KSCAA

Karnataka State Chartered Accountants Association ®

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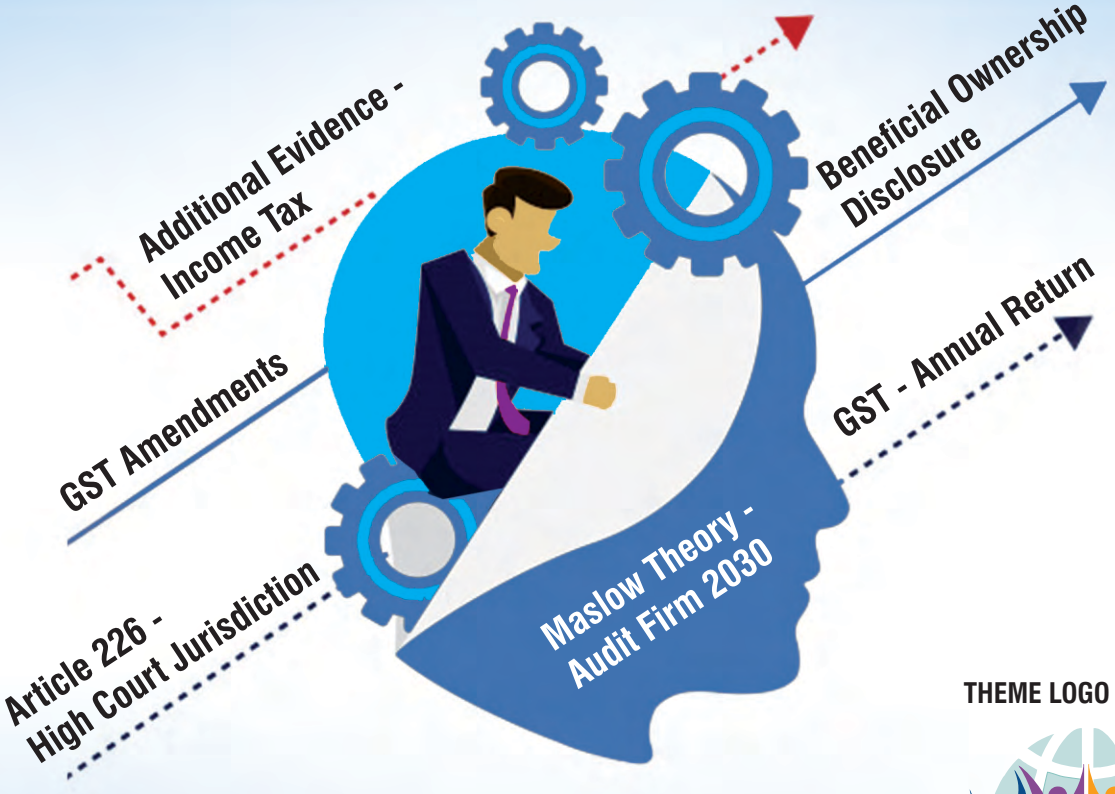

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From the President

Dear professional friends

Teachers play a significant role in the development of society and students. A good teacher always directs his students in the right path, just like a lighthouse guides ships through the darkness to its destination. In all, teaching is another profession and the teacher's job is very great, and their contribution to society is unparallel and invaluable. The role of teachers is vital in our life. In any civilised society, teaching is counted at highest level and teachers exert tremendous vital influence upon the society. The community is entirely depending on the teachers because it is in his hand to create and destroy the society.

The relationship of the teachers with students is slowly deteriorating and now a days is not divine as it was before, many changes have taken place; a teacher is no longer a selfless guru. In the modern time, teacher's importance is declined by favoritism towards few students with vested interests and is not helping the cause at all in any way. Also, some of the students make few teachers as favorite. Due to the punishment meted few times, students think that teachers are not good, but that think-tank leads to disaster to say the least. Punishment is many a time for the betterment of student and has to be taken in that way to help self-betterment of the student. It has turned a bit topsy-turvy and is hard to expect the society to honor the teachers. To resurrect, teachers must uphold their dignity and endeavor towards student guidance with larger interest of the nation. Every one of us must explain the importance of good teacher in one's life and call upon the students to respect their teachers. With this I wish you all Happy Teachers Day. CA article assistants are akin to students and their Principal is no less a Guru and has manifold influence on their career.

News Roundup

The GST Council headed by Hon. Union Finance Minister cleared as many as 46 amendments to GST Laws in its meeting held on 21st July 2018. The Union Cabinet headed by Hon. Prime Minister approved these amendments to Central GST, Integrated GST and Compensation Cess Laws on 1st August 2018. Further, the amendments received acceptance from the Parliament, and the Presidential assent on 29th August 2018. Some of the key amendments include modifications to reverse charge mechanism, allowing employers to claim input tax credit on facilities like food, transport and insurance provided to employees, option to obtain separate registration for additional places of business in the same State, new return filing norms and issuance of consolidated debit / credit notes covering multiple invoices. Besides, businesses with turnover up to Rs.1.5 crore would be eligible for availing composition scheme, as compared to the current limit of Rs.1 crore, e-commerce companies will not have to seek registration under GST provided their annual turnover is less than Rs.20 lakh and are not required to collect tax at source under Section 52. Now, these amendments will be placed before the State Legislatures for making changes in the State GST Acts.

