KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

May 2018 | Vol. 5 | Issue 9 | ₹ 25/-

www.kscaa.com

English Monthly

for Private Circulation only

Gst Exemption

Foreign Cos

Income Tax Act

Representation - CBDT

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Revenue Recognition

Sec. 14 A

Mixed Supply

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From the President

Dear Professional Friends,

I am highly delighted time and again to write in this forum, especially when the readers are a wider diaspora of unique talent breed, which to say the least are multi-faceted personalities in their own right. As I ponder as to what can I write, a thought came into my mind as to highlight few illuminaries who qualified as a Chartered Accountant and went on to don and contribute in as many ways to the society. I salute the visionary zeal and see them in the light of a *Karmayogi*. To name a few amongst them, Kumara Mangalam Birla, Deepak Parekh, Naina Lal Kidwai, Aditya Puri, Gurumurthy, Rahman Khan, Y. H. Malegam, Honourable Justice Vineet Kothari, Rakesh Jhunjhunwala, Motilal Oswal, Yendamuri Veerendranath. They carry with them a shield of disciplined being, persistence, patience, wisdom, depth, possess and get possessed of an air of respect in whatever they are and do.

I wish to pay homage to a special personality, who after completing CA course, went on to become a cop solving few high profile cases, Late Himanshu Roy, who unfortunately could not bear the brunt of ailment and ended his life on 11st May.

Representations:

On the representations front, I am happy to bring to the fore, we have made a representation to Central Board of Direct Taxes expressing concerns regarding instructions dated 8th March 2018 relating to irregularities in appellate orders and instructions dated 28th March 2018 regarding processing of returns under Section 143(1) of the Income Tax Act, 1961 which are pushed to Assessing Authorities by CPC. Copy of the above representations are published elsewhere in the News Bulletin. Alternatively, you can access all our representations at www.kscaa.com.

We request 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.

News Roundup:

The Central Board of Direct Taxes has notified Income Tax Return (ITR) Forms applicable for the Assessment Year 2018-19. Significant changes have been made to new ITR Forms with additional disclosure requirements. Residents with income up to Rs.50 Lakhs from Salary, House Property and other sources will be required to file ITR-1, Residents with income more than Rs.50 Lakhs and non-residents are required to file ITR-2 or other forms with elaborate additional particulars. Presumptive tax payers are mandatorily required to furnish GST Registration number, turnovers declared in GST Returns, and additional information such as Partners / Member's Capital, Fixed Assets, Advances, Secured and Unsecured Loans in ITR-4 (Sugam), which are burdensome for tax payers who are not required to maintain books of account as per the provisions of Income Tax Act. With the introduction of GST related fields, the Income Tax Department will link turnovers and other related information. This was much anticipated as the Government is building its capabilities in use of the latest new age technologies like data mining techniques and artificial intelligence to capture leakages. Overall, the revised forms require lot of additional disclosures for which we as tax professionals need to gear-up, plan ahead of tax filing season and create awareness among the tax payers for proper and timely tax compliance.

The GST Council in its meeting held on 27th April 2018 approved making the GST-Network (GSTN), a government entity by allowing the regime to take over the stake held by private entities. Post the deal, the Central Government will own 50% of the GSTN and the State Governments will collectively hold remining 50%. The Council unveiled a new simplified return filing process that will require a taxpayer to file only one return every month which will come into force in six months. Composition dealers and dealers having Nil transaction will continue to file returns on a quarterly basis. After deliberations, the Council referred the issue of giving a two percent incentive for digital payments, to a five-member committee of State Finance Ministers, while most states favour giving the incentive, if all payments are paid digitally or through cheques, but some want a small negative list. The Council also deferred the decision of imposing cess on sugar and reducing GST on ethanol.

The Companies (Registration, Offices and Fees) Second Amendment Rules, 2018 has been notified on 7th May 2018. Accordingly, in case the due date of filings under Section 92 (Annual Return) or 137 (Annual Financial Statement) of the Companies Act, 2013 expires after 30th June 2018, the additional fee of Rs.100/- per day shall become payable in respect of MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS. In all other cases where the belated annual returns or balance sheet/financial statement which were due to be filed whether under the Companies Act, 1956 (Form 23AC, 23ACA, 23AC XBRL, 23ACA XBRL, 20B, 21A) or the Companies Act, 2013 (MGT-7, AoC-4, AoC-4 XBRL and AoC-4 CFS) additional fee as per the applicable slab for the period of delay up to 30th June 2018 plus Rs.100/- per day w.e.f 1st July 2018 shall become payable. Members are advised to take note, create awareness among stakeholders and plan accordingly.

Upcoming events and programs for the month:

KSCAA jointly with Tumkur District Chartered Accountants Association (TDCAA) is organizing a discussion on "New e-Way Bill System and practical issues in GST Returns" and "Analysis of changes in new ITR Forms" on Saturday 26th May 2018 at TDCAA premises, Tumakuru. I request mofussil members to make most of this event.

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

I wish to conclude this message with a provoking thought:

"Today's pain is tomorrow's power. The more you suffer today, the stronger you are tomorrow."

Self-pity is self-defeating. Tomorrow's success is based on today's discomfort. Plus, willpower is like a muscle; The more you exercise it, the stronger your will gets. And easier it is to call on when dedication and persistence make all the difference. Embracing pain in a proactive manner only transforms and helps individuals set themselves for great trajectory and positioning.

With warm regards,

CA. Raghavendra T.N.
President

KSCAA
News Bulletin
May 2018
Vol. 5 Issue 9
No. of Pages : 20

CONTENTS

Section 14A – Income Tax Act, 1961 Expenditure incurred in relation to Income not includible in Total Income 4
CA S. Krishnaswamy

Mixed Supply in GST 7
CA Madhukar N.Hiregange &
CA Mahadev.R

Financial Reporting and Assurance 9
CA Vinayak Pai V

Analysis of Exemption from GST on Supply of Services 12
CA Raghavendra C R &
CA Bhanu Murthy J S

Prosecution Proceedings under the Income Tax Act: What lies ahead for Foreign Companies? 14
CA Sandeep Jhunjhunwala

Refund under GST- Is it Streamlined? 16
CA Sanjay Dhariwal &
CA Annapurna Kabra

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

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Karnataka State Chartered Accountants Association ®

Jointly with

Tumkur District Chartered Accountants Association

Organizes

One Day Workshop on Direct & Indirect Taxes

at **TDCAA Premises, Tumakuru**

Date: **Saturday 26th May 2018**

10:15 AM to 10:30 AM	–	Registration
10:30 AM to 10:45 AM	–	**Inauguration**
10:45 AM to 11:00 AM	–	Tea Break
SESSION 1		
11:00 AM to 01:00 PM	–	**New e-Way Bill System and Practical issues in GST Returns** by ***CA. Kuber Hundekar***
01:00 PM to 01:30 PM	–	Q & A
01:30 PM to 02:30 PM	–	Lunch Break
SESSION 2		
02:30 PM to 04:00 PM	–	**Analysis of Changes in new ITR Forms** by ***CA. Deepak Chopra***
04:00 PM to 04:15 PM	–	Tea Break
04:15 PM to 04:45 PM	–	Q & A
04:45 PM to 05:00 PM	–	Valedictory

NO FEES

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Section 14A – Income Tax Act, 1961 Expenditure incurred in relation to Income not includible in Total Income

CA S. Krishnaswamy

- Expenditure relating to exempt income is to be disallowed.
- If there is no exempt income in the relevant year, no disallowance of expenditure (contrary to Dept. view).
- Rule 8D should not lead to a situation where the disallowance exceeds exempt income (HC).

