KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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Income Tax | Financial Reporting | GST

Annual General Meeting

On **Saturday, 21st July 2018 at 6.00 PM**

at **Maple Hall, Pai Vista**, Banashankari 2nd Stage, Bengaluru

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From the President

Dear Professional Friends,

It gives me immense pleasure to write my last President message to our august members! It is also with a heavy heart that I am writing this message as I am bequeathing this post which I will truly cherish for my life. It was a dream come true for me at this span of my career to lead this illustrious sexagenarian association!

As I reflect upon, I took guard at a time when GST dawned in and there were quite several headwinds on the radar of our elite profession. Chartered Accountants are looked up to for support and are go-to man, be it micro scale or large-scale entities though a sect of bureaucrats were painting a not so rosy picture. But, we have lived up to the expectations of the public perception.

An association of members, who stand united for a cause, always delivers par-excellence. An association of the members by the members is always for the cause of members. It is quite imperative on the part of our members to join in, give potent ideas, back it with participation to stand united and leave behind individualism for a bigger cause. Though KSCAA has its own set of issues to stay afloat with the amount of meagre resources, capital and participation, it can scale even farther only with adequate support of members especially in a dynamic landscape that we are in.

News Roundup:

A simple reworked form for filing Goods and Services Tax Returns may come by December, Finance Secretary Sri. Hasmukh Adhia said in an interview to Press Media explaining plans to fine tune the year old system that subsumed a plethora of indirect taxes and levies to create a unified market.

The Central Board of Indirect Taxes and Customs (CBIC) had developed and launched a mobile app named 'GST Verify' to protect the interest of consumers. The application is to verify if the person collecting GST from consumer is eligible to collect it or not. It also provides the details of the person collecting GST. It can used across the country and is presently available on Android platform for mobile phones.

A group of ministers under Bihar deputy chief minister Sushil Kumar Modi has recommended doing away with reverse charge mechanism, a key anti-evasion measure under goods and services tax (GST). Separately, another group of ministers has also recommended deferring a proposal to incentivize digital payments under GST by at least a year. A final decision will be taken by the GST Council at its next meeting on 21st July 2018. The discussion on GST Audit Report format is also likely to be taken up in the same meeting.

Representations:

Time and again we have proactively represented and at this hour of return filing season, we have submitted a representation to the Chairman, Central Board of Direct Taxes strongly urging to withdraw the unjust levy of late fee under Section 234F of the Income Tax Act, 1961 and also made an appeal to extend due date for filing income tax returns of individuals and small businesses on the back of various hardships caused to tax payers emanating from myriad administrative factors, technical glitches and GST compliances. This representation was published in prestigious tax search website www.taxguru.com and received more than 80,000 views on the very day. We are overwhelmed by the response received for this representation on social media and the praise heaped in from all over.

You can access all our representations at www.kscaa.com. We request our members to write to us giving pointers where they need support and we are more than willing to build around it and populate before right forums.

Upcoming events and programs:

KSCAA is organising a workshop on GST Audit 'Are you ready for a GST audit?' on Friday, 3rd August, 2018 at Vasavi Vidyanikethan Trust, Basavanagudi, Bengaluru and the details of the program is published elsewhere in this News Bulletin. I request the members to make the most of this event.

For more details on the upcoming programs, please visit at www.kscaa.com

It is with a great contentment that I end my tenure as President of the Association, one of the finest professional bodies I have been associated with in my life. I honestly believe that this Association with its proven credentials is on a solid foundation to embrace the future.

Before I signoff, I would like to convey my sincere appreciation to the many people who walked the talk with me. Immense thanks to Immediate Past President CA. Raghavendra Puranik and all my office bearers Raghavendra Shetty, Chandrashekara Shetty, Kumar Jigajinni and Chandan Kumar Hegde who worked meticulously with me to drive KSCAA on the way to success throughout the year. I also appreciate the intense efforts of all the Committee Chairmen, EC Members, Past presidents and well-wishers who have wrestled with troubled waters, tough timelines and resource constraints to come up with excellent programs during the entire year. Many, many thanks to all the conveners, coordinators, contributors and resource persons, it is your indefatigable efforts that have raised the benchmarks KSCAA is known for.

Last but not the least, I would like to thank whole-heartedly each and every member of the over 2,700+ strong KSCAA family for their profuse support and enthusiastic participation in all activities that have made the Association the proud winner it truly is! It was a great team effort true to saying, **'Together we serve, together we grow'** and I truly believe we lived up to the expectations.

At the AGM of the Association on 21st July 2018, I will pass the baton to the new team. I convey my best wishes to them for the coming year.

I signoff for the last time by sincerely wishing that each one of you to celebrate life. The more you celebrate your life, the more there is in life to celebrate!

"Life should not only be lived, it should be celebrated."

With warm regards,

CA. Raghavendra T.N.
President

GROW, SHARE & TRANSFORM

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CONTENTS

KSCAA welcomes articles & views from members for publication in the news bulletin / website.

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

MOTTO: KNOWLEDGE IS STRENGTH

Penalty – A Civil Liability

CA S. Krishnaswamy

1. Penalty u/s 271(1)(c) is a civil liability for breach of a civil obligation- hence *mens rea* (wilful default) not required
2. Levy of penalty is not automatic (when addition is made in assessment).
3. Levy of penalty is quasi criminal-burden lies on the Department.
4. Karnataka HC decision furnishes a catalogue of principles governing the Section.
5. Difference in the two expression is very significant and needs mention in the notice to be valid.

1. I deal in this article provision s of Sec.271(1)(c) of the Income Tax Act, 1961, dealing with concealment of income or furnishing of inaccurate particulars of income which is considered a civil liability for a breach of civil obligation.
2. Recently there have been a spare of judicial decisions holding that the notice issued under the section invalid if no specific mention is made,
   i. for concealment of particulars of income; or
   ii. furnishing of inaccurate particulars of income.

   It may be recalled that a notice under the section must emanate from assessment proceedings, there should be mention of initiation of proceedings in the assessment order as a notice must follow; the notice in Sec.274 should specifically state the grounds mentioned in Sec.271 (1) (c) i.e., whether it is for concealment of income or furnishing of inaccurate particulars of income. Sending a printed form where all the grounds mentioned in Sec.271 are mentioned would not satisfy the requirement of law.

   The notice in such a case is **invalid.**

1. *CIT v. Manjunath Cotton and Ginning Factory- (2013) 359 ITR 565 (Karn) @ P 603* followed in *CIT v. SSA's Emerald Meadows (2016) 73 taxmann.com 241*. This is a lead decision which catalogues all the implied principles of Sec.271 (1) (c).

   a. Penalty under section 271(1) (c) is a civil liability.
   b. *Mens rea* is not an essential element for imposing penalty for breach of civil obligations or liabilities.
   c. Wilful concealment is not an essential ingredient for attracting civil liability.
   d. Existence of conditions stipulated in section 271(1) (c) is a sine qua non for initiation of penalty proceedings under section 271.
   e. The existence of such conditions should be discernible from the assessment order or the order of the appellate authority or the revisional authority.
   f. Ever if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation 1(A) and 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.
   g. Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271(1) (c) is a sine qua non for the Assessing Officer to initiate the proceedings because of the deeming provision contained in sub-section (1B).
   h. The said deeming provisions are not applicable to the orders passed by the Commissioner of Income-tax (Appeals) and the Commissioner.
   i. The imposition of penalty is not automatic.
   j. The imposition of penalty even if the tax liability is admitted is not automatic.
   k. Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from

the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.

l. Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed.

m. If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

n. The direction referred to in Explanation 1(B) to section 271 of the Act should be clear and without any ambiguity.

o. If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the assessing authority.

p. Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1) (c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income.

q. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law.

r. The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

s. Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

t. The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

u. The findings recorded in the assessment proceedings in so far as 'concealment of income' and 'furnishing of incorrect particulars' would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

2. The special leave petition filed by the Revenue against the above judgement has been dismissed by the Hon'ble Supreme Court of India and the decision of the Hon'ble SC is reproduced herein below:

"1. Delay condoned.