The Central Board of Direct Taxes (CBDT) in its circular issued on 17th August 2018 said representations had been received by the Board that the implementation of reporting requirements under the proposed clause 30C pertaining to General Anti-Avoidance Rules (GAAR) and proposed clause 44 pertaining to Goods and Services Tax (GST) compliance of the tax audit Form No. 3CD may be deferred. Considering the representations received from various quarters, it has directed that the proposed GST and GAAR reporting under the amended tax audit form be kept in abeyance till March 31, 2019. This dispensation would be available for tax audit reports to be furnished on or after August 20 but before April 1, 2019.

Representations

Time and again we have proactively represented before various regulators on hardships faced by our fraternity and to seek meaningful resolutions. This time round, based on the grievances received from our members, we held a detailed discussion with Directorate of Municipal Administration on 20th August 2018 to impress upon certain pending grievances relating to certain terms and conditions of revised RFP relating to appointment of Financial Statements Auditor and made a follow-up written representation on the same. The outcome of the discussion was largely fruitful.

KSCAA jointly with Bombay Chartered Accountants Society, Chartered Accountants Association, Ahmedabad & Surat, Lucknow Chartered Accountants Society and IMC Chamber of Commerce and Industry made a detailed representation to the Chairman, Central Board of Direct Taxes on additional reporting requirements in revised Tax Audit Report Form 3CB for AY 2018-19 highlighting host of issues like untimeliness of amendments, GAAR, GST reconciliations and among other things.

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.

Appeal to members

Another point of important mention is our very core issue of principles and ethics, not just as envisaged under our Code of Ethics but more required, the ones which our forefathers and senior professionals had cherishingly adorned and upheld and wore this righteous attitude on their sleeves. We are a lot well-known in the society for the integrity and interminable persona.

This talk is on the wake of recent stray incidences of GST frauds bearing names of a few members from our fraternity. I call upon our members to exercise restraint in terms of resorting to such mal practices and think about our prestigious and noble past. I also seek our members to lead by example and guide their juniors and subordinates and not to cast aside the integrity and righteousness for any trivial and mundane needs.

It is of paramount importance to have a scale of fees depending upon the business district and for all our members to resort to it vehemently so that each practitioner derives commensurate fees and indirectly shield our fraternity to resort to unhealthy practices especially for youngsters who have less contacts and avenue initially.

Theme for the term: Together we serve; Together we grow

We, at KSCAA, pioneer the cause of identifying, ideating strategies and implementing solutions for the core problem areas at a grassroot level. All the more, we are a continuum of radical reforms carried out by predecessor Executive Committees right from Identifying, Ideating and Implementing to Grow, Share and Transform; the natural progression there from has been "Together we serve, together we grow."

Growth is never by mere chance; it is a result of forces working together. If everyone is moving forward together, then success takes care of itself. In this earnest, and at this hour, we feel the immense need to get our members to cultivate the bonding inter se and take it to the next level by working coherently towards paradigm success.

Upcoming Events and programs

We are organizing a State Level Sports and talent meet across state on Sunday 11th November 2018 and Saturday 24th November 2018 outdoor games, Sunday 25th November 2018 indoor games at Bengaluru.

We are organizing workshop on **'RERA Audit: Challenges and Preparedness'** on Friday 21st September 2018 in VVN at Bengaluru.

I earnestly request members to actively participate in our programs and make use of it.

The details of the programs are published elsewhere in the News Bulletin. For registrations, please visit www.kscaa.com.

Sincerely,

CA. Raghavendra Shetty
President

Together We Serve
Together We Grow

KSCAA
News Bulletin

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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 ®

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

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Additional Evidence – Income Tax Act, 1961

CA S. Krishnaswamy

An important issue that arises in tax appellate proceedings is the submission of additional evidence in respect of any claim or tax position, which could not be produced at the assessment stage and therefore resulted in an addition to return of income giving rise to tax liability. The liability is contested and additional evidence sought to be produced before CIT (A)/ITAT. Under what circumstances can an additional evidence be admitted which was not produced at the time of assessment proceedings? The income tax rules provide such a contingency and the circumstances under which additional evidence can be entertained.

- **Rule 46A: Production of additional evidence before the DCIT (A)/CIT (A):**

(1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule(1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]

- **Income-tax (Appellate Tribunal) Rules, 1963**

Rule 29: Production of additional evidence before the Tribunal.

The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or , if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.]

Rule 30: Mode of taking additional evidence:

Such document may be produced or such witness examined or such evidence adduced either before the

Tribunal or before such income-tax authority as the Tribunal may direct.

Rule 31: Additional evidence to be submitted to the Tribunal:

If the document is directed to be produced or witness examined or evidence adduced before any income-tax authority, he shall comply with the direction of the Tribunal and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Tribunal.

Generally in the interest of fair assessment and avoidance of fasting unjust tax liability appellate forums have taken a lenient view of entertaining belated additional evidence.