Introduction:

Section 14A of the Income-tax carries a simple proposition which lays down that expenditure incurred in relation to income not includible in total income is not deductible in total income. Such expenditure will be determined in accordance with Rule 8D. Thanks to legal draftsmanship and the 'clarificatory' CBDT circular on the section, confusing Rule 8D, this has led to avoidable litigation as to what constitutes expenditure incurred in relation to income not includible in total income. Let us examine some of the issues that were subject to judicial interpretation;

- **Issue 1 – Proportionate tax – exempt income and non-exempt income**

  Recent SC decision in Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC):

  Issue in the case-

  During the Assessment Year 2002-03, the taxpayer filed return of income declaring income of Rs.7.89 million. No part of the interest expenditure of Rs.11.62 million debited to the profit and loss account, to the extent relatable to investment in shares of Max India Limited, yielding tax free dividend income, was considered for disallowance under Section 14A of the Act on the ground that shares in the said company were acquired for the purposes of **retaining controlling interest** and not with the motive of earning dividend. Therefore, dividend of Rs.4.99 million earned on shares of Max India Ltd. during the relevant previous year was only incidental to the holding of such shares.

  The Assessing Officer worked out disallowance under Section 14A of the Act at Rs.6.77 million by apportioning the interest expenditure of Rs.11.62 million in the ratio of investment in shares of Max India Ltd. (on which dividend was received) to the total amount of unsecured loan. Then, the AO restricted disallowance under that Section to Rs.4.99 million being the amount of dividend received and claimed exempt.

The Commissioner of Income-tax (Appeals) upheld the order of the AO. The Special Bench of Tribunal held that investment in shares representing controlling interest did not amount to carrying on of business and, therefore, interest expenditure incurred for acquiring shares in group companies was hit by the provisions of Section 14A of the Act. Further, the Special Bench held that holding of shares with the intention of acquiring/retaining controlling interest would normally be on capital account, i.e. as investment and not as 'trading assets'. For that reason too, the Special Bench held that there existed dominant connection between interest paid on loan utilized for acquiring the aforesaid shares and earning of dividend income. Consequently, the provisions of Section 14A of the Act were held to be attracted. On the interpretation of the expression 'in relation to', the majority opinion of the Special Bench was that the requirement of there being direct and proximate connection between the expenditure incurred and exempt income earned could not be read into the provision. What is relevant is to work out the expenditure in relation to the exempt income and not to examine whether the expenditure incurred by the taxpayer has resulted into exempt income or taxable income.

The Delhi High Court held that the expression 'in relation to' appearing in Section 14A of the Act was synonymous with 'in connection with' or 'pertaining to', and the provisions of that Section apply regardless

of the intention/motive behind making the investment. As a consequence, proportionate disallowance of the expenditure incurred by the taxpayer is maintained. The SC held that if an investment generates both taxable income (business profit arising out of sale of share and exempt income (dividends) then expenditure (interest) has to be disallowed proportionately u/s 14A. The purpose of investment the controlling interest was held to be not relevant.

Issue before the Supreme Court:

Whether the dominant or main object of holding the shares would be a relevant consideration in determining as to whether an expenditure was incurred 'in relation to' the exempt income?

Supreme Court's decision:

- The SC observed that if an expenditure incurred has no casual connection with the exempt income, the same would not be considered as related to exempt income and was allowable as a business expense.
- The SC held that the dominant purpose for which shares were held was not relevant for applicability of section 14A.
- The SC observed that as long as an exempt income was earned, the expenditure incurred as attributable to earning such exempt income, had to be disallowed under section 14A.
- The SC agreed with the view of the Delhi HC, that the intent behind the insertion of section 14A retrospectively was to incorporate the principle of apportionment of expenses between exempt income and taxable income. This was to ensure the taxpayer does not take double benefit by reducing the expenses incurred towards the exempt income against the taxable income and availing the exemption of the non-taxable income.
- The SC accepted the distinction between 'investment' and 'stock–in-trade' pointed out by the Circular relied upon by Punjab & Haryana HC, however, SC disregarded the dominant purpose test for section 14A.
- Further, the SC confirmed the view taken by the Tribunal and the Punjab & Haryana HC of restricting the disallowance to the quantum of exempt income, though the SC did not subscribe to dominant purpose theory.
- The SC held that irrespective of the objective of investment in shares (when the shares are held as stock-in-trade with a view to earn trading profits or as investment representing controlling interest) and the taxpayer earned an incidental exempt dividend income, section 14A was triggered which was based on the theory of apportionment of expenditure between taxable and exempt income.

- **Issue 2 – No exempt income in relevant year but investment made in dividend yielding securities.**

If there is no exempt income in the relevant year, can expense particularly in the nature of investment in shares be disallowed on the ground that the investment is of a type that generates income types of dividend. CBDT says even if there is no exempt income the interest on investment on dividend yielding securities must be disallowed because of the expression in ***"in relation thereto"***. This position has not been accepted by the HCs.

The argument on the part of the assesse was the investment in shares were both on capital account and trading account, but in either case, the investments were for acquiring and retaining control over the group companies with profit on sale of investment being accounted as business income and the purpose of acquisition of shares of these companies was to gain control over them. It was contended that the interest payable was a permissible business expenditure u/s 36(1) (iii) with Section 14A not being attracted. What is relevant is that the income from these investments being dividends, which are exempt, attracts S.14A as decided in this case, affirming the decision of Delhi HC in Maxopp Investment Ltd. Even if the shares were held as stock-in-trade and not as investment, it was pointed out that the assesse was a bank with the main purpose of trading in shares to make profit as in was a bank with the main purpose of trading in shares to make profit as is evident from the fact that such profit on sale was treated as business income. In such a case, the dividend income, being merely incidental to the trading profit, is exempt u/s 10(34), which triggers applicability of S.14A with the disallowance of expenditure being apportioned between taxable and non-taxable income as decided in this case by the SC reversing the decision of the P & H HC in Principal **CIT v. State Bank of Patiyala (2017) 391 ITR 218 (P & H) and (2017) 393 ITR 476 (P&H)**. The theory of dominant intention applied by the HC in these two cases by the HC was not found acceptable, while the decision to disallow the proportionate expenditure in **Avon Cycles Ltd v. CIT (2018) 11 ITR-OL 381 (P&H)** was affirmed, while reversing the decision in **Asst.CIT v.Jamnalal Sons**

P Ltd (2018) 11 ITR-OL 385 (Bom)** and relying upon the decision in **CIT v. Walfort Share and Stock Brokers P Ltd (2010) 326 ITR 1 (SC)**. Whatever be the purpose, the SC found these investments were essentially for earning profit by liquidation of shares, when the share prices go up. It is under these circumstances, it was concluded that application of S.14A cannot be challenged, upholding, however, the view that the disallowance is limited to expenditure proportionate to exempt income.