2. We do not find any merit in this petition. The special leave petition is accordingly dismissed.

3. Pending application, if any stands disposed of."

3. Ravina and Associates Pvt Ltd v. Addl. CIT (2018) 64 ITR/149 (Delhi).

4. Muninaga Reddy v. ACIT (2017) 396 ITR (398) (Karn)

Ground of invalid notice not raised before Assessing Authority, CIT (A) and ITAT cannot be agitated at HC particularly when both conditions applied and the assesse new the nature of default.

Sundaram Finance Ltd v. ACIT (2018) 403 ITR 407 (Madr)

- **Wrong claim:**

  "Thus, it was concluded that by claiming depreciation on machinery which did not exist or which was never supplied, the assessee has, not only concealed particulars of its income, but has also furnished inaccurate particulars of income."

- ***Mens rea* not required:**

  "The Tribunal by referring to the decision of this court in the case of *Lakshmi Vilas Bank Ltd. v. CIT reported in [2006] 284 ITR 93 (Mad)* confirmed the order of levying penalty. Thus, if the facts are tested on the anvil of the legal principles as has been stated above, it is not necessary that there should be wilful concealment for attracting a civil liability of penalty under section 271(1)(c) of the Act.

The existence of the condition mentioned under section 271(1) (c) of the Act are writ large on the face of the order of the Assessing Officer as well as the first appellate authority."

- **Defective notice not raised in earlier forum-both conditions apply:**

"Before us, the assessee seeks to contend that the notices issued under section 274 read with section 271 of the Act are vitiated since it did not specifically state the grounds mentioned in section 271(1)(c) of the Act.

We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts. That apart, this issue can never be a question of law in the assessee's case, as it is purely a question of fact. Apart from that, the assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. All violations will not result in nullifying the orders passed by statutory authorities. If the case of the assessee is that they have been put to prejudice and the principles of natural justice were violated on account of not being able to submit an effective reply, it would be a different matter. This was never the plea of the assessee either before the Assessing Officer or before the first appellate authority or before the Tribunal or before this court when the tax case appeals were filed and it was only after 10 years, when the appeals were listed for final hearing, this issue is sought to be raised. Thus on facts, we could safely conclude that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under section 274 read with section 271 of the Act. Therefore, the principles of natural justice can- not be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage."

- **Expressions Explained:**

In *Dilip N. Shroff v. Joint CIT (civil appeal arising out of SLP (C) No. 26831/2004)* delivered, court observed. The expression ' conceal' is of great importance. According to Law Lexicon, the word ' conceal' means- to hide or keep secret. The word ' conceal' is *concelare* which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the Income-tax authorities.'

In Webster's Dictionary, ' inaccurate' has been defined as:' not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

It signifies a deliberate act or omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars.

The term "inaccurate particulars" is not defined. Furnishing of an assessment of value of the property may not by itself be furnishing of inaccurate particulars. Even if the explanations are taken recourse to, a finding has to be arrived at having regard to clause (A) of Explanation 1 that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event he offers one was false. He must be found to have failed to prove that such explanation is not only not bona fide but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not bona fide, it should have been found as of fact that he has not disclosed all the facts which were material to the computation of his income.

The explanation having regard to the decisions of this court, must be preceded by a finding as to how and in what manner he furnished the particulars of his income. It is beyond any doubt or dispute that for the said purpose the Income-tax Officer must arrive at his satisfaction in this behalf. *(See CIT v. Ram Commercial Enterprises Ltd. [2000] 246 ITR 568 (Delhi) and Diwan Enterprises v. CIT [2000] 246 ITR 571 (Delhi)).*

- **Order imposing penalty is Quasi-judicial in nature.**

T Ashok Pai v. CIT (2007) 292 ITR 11 (SC):

"The order imposing penalty is quasi-criminal in nature and, thus, the burden lies on the Department to establish that the assessee had concealed his income. Since the burden of proof in penalty proceedings varies

from that in the assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitutes good evidence in the penalty proceeding. In the penalty proceedings, thus, the authorities must consider the matter afresh as the question has to be considered from a different angle.

It is now a well-settled principle of law that the more stringent the law, the more strict a construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution." *(See P. N. Krishna Lal v. Government of Kerala [1995] Sup 2 SCC 187).*

Imposing of penalty is not automatic:

The Karnataka HC in *CIT v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Karn) held in para 63 @ P 602* that –

a. The imposition of penalty is not automatic.

b. The imposition of penalty even if the tax liability is admitted is not automatic.

c. Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by the authorities it has resulted in payment of such tax or such tax liability came to be admit ted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.

- **Conclusion:**

Extreme vigilance is required while filing the return of income and offering explanations with regard to items where there is a likely hood of penalty proceedings being initiated. In answering show cause notice in the principles enunciated must be borne in mind. Objections to validity of a notice or relevant extenuating factors must be taken at the earliest stage.

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Congratulations

CA N Nityananda has been nominated as Chairman of Direct taxes, Corporate Laws and GST committee of FKCCI for the year 2018-19.

CA Prabhudev Aradhya has been nominated as Chairman, Banking, Finance and Capital Markets Committee of FKCCI for the year 2018-19.

CA I S Prasad has been nominated as Chairman for Youth India of FKCCI for the year 2018-19.

GST Audit - Precautions

CA Madhukar N Hiregange & CA Mahadev.R

GST law has completed one year in India as on 1st July 2018 and this one year has had numerous tweets, GST fliers, changes in rules, notifications, clarifications, advance rulings etc. This has been a challenging year for not only the tax payer but even for the professionals as they had to manage GST compliance for their clients in addition to regular compliance under companies Act and income tax provisions. In another six months i.e by end of 31st December 2018, there is another deadline to meet for the GST payers as they have to get their books of account audited by a chartered or cost accountant in terms of Section 35(5) of CGST Act 2017. In this article, we have discussed the requirements of audit (mainly audit by professional) and certain precautions to be taken by the tax payer for successful audit by a professional.

Audit under GST

In GST law, in Section 2(13) of CGST Act 2017, the word 'audit' has been defined to mean detailed examination of records, returns and other documents maintained or furnished in GST Act or GST rules or ***under any other law in force*** to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed and to assess taxable person's compliance with provisions stipulated. It is interesting to note that the auditor could examine even the records which are maintained under any other law. Such laws could include income tax Act, companies Act, co-operative societies Act, sales tax Act etc. Tax payer cannot restrict the access of any documents to either professional or departmental officer doing GST audit.