- **Case Studies:**

1. Admission of additional evidence is within the discretion of the Commissioner (Appeals), on the facts the said discretion has not been exercised improperly or against the provisions of law. CIT (A) was justified in admitting the additional evidence. (A. Y. 2001-02).

   CIT v. Better ways Fianance & Leasing (P) Ltd. (2011) 62 DTR 282 (Delhi) (High Court).

2. The Assessing Officer asked the assessee to furnish confirmation letters from customers who had paid advances by cash (& not cheque) which the assesse complied with. In the assessment order, the Assessing Officer treated the advances received by cheque as "unexplained cash credits" under section 68. Before the CIT (A), the assessee produced confirmation letters from customers who paid by cheque. The CIT (A) admitted the additional evidence under Rule 46A & without giving the Assessing Officer an opportunity, deleted the addition. In appeal by the Department, the Tribunal upheld the CIT (A)'s action on the ground that as the Assessing Officer had not called for the confirmations before making the addition, the CIT (A) was justified in admitting the additional evidence and there was no reason to set-aside the matter to the Assessing Officer for a second innings. On further appeal to the High Court, held allowing the appeal:

   Under section 250(4), the CIT (A) has the power to direct enquiry and call for evidence from the assessee. Under Rule 46A, the assessee has the right to ask for the admission of additional evidence. If the CIT (A) exercises his powers under section 250(4) to call for additional evidence, the Assessing Officer need not be given an opportunity to show-cause. However, if the CIT (A) acts on an application under Rule 46A, then the requirement of giving the Assessing Officer an opportunity as per Rule 46A (3) is mandatory. The argument that in all cases where additional evidence is admitted, the CIT (A) should be considered to have exercised his powers under section 250(4) is not acceptable as it will render Rule 46A redundant. On facts, as the assessee had produced the evidence, the CIT (A) ought to have followed Rule 46A (3) and remanded the evidence to the Asseessing Officer for comments and verification (matter remanded to the CIT (A). (A. Y. 2005-06).

   CIT v. Manish Build Well Pvt. Ltd. (2011) 63 DTR 369 / 245 CTR 397 / (2012) 204 Taxman 106 (Delhi) (High Court).

3. Assessing Officer should be given opportunity to examine documents produced by assessee. Rule embodies provision of natural justice and it is mandatory, when assessee produced additional evidence first time before the CIT (A). (A.Y. 1996-97)

   CIT v. Shree Kangra Steel Pvt. Ltd. (2010) 320 ITR 691 / 188 Taxman 392 / 38 DTR 170 / 231 CTR 413 (HP) (High Court).

4. Opportunity of being heard. The Assessing Officer who was present at the time of hearing before CIT (A) having raised no objection, the opportunity as envisaged u/r 46A is said to have been satisfied. (A.Y. 1973-74)

   CIT v. Kuldip Industrial Corporation (2007) 209 CTR 400 / 164 Taxman 285 (P&H) (High Court).

5. Assessing Officer never directed the assessee company to produce any evidence to prove the genuineness of shareholdings by the subscribing companies nor expressed any doubts regarding the genuineness of shareholdings of these companies prior to treating the assessee's capital as unexplained CIT (A) correctly admitted the additional evidence produced before him and there is no question of giving an opportunity to the Assessing Officer to examine the additional evidence. (A. Y. 2005-06).

   Dy. CIT v. Dolphine Marbles (P) lTD (2011) 57 DTR 58 / 139 TTJ 129 / 129 ITD 163 (TM) (Jab.)(Trib.)

6. Where assessee's claim for exemption under section 10(4) of interest on FDRs in NRE account was rejected on ground that status shown by him in return was 'resident', and assessee produced additional evidence in the form of certificate which indicated that money kept in NRE account was as per guidelines of RBI, Commissioner (Appeals) was not justified in declining to admit fresh evidence in form of certificate. (A.Ys. 1997-98 to 2000-01)

Rachhpal Singh v. ITO (2005) 94 ITD 79 / 93 TTJ 283 (Amritsar) (Trib.)

7. Where assessee raised additional grounds relating to claim for depreciation and exemption under section 10(19) but those were not admitted by Commissioner (Appeals) on ground that all facts required to decide said issues were not available on record even though assessee claimed that such facts were on record, action of Commissioner (Appeals) in refusing to admit additional grounds for that reason was not justified as Commissioner (Appeals) could have obtained any further information/clarification from books of account and other record maintained by assessee. (A.Y. 1993-94)

International Airports Authority of India Ltd. v. Dy. CIT (2005) 95 ITD 101 / 95 TTJ 1075 (Delhi) (Trib.)