ACIT v. Progressive Constructions Ltd. (2018) 63 ITR (Trib) 516 (Hyd) (SB) followed the ratio laid down by the Hon'ble Bombay HC in **CIT v. Reliance Utlimates and Poer Ltd (2009) 313 ITR 340 (Bom), CIT v. HDFC Bank Ltd (2014) 366 ITR 505 (Bom)** and the Hon'ble Delhi HC in the case of **Cheminvest Ltd. V. CIT (2015) 378 ITR 33 (Delhi)**.

- **Issue-3 - Can S.14A disallowance be made in arriving book profits?**

  In arriving at book profits can disallowance be made invoking Rule 8D (2)(i) and 8D(2)(ii). In 2017-2018 it was held that the disallowance u/s 14A read with rule 8D could not be added while computing the book profits in terms of section 115JB as the Explanation to that section did not specifically mention section 14A of the Act. Hence, the computation under clause (f) of Explanation 1 to section 115JB (2) was to be made without resorting to the computation as contemplated u/s 14A r.w.r 8D (**CIT v. Bhushan Steel Ltd (ITA No.593 of 2015)** followed) at page no.316 in **ACIT v. Vireet Investment P Ltd (2017) 58 ITR (Trib) 313 (Delhi) SB.**

- **CBDT Circulars.**

  Circular No.14/2006, dated 28/12/2006 (Point 11) has stated that, in the existing provisions of section 14A, however, no method of computing the expenditure incurred in relation to income which does not form part of the total income has been provided for.

  Consequently, there is considerable dispute between the taxpayers and the Department on the method of determining such expenditure. Taking this into consideration, a new sub-section (2) has been added in section 14A so as to provide that it would be mandatory for the Assessing Officer to determine the amount of expenditure incurred **in relation to such income** which does not form part of the total income in accordance with such method as may be prescribed.

  CBDT circular further states legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that he expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial-year or not.

- **Insertion of Rule 8D:**

  The Central Board of Direct Taxes (CBDT) vide Notification No. 45/2008, dated 24/3/2008 has laid out the method for determining amount of expenditure in relation to income not includible in total income.

  As per Rule 8D (2), the expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts –

i. The amount of expenditure directly relating to income which does not form part of total income;

ii. In a case where the assesse has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula -

  $$A \times \frac{B}{C}$$

  Where,

  A = Amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

  B = The average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

  C = The average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

iii. An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

  It is given in Rule 8D (3), for the purposes of this rule, the 'Total assets' shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets

(Contd. on page 13)

Mixed Supply in GST

CA Madhukar N Hiregange & CA Mahadev.R

The incorrect understanding of a supply as a composite supply, non-composite supply or mixed supply could result in excess or short payment of GST. In our last month's article, we had analysed the concept of composite supply. This time, we have made analysis of mixed supply. Reading both the articles together would give better perspective good better idea of the concepts.

Concept of mixed supply in GST

In terms of Section 2(74) of CGST Act 2017, 'mixed supply' would include following elements:

(a) Should consist of two or more supplies (taxable or otherwise);

(b) Supplies may be of goods or services or both;

(c) Supply should be in <u>conjunction</u> with each other;

(d) Supply should be made for single price;

(e) Supply should not constitute a composite supply;

"Composite supply" has been defined to mean a supply consisting of two or more <u>taxable</u> supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a <u>principal supply</u>. Combination of taxable and non-taxable is not a composite supply.

Differentiating the composite supply, non-composite and mixed supply

It would be important to differentiate the mixed supply from composite and non-composite. When a supply is a composite supply, then it cannot be either a non-composite or a mixed supply. First step is to ascertain if the supply is composite supply. If it is not so, then the supply could be either non-composite supply or mixed supply for single price.

Analysis of mixed supply

To determine if a particular supply is a mixed or composite supply, it is relevant to understand the terms such as naturally bundled, in conjunction with each other and principal supply. In GST law, we do not have definition of naturally bundled or in conjunction with. However, 'principal supply' has been defined to mean the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. If a supply has a principal supply, then it cannot be treated as mixed supply. In a mixed supply, customer would not be interested only in a particular goods or services. For example, when a gift box containing dry fruits and chocolates is bought by a customer, it would not be logical to say if a customer is interested only in dry fruits or only in chocolates. He would be interested in both goods and test of principal supply fails to treat it as 'composite supply'. According to Section 8(b) of CGST Act 2017, a mixed supply comprising two or more supplies needs to be treated as a supply of that supply which attracts the highest rate of tax. Chocolates attract higher rate of tax as compared to dry fruits. Therefore, in the given example, even dry fruits would suffer higher rate of GST.

Other relevant example which was also used in Education Guide of CBEC issued under erstwhile service tax regime is of renting of *one floor in a house for residence and other floor the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property."*

Taxable supplies in composite supply Vs. Supplies in mixed supply

Composite supply is a supply of two or more **taxable supply** of goods or services whereas mixed supply is supply of two or more individual **supplies** of goods or services. One doubt which arises from the wordings in definition of mixed and composite supply is that whether a combined supply of goods or services would be treated as mixed supply if one of the goods or services is exempted from GST. This is because supply of exempted goods or services could fail the definition of composite supply. For the purpose of GST, 'taxable supply' has been defined to mean supply of goods or services which are leviable in GST Act. Therefore, even if part of the goods or services are exempted, supply could still be eligible to become a composite supply. Example could be supply of medicines by a hospital while providing health treatment services. Though this is a combination of taxable goods (medicines) plus exempted services (health treatment), supply would not be treated as mixed supply but as a composite supply.

GST impact on promotional items

It is very common to have sale promotional schemes such as 'buy 1 get 1 free' or 'buy 2 for the price of 1' etc. Another type of scheme is to give few goods as free. For example, buy 1 kg of nutritional powder and get 1 kg plastic jar absolutely free. In later case, question which could arise is whether GST payable or not on supply of free plastic jar. One argument is that the price charged for nutritional powder would be inclusive of price of free jar issued though not collected separately. If this view is correct, then there would no need of reversing the GST credit. Other view is to treat it a non-GST supply and reverse the applicable input tax credit.

The issue which could arise now is whether the free issue of goods (different than the original goods) would result in mixed supply. If it so, then in our example, the rate of GST applicable would be higher of nutritional powder and plastic jar. From the plain interpretation of provisions, such sales could be treated as mixed supply unless it can be established that free issue item is naturally bundled.

