmann.com* 198 (Mumbai – CESTAT), wherein it was held that if the contract of employment is entered with one company and later on employees are deputed to another group companies, cost shared will not be liable to service tax because conduct of the parties shows that employee will

work for more than one company and there is no intent to earn revenue.

Supreme Court

C.C., C.E. & S.T.-Bangalore VS Northern Operating Systems Pvt Ltd. (Supreme Court)

Scope of Agreement of Northern Operating Systems Pvt Ltd.

- Seconded Employee continues to be the employee of Foreign Entity for the purpose of Social Security/Retirement Benefit. India Entity is employer for all practical purpose.
- Employer Remuneration will be determined in Foreign Currency
- Term & Condition of Indian Entity will be applicable on Seconded Employee.
- Role of Foreign Currency will be limited to payroll Service Provider only.
- Foreign entity pay employee salary, bonus, Social Benefit & Other Expenses, which will be reimbursed by the Indian Entity without Markup.

Observation

Direction & Control Test is considered relevant in previous judgements, but Supreme Court considered this Test as irrelevant.

- Indian Entity had operational & functional control over the

Seconded Employee for the purpose of completing the task.

- Terms of Employment during Secondment are as per Foreign Entity.
- Foreign Entity for its own business purpose had deployed Employee to Indian Entity.
- Employee gets returned to Foreign Entity upon the completion of task or Secondment period.
- There is an Existence of quid pro quo Between Indian entity & Foreign entity, as Indian Entity is getting benefit from the skilled & specialised employee.
- Disregarded the earlier favourable judgements on this issue, calling it to be unreasonable & therefore having no precedential value.

Judgement

Service Tax under Reverse Charge Mechanism is applicable on this Transaction as Foreign Entity is providing Man-Power Supply to the Indian Entity, on the basis of above observation.

The court also disregarded the Revenue Neutrality Argument, basis the point that it only poses question of taxability of transaction.

Court held that extended period cannot be invoked as Assesses had acted in Bonafide manner, when it relies on the Earlier Judicial Judgement, to take a call of not paying Tax.

Opinion

According to my understanding and opinion, the Judgment of the Supreme Court was correct, as the following points are considered.

- Control cannot be a single determinant factor to determine who is the employer of seconded employee.
- Seconded Employee is working for a particular duration and had to return to their overseas employer, or are deployed on some other secondment.
- Seconded employee is still on the payrolls of their overseas employer and they are entitled to social security benefits in the country of their origin.
- The agreement between Northern Operating Systems Private Limited and seconded employee had nowhere stated that the latter would be treated as former's employees

Therefore, from the above points it can be stated that there is no employer-employee relation between the Northern Operator System Private Limited and the seconded employee.

Implications under GST

Although the decision was under erstwhile law, there would be wide implications under GST as well since the practice of secondment still continues. Considering such secondment transactions as manpower supply services received from foreign group entity, it is relevant to understand the place

of supply to determine GST applicability. For this, Section 13(3) of IGST Act, being the residuary clause would apply since there is no specific clause relating to manpower supply services. Thus, the place of supply would be India (being location of the Indian entity). Further, since place of supply is in India and the location of supplier is outside India, it would amount to "import of services" and liable to GST under reverse charge mechanism.

Actions points for taxpayers

In light of the Supreme Court order, it is important for taxpayers to re-look into the terms of agreements with their Seconded employees. Employment agreements may be entered into with the Seconded employees to establish an employer-employee relationship between the Indian entity and the Seconded employees however, any such amendment in the agreement would surely have an impact under Income Tax Act & Labour Law therefore, it is suggested to obtain professional opinion and guidance before entering into secondment agreements or upon amendment of contracts.

Interest calculation u/s 50 read with Rule 88B

Jasmeet Kaur

Inputs by: Reshab Khandelwal

Supervising CA: Keshav Gupta

“Hello CA, I delayed once again in filing GST Return.

Sir, kindly comply the GST rules. Come, let us compute your interest liability.”



Section 50.
Interest on
delayed payment
of.

*“Step out of
your comfort
zone. Growth
takes place
when you are
challenged, not
when you are
comfortable.”*

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but

fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding **eighteen per cent.**, as may be notified by the Government on the recommendations of the Council.

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in

accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding **twenty-four per cent.** as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

“Sir, yeh prescribed kya h??

CBDT ne Rule 88B prescribe kiya h registered person.”

What does Rule 88B states?

This rule is added by **Notification No. 14/2022-Central Tax** dated July 5, 2022

and is applicable retrospectively from July 1, 2017.

Rule 88B. Manner of calculating interest on delayed payment of tax.

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as

may be notified under said sub-section(3) of section 50.

Explanation. —For the purposes of this sub-rule, —

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, —

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other.



“Aaye abh ek practical case se smajhte h yeh section aur rule kehna kya chaah rahe hai??”

Lazy Pvt Ltd. got a Notice from GST Department on 25th November 2021 for wrongly availing Input Tax Credit in the year 2020-21.

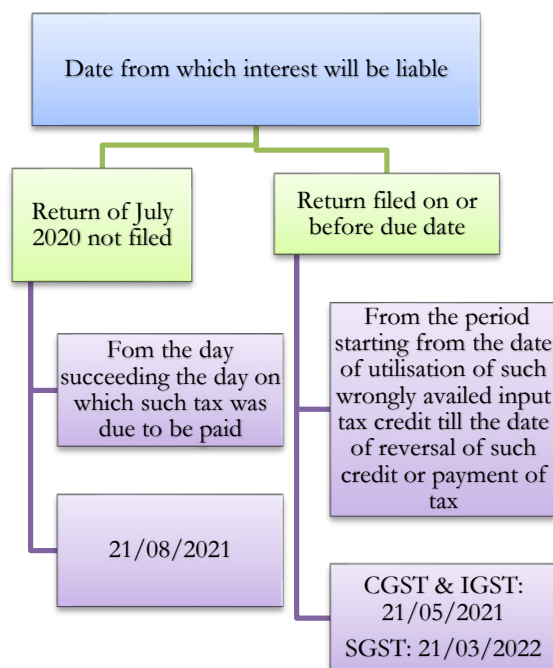
Month-July		
Particulars	CGST & SGST	IGST
Input availed during the month	15,87,510	5,05,450
Input to be reversed	7,01,440	2,23,330
Actual input reversed	6,35,000	2,02,180

The balance in the Electronic Credit Ledger of 2020-21 never falls below the amount of input tax credit wrongly availed. However, the balance in the year 2021-22 are as follows:

Tax Period	Balance Available		
	IGST	CGST	SGST
April 21	0	0	21,38,430
Feb 22	0	0	0

Having a brief knowledge about Section 50 and Rule 88B, let's find the date from which interest will be liable and how and on what amount it will be calculated in two different scenarios.