8. Assessee for the first time filed affidavit in 1993, seeking to produce Trust Deed Dt. 4-1977. The Assessing Officer had given ample opportunity to the assessee to file or produce relevant documents like trust deed which was not produced before him. It was not produced before CIT (A) also and hence Tribunal refused to admit the same. On reference, High Court upheld the decision of ITAT. (A.Ys. 1978-79 to 1982-83)

N. B. Surti Family Trust v. CIT (2007) 288 ITR 523 / 200 CTR 145 / 153 Taxman 31 (Guj.)(High Court).

9. There is no need to make a formal application under rule 29 of the ITAT Rules for admission of the additional evidence. There is no error in the order of Accountant member admitting the additional evidence and sending it to the CIT for examination and decision. (A.Y. 2002-03)

Mascon Global Ltd. v. ACIT (2010) 45 DTR 20 / 133 TTJ 257 / 37 SOT 202 (TM)(Chennai)(Trib.)

10. In an appeal filed by assessee, additional evidence can be admitted at the instance of revenue on application under Rule 29 of ITAT Rules.

UOPLLC v. Addl. Dir. of IT. (2007) 110 TTJ 619 (Delhi) (Trib.)

11. Prayer for admission of additional evidence be allowed when assessee had not changed his stand, nor new ground has been taken, nor a new explanation different from one which was taken before the Assessing Officer & CIT(A) is being put up, and by admitting the same it proves assessee's case. (A.Ys. 1997-98, 1998-99)

Sikander Publishing (P) Ltd v. Dy. CIT (2003) 81 TTJ 249 / 133 Taxman 156 (Mag.) / (2004) 2 SOT 294 (Delhi) (Trib.)

12. For the admission of the additional evidence, the assessee has to make an application to show cause why it should be admitted. The accounts of the assessee were rejected by Assessing Officer on the ground of non-production of stock register. The stock register constitutes additional evidence in that regard and hence stock register cannot be produced for the first time before ITAT without proper application. (A.Y. 1982-83)

Bimal Kumar Anant Kumar v. CIT (2007) 288 ITR 278 / 210 CTR 171 / 159 Taxman 402 (All.)(High Court).

The gist of the above decisions is that when producing additional evidence a written application should be made for entertaining addition evidence. The conditions stated in Rule 46A should strictly followed in respect of appeals before CIT (A). In respect of appeals before ITAT conditions mentioned in Rule 29 should strictly be followed.

- **<u>Conclusion:</u>**

  In order to get a fair assessment of an income the assesse and his counsel should take every step to gather every possible and relevant evidence in support of deductions or claims in the return of income at the time of scrutiny assessment even if some evidences are not available at the time of assessment proceedings, a written request must be placed on records seeking time to produce extra evidence. The judicial decisions give a clue to what is expected from an assessee and his representative in regard to production of additional evidence.

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Important Amendments in GST ITC

CA Madhukar N Hiregange & CA Mahadev R

Much awaited changes in the CGST and IGST Act 2017 has become effective from 30th August 2018. Important changes such as increase in the turnover for opting composition scheme, levy of GST on unregistered procurements only on notified category of persons and widening the credit base have taken place which are being well received by the business community. In this article, important changes made with respect to GST ITC have been discussed including few aspects which needs attention of the government to facilitate smooth flow of credits.

Important changes in Section 16 and Section 17 of CGST Act

Bill to ship to concept for services

One of the conditions for availing GST ITC is the receipt of goods or services by him. In the case of "bill-to-ship-to" situations, for the purposes of availing of ITC on goods by the registered person, a deeming provision is present for goods. By virtue of this deeming provision, the registered person would be deemed to have received the goods, even when the same were delivered to any other person.

Now this benefit has been allowed for services as well by including an explanation to Section 16(2) of CGST Act.

Reversal of credit in case of schedule III activities

In case of high seas supplies, supplies from customs bonded warehouse before clearance for home consumption, supplies in non-taxable territory without bringing goods to taxable territory (merchanting transactions) were being considered as exempt supplies for the purpose of restricting the ITC. Now Schedule III has been amended to include all these transactions as neither supply of goods or services.

An explanation has also been added to Section 17(3) to provide that there is no need of reversal of input tax credits to the extent it pertains to transactions covered in Schedule III. However, reversal would be required attributable to transaction covered in schedule III which are in the nature of sale of land or building (sold after occupation). This is a relief for the tax payers as identifying the common input credits was also not easy for them.

Amendment in Section 17(5) to widen the credit eligibility

Section 17(5) provides the list of goods and services which are restricted for ITC. This section has been amended resulting in increasing the credit eligibility through following changes:

a) Motor vehicle credit was restricted for all types of vehicles except when they were used for further supply or for transportation of passengers or for imparting training on driving such motor vehicles. This eligibility would continue. In addition, the credit would be eligible on vehicles which are for transportation of persons having approved seating capacity of more than thirteen persons (including the driver). This would enable the entities to take credit on bigger vehicles such as motor bus.

b) Credit on vessels and aircraft would be restricted unless they are used for making the following taxable supplies, namely:

   (*A*) further supply of such vessels or aircraft; or

   (*B*) transportation of passengers; or

   (*C*) imparting training on navigating such vessels; or

   (*D*) imparting training on flying such aircraft;

   (*ii*) for transportation of goods;

c) Services of general insurance, servicing, repair and maintenance, leasing, hiring or renting in so far as they relate to motor vehicles, vessels or aircraft which are eligible for credit would be eligible. In other cases, it would not be eligible. There were doubts on eligibility of credit on expenses related to motor vehicles. This amendment has provided clarity on this.