In case of *Food Supplier and Commissioner of Taxation* [2007] AATA 1550, the Administrative Appeal Tribunal of Sydney, Australia held that promotional items packaged with food had intrinsic value, would not be consumed with the food and were mostly unconnected with the food. This was so even when, for example, the main item was a jar of coffee and the promotional item was a mug in which coffee might be served. Further held that the supply of the promotional items packaged with the food items was a mixed supply. Therefore, greater care needs to be taken while planning for free issue of goods as part of promotional schemes. Issue would arise when the rate of tax of free goods is higher than the main goods being supplied.

Advance ruling and European court judgements

GST being still in its infant stage, decisions of European Courts could be useful in understanding the concept of mixed or composite supply. Advance Ruling may also provide some direction though it is expected that many will get appealed against. Recently there was a West Bengal authority's GST advance ruling with respect to mixed or composite supply concept wherein the applicant was supplying battery with UPS. The authority held that the supply would be treated as mixed supply when the supplies are made in single contract at a combined single price. Though, the ruling is not binding on other assesses, it could be used as reference. Goods or services supplied in combination would be treated as composite supply only when the contract is indivisible and supplies are naturally bundled. Understanding the complete facts would be important to reach at the conclusion. Readers could refer our last month's article on relevant judgments of European courts.

Conclusion:

Concepts such as composite supply and mixed supply are new to the Indian tax payers. This would be very important especially where there is a difference in rate of tax applicable on a particular supply when treated as mixed supply or composite supply. A onetime review of major contract, the type of supply, the classification and rate to be charged in necessary for all medium sized enterprises. Larger concerns may continue with regular compliance check on periodical basis could be helpful which could reduce the number of qualifications in mandatory GST as well.

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Financial Reporting and Assurance

CA Vinayak Pai V

1. Heads Up – Latest/Upcoming Changes

AS	
1	**Existing AS to be upgraded** for scheduled implementation after **April 1, 2020**
2	New **financial instruments** standards for **SMEs**
IND-AS	
1	Educational material on **IND-AS 103** – *Business Combinations* released by ICAI
IFRS	
1	Amendments to **IFRIC 14** – *Availability of a Refund*
2	**IFRS 13** – *Fair Value Measurement* Post Implementation Review
Company Law	
1	Relaxation of additional fees and extension of last date of filing of **AOC-4 XBRL E-Forms** using **IND-AS**
Valuations	
1	Exposure Drafts of **Valuation Standards** released by ICAI
Assurance	
1	**Implementation Guide** on Reporting Standards **SA 700 (Revised)** – *Forming An Opinion And Reporting On Financial Statements* **SA 705 (Revised)** – *Modifications to the Opinion in the Independent Auditors Report* **SA 706 (Revised)** – *Emphasis Of Matters Paragraph And Other Matter Paragraphs In The Independent Auditor's Report*

2. Relaxation Of Additional Fees And Extension Of Last Date Of Filing Of AOC-4 XBRL E-Forms Using IND-AS

The MCA vide General Circular No.4/2018 dated April 27,2018 has extended the last date of filing of **AOC-4 XBRL E-Forms** for all eligible companies required to prepare or voluntarily prepare their financial statements in accordance with Companies (**Indian Accounting Standards**) Rules, 2015 for the financial year **2016-17** without additional fee till **May 31, 2018**.

3. IND-AS Transition Impact: A Case Study

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

Impact of IND-AS Transition			
	Equity	**Financial Assets**	**Net Profits for the comparative period**
Impact in comparison with reported numbers as per AS	Increase of **19.8%**	Increase of **31.1%**	Increase of **1.6%**

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

- Under AS, **non-current investments** were being measured at cost less provision for diminution in value other than temporary whereas under IND-AS, they are recognized at amortized cost or fair value. Accordingly the impact has been on account of measurement base changing for investment in government securities, debt oriented mutual funds, fixed maturity plans and investments in equity shares portfolio of the company.
- Under previous GAAP, **revenue from sale of products** were being presented net of excise duty in the Statement of Profit and Loss whereas under IND-AS, revenue from sale of products includes excise duty.
- Under IND-AS, **cash discounts and sales promotion expenses** are reduced from revenues from sales whereas under AS accounting framework, they were presented as operating expenses.
- Previously as per AS, **goodwill acquired in business ac**quisitions was amortized over its useful life not exceeding five years. In the IND-AS balance sheet, goodwill is not being amortized but is being subject to an annual impairment test.
- In the financial statements prepared under AS, the **carrying amount of interest free loans** provided

was recognized at the principal amount repayable contractually. Under IND-AS, such loans being financial liabilities are being recognized initially at fair value and subsequently being measured at amortized cost using the effective interest method. The consequential difference arising is recognized as deferred income.

- Under previous GAAP, **cash and cash equivalents** represented by short-term highly liquid mutual funds were recognized at cost. However, under IND-AS, such cash and cash equivalents being financial instruments are being recognized at fair value.
- In the financial statements prepared under Previous GAAP, **deferred tax** was accounted as per the income statement approach that required creation of deferred tax asset/liability on temporary differences between taxable profit and accounting profit. Under IND-AS, deferred tax is accounted as per the **Balance Sheet approach** requiring creation of deferred tax asset/liability on temporary differences between the carrying amount of an asset/liability in the Balance Sheet and its corresponding tax base.

4. New Revenue Recognition Standard – Step 1

The MCA vide Notification dated March 28, 2018 issued IND-AS 115 – ***Revenue From Contracts With Customers*** that is effective from April 1, 2018. The new revenue recognition standard is based on a **transfer of control** model with the core principle being that an entity recognizes revenue to depict the transfer of promised goods and services to customers in an amount that reflects the consideration to which it expects to be entitled in exchange for such promised goods and services.

IND-AS 115 requires a 5-Step approach to revenue recognition. In the **First step**, a reporting entity is required to identify the contract with the customer. The salient aspects of **Step 1** are summarized herein below.

- The first step involves **identification of the contract** with a customer.
- A **contract** is an agreement between two or more parties that creates enforceable rights and obligations.
- A **customer** is a party that has contracted with the reporting entity to obtain goods or services that are an **output of the entity's ordinary activities** in exchange for consideration.
- A contract with a customer is accounted per IND-AS 115 only when it meets **all of the below mentioned criteria.**
  - o The parties to the contract have **approved the contract** in writing, orally or in accordance with other customary business practices and are **committed to perform** their respective obligations,
  - o The entity can **identify each party's rights** regarding the goods or services to be transferred,
  - o The entity can **identify the payment terms** for the goods or services to be transferred,
  - o The contract has **commercial substance** i.e. the risk, timing or amount of the entity's future cash flows is expected to change as a result of the contract, and
  - o It is **probable that the entity will collect** the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer.
- When a contract with a customer does not meet the above criteria and the entity receives consideration from the customer, the entity shall recognize the consideration received as revenue only when it has no remaining obligations to transfer goods or services to the customer and all, or substantially all, of the consideration promised by the customer has been received by the entity and is non-refundable or the contract has been terminated and the consideration received from the customer is non-refundable.