Types of audit

In GST, mandatory audit by professional has been introduced which is similar to erstwhile VAT audit. Earlier, there was no need to get the accounts audited from a professional in many of the central government laws such central excise or service tax. However, there was a concept of special audit as and when notified under central excise or service tax law. The types of audit under GST are as follows:

a. Audit by professional – In terms of Section 35 (5) of CGST Act 2017, a chartered or cost accountant could take up this audit which is mandatory in case of GST registered persons with aggregate turnover exceeding Rs.2 crores.

b. Audit by department – In terms of Section 65 of CGST Act 2017, the commissioner or any authorized office could take up the audit of registered person after giving notice in advance to ensure GST compliance.

c. Special audit – In terms of Section 66 of CGST Act 2017, an officer not below the rank of assistance commissioner could order for special audit if he is of the opinion that there is incorrect valuation or incorrect credit availment during the scrutiny, inquiry, investigation or at the stage of any proceedings. Such special audit should be undertaken by either chartered or cost accountant appointed by the officer.

Other than audit under law there could be value added services in GST. They could be as under:

i. Review/ Internal Audit in GST – The tax payers could also opt for regular review of GST compliance which could be similar to internal audit restricted to GST aspects. If there is already a internal audit system, then the audit scope could be expanded to include GST aspects as well after ascertaining the competence of such auditors. This could add value to tax payer as he could get to know about non-compliances thereby reduce the penalties and interest by ensuring compliance, get to know about maximizing the credit benefits, better tax planning etc.

ii. Due Diligence/ Other Management specific audits - The professionals with GST knowledge could also provide the audit services specific to any of the aspect of GST such as credits audit, sales audit, export audit etc., to add value to tax payers. Such examinations could be conducted even as part of due diligence audit.

Turnover limit and audit for units with less than Rs.2 crores

In terms of Section 35(5), every registered person whose **turnover** exceeds the prescribed limit should get his accounts audited and submit a copy of the audited annual accounts, the reconciliation statement under Section 44(2) of CGST Act 2017 and such other documents in such form and manner as may be prescribed.

It is interesting to note that the word 'turnover' is not defined in GST law. We could find definitions for 'turnover in the state' and 'aggregate turnover' but not for 'turnover'. For this, solution lies in Rule 80(3) of CGST Rules 2017 which states that every person whose ***aggregate turnover*** exceeds two crores should get the accounts audited. The question as to whether rule can override section of Act still remains unanswered here.

Another issue which could arise is with respect to requirement of audit in case of States where turnover is less than two crore rupees. For example, a registered person has ten lakh rupees turnover in twenty-one States. For this answer may be affirmative, as the aggregate turnover includes turnover on PAN India basis and in the given example, for all twenty-one States, aggregate turnover would be two crore and ten lakh rupees.

Meaning of accounts

A professional appointed under Section 35(5) has to audit the accounts and he would get the access to any information which has GST impact. However, this may not mean that the he has to go through all the records just because the word used is 'accounts'. In terms of Section 35(1) of CGS Act 2017 which has the Section heading 'Accounts and other records', every registered person needs to keep and maintain true and correct account of following records at his place of business:

(a) Production or manufacture of goods;

(b) Inward and outward supply of goods or services or both;

(c) Stock of goods;

(d) Input tax credit availed;

(e) Output tax payable and paid; and

In addition to above list, few other records are prescribed in Rule 56 to Rule 58 of CGST Rules 2017 which includes, records for import / export of goods or services, records for goods lying in warehouse, record of goods lost / rejected / issued as samples etc.

The professional auditor may be expected to audit mainly these records and on need basis he should examine the other records which could have impact on GST liabiity or credits.

Precautionary steps by tax payers

In terms of Rule 80(3), audit report has to be issued in form GSTR-9C by the auditor which should be accompanied by annual return in form GSTR-9. Both these forms are yet to be notified. It is expected that the reporting requirements could be exhaustive as there were regular changes in the law and law is also new in the country. The auditor may have to highlight all the non-compliances in GST which could be used by the tax department to take action for recovery of taxes unpaid, wrong credit claims, wrong refund claims in addition to interest and penalties. The tax payers need to be aware of these and take necessary actions for compliance of GST law. Following could be few precautionary steps:

a) Get the general GST compliance review done before filing the GST annual return;

b) File the annual return and if option of rectifying the mistakes are provided in form which is yet to be notified, then rectify those mistakes;

c) Ensure that the following transitional provisions are complied:

   i) Get the goods sent in pre-GST regime returned from job worker (due date was 31st Dec 2017);

   ii) Get the goods sent in pre-GST regime on approval basis or issue invoice (due date was 31st Dec 2017);

   iii) Issue of debit or credit notes for price differences towards supplies made in pre-GST regime;

   iv) Filing of TRAN-2 forms

d) Ascertain GST compliance with respect to valuation, place of supply or time of supply. If needed, views could be supported by written legal opinion which could be referred by the auditor at the time of certification.

e) Compliance with Rule 42 and Rule 43 for apportioning the credits.

The list can go on and vary depending on type of business. A clean audit report could create goodwill with the department and help in getting good GST compliance rating (when introduced). This could also increase the confidence of investors or other auditors as well.

Conclusion

In many of the State VAT laws, the VAT audit reports were not being relied much by the State governments. In GST, this scenario could change and reliance on audit report could be more by making the form exhaustive increasing the responsibility of the auditor. Even the auditor should not resort to the option of just certifying the accounts without actual examination which could further damage the reputation. Tax payers should also take this opportunity to correct the mistakes and many a times the audit could lead to more value than the cost involved.

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Tax Notes - KVAT / GST Updates

CA G.B. Srikanth Acharya & CA Annapurna D Kabra

I) **Case Law**

Applicability of Purchase Tax under section 3(2) of the KVAT Act 2003

Dhammangi Property Developers Vs Acct Zone-1 (HC) Bangalore (STA No 128 / 2012 &22 -68/2013):

The Appellant is a developer of properties and has purchased the materials like sand, jelly, bricks, etc from the unregistered dealer and used for the construction of roads, drainage, sewage etc in the formation of the layout. The developed Sites as immovable properties are sold to the purchasers It was contended that there being no resale of goods and there is no input tax credit available to the Appellant and therefore the unregistered purchase tax is not leviable. It is held that the Taxable goods purchased from the unregistered dealers which are used for development of the land in the course of business are liable to tax under section 3(2) of the KVAT Act.

II) **Notifications under GST law**

- **Disposal of specified goods by the Proper Officer:**

Notification No. 27/2018 CT dated 13.06.2018 notifies certain goods or classes of goods which shall after the seizure u/s 67(2) is disposed of by the Proper Officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations.

- **Extension of due date for filing FORM GSTR- 6:**

Notification No. 25/2018 CT dated 31.05.2018extends the time limit for furnishing the return of Input Service Distributor in FORM GSTR- 6 for the months of July' 2017 to June' 2018 till **31.07.2018**

- **Notifying NACIN as the Authority for conducting the examination for GST Practitioners:**

Notification No. 24/2018 CT dated 28.05.2018notifies National Academy of Customs, Indirect taxes and Narcotics (NACIN), as the Authority to conduct the examination.