   The amendment could also be interpreted to mean that the credit on expenses such as insurance, servicing or repair of motor vehicles were eligible for credit earlier before this amendment.

d) Earlier in case of membership of a club, health and fitness center, rent-a-cab, life insurance and health insurance were eligible only where government notifies them as obligatory for employees. Services like outdoor catering which were obligatory were still ineligible as it was not specifically covered.

Amendment has been made now to allow credit in case of various services including food and beverages, outdoor catering, health insurance etc when there is obligation for an employer to provide them to employees under any law for the time being in force.

With this change, there is a requirement for the tax payers to look at the recoveries being made from employees towards canteen facility. Where credit is admissible and recovery amount is less than credit benefit, option of not recovering the amounts could be explored. This is because once amount is recovered from employees, then liability of 5% GST would arise on full cost of food without credit facility.

e) *Relaxation in documentation for credit*

In terms of rule 36 (2) of CGST Rules 2017, input tax credit was to be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI (invoice contents) are contained in the said document. Due this, there was a risk that department would deny credit on invoices where certain information like HSN, rate of tax, signature, address, GSTIN etc., are missing.

The amendment has been made in rule to provide that the credit would be eligible if details such as the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply are available in the invoice. This is a welcome change as there was no powers for the officers to relax for procedural lapses in GST law which was present in earlier Cenvat credit provisions.

Few issues which are not addressed

There is no doubt that all the amendments made would provide relief to the tax payers. However, there still few issues which needs to be addressed by the government. Few important ones have been discussed below:

Recredit on goods received after job work

In terms of Section 143 of CGST Act 2017, if the inputs or capital goods sent for job work are not received within the stipulated time limit of 1 year / 3 years, the transaction would be deemed to be supply. The principal who has sent the goods for job work should consider the date of job work challan as date of supply and pay GST along with interest which would be for minimum of 1 year or 3 years. Unlike the earlier Cenvat credit provisions, there is no provision in GST to take back the credit or tax paid on goods which are deemed as supplies. An amendment is required to allow credit of tax paid on such goods. Interest could continue to be a cost as a check.

Meaning of receipt of services

One of the conditions for taking the credit for the registered person is receipt of goods and services in terms of Section 16(2). Goods being tangible, it is easy to understand the meaning of receipt of goods. However, in case of services it is not so. Services like AMC and insurance which would be on periodical basis say annual, question is whether the service is said to be received when amounts paid at the beginning. In our opinion, credit should be allowed as the eligibility or rights would accrue as soon as the payments are made for services like AMC or insurance which can be said to be receipt of services. Clarity could be provided by the government in this regard.

Credit restriction on samples and gifts

It is essential for the business to issue goods as samples which would further facilitate sale of goods and increase the GST revenue as well. Similarly, issue of gifts to distributors or customers would only facilitate further increase in sales and in turn GST revenue. Therefore, credit restriction present in Section 17(5)(h) needs a relaxation.

The above discussed points are only illustrative which could be very important. In addition to this clarity may be provided on credit eligibility on CSR expenses, distribution of credit Vs. cross billing and treatment of reimbursement of expenses for credit eligibility etc.

Conclusion

The major objective of introduction of GST is removal of cascading effect. With restricted credits, this objective is actually not met completely met. However, we could expect complete free flow of credit in future if we were to consider the fact that the present union government is taking all possible measures to address the woes of tax payers. The professionals could advise the tax payers on the latest changes which would increase the credits including the precautions to be taken as few issues are still needs to be addressed. The due date for taking the credit for the previous FY 2017-18 is 20th October 2018 which is a final opportunity for the professionals in adding value to the clients by guiding on proper availment of credits.

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Annual Return under GST

CA G.B Srikanth Acharya & CA Annapurna D Kabra

Annual Return under GST (Serial No 10 of Notification No 39/2018 Central Tax dated 4.9.2018):

All Registered persons including Composition dealer, other than an Input Service Distributor (ISD), a Person paying tax under Tax deduction at source and Collection of tax at source, a Casual taxable person and a Non-resident taxable person, shall furnish an Annual Return for every financial year electronically in **FORM GSTR 9** on or before the thirty-first day of December following the end of such financial year. GSTR 9 consists of details regarding the supplies made and received during the year under different tax heads i.e. CGST, SGST and IGST. It consolidates the information furnished in the monthly/quarterly returns during the year.

Types of GSTR 9:

1. **GSTR 9**: It should be filed by the Regular Taxpayers
2. **GSTR 9A**: It should be filed by the Persons Registered under Composition scheme under GST.
3. **GSTR 9B**: It should be filed by the e-commerce operators who have filed GSTR 8 during the financial year.
4. **GSTR 9C**: It should be filed by the taxpayers whose annual turnover exceeds Rs. 2 Crores during the financial year. All such taxpayers are also required to get their books of accounts audited and file a copy of audited annual accounts and reconciliation statement of taxes paid and payable as per audited accounts.