1. Exposure Drafts of Indian Valuation Standards

Our Institute has issued Exposure Drafts of **Indian Valuation Standards (IVS)**. The objective of issuing the Valuation Standards is to standardise the various principles, practices and procedures followed by registered valuers/ valuation professionals in **valuation of assets and liabilities**.The Valuation Standards sets out concepts, principles, practices and procedures which are generally accepted internationally having regard to prevailing legal framework, procedures and practices in India.

The following draft standards have been exposed for public comments:

1	**Preface** To The Indian Valuation Standards.
2	Framework For The Preparation Of Valuation Report In Accordance With 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

2. **Amendment to IND-AS 21**

IND-AS 21 – *The Effects of Changes in Foreign Exchange Rates* has undergone an amendment with the inclusion of an appendix – **Foreign currency transactions and Advance Consideration.**

The salient aspects of the accounting principles enunciated in the amendment are summarized herein below.

- When an entity pays or receives consideration in advance in a foreign currency, it generally recognizes a non-monetary asset/liability before the recognition of the related asset, expense or income.
- The related asset, expense or income or part of it is the amount recognized applying relevant IND-ASs, which results in de-recognition of the non-monetary asset/ liability arising from the advance consideration.
- The amendment clarifies the **date of the transaction** for the purpose of **determining the exchange rate** to use on initial recognition of the related asset, expense or income when an entity has received or paid advance consideration in a foreign currency.
- The date of the transaction for the purpose of determining the exchange rate to use on initial recognition of the related asset, expense or income or part of it **is the date on which an entity initially recognizes the non-monetary asset liability** arising from the payment or receipt of advance consideration.
- If there are **multiple payments or receipts in advance**, the entity shall determine a date of the transaction for each payment or receipt of advance consideration.

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Analysis of Exemption from GST on Supply of Services:

Notification No. 12/2017 Central Tax (Rate) Dated 28.06.2017 – Services by Educational institutions - Part II

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

Having analysed the exemption entry relating to education, it would be relevant to discuss certain issues involved around this exemption entry:

A. Whether 'Educational institution' definition to be tested and satisfied for each of the courses provided by an institution or is it enough if one of the courses it provides falls within the ambit of the definition?

From the plain reading of the definition it appears that if any of courses falls within the definition, the institution qualifies as educational institution and entire exemption would be applicable.

B. Where once an entity qualifies to be educational institution, <u>any service</u> (other than pre-school or education as a part of curriculum) would also be exempt in terms of clause (a) of the exemption entry?

It terms of the language of the notification it is crystal clear that the important factors for claiming exemption are:

(a) the supplier of service shall qualify as educational institution in terms of the definition;

(b) the recipient of the supply shall be student or staff or faculty of such an educational institution.

Once the above two factors get fulfilled, any service provided by the educational institution to its students or staff or faculty would be exempt from GST. Therefore, it is quite possible that where an educational institution conducts special coaching, the same would also be covered under the exemption as any person who enrols himself or herself for the coaching would become the student of the educational institution.

C. Clause (b) (i) provides that the services provided to an educational institution by way of **transportation** of students, faculty and staff would be exempt. Question arises whether such services is restricted to pick-up and drop of students, faculty and staff or any other purpose such as faculty and staff usage for official purposes, use of vehicles for excursion etc. From the plain reading of the entry, it appears there is no restriction.

D. Central Board of Excise & Customs (CBEC) vide its Circular No. 28/02/2018-GST, dated 8-1-2018 clarified that food supplied through the mess is taxable at 5% irrespective of the fact whether the said supply is by educational institution or by a 'third party' contractor. However, within 10 days CBIC issued a corrigendum dated 18.01.2018 to clarify that food supplied by educational institution would be exempt in terms of entry 66(a) of the notification No. 12/2017 where as food supplied by the 'third party' contractor, then same is taxable @ 5%.

It is relevant to note that the above referred clarification has been issued by the Board, without analysing the taxability, classification, rate applicability and exemptions available to particular activity, however, the same was re-clarified by way of corrigendum.

Now look at the entry 66(b)(ii) which provides that services of catering provided by any person to any educational institution would be exempt from GST. However, in terms of the proviso, the said exemption would not be applicable to educational institutions other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

From the conjoint reading of the entry 66(a) and 66(b)(ii) it is quite clear that supply of food by contractor to educational institution an from education to students, both would be exempt form GST.

Another question that would on the issue of restriction of applicability of exemption entry 66(b) (i), (ii) and (iii) to an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. This would lead us to following situations:

a) Exemption is applicable only to an educational institution having only pre-school / Higher secondary. In other word where such institution has colleges affiliated to universities, then exemption is not applicable

b) Where both colleges affiliated to universities as well as pre-school / Higher secondary education is provided, the exemption is available only to the extent of pre-school or higher education portion and not to colleges affiliated to universities.

c) Once educational institution has pre-school or higher secondary schooling, they would be eligible for this exemption, whether or not they have other institutions.

The authors are of the view that the position narrated in (c) above would be more appropriate way of the reading notification.

E. However, on the issue of hostel facility, the C.B.E. & C. Press Release No. 77/2017, dated 13-7-2017 rightly clarified that hostel facility by an educational institution to students is exempt from GST.

F. As per item (b) (iv) services provided to an educational institution by way of services relating to admission or conduct of examination by such institution would be exempt. Since the entry use the phrase 'services relating to admission…', a view is possible that any service connected to the admission, conduct of examination would get covered under the exemption. For instance, if premises is taken on rent for conduct of examination, the same would also get covered by exemption.

G. As per item (b) (iii) services provided to an educational institution by way of security services, cleaning services or housing keeping services shall be exempt if such services are performed in such educational institution. Question may arise where an educational institution owns a playground which is not part of the educational institutions premises, whether security and house-keeping services provided at the playground owned by educational institutions would be exempt from GST?

We are of the view that as the nature of service involved i.e., 'education services', the playground is an important and vital role in supply of services and therefore the eligibility to exemption has to be decided in keeping this mind and not the place where such supply is being performed.

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Section 14A – Income Tax Act, 1961 Expenditure incurred in relation to Income not includible in Total Income

(Contd. from page 6)

- **Other case laws:**

  AOs have not been paying any attention to the aforesaid provision and they have been indiscriminately applying the prescribed method laid down under rule 8D(2) in all the cases, where disallowance under section 14A of the Act, is sought to be made. In view of the aforesaid approach of the AOs, gross injustice continues to be done in a number of cases, where the provisions of section 14A are found to be applicable.

1. No disallowance can be made against income which is not specifically exempt under the Act.

   [CIT v. Kribhco (2012) 75 DTR 265 (Delhi) (High Court)]

2. If net investment is positive, no disallowance is to be made.

   [Karnavati Petrochmem Pvt. Ltd. vs. ITO (ITA No.2228/AHD/2012)]

3. Whether, in a given situation, any expenditure was incurred which was to be disallowed, is a question of fact.

   [CIT v. Hero Cycles Ltd., 323 ITR 518 (P & H)]

4. Expenditure not incurred for earning dividend income cannot be disallowed on any notional basis.

   [Sundaram Asset Management Co. Ltd. vs. DCIT (ITA No.1774/Mds/2012)]

- **Conclusion:**

  An analysis of the case law it will be observed that the disallowance of expenditure has to be in relation to exempt income in the relevant year. In case of expenditure incurred in respect of partly taxable income and partly exempt income proportionate disallowance only can be made. If no expenditure is incurred in relation to exempt income as in the case of Sundaram Asset Management Co Ltd disallowance is not called for.