- **Waiver of late fees for FORM GSTR- 3B:**

Notification No. 22/2018 dated 14.05.2018waives the late fees payable for failure to furnish the return in FORM GSTR- 3B by the due date for each of the months from October' 2017 to April' 2018, for the class of registered persons whose declaration in FORM GST TRAN- 1 was submitted but not filed on the common portal on or before 27.12.2017

- **Extension of due date for filing of application for Refund**

Notification No. 20/2018 dated 28.03.2018provides for extension of due date for filing of application for refund under Section 55 by notified agencies. Initially, Section 55 provided that the specified persons like UNO or Multilateral Financial Institution and organization were entitled to claim refund of the tax paid by them on inward supplies of goods or services or both, should make an application for such refund before the expiry of six months from the last day of the quarter in which the supplies was received. However, the online facility was provided only recently and hence, an extension in the due date has been made. Presently the application can be made to the jurisdictional tax authority before the expiry of eighteen months from the last date of the quarter in which the supply was received.

- **Reverse Charge Mechanism:**

Notification No. 12/2018 CT (Rate) dated 29.06.2018 extends the time limit for applicability of RCM on supplies from an unregistered personi.e., Section 9(4) of CGST Act, 2017 till 30.09.2018

III) **Circulars under GST Law**

1. **Clarifications on Refund Related Issues (Circular No. 45/2018 dated 30.05.2018)**

- **Claim for refund filed by an Input Service Distributor, composition tax payer or a non-resident taxable person**

A claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and

a non- resident taxable person, the filing of the details in FORM GSTR- 1 and the return in FORM GSTR- 3B is not mandatory. Instead, the return in FORM GSTR- 4 filed by composition taxpayer, the details in FORM GSTR- 6 filed by ISD and the return in FORM GSTR- 5 filed by a non- resident taxable person shall be sufficient for claiming refund.

- **Application for refund of Integrated tax paid on Export of Services and supplies made to SEZ developer or SEZ unit**

  For the tax periods commencing from 01.07.2017 to 31.03.2018, the registered persons shall be allowed to file the refund application in FORM GST RFD- 01A on the common portal subject to the condition that the amount of refund of integrated tax/ cess claimed shall not be more than the aggregate amount of Integrated tax/ cess mentioned in the Table under columns 3.1 (a), 3.1 (b) and 3.1 (c) of FORM GSTR- 3B filed for the corresponding tax period.

- **Whether bond or LUT is required in the case of zero rated supply of exempted or non- GST goods and whether refund can be claimed by the exporter of exempted or non- GST goods?**

  There is no necessary requirement for furnishing the Bond/ LUT on export of non- GST or exempted goods without payment of Integrated tax. Such Registered Persons exporting non- GST shall comply with the requirements prescribed in the Central Excise Act, 1944 or The Karnataka Sales Tax Act, 1956) or under the Customs Act, 1962. Further the exporter would be eligible for refund of unutilized Input Tax Creditof CGST, SGST, UTGST, IGST and Compensation cess in such cases.

2. **<u>Clarifications of certain issues under GST: Circular No. 47/2018 dated 08/06/2017:</u>**

   Taxability of moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost to a component manufacturer.Both, the Original Equipment Manufacturers and component manufacturer are not related persons or distinct persons and there is no consideration involved. Therefore, it does not constitute a supply.Moulds and dies are provided in the course or furtherance of business, hence there is no requirement for reversal of input tax credit.The value of moulds and dies provided to the component manufacturer on free of cost basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer.

   Treatment for servicing of cars involving both supply of goods and services, where the value of goods and services are shown separately - the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

   In case of transportation of goods by railways, the goods shall be delivered only if the e-way bill is produced at the time of delivery.In case of transport of goods from one area to another area within the state, through another state, issuance of e-way bill is mandatory since movement of goods is inter-state, even though the destination of goods is within the same state.In case of movement of goods from DTA unit to a SEZ unit or vice-versa located in the same state, there is no requirement for issuance of E-way bill.

3. **<u>Certain issues relating to SEZ and Job work: Circular No. 48/2018 dated 14/06/2018:</u>**

- Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an interstate supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

  As per the principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case section 7(5)(b) of IGST Act, 2017 is specific, therefore the supply is treated as inter-state supply.

- Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?

- As per the provisions of Section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for **Authorized operations**, as endorsed by the specified officer of the Zone, the benefit

of zero rated supply shall be available in such cases to the supplier.

- Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017
- It is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.

4. <u>Circular No. 49/2018 dated 21/06/2018: Seeks to modify Circular No. 41/15/2018- GST</u>

- Rule 138C (2) of the Central Goods and Services Tax Rules, 2017, provides that where a physical verification of goods being transported on any conveyance has been done during transit at one place within a State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.
- For the above purpose requisite FORMS are not available in the common portal currently. Therefore, any action taken by the State Officers may not be intimated to the Central Officers and vice- versa.
- For this reason, a clarification has been issued stating that the hard copies of the notices/ orders issued in the specified FORMS by the tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.
- Further clarification is that only such goods and/ or conveyances should be detained/ confiscated in respect of which there is violation of the provisions of the GST Acts or the Rules.

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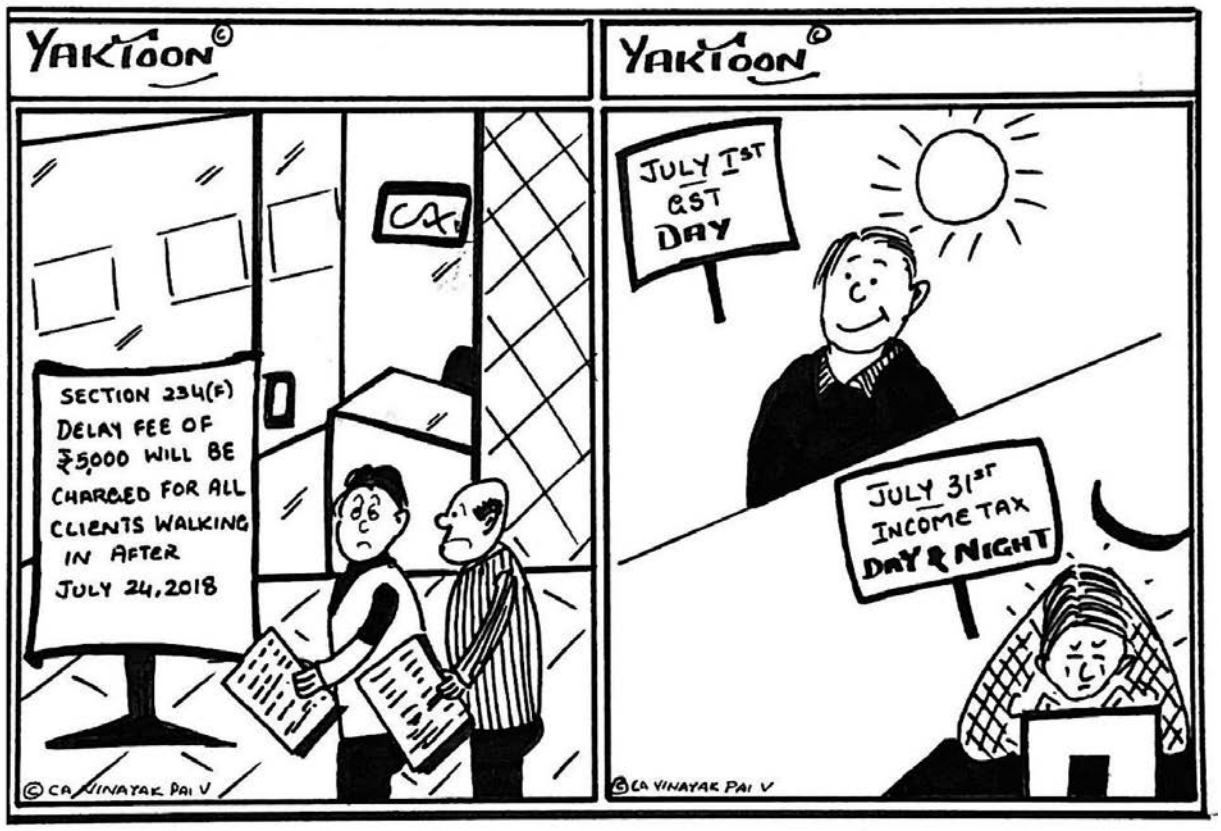