The Annual return in FORM GSTR 9 is divided into six parts with 19 tables which includes detailed information related to outward supplies, inward supplies, ITC availed, ITC Reversed, Ineligible ITC, Particulars of Demand and Refund, HSN summary of outward supplies and HSN Summary of Inward supplies of the transactions declared in returns filed during the financial year. The following are the parts given in the annual return FORM GSTR 9

1. Part-I: Basic details of the taxpayer.
2. Part-II: Details of Outward and Inward supplies declared during the financial year.
3. Part-III: Details of ITC declared in returns filed during the Financial.
4. Part-IV: Details of tax paid as declared in returns filed during the Financial Year.
5. Part-V: Particulars of the transactions for the previous Financial Year declared in returns of April to September of current Financial Year or up to the date of filing of annual return of previous Financial Year whichever is earlier.
6. Part-VI: Other Information comprising details of:
   - GST Demands and refunds,
   - HSN wise summary information of the quantity of goods supplied and received with its corresponding Tax details against each HSN code,
   - Late fees payable and paid details and
   - Segregation of inward supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis.

The following are required details has to furnish in different parts while filing the Annual Return in FORM GSTR 9

Part-I: Basic details of the taxpayer:

This part of the Annual return contains the basic information of the registered person like name and GST number and the financial year for which the return is filing.

Part-II: Details of Outward and Inward supplies declared during the financial year:

This part contains the details related to the GST payable. The GST is payable on the outward supply and the inward supplies on which the GST is payable under reverse charge basis. This part has divided the outward supply into two parts i.e. taxable supply and non-taxable supply. Further supplies have been divided into the following category

The Outward taxable supplies and inward supplies on which tax is payable on reverse charge basis:

- Supplies made to un-registered persons (B2C)
- Supplies made to registered persons (B2B)

- Zero-rated supply (Export) on payment of tax (except supplies to SEZs)
- Supply to SEZs on payment of tax
- Deemed Exports
- Advances on which tax has been paid but invoice has not been issued
- Inward supplies on which tax is to be paid on the reverse charge basis
- Credit Notes issued
- Debit Notes issued
- Supplies / tax declared through Amendments
- Supplies / tax reduced through Amendments

Non-taxable supply is divided into the following category:

- Zero-rated supply (Export) without payment of tax
- Supply to SEZs without payment of tax
- Supplies on which tax is to be paid by the recipient on reverse charge basis
- Exempted
- Nil Rated
- Non-GST supply
- Credit Notes issued
- Debit Notes issued
- Supplies declared through Amendments
- Supplies reduced through Amendments

Part-III: Details of ITC declared in Returns filed during the Financial Year

This part requires the information related to the most important details i.e. the Input Tax Credit and its reconciliation: The Input Tax Credit claimed in the FORM GSTR 3B shall be divided into the following categories:

- Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)
- Inward supplies received from unregistered persons liable to reverse charge on which tax is paid & ITC availed
- Inward supplies received from registered persons liable to reverse charge on which tax is paid and ITC availed
- Import of goods (including supplies from SEZs)
- Import of services (excluding inward supplies from SEZs)
- Input Tax credit received from ISD
- Amount of ITC reclaimed under the provisions of the Act
- Transition Credit through TRAN-I (including revisions if any)
- Transition Credit through TRAN-II
- Any other ITC availed

The Input Tax credit details should have to give separately with respect to Inputs, Capital Goods and Input Services.

In addition to the above Input Tax Credit details the reversal and the ineligible credit shall be bifurcated into the following:

- As per Rule 37- Reversal of input tax credit in the case of non-payment of consideration
- As per Rule 39- Procedure for distribution of input tax credit by Input Service Distributor
- As per Rule 42- Manner of determination of input tax credit in respect of inputs or input services and reversal thereof
- As per Rule 43- Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases
- As per section 17(5)- Credit which is cannot avail
- Reversal of TRAN-I credit
- Reversal of TRAN-II credit
- Other reversals (if any) - if the reversal and ineligible input does not fall into the above.

The credit reflecting in FORM GSTR 2A shall be bifurcated and treated in the following manner:

Input tax credit on Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but availed during April to September 2018

The difference of the amount available in FORM GSTR 2A as reduced by the amount determined in part II on Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZ's), amount of Input Tax Credit reclaimed under the provisions of the act and Previous year Input Tax Credit availed during April and September 2018.

Out of the difference amount derived above, it should be bifurcated into

- ITC available but not availed

- ITC available but ineligible
- IGST paid on import of goods (including supplies from SEZ)
- IGST credit availed on the import of goods
- ITC available but not availed on the import of goods

Part-IV: Details of taxes paid as declared in returns filed during the Financial Year:

This part contains the details related to the taxes and other sums payable and paid in cash or through the utilization of Input Tax Credit namely:

- Integrated Tax payable and paid in cash or through the utilization of ITC.
- Central Tax payable and paid in cash or through the utilization of ITC.
- State Tax payable and paid in cash or through the utilization of ITC.
- Interest, Late fee, Penalty and other sums payable and paid in cash only.