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Prosecution Proceedings under the Income Tax Act: What lies ahead for Foreign Companies?

CA Sandeep Jhunjhunwala

There are three modes in-built under the income tax laws for encouraging tax compliance - (a) Charge of interest, (b) Imposition of penalty, and (c) Initiation of prosecution against tax delinquents. While charging of interest is considered compensatory in character, imposition of penalty and institution of prosecution proceedings act as strong deterrents against defaulters. The Finance Act 2018 has introduced an amendment to Section 276CC of the Income-tax Act, 1961 ("IT Act") which deals with prosecution proceedings for a person willfully failing to furnish return of income within statutory timelines. As per the earlier tax law, (prior to enactment of Finance Act 2018), exemption from such prosecution proceedings was provided to all persons (including companies), if the tax payable by the person (after reducing advance tax and tax deducted at source), did not exceed INR 3,000. The Finance Act 2018 has now introduced an amendment (effective from AY 2019-20) that the above exemption will not cover companies. This implies that if a company willfully fails to file its return of income, then notwithstanding that the tax payable (net of advance tax/ TDS) is less than INR 3,000, the company could still be subject to prosecution proceedings. A technical view, which therefore, arises is that a company, which although may have paid all taxes (by way of TDS or advance tax) but which may not have filed the return of income, could undergo prosecution proceedings.

The above interpretation could equally be applicable to foreign companies. Foreign companies, which have subsidiaries operating in India, routinely receive payments in the nature of interest/ royalty/ fees for services/ dividends from their Indian subsidiaries. At times, the foreign companies may also receive income from unrelated customers (non-associated enterprise category as per Indian transfer pricing regulations) in India. While Section 115A(5) of the IT Act provides exemption to non-residents receiving income in the nature of dividends, interest (under Section 194LC and 194LD of the IT Act) etc from filing tax return, no similar relaxation is available from filing IT returns to non-residents receiving income in the nature of royalty or fees for technical services from India. There could be instances where such payments received from India (either from the Indian subsidiaries or from third party customers) could have duly suffered withholding tax due on such payments. As such withholding tax fully covers the tax liability of the foreign company in India, there are no incremental taxes payable in India by such foreign companies. However, a mere non-compliance by failure to file return of income in India (which may result in other monetary penalties as well under Section 234F and Section 270A of the IT Act) could subject such a foreign company to draconian prosecution proceedings as per the newly introduced amendment. Interest and penalty provisions sufficiently take care of the Revenue's interests in such cases.

In the context of prosecution proceedings, Section 278E of the IT Act assumes a culpable mental state of the accused, unless the accused can disprove that there was no such culpable mental state. The effect of Section 278E of the IT Act is that the onus of proving this is placed on the assessee. Thus, a director of a foreign company could be subject to prosecution proceedings, if the company fails to file its return of income. If the director can prove that the offence is committed without his knowledge or due diligence exercised by him to prevent commission of such offence, he may not be liable to prosecution proceedings. The compounding of offence is permitted in case of first offence under Section 276CC of the IT Act. Thus, in cases where the income tax authorities have sent few notices to a foreign company which have remained unanswered, the concerned director could be considered as a consistent defaulter and the chances of getting immunity under compounding provisions could be considerably lowered. The intent of the amendment (as given in the Memorandum to the Finance Bill 2018) states that:

"In order to prevent abuse of the said proviso by ***shell companies or by companies holding Benami properties****, it is proposed to amend the provisions of the said sub-clause so as to provide that the said sub-clause shall not apply in respect of a company."*

Based on the observations in the Memorandum, it could be inferred that the proposed amendment is meant to target shell companies and companies holding benami properties and not all companies in general. However, the current construct of Section 276CC of the IT Act does not capture the same intent. Judicial precedents also suggest that where the text of the provision is clear and is not difficult to interpret, the observations in the Explanatory Memorandum cannot be relied upon. Accordingly, as a consequence to this interpretation, the tax authorities may initiate prosecution proceedings against all companies (including foreign companies), even in cases where there is no additional tax liability.

The amendments in relation to the removal of exemption for companies seems to be a regressive measure. The Government in general, needs to repose more faith in corporates, especially foreign corporates who intend to invest into India. The proposed amendment seems to be "anti-entrepreneurial friendly" and could potentially impact "ease of doing business in India". For instance, in the context of foreign companies, if the directors of such foreign companies perceive a risk of prosecution, as a result of this newly introduced provision, despite paying all taxes due in India, then this could deter them from visiting India for furthering the business operations in India for the entire group. Also, in cases, where foreign companies have been operating subsidiaries in India, in the context of interest/ royalty/ fees for services category of payments, where tax is deducted at source by the subsidiaries, there are adequate returns, reports etc (say transfer pricing documentation, Form 15CB, quarterly withholding tax returns in Form 27Q etc) filed by the Indian subsidiary for disclosing data related to transactions with their foreign affiliates and taxes discharged thereon. As such, there is no dearth of information for verification by the income tax department for such foreign payments and discharge of tax liability thereon. Genuine taxpayers (including corporates) have to be under the constant fear of having to face prosecution proceedings, even if some of their tax positions (well documented and substantiated) are challenged and demands levied. Press articles suggest that there has been a sudden surge (nearly three-fold jump) in prosecution notices slapped by the IT department recently. It is therefore extremely important to clarify the intent of prosecution provisions in the law itself.

Prosecution provisions are meant for deterring and preventing extreme cases of tax avoidance. An instruction issued by the Central Board of Direct Taxes ("CBDT") - No 5051/ 91 dated February 7, 1991 also portrays the same message. As per the guidance given in this instruction, prosecution under Section 276CC of the IT Act is to be initiated only in case of habitual defaulters. This intent is also clear from the Memorandum to the Finance Bill 2018. However, the plain language of Section 276CC of the IT Act does not seem to suggest so. It is, therefore, suggested that the intent of prosecution provisions be clearly brought out in Section 276CC of the IT Act itself. Alternatively, an administrative Circular may be issued now by the CBDT on the amendments proposed in Section 276CC of the IT Act, clarifying to the field officers that prosecution proceedings are to be initiated only in such cases referred to in the 1991 Circular (cases of habitual offenders). In most of the developing countries, prosecution for tax matters is applied only in cases of serious tax frauds and not in cases of general non-compliance matters such as return filing. Though the taxman in India may be driven by compulsions to ensure proper tax compliance, care must be taken that such action does not hurt growth of business in India. With the tax administrators getting more focused on tax compliances, it is imperative that foreign companies receiving any income from India are more vigilant in order to ensure that filing non-compliances do not result in dire consequences such as prosecution.