Financial Reporting and Assurance

CA Vinayak Pai V

1. **Heads Up – Latest/Upcoming Changes**

AS	
1	**AS 11** – *The Effects of Changes in Foreign Exchange Rates* – Companies (Accounting Standards) Amendment Rules, 2018 effective April 1, 2018
IND-AS	
1	**IND-AS 40** – *Investment Property* - ***Fair valuation***
2	**IND-AS 28** – *Investments in Associates and Joint Ventures* – ***Long term interests in associates and joint ventures***
3	**IND-AS 109** – *Financial Instruments* – ***Prepayment features with negative compensation***
4	**IND-AS 19** – *Employee Benefits* – ***Plan amendment, curtailment or settlement***
5	**IND-AS 103** – *Business Combinations* - ***Previously held interest in a joint operation***
6	**IND-AS 111** – *Joint Arrangements* – ***Previously held interest in a joint operation***
7	**IND-AS 12** – *Income Taxes* – ***Income Tax consequences of payments on financial instruments classified as equity***
8	**IND-AS 23** – *Borrowing Costs* – ***Borrowing costs eligible for capitalization***
9	ICAI **Educational Material** on **IND-AS 27** – *Separate Financial Statements* and **IND-AS 28** – *Investments in Associates and Joint Ventures*
IFRS	
1	IASB project on **Financial Instruments with Characteristics of Equity**
2	Supporting materials on **7 Sections** of ***IFRS for SMEs*** published by the IASB
Valuation Standards	
1	Indian Valuation Standards **mandatory** for all valuation engagements under Companies Act **effective July 1, 2018**.
2	Indian Valuation Standards **recommendatory** for valuation engagements under other statutes like Income Tax, SEBI, FEMA etc.
Assurance	
1	**RBI's Enforcement Action Framework** in respect of statutory auditors for the lapses in the **statutory audit of commercial banks**
Banks and NBFCs	
1	**Scheduled Commercial Banks - IND-AS Transition date April 1 2018** with first full set of financial statements under **IND-AS** from **FY 2019-20** (subject to final notifications under statutes)
2	**NBFCs to converge with IND-AS from April 1, 2018** (Subject to any further announcements)

2. **Fair Valuation Option For Investment Properties Under IND-AS – Recent Exposure Draft**

Our Institute has issued several exposure drafts (EDs) that seek to amend a number of Indian Accounting Standards including **IND-AS 40** – *Investment Property.*

The extant notified IND-AS does not permit the use of the fair valuation model for investment properties unlike IFRS where the same is permitted. The ED now proposes to eliminate this carve out.

The salient features of the amendments are summarized here in below.

- An IND-AS reporting company can now choose either the **cost model** or the **fair value model** as its accounting policy for investment properties.
- **Gains or losses** arising from **fair value changes** are required to be **recognized** in the **statement of profit or loss** in the period in which it arises.
- Comprehensive **disclosures** for the fair value model have now been prescribed.
- The ED maintains that a change from the fair value model to the cost model is very highly unlikely to result in more relevant presentation of financial statements.

It may be noted that under IND-AS **investment property** is property (**land or a building – or part of a building – or both**) **held** by the owner or by lessee under a finance lease **to earn rentals or** for **capital appreciation** or both rather than for (a) use in the production or supply of goods or

services or for administrative purposes or (b) for sale in the ordinary course of business.

3. **Amendment To AS 11 – *The Effects Of Changes In Foreign Exchange Rates Effective April 1, 2018***

The MCA vide Notification No. G.S.R.569 (E) dated June 18, 2018 has made a limited amendment to **AS 11** – The Effects of Changes in Foreign Exchange Rates. This amendment viz. Companies (Accounting Standards) Amendment Rules, 2018 shall come into force on April 1, 2018.

The amendment relates to the **accounting topic of disposal of interest in a** non-integral foreign operation **(NIFO)**.

The substituted paragraph in Para 32 now includes the following – "**Remittance from a non-integral foreign operation** by way of **repatriation of accumulated profits** does **not** form **part of a disposal** unless it constitutes return of the investment".

4. **A Case Study: IND-AS Transition Impact**

The following case study of an **IND-AS first-time adopter** is based on published financial statements available in public domain.

IND-AS Impact	Impact (%)
Equity at date of transition	Increase of **5.3%**
Revenues for the comparative period	Increase of **14.8%**
Net profits for the comparative period	Decrease of **5.1%**

Key **Contributing Factors** for IND-AS Impact:

- Under AS, revenues from sale of goods were presented net of **excise duty** whereas under the IND-AS framework, the same is presented inclusive of excise duty. Further excise duty is now presented as an expense line item in the statement of P&L.
- The entity had given a **concessional rate loan to its subsidiary** company and under IND-AS the same has been measured at fair value on initial recognition. The differential on account of fair valuation of the said loan being in the nature of equity component has now been considered as part of investment in subsidiary.
- Under AS, the company had recognized **provision for trade receivables** based on expectation of losses thereunder whereas under IND-AS, the company has provided for loss allowance on receivables based on the expected credit loss (ECL) model that is measured applying the simplified approach at an amount equivalent to the lifetime expected credit losses at each reporting date.
- **Transaction costs related to borrowings** were initially recognized as an asset under AS and subsequently amortized over the period of the related borrowings as borrowing costs in the income statement. Under IND-AS, such borrowings are classified as financial liabilities and measured at amortized cost using the effective interest rate method.
- Under AS, the company accounted for **non-current investments in equity shares of companies other than subsidiaries**, joint ventures and associates at cost less any provision for other than temporary diminution in the value of investments. Under IND-AS, the same have been classified at Fair Value through Other Comprehensive Income.

5. **Applicability of Indian Valuation Standards (IVS) for Valuation Engagements**

Our Institute had recently issued **Indian Valuation Standards (IVSs)** as a benchmark for valuation practices that are applicable for Chartered Accountants. Accordingly, the following valuation standards were issued as detailed in table herein below. The applicability guidance for these standards have now been detailed by our Institute

1	Preface to the Indian Valuation Standards
2	Framework for the Preparation of Valuation Report in accordance with the Indian Valuation Standards
3	IVS 101 - Definitions
4	IVS 102 – Valuation Bases
5	IVS 103 - Valuation Approaches and Methods
6	IVS 201 – Scope of Work, Analyses and Evaluation
7	IVS 202 – Reporting and Documentation
8	IVS 301 – Business Valuation
9	IVS 302 – Intangible Assets
10	IVS 303 – Financial Instruments

Applicability of above valuation standards:

Valuation Engagement	Applicability
Under **Companies Act**	**Mandatory** – effective for valuation reports issued on or after **July 1,2018**
Under **Other Statutes**	**Recommendatory** for valuation reports issued on or after **July 1, 2018**

It may be noted that the above IVSs will be effective till Valuation Standards are notified by the Central Government under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2018.