Part-V: Particulars of the transactions for the previous Financial Year declared in returns of April to September of current Financial Year or up to the date of filing of Annual return of previous Financial Year whichever is earlier:

This part contains the details of the transactions from the previous tax period i.e. from July-2017 to March-2018 incorporates into the tax return for the period April-2018 to March-2019 up to the date of filing of the annual return relating to

- Supplies / tax declared through Amendments (net of debit notes)
- Supplies / tax reduced through Amendments (net of credit notes)
- Reversal of ITC availed during the previous financial year
- ITC availed for the previous financial year
- Differences of Tax paid and payable

Part-VI: Other Information:

This part requires the details in respect of demand and refund, inward supplies, HSN wise summary and the late fee paid and payable.

The details in respect of refund and demand shall be bifurcated in the following manner and each tax component-wise namely IGST, CGST, SGST and the Cess:

- Total Refund Claimed
- Total Refund Sanctioned
- Total Refund Rejected
- Total Refund Pending
- Total demand for Taxes including the cess including interest, penalty, late fee and other Amounts
- Total taxes paid in respect of demands including interest, penalty, late fee and other Amounts
- Total demands pending in respect of taxes including the Cess including interest, penalty, late fee and other amounts.

Additional information in respect of the supplies received in respect of the following:

- Supplies Received from Composition taxpayers
- Deemed Supply under Section 143 related to Job work
- Goods sent on Approval basis but not Returned

HSN Wise Summary of inward/outward supplies shall be provided in the following manner:

- HSN Code
- UQC
- Total Quantity
- Taxable Value
- Rate of Tax
- Central Tax
- State Tax / UT Tax
- Integrated Tax; and
- Cess

This part also contains the details related to the late fee paid and payable.

Important Points to Remember

- The Annual Return has to be filed separately for each registration number by the Registered Person.
- Annual Return is mandatory irrespective of turnover of Registered Person
- The Taxable Turnover/Tax Payable missed in GSTRB/ GSTR1 cannot be added in Annual Return but if any exempted supply or Non GST Supply is missed it can be added in Annual Return
- There is no provision for revision of Annual Return.

- The Credit Note issued Under Section 34 should be accounted and not other Credit Notes in Annual Return. B2B Credit Note has to be disclosed in Annual Return and B2C should be reduced from the supplies.
- B2C Supplies made to Unregistered person (More than 2.5 lakhs and other Supplies) should be clubbed and disclosed in Annual Return
- No Provision for availment of credit in the Annual Return. The Input tax credit availed wrongly should be amended in GSTR 3B.
- No requirement for reversal of credit on account of invoices not reported in GSTR- 2A. It is like C Form under the CST law where the benefits of concessional rate is taken and then follow up with recipient for statutory forms.
- Disclosure of HSN wise details of inward supplies
- The Credit availed under section 9(4) till notified date should be reported
- The IGST credit availed on import of goods should be separately reported by the registered person

The Annual return is an informative return in which only information has to furnish for the whole financial year. If there is any differences and the resultant is GST payable which cannot be paid through annual return. Therefore every registered person has to reconcile the books of accounts with the returns filed monthly or quarterly during the financial year and has to pay the difference amount in the regular return. If there is any Input Tax Credit is missed out to avail during the financial year and it should be avail before due date of 30th September return of the following financial year.

As per section 47(2) of the CGST Act states that "Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent of his turnover in the state or union Territory". Therefore in case if the Annual Return is not filed then penalty is Rs.100 per day subject to maximum of 0.25% of Turnover in the state.

Authors can be reached on e-mail:
query@dnsconsulting.net

KSCAA WELCOMES NEW MEMBERS - SEPTEMBER 2018

S.No.	Name	Place
1	LAKSHMIKANTHA REDDY G	BANGALORE
2	DEEPA N	BANGALORE
3	NAISHADAM CHANDRASHEKAR	SECUNDERBAD
4	SIDDARTHA JAVALI	BANGALORE
5	SURAJ R. KEDLAYA	BANGALORE
6	HEBSUR DATTATRAYA	BANGALORE
7	RAMESHA B	BANGALORE
8	REKHA B.V.	BHADARAVATHI
9	VIKAS SATRASALA	BELLARY
10	MAHESH ANANT HEGDE	BANGALORE
11	YARRISWAMY A.B.	BELLARY
12	SIDDU B.M.	BANGALORE
13	CHANDARGI BASAPPA	BELAGAVI
14	BHARAT R. PORWAL	BELAGAVI
15	RAVI H.KERUDI	RANEBENNUR
16	MOHAN SRIDHAR	BANGALORE
17	AMAR V.M.	BENGALORE
18	VINAY SR KUMAR	BANGALORE
19	SANKEERTH N.	BELLARY
20	SPUDARJUNAN S.	BANGALORE
21	PRADEEP	BANGALORE
22	PRATEEK JAIN	BANGALORE
23	VIJAY Y. UMMI	BELAGAVI
24	MOHAMMED GHOUSE	BELAGAVI
25	SHAKIRALI MURGOD	BELAGAVI
26	PRAVEEN IVAN DSOUZA	BANGALORE
27	GOPALAKRISHNAN	BANGALORE
28	RAMAKRISHNAN R	BANGALORE
29	PURUSHOTHAMA K.L.	BANGALORE
30	LINGARAJ K.M.	SHIMOGA
31	MOHAMAD RAFI K	KOZHIKODE
32	SHASHANKA M.J.	SHIMOGA