(a) Date from which interest will be liable:



(b) Amount liable to interest:

CGST & SGST	
Input to be reversed	7,01,440
Actual input reversed	6,35,000
Difference (Tax amount)	66,440
IGST	
Input to be reversed	2,23,330
Actual input reversed	2,02,180
Difference (Tax amount)	21,150

(c) Interest Calculation:

(Assumption: Interest is paid on 01/12/2022)

Scenario 1:

No proceedings u/s 73 or 74 raised:

CGST	
No. of days interest is liable	559
Rate of interest	18% p.a.
Interest applicable	$33,220 \times 18\% / 365$ *559
	9,157

SGST	
No. of days interest is liable	255
Rate of interest	18% p.a.
Interest applicable	$33,220 \times 18\% / 365$ *225
	3,686

IGST	
No. of days interest is liable	559
Rate of interest	18% p.a.
Interest applicable	$21,150 \times 18\% / 365$ *559
	5,830

Section 73

• Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts

Section 74

• Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts

Scenario 2:

Proceedings u/s 73 or 74 raised:

CGST	
No. of days interest is liable	559
Rate of interest	24% p.a.
Interest applicable	$33,220 \times 24\% / 365$ *559
	12,210

SGST	
No. of days interest is liable	255
Rate of interest	24% p.a.
Interest applicable	$33,220 \times 24\% / 365$ *225
	4,914

IGST	
No. of days interest is liable	559
Rate of interest	24% p.a.
Interest applicable	$21,150 \times 24\% / 365$ *559
	7,774

Corporate Guarantee Under GST

Sakshi Saini

Inputs by: Abhishek Pareek

Supervising CA: Keshav Gupta

The Goods and Services Tax Regime brought plethora of changes to the pre-existing taxation

*“Guarantee
Leloo Bhai
Guarantee”*

regime of the country. It brings various transactions into GST net which otherwise were not liable to tax

in pre GST era by way of wide inclusive definition of supply and business.

Taxability of Corporate Guarantee under GST is one of the emerging chunks of this regime. Recently, Tax and Regulatory have been quite vigilant about these transactions and have been scrutinizing more closely. This topic is to provide a wholesome overview on taxability of Corporate Guarantee under GST for clear understanding of the readers about when it constitutes a supply of service with a twist when it does not get covered under supply of service.

About Corporate Guarantee:-

Corporate Guarantees is a guarantee by one business or Corporate entity or by a



holding company for another group company or subsidiary company or Joint Venture company. Generally, guarantee by one Corporate entity for other Corporate entity is given at the time of Term Loan / Working Capital loan / Other Special purpose loans when being availed by other group company. Such understandings are termed as "Corporate Guarantee". The guarantor agrees to take responsibility for the debtor's obligations, such as repaying a debt. Simply, one corporate entity stands as guarantor for another corporate entity. In general, these corporate guarantees are issued to safeguard and support the financial health of their associate enterprises or to facilitate smoother functioning of the whole group.

A contract of guarantee comprises of three components, viz:

- **The Principle Debtor**- for whom the guarantee is given
- **The Creditor**- to whom the guarantee is given

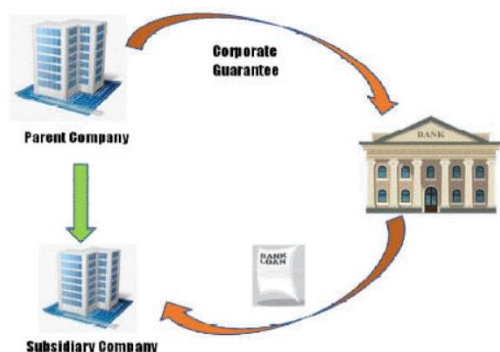
- **The Surety**- who is liable to pay the creditor in case of default by the principle debtor.

Example of Corporate Guarantee: -

Let us understand this term with an example:

Bholu Pvt Ltd is a startup company and is in need of funds for operating business. It seeks to borrow funds from Bank to fulfil its purpose. Unfortunately, the Bank rejects the loan proposal of Bholu Pvt Ltd on the reason that it's a startup and the future prosperity of its business is not certain at this time. Simply, the Bank cannot provide loan to it just because there was no surety of repayment of its loan on time. Bholu Pvt Ltd now seeks help from its Holding Company, namely, Sonu Pvt Ltd., who give guarantee to the Bank that in case its subsidiary fails to repay the debt, it will become liable to pay the Bank. In return, it will not charge any consideration from Bholu Pvt Ltd.

Finally, Bholu Pvt Ltd gets a loan which is secured under a **corporate guarantee** given by its holding company.



Corporate Guarantee – Supply or not?

The term “Supply” is defined under section 7 of the CGST Act, 2017 to include all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal of goods or services or both, made or agreed to be made in the course or furtherance of business and for a consideration and includes activities mentioned in Schedule I to the Act which are made or agreed to be made without consideration.

Schedule I of the CGST Act, 2017 for the purpose of our case includes supply of goods or services or both between related persons or distinct persons as specified under Section 25, when made in the course or furtherance of business even if made without consideration.

Now, whether extending guarantee by a corporate entity to its subsidiaries constitutes taxable supply or not. But before that, its important to know the definition of “**Services**” given in **Section 2(102) of the CGST Act**, which says that *services means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.*

Considering the above definition of supply and services, let us now continue our example to delve into the scope of Corporate Guarantee under GST.

Bholu Pvt Ltd becomes **very bholu** to analyze that the transaction performed

amongst the three parties will constitute supply. With the help of a GST consultant, it gets to know that the guarantee given by Sonu Pvt Ltd will be covered under the scope of supply of services which is in the course and furtherance of its business even when no consideration is charged by the supplier of service ,i.e., Sonu Pvt Ltd. for providing services in the form of guarantee.

Schedule I is attracted here because these two parties are related to each other as SonuPvt Ltd holds more than twenty-five percent of shares in Bholu Pvt Ltd. Thus, it becomes clear that this transaction on being conducted between related parties without consideration in the course or furtherance of business will attract liability under GST.

In the above example, it is understood that corporate guarantee when given to a related person with or without consideration will be treated as supply of service. Also, when it comes to guarantee given by a company to its unrelated entity against a consideration, then it will qualify as supply.

“Lg Gyaa GST...ab GST dega kon??”

Liability to pay GST:-

After understanding that corporate guarantee constitutes supply under GST, here comes a question that who is liable to pay GST on such supply of service – supplier or recipient.

It is pertinent to note that of the surety is an Indian Company then it would have the liability to pay GST to the Government as the supplier of such services. If the supply is

made with consideration, then the supplier will be liable to pay output tax on such income received at applicable GST rates. But if the supply is made without consideration then in general, GST will be payable on the open market value of such transaction and if the open market value is not available, it shall be levied on the basis of value of such services evident in the similar transactions of giving commission on providing corporate guarantee services.

However, in the other scenario, if the supplier of such service is not an Indian Company, then liability to pay GST will fall in the hands of recipient of such service under Reverse Charge Mechanism as this will constitute import of service as given under Section 9(3) of the CGST Act, 2017.

Corporate Guarantee – when not supply of service?

Now, the most awaited twist in the article is going to appear before the readers that is it possible for a corporate guarantee to not to get covered under the scope of supply of services under GST.



Yes, indeed!! GST is not levied on a corporate guarantee in two scenarios:

- ✓ When it falls outside the ambit of supply under Schedule I.
- ✓ When it becomes an actionable claim which is neither a supply of service nor supply of goods under Schedule III.

In first case, if a company gives guarantee to its unrelated party without a consideration then it will not be a supply as Schedule I will prevail only if its three conditions will be satisfied, i.e transaction be to be conducted with or without consideration; in the course or furtherance of business; and by parties related to each other.