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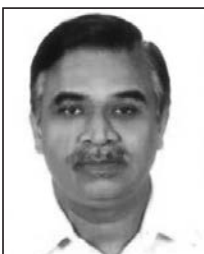

CA S. Prakash Chand
has been appointed as
Co-opted Member of
Library Committee
of SIRC of ICAI
for the year 2018-19.

CA Raghavendra Puranik
has been appointed as
Co-opted Member of
Committee on Indirect Taxes
of SIRC of ICAI
for the year 2018-19.

Refund under GST- Is it Streamlined?

CA Sanjay Dhariwal & CA Annapurna Kabra

Introduction

The Tax Refund is the difference between taxes paid and taxes owed. The refund refers to any amount that is due to the tax payer from the tax administration. Under the erstwhile taxation regime the refund was onerous area for the tax applicant and the tax administration. When GST was implemented it was indicated that there will be effective and efficient administration for issuing the refunds. But in actual practice there are many complaints that GST refunds are not accurate or there is delay in issuing the refund or many exporters are facing working capital crunch….. . In the initial period the tax payers were not able to apply for refund as there were technical issues in the GST portal. Later the multiple circulars were issued for manual filing and processing by inserting Rule 97A of CGST Rules 2017.

Explanation of Refund

Refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit.

Refund of unutilized Input tax credit

The unutilized input tax credit shall be available to a taxpayer in cases where the taxpayer is engaged in export (with LUT/ bond) or where the taxpayer is unable to utilize the credit on account of rate of tax of inputs being higher than rate of tax on outputs. The refund is not issued in case where the goods are exported and have suffered export duty or where the supplier of goods or services has availed the drawback in respect of central tax or integrated tax paid on such supplies. The restriction on drawback is for CGST, IGST and Cess and not for Basic Customs Duty. Additionally, the exporter will be entitled to claim SGST refund even if he claims drawback of Central taxes.

Refund in following cases

The refundable amount shall be payable to applicant instead of crediting to the consumer welfare fund in case of tax paid on zero rated supplies of goods and or services, unutilized input tax credit as for exports and inverted duty structure, tax paid on a supply which is not provided and invoice has not been issued or where a refund voucher has been issued, refund of tax wherein tax wrongfully collected and paid to Government and tax and interest paid but had not passed on the incidence of such tax to any other persons or tax paid to international tourist.

Refund to Casual Taxable Person and Non-Resident Taxable person

The amount of advance tax deposited by a casual taxable person or a non-resident taxable person shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him furnished all the returns.

Relevant Date

A person can claim refund of tax and interest by making an application to the proper officer. This application shall be made before the expiry of two years from the relevant date.

- o The relevant date are different in different situations like
  - ✓ In the case of goods exported out of India
    - (*i*) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded leaves India
    - (*ii*) If the goods are exported by land, the date on which such goods pass the frontier
    - (*iii*) If the goods are exported by post, the date of dispatch of goods by the post office concerned to a place outside India.
  - ✓ In case of supply of deemed exports the date on which the return relating to such deemed exports is furnished.
  - ✓ In case of Export of Services –

(i) the date of receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment

(ii) or issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice.

- ✓ In case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction.
- ✓ In the case of refund of unutilized input tax credit, the end of the financial year in which such claim for refund arises
- ✓ In the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof
- ✓ In the case of a person, other than the supplier, the date of receipt of goods or services or both by such person and
- ✓ In any other case, the date of payment of tax.

Application in case of SEZ/Deemed Exports

In case of supplies to SEZ unit or a SEZ developer, the application for refund shall be filed by the supplier of goods or supplier of services. In case of supplies regarded as deemed export the application may be filed by the recipient of deemed export or the supplier of deemed export.

Documentation for Refund

The various documents are specified in GST Rules like

i) Statement containing details of shipping bills/bills of export/export Invoices in case of export of goods.

ii) Statement containing export invoices and the relevant bank realization certificates or foreign Inward Remittance Certificates in case of the export of services.

iii) The reference number of order or copy of order passed by the proper officer or Appellate Authority or Appellate Tribunal or Court.

iv) Reference number of Final Assessment order in case of finalization of Provisional Assessment

v) A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

vi) A statement showing the details of the amount of claim on account of excess payment of tax;

vii) A declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person

Pre Compliances for Refund Application

- Refund claim can be filed only after the GSTR 1 for the month for which refund is being claimed and GSTR 3B for the month preceding the month for which refund is being claimed, have been filed.
- Shipping Bill filed for export of goods along with export manifest / report will be deemed to be application for filing refund claim

Time period to issue Refund:

The Proper officer shall issue the refund order within 60 days from the date of receipt of application. The provisional refund will be granted in case of export related refund claim to the extent of 90% of the amount so claimed and the balance 10% shall be refunded after due verification of documents.

Formula for Claiming Refund

Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

The different formulas has been specified for calculating the Refund for export without payment of tax and in case of Refund for Inverted duty structure

i) Refund for Export without Payment of tax=

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net Input Tax Credit ÷Adjusted Total Turnover.

ii) Refund on Account of Inverted duty structure,

Maximum Refund Amount = {(**Turnover of Inverted Rated supply of goods**) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods.

Substituted vide Notification No. 21/2018- CT dated 18.04.2018. The above formula is replaced by the following formula.

Maximum Refund Amount = {(**Turnover of Inverted rated supply of goods and services**) x Net Input Tax Credit ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Issues with reference to above formula

There is a difference in definition of Net Input tax credit in above scenarios (i) and (ii). In the former case "Net Input Tax Credit" means Input Tax Credit availed on **Inputs and Input services** during the relevant period and in the latter case (Inverted Duty Structure), the Net Input Tax Credit means input tax credit availed on Inputs. It has lead to an inconsistency in claiming the refund claim by the applicant when he has inputs services used for inverted duty structure and not treated at par with exports resulting into serious discrimination. Also there is issue for quantification of input

services used for exports and inverted duty structure for reversing the input service credit.

So with the substitution vide Notification **No. 21/2018- CT dated 18.04.2018** wherein earlier the formula restricted for the turnover of **inverted rated supply of goods** and it has amended by adding the turnover of **Inverted rated supply of goods and services**. Therefore there is issue that whether this formula is retrospective or prospective as many tax payers have already applied for refund application with the old formula. In some instances the refund is already issued and in some instances the refund is pending. Therefore it is believed that such formula should be made applicable retrospectively to bring consistent with the section 54(3) of the CGST Act 2017.

"Net Input Tax Credit" refers to the credit claimed during the relevant period and will not include transition credits. It is clarified in the circular that transitional credit pertain to duties and taxes paid under the existing law i,e Central Excise Act 1944 and Chapter V of Finance Act 1994 and the same cannot be said to have been **availed** during the relevant period and thus cannot be treated as part of Net Input Tax credit. In many instances the Applicant is having refund and there is not output tax liability and in such instances also the applicant is not able to claim the refund of transitional credit

Quarterly filing of Refund claim not yet activated

Though the common GST portal allows for filing of refund on quarterly basis but while filing for refund application, monthly basis is to be selected while filing the refund application. Hence exporter who does not have export receipts during a particular month will not be able to claim refund of Input Tax Credit during the said month. There is a clarification issued in 37/2017 in point 11 that in many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period. In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years. Still the quarterly filing of refund claim is not activated in the common portal.