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CBDT's stringent action-points to reactivate local grievance committees on high-pitched assessments and increase in threshold monetary limits for filing Departmental Appeals: Are these anti-tax-terrorism directorates to ease taxpayer distress?

CA Sandeep Jhunjhunwala

The campaign pledge to end "tax terrorism" had swung votes in the last general elections. With 2019 general elections not far away, the Government seems to be making sure that the catchphrase does not come back to unnerve it again. On July 4, 2018, the chief of the Central Board of Direct Taxes (CBDT) - the Finance Ministry arm which serves as the apex administrative body for Income tax policy and planning, has directed all principal Chief Commissioners, through an internal note (directive), to closely monitor and resolve all cases of "high-pitched" tax demands. Press articles suggest that the decision seems to have been taken as part of the Government's plan to check high-handedness of taxmen in deciding assessments.

The CBDT, had three years ago, sought the creation of local committees in every tax region headed by a Principal Chief Commissioner (vide Instruction No 17/ 2015 dated November 9, 2015) to expeditiously deal with taxpayers' grievances arising from high-pitched scrutiny assessment. Generally, a high-pitched scrutiny assessment case is one where it is found that the addition of income is made on frivolous grounds, non-observance of principles of natural justice, or non-application of mind and gross negligence by the Assessing Officer (AO) in deciding a case (all of these often driven by stiff targets, resulting in assessment of unreasonably high income). It has been categorically instructed in the note that wherever local committees formed to look into complaints of tax payers have taken a view that a tax assessment is indeed 'high-pitched', the AOs should be invariably asked to give explanation. Moreover, it significantly states that wherever required, administrative actions such as transfer of the AOs to a non-sensitive post in a different city and appropriate disciplinary action should be initiated. No coercive action should be taken for recovery of demand in cases which have been identified as 'high-pitched' by the local committees. The CBDT chief also directed that a compliance report on these cases should be sent to the Board every 3 months and a publicity campaign should be undertaken so that taxpayers know that this mechanism can be used to get their grievance arising from high-pitched assessments redressed. The CBDT chairperson, in his letter, had stated that the performance of these committees in the last three years has not been found to be satisfactory.

Overall, the facility of referring the case of high-pitched assessment to the notice of the committee could enable the assesse to stay the demand without paying 20 percent of the additional tax amount necessary in the direct appeal process [Commissioner of Income Tax (Appeals) route] and move the appellate authority to dispose of the matter rapidly (depending on the technical merits based on the facts of the case). The CBDT has from time-to-time issued instructions and circulars laying down the guidelines to be followed by the AOs while exercising the statutory powers of tax collection in the course of assessments. An Office Memorandum dated February 29, 2016 (and later amended by an Office Memorandum dated July 31, 2017) issued by CBDT has standardized the quantum of lump sum payment required to be made by a taxpayer as a pre-condition of stay of tax demand, which the taxpayer could have appealed before the Commissioner of Income Tax (Appeals). Situations envisaging payment of 20 percent of tax demand and amounts higher and lower than 20 percent have been discussed in the circular. Other circumstances for grant of stay by the higher authorities are prescribed in an earlier Instruction (No 1914 dated February 2, 1993), which empowers the superior authorities to grant stay in cases where an unreasonably high-pitched assessment order has been passed or the taxpayer would face genuine hardship if made to pay the tax demand. The Hon'ble Karnataka High Court in a recent case [*Flipkart India (P) Ltd vs Assistant Commissioner of Income-tax, Circle 3(1)(1), Bengaluru (2017) 79 taxmann.com 159 (Karnataka)*] has provided guidance on the question whether the Circular of February 29, 2016 has superseded the earlier Instruction No 1914 of February 2, 1993 in *Toto* as it was later in time and

provided a new procedure for streamlining the procedure for granting of stay. The Hon'ble High Court in this case had clearly negated the Revenue's stand that Instruction No 1914 has been superseded by the Office Memorandum of February 29, 2017. Thus, the superior authorities continue to have power to grant stay in cases where unreasonably high-pitched assessments have been made and also in cases where taxpayer would suffer genuine hardship, unless a stay is granted.

While the Government has been assuring foreign companies and investors that India would no longer engage in tax terrorism, actions such as levying huge retrospective tax bills on corporations such as Cairn India (on which a tax notice worth USD 3.6 billion was slapped for a transaction that occurred in 2006-07), notices to collect a 20-percent levy in the form of Minimum Alternative Tax amounting to USD 6.4 billion from a group of 100 Foreign Institutional Investors (FIIs) for the year 2012-13, share premium tax for start-ups etc, threaten to wreck investors' confidence. Recent press articles suggest that while an international arbitration tribunal is to begin final hearing in Cairn's challenge to the tax imposed retrospectively, the IT Department has already realised USD 216 million from selling some of the firm's residual holding in Vedanta (in addition to tax recovery actions such as seizing dividends due to Cairn Energy Plc and offset of tax rebate).

Veda Vyasa had laid down in the Mahabharata that "a king should collect taxes like a bee collects nectar from flowers, painlessly". The need of the hour, is therefore, a dramatic overhaul of the tax code and administration. The Government must chalk out a plan to reduce pendency of tax litigation, specifically the exponential increase in disputes related to transfer pricing regulations. Faced with a success rate that is less than 30 percent, the Economic Survey of 2018 had revealed that the tax department would gain from a reduction in appeals pursued at higher levels of the judiciary besides leading to a reduction of workload on High Courts and the Supreme Court. The Hon'ble Karnataka High Court had recently refused to review dispute over transfer pricing comparables selection to assess the arms' length price of related party transactions in a case brought by the Revenue department, involving Softbrands India Private Limited. Large number of such appeals are pending before various jurisdictional High Courts in India (including Karnataka) and could be dismissed based on this ruling - a clear instance of frivolous appeals by the Revenue being dismissed at higher appellate forum. The recent step by the CBDT to increase the threshold monetary limits for filing Departmental Appeals at various levels - Appellate Tribunals (from Rs 10 lakhs to Rs 20 lakhs), High Courts (from Rs 20 lakhs to Rs 50 lakhs) and the Supreme Court (from Rs 25 lakhs to Rs 1 Crore) is definitely a major one in the direction of litigation management. The total percentage of reduction of litigation from Department's side would be 41 percent due to this move. To induce transparency into the system, the CBDT had recently notified a new centralised communication scheme for serving e-notices to taxpayers, which will almost eliminate person-to-person contact leading to greater efficiency and transparency. Transparency is becoming an unofficial mandate by the public (and is often a legal mandate). Infact, the Supreme Court has also now agreed with the Centre's suggestion that the telecast of judicial proceedings can be undertaken and has sought suggestions for taking a holistic view on the matter. More than Rs 70,000 crore of refunds were issued to the taxpayers as a result of the special drive conducted by the CBDT recently. The facility of issuing e-PAN on a real-time basis is expected to reduce the interaction with the department and help taxpayers generate PAN without any hassle. These steps would definitely aid in improving the overall level of taxpayer service.