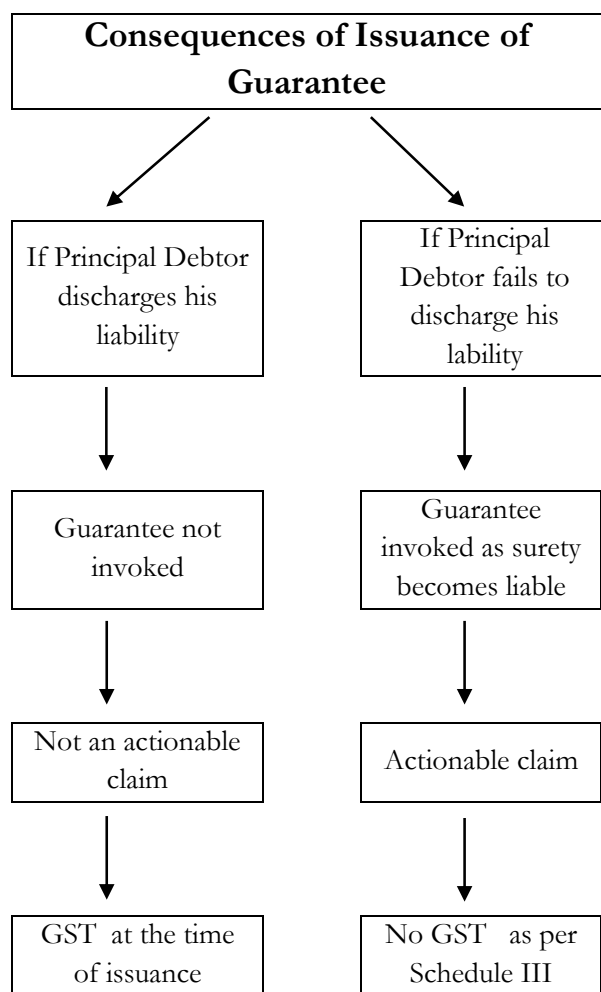
Let's understand the second scenario now. The scope of Schedule III in GST. *Schedule III covers those activities or transactions which shall be treated neither as a supply of goods nor supply of services. Schedule III of the CGST Act under Clause 6 mentions that actionable claims are not to be considered either as a supply of goods or services.*

The term actionable claim is not defined under the GST Act. However, actionable claim shall have the same meaning as assigned to it in **Section 3 of the Transfer of Property Act, 1882**, which defines it as *a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for*

relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. In general terms, an actionable claim is a debt or claim for which the person can take an action against the debtor, and can also approach the Court for recovery of his debt.

To provide a clarity to the definition quoted above, the Patna High Court, in the case, **Ambica Prasad Singh And Anr. vs Ram Charitar Singh And Anr. on 21 December, 1949 (AIR 1951 Pat 415)**, stated that a claim in respect of which the power to take an action lies in the hands of appellant is an actionable claim, however, the one in respect of which an action has already been taken and the same has been fructified in a decree is not an actionable claim.

It can be argued that corporate guarantee gives rise to an unsecured contingent debt and this debt can be claimed by Banks from the company which is 'surety to the contract of guarantee' when the Banks are unable to recover the amount from the principal debtor and surety becomes liable to pay the creditor. Hence, it can be contended that corporate guarantee qualifies as actionable claim. Issuance of Corporate Guarantee involves provisioning of assurance services and this transaction is resulting into actionable claim in the hands of Bank or Financial Institutions.



Conclusion:

In nutshell, the definition of supply covers Schedule I which deems certain activities without consideration also as supply and it includes supply of goods/services between related persons made in the course or furtherance of business. Accordingly, it cannot be said that corporate guarantees are issued without consideration and not leviable to GST due to the aforesaid entry in Schedule I. The said entry under Schedule I under CGST Act is designed by legal fiction on the principle that relationship itself is consideration. Thus, it appears that

corporate guarantees, being a transaction between related person without consideration, will be deemed as supply under Schedule I and will be taxable under GST.

Also, to determine the taxability of Corporate Guarantee, reliance can also be placed on **Circular No. 34/8/2018-GST dated 01.03.2018** wherein, it is provided that services provided by Central or State Government to any business entity including PSUs by way of guaranteeing the loan taken from financial institutions against consideration shall be taxable. Hence, the aforementioned circular supports the view that transaction of guaranteeing loan with consideration qualifies as supply and therefore, is leviable to GST.

Further it shall be noted that, Corporate Guarantee can be an actionable claim which takes it out of the scope of supply in accordance with Schedule III. However, mere issuance of corporate guarantee may not qualify as supply of actionable claim and would be chargeable to GST.

Amended Section 16(4)

Saloni Jain

Inputs by: Aryan Agarwal

Supervising CA: Keshav Gupta

“Hello CA, Input lene ki date badh gyi..ab to I am very happy.

Sir, yaha b thoda jhol h...dhyan se samajhna”

Section 16 :- Eligibility and condition for taking Input Tax Credit

“Step out of your comfort zone. Growth takes place when you are challenged, not when you are comfortable.”

**AMENDED
BY
NOTIFICATION NO.
18/2022**

(4) A registered person shall not be entitled to take input tax credit in respect of all invoice or debit note for supply of goods or services or both after the **(thirtieth day of November)** following the end of financial year to which invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Before Amended

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or service or both **after the due date of**



furnishing of the return under sec 39 for the month of September following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

This amendment came as a much needed relief to the taxpayers for claiming ITC. Earlier time limit for taking input tax credit with respect to invoice or debit note was due date of furnishing of GSTR-3B for the month of September following the end of the financial year to which such invoice or debit note pertains and other condition in respect to annual return is irrelevant, as annual return due date i.e 31 December is after September GSTR-3B due date.

Now after amendment, time limit for input tax credit with respect to invoice or debit note is 30th day of November following the end of the financial year to which such invoice or debit note pertains.

Here, it is also important to understand the need of amending section 16(4) before we proceed for a deeper analysis of section amended 16(4).

With the Finance Act, 2020 amending the time limit for filing of return for a company and certain other assessee u/s 139 of the Income Tax Act, 1961 as 31st October from 30th September, the date of 30th September provided earlier in section 16(4) become reluctant.

The finalization date under Income tax shifts to 31st October from 30th September and thereby the due date of filing September month GSTR 3B as mentioned in Section 16(4) seems to be not in line with the income tax and with finalization of books of accounts.

So, after the amendment through Finance Act, 2020, the practical date for claiming ITC with respect to any invoice or a debit note of the previous financial year u/s 16 of GST law should be due date of GSTR 3B of October which will be generally 20th November and this anomaly is being cured with the amendment in section 16(4) of CGST Act, 2017 by Finance Act, 2022.

The amendment looks like a blessing but do you see a disguise here or rather we should call the amended section 16(4) as 'blessing in disguise. Let us understand it further.

Here is the common question of every taxpayer regarding this amendment - *"sir, due date GSTR-3B for the month of October hai ya some additional return has been issued by Government for such rectification till 30th November"*

So the answer on plain interpretation of amended section 16(4) gives an answer that no additional return has been prescribed by

Government and effect of such extended time limit has to be done in GSTR-3B itself.

Further, the amended provision is very confusing as it says 30th November without mentioning period of return and due dates.

In my opinion for all the regular monthly GST return filers, registered person can take input tax credit with respect to the previous financial year latest by filling October GSTR-3B which falls on 20th November i.e before 30th November.

If this is the case then practically extension in the time limit for claiming ITC is of 31 days (i.e, from 20th October of next FY to 20th November of next FY) and not of 41 days. One can also argue that for monthly return filers last date for availing ITC will be 20th December of next FY because it is not possible to avail ITC as on 30th November. So, registered person can avail ITC in GSTR-3B of November's month i.e, 20th December of the next FY.

However, as per my understanding, a registered person can avail ITC only upto 20th November of the next FY i.e, in October's month GSTR-3B. Availing ITC in November's month GSTR-3B i.e, 20th December can invite notices from the GST department which lead to litigations.

For quarterly return filers, this issue is much bigger, whether it is GSTR-3B of September quarter (i.e, 22nd/24th October, as the case may be) or GSTR-3B of December quarter (i.e, 22nd/24th January, as the case may be).