Various Notifications, Circulars and Press release were issued for clarifying the procedures of Refund under the GST law. The refund procedures are streamlining reasonably subject to certain Procedural, quantification and documentation concerns for the refund.

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KSCAA WELCOMES NEW MEMBERS - APRIL 2018

S.No.	Name	Place
1	Ritesh Parsotam Rangani	Bengaluru
2	Gowrish	Shivamogga
3	Harsha V.R.	Shivamogga
4	Vinutha S.V	Bengaluru
5	Anand Kumar	Bengaluru
6	Yash Jain	Bengaluru
7	Hemanshu Bahety	Bengaluru
8	Raja Chandrashekara Gupta	Bengaluru
9	Ganesha D.	Bengaluru
10	Gurudath Kaiwar R	Bengaluru
11	Sudheer Javali	Bengaluru
12	Vinay CS	Bengaluru
13	Ravindranath N	Bengaluru
14	Abhilash V	Bengaluru

Representation regarding Instructions dated 8th March, 2018 relating to irregularities in Appellate Orders and Instructions dated 28th March, 2018 regarding processing of returns u/s 143(1) which are pushed to Assessing Officers [AOs] by CPC

To

The Chairman
Central Board of Direct Taxes, Government of India,
North Block, Vijay Chowk, New Delhi 110 001.

Date: 27th April 2018

Respected Sir,

Re: Representation regarding Instructions dated 8th March, 2018 relating to irregularities in Appellate Orders and Instructions dated 28th March, 2018 regarding processing of returns u/s 143(1) which are pushed to Assessing Officers [AOs] by CPC

A. Instructions dated 8th March, 2018 relating to irregularities in Appellate Orders

CBDT has instructed that the CCITs' should conduct regular inspections of the CIT(A) working under them and keep a watch on the quality and quantity of orders issued by the CIT(A).

On one hand, CBDT is inviting suggestions from stakeholders for simplification in tax laws, smoothening of return processing, issue of refunds, timely disposal of appeals etc. However, on the other hand, an instruction has been issued that CCITs should regularly monitor cases taken up by CIT(A) and ensure the quality and quantity of the orders passed by them.

There is a strong apprehension that this step is likely to severely impact the judicial decisions being taken by the CIT(A)s as their decision making is going to be influenced by the CCITs, which is against the principles of judiciary. The very purpose of first appellate authority, being independent judicial functioning, would be defeated if the qualitative aspects of its decision are monitored/ influenced by any senior officer of the Department.

It is a welcome step that CCITs should monitor disposal and dispatch of appeals, but that should only be restricted to quantitative aspect.

It is strongly suggested that necessary clarification should be issued that the instructions shall not apply at all to the qualitative aspects i.e. no influence shall be exerted on the judicial decision of the CIT(A).

B. Lack of criteria for pushing down Returns by CPC to the AOs and Instructions dated 28th March, 2018 regarding processing of returns u/s 143(1) which are pushed to AOs by CPC

1) Lack of criteria for pushing down Returns by CPC to the AOs and adjustment of refunds

I) Presently, there is no prescribed criteria in public knowledge for pushing down the returns by CPC to the AOs.

ii) It has been observed and experienced by many assessees that high refund cases are pushed by the CPC to the AOs and then AOs hold back from processing the returns and issuing the refunds.

We therefore suggest that CBDT should lay down some criteria for pushing down the returns by CPC to the AOs and the same should not be on the basis of high refunds claimed in the returns which is a bit farfetched. This may cause undue intrusion and hindrance in smooth processing of refund and returns.

iii) It has also been experienced that in many cases, adjustments of refunds are being made by AOs, particularly when return processing are pushed down to the AOs, without giving an intimation u/s 245, in violation of section 245.

CBDT should also issue necessary instructions to lay down strict criteria for adjustment of refunds against any demands along with specific instruction emphasizing that no adjustment should be made unless intimation u/s 245 is given, principle of natural justice being violated.

2) Instructions dated 28th March, 2018 regarding processing of returns u/s 143(1) which are pushed to AOs by CPC

CBDT has rightly directed the AOs to process all tax returns of tax year 2016-17 [AY 2017-18] and onwards which are pushed by CPC to the AOs, on Income Tax Business Application (ITBA Module).

It has also been provided that in exceptional circumstances, whenever returns cannot be processed because of technical difficulties in functioning of the ITBA, the AO can also manually process the return with prior administrative approval of the Pr. CIT.

However, it is noticed that for processing of the returns on ITBA and also when the returns are allowed to be processed manually on account of technical glitch, no time limit has been prescribed for processing the refunds.

We, therefore, suggest that for processing of the returns on ITBA and also when the returns are allowed to be processed manually on account of technical glitch, there must be a reasonable time line within which the refunds must be processed by the AO to bring in certainty.

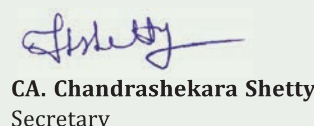
We have populated issues and possible solutions in the light of genuine hardships and concerns on the part of practitioners and assessees. We request your honour to consider this representation favourably.

Thanking you,

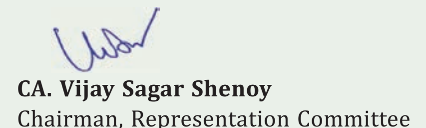
Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra T.N.
President



CA. Chandrashekara Shetty
Secretary



CA. Vijay Sagar Shenoy
Chairman, Representation Committee

"Registered" News Bulletin for India vide No.KA/BGGPO/2542/2018-20
RNI Regn. No. KARENG/2013/51293
Licensed to post without prepayment License No. WPP-309
Total No. of Pages Printed : 20
Date of Publishing & Posting 15th of the month, Place of Posting at Bangalore PSO, Mysore Road, Bangalore 560026

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KSCAA NEWS BULLETIN English Monthly Printed, Published & Edited by **CA Raghavendra T.N.**, President on behalf of **Karnataka State Chartered Accountants Association**, # 7/8, 2nd Floor, Shoukath Building, S.J.P. Road, Bengaluru-560 002. **Ph : 2222 2155, Tel. Fax : 2227 4679, e-mail : kscaablr@gmail.com, Website : www.kscaa.com**
Printed at **Jwalamukhi Mudranalaya Pvt. Ltd.**, 44/1, K.R.Road, Basavanagudi, Bengaluru- 560 004, Ph : 080-2660 1064, e-mail: jwalmuki@gmail.com.
Published at # 7/8, 2nd Floor, Shoukath Building, S.J.P.Road, Bengaluru-560 002. Editor : **CA Raghavendra T.N.**