The Government is expected to provide a broad road map for the new direct tax code. The direct tax code offers us a chance to take a fresh new and long term look at our tax policy and it is hoped that the effort on this begins with a clean slate and does not become like the Companies Act 2013, which after the initial law and numerous changes represents a mere incremental change over its older version or like GST - which instead of portraying one nation, one tax is shaping up as one tax, many changes. While the foreign investors are still betting high on India (recent events such as Samsung India setting up world's largest mobile manufacturing facility, jump in Ease of doing business index etc demonstrates this), it time for the Government to offer all-out efforts to retain global majors from exiting India due whimsical tax regime (such as the recent Nokia episode). To remain in the economic sweet spot, India must ensure forward momentum on its programme of tax reforms.

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Analysis of exemption from GST on supply of services:

Notification No. 12/2017 Central Tax(Rate) dated 28.06.2017 – Construction services- Residential

CA Raghavendra C R, B.com, FCA, LLB, Advocate and **CA Bhanu Murthy J S**, B.com, FCA, LLB, Advocate

In this write up the emphasis is on analysis of exemptions related to construction of the residential units. The relevant entries from Notification 12/2017 CT(R) dt. 28.06.2017 is reproduced for the sake of easy reference:

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
10	Heading 9954	Services provided by way of **pure labour** contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led **individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.**	Nil	Nil
11	Heading 9954	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to **a single residential unit** otherwise than as a part of a residential complex.	Nil	Nil

Analysis of the Exemptions related to training services under GST

a) **Entry 10- pure labour services relating to Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.:**

This entry provides for exemption from payment of GST on services provided by a service provider which are in the nature of pure labour.

Nature of services which are covered under exemption: The exemption is eligible only for the pure labour contracts relating to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of building or civil structure.

Nature of buildings or civil structures for which the exemption is limited: exemption is limited to the pure labour works relating to civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

b) **Entry-11: Labour contract for construction of single residential unit:**

This entry grants exemption from payment of GST on services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit.

It shall be noted that this exemption is for construction, erection or other activities detailed above for a single residential unit otherwise than as a part of a residential complex. In other words, the single residential unit which is part of a residential complex would not be eligible for the exemption.

Single residential unit has been defined in notification to mean a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

Further, the phrase "residential complex" has been defined to mean any complex comprising of a building or buildings, having more than one single residential unit.

It shall be noted that in both the above entries the exemption is only for the pure labour contract and the exemption is not applicable where the supply involves both goods as well as services.

It is relevant to note that entry 10 grants exemption to the pure services pertaining to 'original work' of beneficiary-led individual house construction, it could be part of a housing project under 'Housing for All (Urban) Mission' or 'Pradhan Mantri Awas Yojana'. However, the exemption under Entry 11 is available only to the services involved in original works pertaining to **a single residential unit** otherwise than as a part of a residential complex.

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REPRESENTATION ON REVISED RFP FOR APPOINTMENT OF FINANCIAL STATEMENT AUDITORS FOR URBAL LOCAL BODIES

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

GROW, SHARE & TRANSFORM

CA. Raghavendra T.N.
President

CA. Chandrashekara Shetty
Secretary

Dated: 29th June 2018

To,
The Director,
Directorate of Municipal Administration
V.V. Towers,
Bangalore

Dear Sir,

Subject: Selection of Financial Statement Auditors for ULBs
Reference: 1) Pre-bid Meeting held on 15-3-2018 of Earlier RFP
2) Our letter dated 09-03-2018
3) Our Letter dated 26-03-2018
4) Withdrawal of Earlier RFP due to our Representation.
5) Pre-bid Meeting held on 13-06-2018 for the revised RFP
6) Revised RFP dated 21-5-2018
7) Corrigendum uploaded to the eprocurement portal on 28-6-2018

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community. With this backdrop, we have written to your good-selves earlier populating issues in RFP and possible solutions.

As a State level body representing chartered accountants across the State, we had interacted with your office on a few several occasions, representing the views of members with regard to the issue of financial statements audit of municipalities. We had communicated the concerns of our members with regard to the RFP during pre-bid meetings, and also submitted our suggestions expressing the concerns of our members. We thank you for appreciating our concerns, and issuing corrigendum considering many of our suggestions. We request you to consider a few more points of concerns which are explained in the following paragraphs:

a) Paragraph 3.2. of revised RFP - Half-yearly Audit:

As per the above Paragraph, the Financial Statements Auditor (FS Auditor) is required to carry out half-yearly audit (Internal audit) to verify specified items. During the pre-bid meeting, and also in our representations, we had submitted our concerns with regard to this paragraph. There are no specific details in the RFP as to the scope of half-yearly audit, and the reporting requirement. Apparently, half yearly audit will be a replica of financial statements audit, without any specific deliverables. The time and cost (including travelling) of audit will almost double, with no noticeable benefit to the ULBs. In the absence of a proper structure and preparedness of ULB staff, we are sceptical about the practicality of this additional requirement. It will cause unnecessary hardship both the financial statement auditor and the ULB staff, with no noticeable benefit. We request you to drop this requirement.

b) Corrigendum – District-wise allocation of ULBs:

As per the Corrigendum, the district-wise packages comprise 4-10 ULBs. Considering the preparedness of ULBs and the time required to complete the audit of ULBs, it could result in considerable delay in completion of audit even for bigger firms. We request you to have the package size of five or less as was done in the earlier years in order to complete the audit in time, and also to maintain the quality of audit. This was also expressed in the pre-bid meeting.

c) Corrigendum – Evaluation criteria:

The revised evaluation criterion no. 3 gives 15 points for ACA partners and 10 marks for CA employees. We would like to stress on the fact that "number does not mean quality". Big CA firms with 10-20 partners have multi-disciplinary specialisations, with each of them exclusively specialising on certain specific areas. Each specialised area will not have more than 4-5 chartered accountants. There will be not more than 1-2 chartered accountants having experience in government sector audits. Moreover giving weightage separately for FCA & ACA is not suitable. Therefore, we request you to reduce the weightage given to number of partners and CA employees, and increase the weightage given to experience, as ULB Audit is a specialised Audit of Accounts maintained in Fund Based Double Entry Accounting system. We propose the following changes to the evaluation criteria:

Sl. No	Qualification	Max Points		Point allocation criteria
		AS per Corrigendum	Proposed	
3.	Full time ACA Partners	15	--	
4.	Full time CA Employees	10	--	
5.	Audit Experience of Govt/PSU (excluding ULBs) in the past 5 years	10	20	4 points for each audit assignment of Govt. department/PSU
6	Audit Experience of ULBs in the past 5 years	5	20	2 points for audit of one ULB

We request you to kindly consider the above proposals, so that the financial statement audit of ULBs can be completed in a timely and qualitative manner.

Thanking you,

Yours sincerely,
For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra T.N.
President

CA. Chandrashekara Shetty
Secretary

Vijay Sagar Shenoy
Chairman
Representation Committee

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

GROW, SHARE & TRANSFORM

CA. Raghavendra T.N.
President

CA. Chandrashekara Shetty
Secretary

Date: 10th July 2018

To,

Shri. Sushil Chandra
The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Government of India,
North Block,
New Delhi 110 001.

Dear Sir.