As per amended Section 16(4), it is clear that for quarterly return filers last date for

availing ITC will be same as earlier i.e, 22nd/24th October of next FY because last date to avail ITC is 30th November and after that registered person can not avail ITC. ITC can be availed only in September's quarter GSTR-3B i.e, 22nd/24th October.

Practically there is no extension in the time limit for claiming ITC for quarterly return filers because after September month's quarter GSTR- 3B, GTSR-3B of December quarter will be filed on 22nd/24th January, which is far beyond 30th November, 2022. One cannot argue that for quarterly return filers last date for availing ITC will be GTSR-3B of December quarter i.e, 22nd/24th January of next FY.

Illustration -1

A debit note dated 10.7.2021 is issued in respect of the original invoice dated 15.07.2020. as the invoice pertains to F.Y - 2020-21, the relevant financial year for the availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST Act , shall be 2020-21 and registered person can avail ITC on the same till due date for furnishing of GSTR-3B for the month of September , 2021 or furnishing of annual return for the F.Y 2020-21 , whichever is earlier.

Illustration - 2

A debit note dated 12.7.2022 is issued in respect of the original invoice dated 15.10.2021 as the invoice pertains to F.Y - 2021-22, the relevant financial year for the availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST Act , shall be 2021-22 and register

person can avail ITC on the same till 31 November ,2022 or due date of furnishing of annual return for the financial year 2021-22 , whichever is earlier .

Illustration -3

Mr X supplies an item to Mr Y at Rs 500/- plus 28% GST on 24 October, 2021. Mr Y supplies that items to MR Z at 650/- plus 28% GST on 25 December, 2021. Mr Z then provide that items to the end consumer at Rs. 800/- plus 28% GST on 2 February, 2022. MR X, MR Y, MR Z are register person and everyone pays the tax duty and files return properly and in time.

Person	Inward supply	ITC	Outward supply	GST Payable
X			500	140
Y	500	140	650	182
Z	650	182	800	224

Hence, total end sale was Rs 800 and Tax on which was Rs 224. The same was paid in cash to Government through X, Y,Z (140, 42,42=Rs 224)

Operation have been successfully implement but Mr Y default in uploading invoice in GSTR-1 of the December, 2021 that is 11 January, 2022.

“What shall be done when Mr Y files his return and Section 16(4) restriction are there what is the impact of Tax collection”

Mr Y rectified his mistake till 30th November, 2022. He upload his invoice on portal on September, 2022 and take advantage of the policy through permitting the ITC of the previous year in which time limit lapse.

Interest as per sec 73 of CGST Act, 2017

$(RS\ 182 * 0.18 * (20/1/2022 - 20/9/2022)) =$
Rs 21.81

Mr Y file his GSTR-3B with Tax amount
Rs. 182 along with interest Rs 21.81.

High Sea Sales: GST Implications

Sparsh Garg

Inputs by: Anshita Mittal

Supervising CA: Keshav Gupta

Introduction

"High Sea Sales" is a terminology used in common parlance for "Sale in the course of import", where sale is effected while the

*"Goods
beyond the
sea, Are
all GST
free"*

goods are in the course of transportation through the seas, by the way of transfer of documents of title to goods to the buyer before the imported goods cross the customs frontiers.

In layman's language, importers procure goods from outside the country, bring them to India, pay the Custom Duty and GST at the time of getting the clearance from the Custom Authorities of India for home consumption or for further sale.

However, in certain cases, the importer may, before the goods are cleared from the Custom Authorities, sell the goods to another buyer by the transfer of the title to the goods for a consideration. Now, the goods are the property of the buyer and he is

liable to get the goods cleared for home consumption from the Custom Authorities on payment of the required taxes and duties



on the valuation derived in accordance with Customs Valuation Rules.

Background

It might be stated that the term "High Sea Sales" is not defined either by the IGST Act, 2017 or the CGST Act, 2017. Thus, for getting deeper into the topic, we first need to get familiar with a few terms as defined by the GST Acts and the Customs Act.

As per Section 7(2) of the IGST Act, 2017, which defines the inter-state supply states that, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

To understand the phrase "customs frontiers of India", we will have to refer Section 2(4) of the IGST Act, 2017 which defines "customs frontiers of India" as the limits of a customs area as defined in section 2 of the Customs Act, 1962.

And as per section 2(11) of the Customs Act, 1962 "customs area" is defined as the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

Also, "customs station" means any customs port, customs airport, international courier terminal, foreign post office or land customs station as defined in the clause (13) of section 2 of Customs Act, 1962.

Thus, to conclude it, supply transaction for any goods imported into the territory of India till they cleared from the custom station or warehouse or ICD for home consumption shall be categorised as High Sea Sales transaction.

Also, it may be noted that following are the documents that are required to consider High Sea Sales under the GST Law:

- Import Invoice
- High Sea Sales Contract
- Commercial Invoice
- Bill of Lading
- Import General Manifest (IGM)
- Other documents as required to establish a link between the first contracted price and last transaction price.

High Sea Sales: Implications of GST

Levy of GST in case of "High Sea Sales" transactions had created a lot of confusion since its implementation and such transactions or imports generally go through multiple buyers wherein the original importer sells the goods to a third party before the goods are cleared from custom authorities for home consumption. This led to doubts whether GST would be levied multiple times on the same transaction and also in case of each of the transactions occurred in the process. Thus, the government, through circular clarified this issue. The GST Council further

recommended changes to GST Act as mentioned below.

The Schedule III of CGST Act, 2017 as amended by CGST (Amendment) Act, 2018, which states the list of activities or transactions which shall be treated neither as a supply of goods nor a supply of services, states that-

"Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be treated neither as a Supply of Goods nor a Supply of Services".

And thus, the transactions are not liable to GST as the same have been excluded from the purview of supply specifically by the Schedule-III of the Act *ibid*.

Now, as per the interpretation derived from the facts stated above, the goods are considered to be in the course of import until the same have crossed the Custom Frontiers of India for home consumption. Thus, any sale invoice for transfer of title in goods prepared before the filing of the Bill of Entry, which marks the clearance by the Custom Authorities, shall be considered within the scope of Schedule-III, and thus, would be exempt from the payment of the GST.

The said position has been appreciated by CBIC in Circular 33/2017-Customs dated 1st August 2022. Following are the important discussion in the Circular

- IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time.
- The supply of high sea sales comes within the operation of Section 7(2) of the IGST Act, 2017. The Provisions of Sec 3(12) of the Customs Tariff Act, 1975 in as much as in respect of imported goods provides that all duties, taxes, cess, etc., shall be collected at the time of importation, i.e., when the import declarations are filed before the customs authorities for the customs clearance purposes. The title of the goods transfers to the buyer and bill of entry is also filed in the name of buyer.

The title of the goods is thus transferred to the buyer and hence, no liability to pay the IGST resides in the hands of the original importer. The IGST liability along with the Basic Custom Duty is then to be paid by final buyer/importer, and the Bill of Entry is to be filed with the Custom Department which marks the clearance of the goods from the Customs Department for home consumption.

Illustration to understand the concept practically

XYZ Ltd has made certain supplies treating them as High Sea Sales supply and thereby claiming exemption from GST under

Schedule-III. It received a Show Cause Notice from the GST Department, objecting that the title of goods has been transferred by issuing invoice after goods crossed the Custom Frontiers of India, as represented in the table given below, which is not considered as a High Sea Sale transaction and thus is liable to pay the amount of tax, along with interest and penalty, according to the relevant provisions of the Act.

Inv. No.	Invoice Date for HSS supply	Date of goods entering India	IGM date	Date of Filing Bill of Entry at ICD
1	01-07-2022	05-07-2022	06-07-2022	10-07-2022
2	05-07-2022	01-07-2022	02-07-2022	10-07-2022
3	12-07-2022	01-07-2022	02-07-2022	10-07-2022
4	17-07-2022	01-07-2022	02-07-2022	10-07-2022

Case Analysis:

→ The department considered the goods entering the Indian Territorial Waters for the purpose of deciding the levy of GST, however, it may be noted that for the said purpose, clearance of the goods from the

Custom Authorities is considered and thus, the supply of goods after crossing the Custom Frontiers are liable for GST.

- Also, the department considered the date of filing IGM for enmarking the clearance of goods from the Custom Authorities. But, as per the provisions as stated above, the filing of the Bill of Entry shall form the conclusive evidence of clearance for home consumption, and thus any goods supplied before the filing of the Bill of Entry, shall still be considered in the possession of the Custom Authorities and thus no GST will be applicable on such transactions.
 - Furthermore, in the cases, where the goods were transferred from the Customs station to the Inland Customs Depot (ICD), the department contended that the goods were cleared from the customs station. However, the ICDs have been specifically covered under the definition of the Customs station. Hence, any goods transferred to ICD, shall not attract the levability of GST, until they are cleared by filing of the Bill of Entry.
 - Hence as per the, facts of the case and the relevant provisions of the Act as stated above, the **Invoice No. 1 & 2** have been prepared before the date of filing the Bill of Entry, and thus, no GST would be applicable on the same. However, **Invoice No. 3 & 4** have been prepared after filing of the Bill of Entry, and thus would be covered under the scope of Supply as per the provisions of the GST Act, and thus, the tax payer would be liable to pay GST on such transactions.
- Any other date (other than the date of filing Bill of Entry) should not be considered for the purpose of levability of GST. Thus, the date of the goods entering into the Custom Frontiers of India, IGM Date, etc. should not be considered for the purpose.
 - However, it may be taken into consideration that, whether the existence of HSS agreement between the domestic parties is conclusive evidence for transfer of title in goods or is the tax invoice is necessary to prove the fact? The question remains unclarified!
 - Moreover, should the discussed issue fall into the jurisdiction of the GST department and any action taken by them considered to be justifiable? Or should such issues be dealt by the Customs department only as they fall in the jurisdiction of Customs? Knuckle down your thoughts on it!!

Refund of IGST paid on expenses: Continues Controversy

Yamini Agarwal

Inputs by: Anil Chaudhary

Supervising CA: Keshav Gupta

“There is a lot of controversy, but one continues controversy in GST world is refund on Export Supply,

Let's be a part of this controversy and try to understand it.”

Overview of Rule 96(10)

Restriction under Rule 96(10) of CGST Act 2017, from claiming refund on Export with payment of IGST

The Provision contained in Rule 96(10) has been mattering of discussion since its introduction vide Notification No. 3/2018 of Central Tax, dated 23.01.2018. The Language of Rule 96(10) has been changed various times.

- ❖ As rule 96(10) originally existed, when this rule provided that the persons claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit from Government of India, Ministry of Finance. (w.e.f. 23.10.2017)



- ❖ Notification No. 39/2018- CT dated 04.09.2018 had amended Rule 96(10) by stipulating that the claimant should neither have received
- ❖ supplies from supplier who have availed benefits of specified notifications or the claimant himself should not have availed benefit of specified notifications. (w.e.f. 23.10.2017)

Supplier supplies to Exporter and exporter exports the goods or services

If Supplier Claims benefit of –

- (i) Deemed Exports (Notn No. 48/2017-CT).
- (ii) 0.1% scheme (Notn No. 40/2017-CT(R) and 41/2017-IGST(R))
- (iii) EOU Scheme (Notn 78/2017-Customs)

Exporter can not use the route of payment of IGST and taking refund under Rule 96. He needs to avail refund of unutilized ITC as per Rule 89 (4B/4A)

- ❖ Thereafter, Notification No. 53/2018-Central Tax dated 9 October 2018, retrospectively effective from 23 October 2017, reinstated the restriction under Rule 96(10) of the CGST Rules to be applicable only to the suppliers of exporters if they availed the benefit of IGST exemption. (w.e.f. 23.10.2017)

This is applicable only upto 8th October 2018.

- ❖ However, the Amendment Notification No. 54/2018- CT, de-merged the provision of Rule 96(10) of the CGST Rules to include sub-clauses (a) and (b) to again place the restriction of rebate on both, suppliers of exporters and exporters who had availed benefit under AA Licenses. However, this bar will not be applicable for capital goods made under the said notification. The said notification come into force on the date of publication in the official Gazette i.e., from 9th October 2018.

Refund of IGST paid on exports of goods or services

If exporter receives supplies on which following benefits availed-

- Deemed Exports (Notn No. 48/2017-CT)
- 0.1% scheme (Notn No. 40/2017-CT(R) and 41/2017-IGST(R))

If exporter avails following benefits-

- EOU Scheme (Notn 78/2017-Customs)
- AA/EPCG etc (Notn No. 79/2017-Customs, except for capital goods)

Exporter cannot use the route of payment of IGST and taking refund under Rule 96. He needs to avail refund of unutilised ITC as per Rule 89(4A) / (4B)

“Ek minute, yeh advance license holder, EOU and Merchant exporter Kaun h??”

- An **Advance License holder** is a person who holds license under **Advance Authorisation Scheme** which is issued to allow duty free import of inputs, which are physically incorporated in export product.
- **EOUs** are those units that undertake to export their entire goods and services.
- A **Merchant exporter** is a person who is involved in trading activity and exporting or intending to export. They do not have a manufacturing unit. They buy goods from a manufacturer-exporter and then ship them to foreign customers. They availed the benefit of GST under Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 i.e. exporter has received supplies at concessional rate of GST @ 0.10%.
- **Export Promotion Capital Goods Authorisation** means an authorization issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.

Amendment in CGST Rules regarding Refund of IGST paid on export of goods or service

Recently vide Notification No. 16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017).

“Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered

to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”.

Though the above explanation is a welcome step by the Government, it opens an array of possibilities given the language of the explanation and the late insertion of it from a retrospective date. Let us analyse some of these possibilities in detail below:

(a)	Practically upon approaching the Customs Authorities to allow imports without payment of BCD but with payment of IGST, one used to meet roadblocks. This means that after insertion of the aforesaid exemptions, one could only opt for exemption of both BCD and IGST or payment of both upon import. Thereby, if any taxpayer wished to avail the benefit of claiming refund of export with payment of IGST, then he had no option but to make payment of both BCD and IGST during import which otherwise would have been allowed as exemption to EOUs and holders of Advance Authorization.
	Since this is a retrospective amendment from 23rd October 2017, can such person ask for refund of imports made upon payment of BCD though they were eligible for exemption under 78/2017 or 79/2017.
(b)	<p>It only provides for the situation where the registered person has paid IGST on inputs. It does not discuss about capital goods at all. The exception where the capital goods is allowed to be imported without payment of tax and export is allowed with payment of tax is only under EPCG scheme.</p> <p>If any EOU imports capital goods without payment of BCD and IGST (or without payment of BCD and with payment of IGST), whether the person would be deemed to have not availed the benefit of 78/2017 is yet to be clarified.</p>
(c)	<p>Further, it has not been clarified whether the explanation is <i>qua</i> the duty or <i>qua</i> the time period.</p> <p>'Qua the time period' refers to the situation where from a particular date say '1st April 2020', if import is without payment of IGST, export also needs to be without payment of IGST. Where imports are with payment of IGST while claiming exemption of BCD, one could avail the benefit of claiming the refund of export with payment of IGST during that particular time period.</p>

Let's take another situation where the accumulation of ITC occurs due to import of goods with payment of IGST in a prior period which had not been claimed as a refund on export with payment of tax during the said time period. Subsequently when the import is being made without payment of IGST, one can export with payment of IGST to claim back the refund to the extent of accumulated ITC of the prior period. This is considered as the 'qua the duty'.