SUBJECT: REPRESENTATION ON RELAXING THE APPLICATION OF SECTION 234F OF INCOME TAX ACT AND EXTENSION OF DUE DATE FOR FILING INCOME TAX RETURNS OF INDIVIDUALS AND SMALL BUSINESSES

The Karnataka State Chartered Accountants Association (R) (in short **'KSCAA'**) is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

We have written to your good selves many a times populating issues and possible solutions. Herein, we are presenting difficulties and hardships faced by the trade, consultants and public at large pursuant to introduction of Section 234F and also, relating to adhering the timelines for filing of Income Tax returns within 31st July 2018, the due date as mentioned in Explanation 2 of Section 139(1). Having a wide outreach to Chartered Accountants, tax practitioners, trade bodies etc., and issues populated by them, KSCAA felt it necessary to put forth these issues and seek your redressal mechanism to alleviate the pain caused as well as seek a reasonable extension of due date.

We wish to present before you the following facts on the ongoings and public sentiment on the matter under two segments:

A. Regarding Section 234F of the Income Tax Act

The Union Budget, 2017 introduced Section 234F for levy of fee for delay in filing of Income Tax Return beyond due date.

Our view-points:

- In view of various interpretations, general connotations and judicial precedents, fees can be categorized as compensatory or regulatory. While 'Compensatory' involves something of a quid pro quo, 'Regulatory' involves regulating activities which Government feels important but must be reasonable and not excessive and the charge would be in lieu of license.

- The levy under Section 234F is neither for a service nor for any kind of license. Hence, it partakes the character of penalty because it is punitive in nature rather than compensatory. Further, mere change in nomenclature of a levy disregarding its intention and function cannot alter the character of levy.

- Opportunity of being heard is a foundational concept of principles of natural justice. Notice and fair hearing are two aspects which are essential and elementary even in tax laws. It is very important to provide a reasonable opportunity of being heard for such a levy of penalty, which is being introduced under the garb of 'fee' and is not built on sound fundamental principle of natural justice.

- The Department is already deriving revenue on late filings in the form of interest under Section 234A, 234B and 234C on the count of delay in filing of returns, non-payment of advance tax and irregular or non-payment of advance tax installments respectively. Hence the Revenue is sufficiently compensated.

- The filing of return is being narrowed down to assessment year itself and to top that up, this imposition seems too harsh and regressive.

- The nominal earners who are brought into tax net may be discouraged to file the returns though genuinely they wish to file the returns.

- For those assessees whose income does not exceed maximum amount not chargeable to tax, but, filing returns only for the sake of claiming the refund as well as those assessees who file with 'Nil' tax liability, this levy seems agonizingly harsh.

Therefore, on behalf of the tax paying community of India, and on behalf of the tax professionals who assist the tax payers in honestly complying with the tax laws of the country, we strongly urge you to withdraw this levy of late fee under Section 234F of the Act.

B. Regarding extension of due date for filing income tax returns of individuals and small businesses:

The due date fixed for filing returns i.e. on or before 31st July seems more than sufficient to comply but for various factors which are practically acting collectively against such compliance on the part of the assessees, trade and practitioners. We have presented here in below the actual facts for your better understanding:

- The due date presupposes that all returns pan India can be filed within a span of four months from the completion of the financial year. But practically the filing can only start around June or even later part of June for few class of assessees and window for filing within the due date immediately closes next month itself pursuant to myriad of factors as underlined herein infra.

- The tax return preparation involves compilation of data from various sources, say from bank, from businesses in the form of TDS certificates, employer's Form 16, credit of tax in Form 26AS despite issuance of such records by the respective deductors. It is a known fact that the TDS certificate is only issued in June and many a times, Deductors issue TDS certificates late due technical glitches or to delayed filings of e-TDS returns by them.

- Many assessees have multiple businesses and streams of revenue, in genuine situations, may have to await the proper reflection of tax credits and thereafter commence and forward it to their respective consultants. Also, GST compilation and reporting requires time and effort and has to conform with Form 26AS and follow up with the respective deductors for any inadvertent errors and such correspondences happen only after TDS is reflected and is complete in all respects.

- Also, certain documents may be lacking or incomplete on the part of assessees when they present to their consultants and would be prompted rightly to be provided. The process of such collation from respective sources would also kill time and it is not useful to start this process in April as everyone is aware that things gets reflected in TDS database only in June and it will be a futile exercise to follow up before 1st April.

- Returns would not be comprehensive without considering all the streams of revenue. The tax credits, which sometimes get reflected belatedly and creeping every now and then into the tax credits also cause deviation in the reporting of income in returns. The veracity of the screening process consumes time and effort and filing without considering the same can have penal implications. Adhoc filing without considering all relevant income streams would be futile and incomplete. If the assessee waits for such reflection, there would be delay in filing and this mandatory levy of late fee under Section 234F imposes additional burden to the assessee for no fault of his.

- The tax department itself does not provide facility to file on 1st April and does not release schema at the beginning of the Assessment Year for all categories of assessees. This is despite it having one full year from the date of assent by the Hon. President of India.

- Another point of due mention is frequent and intermittent changes to schema not doing any good to the already persistent woes.

- The e-TDS Return filing deadline for fourth quarter for the deductors being 31st May and though there are penal provisions, many deductors for genuine reasons too are filing belatedly and the same is having a rippling effect on the deductees' filing woes.

This write-up is on the back of representations received from our members, tax practitioners and trade bodies who are in the thick of things with the assessees.

We would be highly thankful if you could extend the due date well in advance, which would be very useful in planning the filings for the assessees, businesses and practitioners. Also, we seek your intervention on unjust levy under Section 234F fees for filing beyond due date.

Thanking you,

Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra T.N.
President

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Secretary

CA. Vijay Sagar Shenoy
Chairman
Representation Committee

KSCAA delegation meeting Sri. Mohanraj, IAS, Director of Municipal Administration on 29th June 2018 to impress upon the pertinent pending issues in revised RFP & Corrigendum

Interactive Meeting with Sri. B.R. Balakrishnan, IRS, Principal Chief Commissioner of Income Tax and Sri Harish Kumar, Principal Director General of Income Tax (Systems) New Delhi on 29th June 2018 regarding e-Assessment related issues

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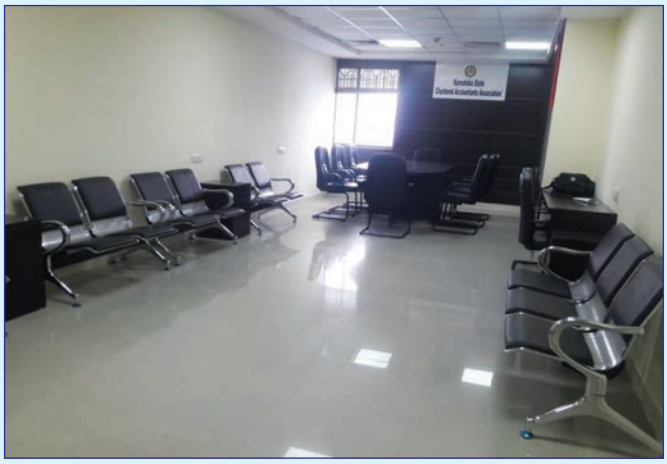

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KSCAA delegation meeting Sri. Anant Kumar Hegde, Hon. Union Minister of State for Skill Development and Entrepreneurship on 12th July 2018 to impress upon issues faced by our fraternity and business community

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