It is of paramount importance that the government should clarify the nature of the restriction under Rule 96(10) through the explanation to avoid any unfounded litigation.

Conclusion

The restriction imposed by the Rule (which in itself got amended multiple times) is an ultra-virus rule and would surely be taken for test before High Courts in future.

As per the above mentioned facts, legal provisions, interpretation and review of the judicial pronouncements, it is crystal clear that Notification No. 03/2018 dated 23.01.2018, which has put a restriction on Refund of IGST paid on export of goods ONLY if the supplier has claimed the benefit of certain Notifications as mentioned therein, in other words, the conditions are applicable vis-à-vis the Supplier of goods to the exporter and not to the exporter of goods directly.

Restrictions have been put directly on the exporters of goods/services only vide

Notification No. 54/2018-CT dated 09.10.2018 and not before that. Accordingly, IGST paid refunds availed by exporters from 1.07.2017 to 8.10.2018 are good in law.

Since all exporters are not claiming erroneous refund of IGST intentionally, therefore many amendments have been made in this rule for convenience of exporter and once again an explanation inserted by the government retrospectively effected from 23 October 2017, which seems to have been made without putting complete thoughts on the impact of it.

Those who wish to regularize this option to pay IGST at the time of import must have filed a bill of entry accordingly and the real challenge is reassessment of bill of entry.

Another option being pushed by the DGGI and Audit authorities is to make payment of refund already claimed through automatic route.

Both the options have different ways to deal with and come up with certain conditions. Hence a careful calculation of ITC needs to be prepared.

Bhaut confusion he re baba, that's why people correctly said "this is a never-ending controversy"



Our Mentors

CA Rajeev Sogani
CA Rakesh Kedia
CA Bharat Sonkhiya
CA Naresh Kumar Kabra
CA Rohan Sogani
CA Keshav Gupta
CA Shivangi Samdhani
CA Arun Soni
CA Nitin Sharma
CA Harsh Pareek
CA Jitendra Kumar
CA Reena Agarwal
CS Harleen Kaur
CS Neha Dangayach
CS Palak Gupta
Shri Ramprasad Jat
Smt. Sarika Tiberwal
Shri Sudhir Jat
Shri Suresh Verma
Shri Vijay Chandolia
Shri Mahendra Choudhary
Shri Shankar Jat
Shri Hare Krishna Sharma
Shri Sunil Kumar
Shri Shiv Shankar Barala



SATURDAY CLASS



DATE	PRESENTOR	TOPIC
17/03/2022	CA Keshav Gupta Ji	Inspection under GST
	Princy Agarwal Ji	Why fraud is included in error- IndAS 8
09/04/2022	CA Keshav Gupta Ji	Search under GST-Introduction
	CA Rajeev Sogani Ji	Penalty for false entry, etc., in Books of Accounts
	Nandini Bhargava Ji and Anusha Agarwal Ji	Death Penalty- For and Against
	Rohan Garg Ji	Events occurring after Balance Sheet date
16/04/2022	Rohan Garg Ji	Motivation Talk
	CA Keshav Gupta Ji	Search under GST-Introduction
	CS Neha Dangayach Ji	Appointment of MD, WTD or Manager
23/04/2022	CA Rohan Sogani Ji	NCLT & LLP Law
	CA Keshav Gupta Ji & CA Arun Soni Ji	Search under GST
	CA Naresh Kabra Ji	Audit Issues in Online Sales
30/04/2022	CA Aakansha Tuteja Ji	206C(1H)-TCS Provisionson Sale of Goods
	CA Shivangi Samdhani	194Q-TDS Provisions on Purchase of Goods
	Aksh Agarwal Ji	Poetry
	CA Rohan Sogani	194O-TDS Provisions on E-commerce operator & 206AB- Deduction of TDS for non-filers of ITR
14/05/2022	CA Bharat Sonkhiya	Audit of Stock and its valuation, together with other stock related CARO clauses
	Nandini Gupta Ji	Sri Lanka Crisis
	CA Aakansha Tuteja Ji	206C(1H)-TCS Provisionson Sale of Goods
	CA Rakesh Kedia Ji	Overview on New Generation TDS/TCS Provisions
21/05/2022	CA Naresh Kabra Ji	Taxability of Charitable Trust- Short fall in application of 85% - Remedies available or not
	Mayank Agrawal Ji	Gun Violence in America
28/05/2022	CS Harleen Kaur Ji	Change in Registered office - Company Law Provision
	CA Keshav Gupta Ji	SC Judgement in Mohit Mineral Case
	Nandini Gupta Ji and Rohan Garg Ji	Gyanvapi Mosque Controversy
	CA Shivangi Samdhani Ji	Updated Income Tax Return
04/06/2022	Rohan Garg Ji	Motivational Talk
	CA Shivangi Samdhani Ji	Updated Income Tax Return- Continued
	Khushi Agarwal Ji	RSA Updates
	CA Rakesh Kedia Ji	Tax Audit Clause – 21(e),26(1), 34(c)
	CA Rajeev Sogani Ji	Relevance of Bank Reconciliation Statement in Audit
11/06/2022	CA Rohan Sogani Ji	Disclosure of foreign assets in ITR
	CA Bharat Sonkhiya Ji	Time of Revenue Recognition in case of export sales
	Reshab Khandelwal Ji	Investment Mantras
18/06/2022	CA Naresh Kabra Ji	Key challenge- Statutory Audit of charitable institution for A.Y 2022-23
	Shreya Pareek Ji & Shivam Pareek Ji	Discussion on GST scrutiny paras
25/06/2022	CA Rakesh Kedia Ji	Section 194R- TDS on benefit or perquisite in respect of business or profession

	Arsh Gupta Ji & Siddhant Tholia Ji	Relevance of Bank reconciliation statement in Audit
02/07/2022	CA Nitin Sharma Ji	SA 501 Audit evidence-specific considerations for inventory
	CA Harsh Pareek Ji	Discussion on GST scrutiny paras
	CS Harleen Kaur Ji	Issues- Creation of charges under Companies Act, 2013.
	CA Aakansha Tuteja Ji	Tax Audit Clause No. 44
08/07/2022	CA Bharat Sonkhiya Ji	IDEA Software
16/07/2022	CA Keshav Gupta Ji	Circular on Fake Invoice-GST Law
	CA Rohan Sogani Ji	TDS on foreign remittances under section 195
	CA Aakansha Tuteja Ji & CA Keshav Gupta Ji	Tax Audit Clause 44
06/08/2022	CA Rakesh Kedia Ji	Tax Audit Clause- 36(A), 44
	CA Aakansha Tuteja Ji	Seeking Information from client for ITR Filing A.Y 2022-23.
	CA Bharat Sonkhiya Ji	Some Common Audit Issues
	CA Keshav Gupta Ji	GST on Letting Out Residential House Property
08/10/2022	CA Bharat Sonkhiya Ji	Learnings from recent Stat Audit season
	CA Keshav Gupta Ji	Issues raised in GST Departmental Audits
	Aman Goyal Ji	Tokenisation
	CA Rajeev Sogani Ji	Section 68 of Income Tax Act, 1961
15/10/2022	CA Harsh Pareek ji and Shreya Pareek Ji	(i) Foreign Currency Conversion- Packing Credit Foreign Currency (PCFC) (ii) Prepayment discount on foreign currency
	CS Neha Dangayach Ji CS Palak Gupta Ji and Netali Jain Ji	Obligation of Auditor to attend AGM- related issues
	CA Arun Soni Ji	Understanding the concept of Job work under GST
	Prakhar Agarwal Ji	Hijab Controversy And its Indian Perspective
	CA Rajeev Sogani Ji	Section 69 Section 56(2)(viib) Section 115BBE
05/11/2022	Rohan Garg Ji	Motivational Talk
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12/11/2022	CA Rajeev Sogani Ji	Section 56(2)(viib) Section 115BBE
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	CA Bharat Sonkhiya Ji	Creation and Satisfaction of Charge under Companies Act
	CA Shivangi Samdhani Ji	Agriculture Land as Capital Asset
	CA Rohan Sogani Ji	Issue if Convertible Debentures- Basic Law
	CA Rajeev Sogani Ji	RSA Updates Between US- Progress
17/12/2022	Nikhil Agarwal Ji	Charitable Trust- Managing Application of Income on Actual Payment Basis
	Kunal Jha Ji	RSA Updates
	CA Keshav Gupta Ji	Latest GST Updates
	Puneet Motwani Ji	The future of Physical Currency v/s Virtual Currency

Message from Ramprasad ji

ONE MISTAKE CAN COST MANY LIVES!

As per some research findings, one key could have saved 1,522 lives that were drowned in the maiden voyage of the “unsinkable” Titanic. Yes, one simple key! It all happened this way... the Second Officer David Blair was replaced at the eleventh hour by a more senior and experienced officer in handling such gigantic liners. While the ship departed, Blair forgot to hand over the key of the locker, where the crow's nest binoculars were kept - meant to keep a watch at the impending threats to the liner if any.

Blair realised his mistake after the Titanic had left Southampton. During the investigation process, when Fred Fleet was inquired, he said, “Had there been binoculars, we would have detected the presence of the iceberg much ahead and steered the ship timely.”

Blair gave the key to his daughter Nancy, who, in turn, handed it over in the 1980s to the British and International Seamans Society.

Alas! Such a catastrophe resulted due to just one mistake of forgetting the simple key! Doesn't it mean that we should be more alert, even towards the “small” things, while we are discharging our duties?

ONE MISTAKE CAN LEAD TO A GIGANTIC LOSS!

In December 2005, Mizuho Securities Co., a division of the second-largest national bank in Japan, had to sell the shares on the Tokyo Stock Exchange. These shares were of a recruiting company, where in one share was to be sold at 610,000 yen apiece. However, while typing, one mistake occurred, and it led to something, which was no less than a 'financial' disaster! Yes, instead of the above, what was typed resulted in the sale of 610,000 shares for 1 yen apiece! Alas! One typo resulted in a loss of \$225 million to the company!! Does it not mean that we should not lose our attentiveness even for a small chunk of time?

ONE 'GOOD DEED' CAN BE A BOON FOR ENTIRE HUMANITY!

Jonas Salk is credited with the title of “father of biophilosophy.” His one selfless contribution has proved to be a boon for the whole mankind today! How? Well, Jonas was the inventor of the Polio vaccine. Undoubtedly, this invention was in itself a big gift to humanity, for saving humans from getting trapped in the deadly disease of 'polio'. Besides that, Jonas did something else as well, that proved to be no less than a cherry on the cake. Why so? Because Jonas denied patenting his remarkable invention, just to keep its cost low and to allow the reach of the vaccination to all corners of the world. He gave up the big sum of 7 billion dollars, in order to save the lives of several millions of people!

ONE 'GOOD DEED' CAN SAVE GENERATIONS TOGETHER!

A severe nuclear explosion took place in the year 2011 at the Fukushima power plant in Japan. Of course, the nuclear radiations posed a grave threat to not just those who lived there and in that age... but, their cascading effect was also devastating! Can you guess what did the elderly Japanese men do in those hours of peril? Hundreds of them, majority of whom were retired professionals and engineers, came forward to volunteer the task of cleaning the plant. Indeed, that meant exposure to nuclear radiations and hence 'death'. Just read why they decided to do so... They said that they were not left with many years to live, in comparison to the younger ones who had their whole life ahead. Therefore, in order to save them and the generations ahead from the resulting cancer that could percolate with those radiations, they sacrificed their lives!

Indeed, their one deed of selflessness served as the life current for many thousands!

Well, that's the power of 'one'! Perhaps, after going through these instances, we would be able to realise the cost of being careless and the reward of being selfless! Verily, this rule applies not only to things, objects, or situations. It also applies, rather, more intensely, on the subtle parameters of our existence as well.

Yes, one mistake of not realising the Self while we are alive can result in plummeting us in the vicious cycle of birth and death.

One mistake of not identifying the Perfect Master of the time and the technique he disseminates can keep our Soul bereft of its goal for ages together.

On the other hand, one good deed of giving the message of “God-realisation” to even one inquisitive soul and helping him attain his 'true goal' can deluge you with the blessings and love of the Divine Lord!

One good deed of reforming yourself by sincerely adhering to the road of Self-realisation can make a big contribution in transforming the world at large! After all, the world is nothing but the conglomeration of we human beings only!

Message from Sudhir Ji

जब कदाचार ने ओढ़ा सदाचार का वेश !

एक अति प्राचीन दंत कथा है। श्रुति परंपरा बताती है- 'सदाचार' नाम का एक वृद्ध किसी गाँव में बहुत सम्मान और ऐश्वर्य से रहता था। उसी गाँव में कहीं से 'कदाचार' नाम का व्यक्ति भी आ गया। अंधकारपूर्ण देश से आए कदाचार को सदाचार से भयंकर ईर्ष्या हो गई। वह उसे हटा कर स्वयं उसका स्थान पाने की योजनाएँ बनाने लगा। एक दिन उसने स्नान कर रहे सदाचार के सुंदर वस्त्र ही चुरा लिए। उन्हें पहन कर वह सदाचार का रूप बना कर गाँव में सम्मान पाने लगा। वास्तविक सदाचार किसी तरह जीर्ण-शीर्ण वस्त्रों को ही पहनकर ग्रामवासियों को सत्य बताने लगा। किंतु किसी ने उसकी बात नहीं मानी।

एक दिन गाँव में सदाचार की अत्यन्त तेजस्विनी माँ पधारी। उसने पलक झपकते ही सारा वृत्तांत समझ लिया। कदाचार सदाचार की तेजस्विनी माँ के तेज को सहन नहीं कर सका और भाग गया। इस प्रकार सदाचार को पुनः गाँव में अपना सनातन-सम्माननीय स्थान प्राप्त हो गया।

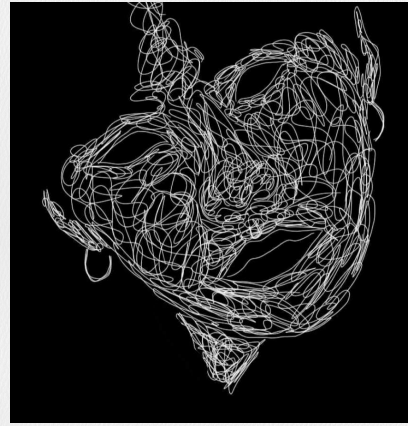
इस प्राचीन कथा का उद्देश्य चाहे कुछ भी रहा हो, किंतु यदि हम इसे सम्यक् पूर्वक जानें तो यह आज के दूषित भौतिक परिवेश को भलीभाँति स्पष्ट करती है। निःसन्देह, आज भी यही स्थिति है। झूठ सत्य का आवरण ओढ़कर बैठा है। बगुला हंस का वेश बनाकर बैठा है। भेड़िये भेड़ की खाल पहनकर घूम रहे हैं। असंत संत का वेश धारण कर चुके हैं। साधारण लोग वेश देखकर भ्रमित हो जाते हैं और असत्य को ही सत्य मान लेते हैं। वे सत्य-असत्य का परीक्षण किए बिना भय, लोभ एवं अंध श्रद्धा के कारण केवल बाहरी आवरण देखकर अनुसरण करने लगते हैं। अंततः धोखा खाते हैं और अपनी श्रद्धा, धन एवं साधनों की हानि कर बैठते हैं। परन्तु जिस प्रकार सूर्य के उदित होने पर अंधकार समाप्त हो जाता है, उसी प्रकार सत्य के पराक्रम से पाखण्ड मिट जाता है।

सत्य का ऐसा पराक्रम सदाचार की तेजस्विनी जननी अर्थात् 'तत्त्वद्रष्टा सद्गुरु' ही संचालित कर सकते हैं।

Kalakaar



Khushi Agarwal



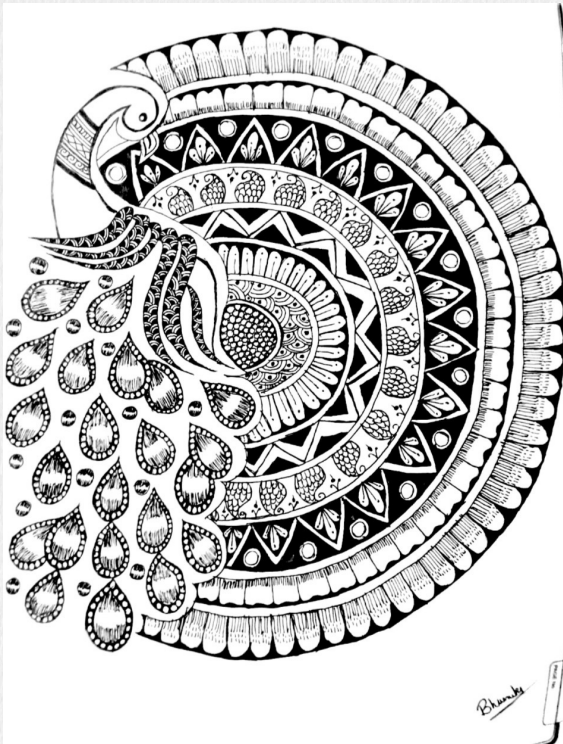
Akansha Agarwal



Yash Kumat



Kartik Nagar



Bhumika Khandelwal



Shivi Akar

FUN TIME

Articles discussing how to complete this audit assignment



When an article sends audit observations from client place..



When Junior article uses mouse everytime in MS Excel



Observations before discussion with management

Observations after discussion with management



When ur a article but client calls u CA sahab!! 🤔🤔🤔




कठिनाई में हैं भला क्या बुराई ?

कठिनाइयों के जब कंकर चुभते,
प्रयासों से ये रक्त उगलते।
संतोष के फिर दीपक जलते,
चाहे फिर कुछ पैर फिसलते॥

चहरे पर जगमगाती मुस्कान,
दे देती थकी आंखों को प्राण।
तुम लगा दो बस अपनी पूरी जान,
करे फिर वो कठिनाई भी तुम्हारा सम्मान॥

सरलता तो हैं मृत का गुमान,
जीवन का हैं ये सत्य निदान।
क्षण-भर की खुशी को करो कुर्बान,
मत बनाओ तुम जीवन को शमशान॥

~निकिता



Khayal mann mein bahut h,
Par bayan karne ka waqt nhi !!
Yeh kaisa aaya samay aisa,
Jahan shaanti kam , bhaagdaud h bas reh gyi !!

Yahi sochte honge shayad tum bhi,
Jab aazad honge isse, tab bhaag jaayenge kahi !!
Par aana toh waapas h hi,
Toh itni mehnat bhi kyu karni!!

Karna hoga abhi bas itna hi,
Mann ko bandhana hoga, chahe kuch waqt ke liye hi sahi !!
Apni mehnat ko samay dekar,
Kuch haasil jo karna h, kyuki yeh sapna dekha tha kabhi!!

Agar yeh kar liya toh,
Aage ka waqt tumhara hoga !!
Jo khoya tha pehle tumne,
Voh pal waapis jee lene ka maza doguna hoga

SHIVI AKAR



वादा कैसे तोड़ दूँ

माँ बहुत याद आती है तेरी...
मन तो करता है यह राहें घर की ओर मोड़ दूँ
पर रुक जाता हूँ यह सोचकर कि
तुमसे किया सीए बनने का वादा कैसे तोड़ दूँ

पढ़ना है हर रात बारह बजे तक माँ
मन तो करता है कभी दस बजे ही छोड़ दूँ
पर रुक जाता हूँ यह सोचकर कि
तुमसे किया सीए बनने का वादा कैसे तोड़ दूँ

बोरिंग सी हो गई है ये जिंदगी माँ
मन तो करता है खुद को मस्ती में निचोड़ दूँ
पर रुक जाता हूँ यह सोचकर कि
तुमसे किया सीए बनने का वादा कैसे तोड़ दूँ

तनाव सीमाएं पार कर चुका है माँ
मन तो करता है किसी पत्थर पर सर फोड़ दूँ
पर रुक जाता हूँ यह सोचकर कि
तुमसे किया सीए बनने का वादा कैसे तोड़ दूँ



मां ये याद रखना...

तुमसे किया ये सीए बनने का वादा,
मैं ऐसे ही नहीं तोड़ दूंगा
दिल की यही ख्वाहिश है कि..
तुम एक हजार मांगोगी, और मैं
तेरे हाथों में एक करोड़ दूंगा

तूने तो खुद के लिए कुछ नहीं रखा मां,
सब कुछ मुझे पर ही लगा दिया..
हर मुकाम पर खुश रह सकूँ मैं,
इसलिए अपना सब कुछ लुटा दिया..
हर एक दौड़ में तू खुद तो हार गई मां
लेकिन मुझे तो तूने जीता दिया..
तुझे तो अमर नहीं बना सकता मां,
लेकिन तेरा नाम अमर कर दूँ
इतना तो तूने मुझे काबिल बना दिया...

तेरे आशीर्वाद से मां, मैं कभी भटकूंगा नहीं
आए कितनी भी मुश्किलें, मैं अटकूंगा नहीं
चाहें जीवन में मिले मुझे कितने भी झटके..
तेरा चेहरा याद रखूंगा, रस्सी से जा कभी मैं लटकूंगा नहीं

(अभिषेक पारीक)



From the Mentor's Desk

*It is my proud privilege to represent the partners of
RSA in communication
with the dear article students of the Firm through
these lines. "Between Us"
2023 is the 28th Edition. The Firm owes its present
position largely to its
annual academic updation done through "Between
Us". "Between Us" has
become the Firm's identity.*

*Firm believes in establishing best practices for
developing fundamental strength of the article
students, both academically and creatively. However,
Firm is conscious of the fact that with change in time,
change in approach is needed, thereby, we try to make
this "Between Us" exercise more meaningful and
contemporary with every edition. We have all enjoyed
the journey so far, and wish to make it even more
enjoyable in the future. I am sure each writer,
academically, is greatly enriched by writing the
article. For many it is a first time experience. I hope it
is just a beginning for many budding articles to
become ardent authors in the time to come.*

*My heartiest congratulations to the Editorial Team
for their efforts in encouraging all the writers of
articles to bring in their best and that too within the
pre decided timelines.*

*May the Joy of learning continues!!
RAKESH KEDIA
On behalf of all the RSA Partners*