Significant Beneficial Ownership disclosure and push for demat in unlisted firms - Attempt to identify true owners and lift corporate veil

CA Sandeep Jhunjhunwala

Taking a step towards implementing the recommendations of the Financial Action Task Force (FATF) for enhancing transparency of legal persons and arrangements, the Companies (Significant Beneficial Owners) Rules, 2018 were notified on June 13, 2018. These rules were notified pursuant to Section 90 of the Companies Act 2013, dealing with disclosure of Significant Beneficial Owners (SBO) in a company. Section 90 was inserted in the Companies Act 2013 to deal with potential abuse of corporate structures in masking the identities of real owners. The rules now not only lay down the operating framework but also aligns these with those under the Prevention of Money Laundering Act 2002 (PMLA). The overarching principle is to be able to trace the significant beneficial ownership of a company ultimately to an individual (or a set of individuals) thereby making the entire corporate structure, see-through. The rules were put in place as the Government was of the view that there are several individuals, who are warehousing shares for corporate groups and have back-to-back arrangements on voting and dividend rights, which makes it difficult to ascertain the source of corporate's assets.

Section 90 of the Companies Act 2013 requires a company to maintain a register of SBOs of the shares in the company and necessitates any person who holds significant beneficial interest in a company (defined to mean 25 percent or more) to disclose their interest. The Companies (Significant Beneficial Owners) Rules 2018 elaborate on the definition of SBO which is primarily aligned to that under PMLA and reduces the threshold for determining SBO from 25 percent to 10 percent. These rules further prescribe various forms to be filed by SBOs and Company [Form Nos BEN-1 to BEN-4 have been prescribed as collaborative filing requirement on an ongoing basis - any change in SBO requires re-filing subsequently] and exempts certain entities from its application such as pooled investment vehicles/ investment funds [Mutual funds, Alternative Investment Funds, Real Estate Investment Trusts, Infrastructure Investment Trusts regulated under SEBI Act]. No other exemptions to listed companies, wholly owned subsidiaries, foreign portfolio investors, offshore private equity funds, foreign venture capital investors etc have been provided. The Rules have clarified that the disclosure norms would equally apply to instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures, which would be treated as 'shares' for this purpose. It is however, debatable, that the percentage threshold (10 percent) would be reckoned on basis of the existing total share capital or resultant share capital, post-conversion. Whether the limit stated above shall apply to a particular class of shares or to all shares together held by a SBO is also not clear. Determination of SBO in case of shares with differential voting rights would also be a complex exercise. As filings need to be made for each company separately, it would mean numerous filings for a large conglomerate. Frequent changes in the shareholdings, particularly in listed companies and tracking the shareholding percentage periodically and updating the members' book would be a mammoth task. Periodic checks needs to be built into the operating practices by the companies to ensure on-time compliances.

The Companies (Significant Beneficial Owners) Rules 2018, have, thrown up significant interpretational challenges. The main reason giving birth to interpretational challenges is ambiguously drafted sections of the Companies Act and related rules. The real issue involved while identifying the SBO is whether the chain of ownership needs to be seen right up to the top or only one level above in the ownership chain. It remains unclear if one would have to look through offshore corporate structures and identify individuals, for determining significant beneficial ownership. Going by the recommendations of the Company Law Committee (which had suggested these provisions), it would mean the ownership must be traced all the way up to the individual, notwithstanding that the individual may not directly own any shares in the company. The objective of these Rules is to identify those individuals who ultimately hold significant beneficial ownership, whether through layers of entities, individually or collectively. Where a natural person cannot be identified owing to widely dispersed ownership patterns, a senior managing official would be regarded as the SBO (say, CEO/ MD/ Manager/Whole Time Director of the company).

It is interesting to note that these rules are expected to have a corresponding impact on other allied corporate legislations as well. For instance, a question arises that in a case where the SBO is identified as a Resident Indian as per Indian exchange control regulations, would such inbound investments through layered structures be considered as "round tripping" necessitating approval from the Reserve Bank of India. Also, a question arises if such shareholding under multi-layer structures could fall under the definition of "Benami transaction" and the registered owner could qualify as "Benamidar" under the recently amended Prohibition of Benami Property Transactions Act, 1988. Similarly, the SBO rules throw open a gamut of questions from Income tax perspective such as - (a) Whether any loan or advances given to individuals identified as SBO be regarded as deemed dividends under Section 2(22)(e) of the Income Tax Act with a corresponding liability on the Indian investee company to deduct tax at source under Section 194 of the Income Tax Act (b) Would there be an any adversarial impact on the corporate structure from General Anti-Avoidance Rules (GAAR) angle on account of SBO disclosure (c) Would any transaction with the SBO be considered as related party transaction and require an evaluation of arms' length principle from Indian transfer pricing perspective (d) Interplay with Section 79 of the Income Tax Act on the eligibility to carry forward and set-off business losses due to reporting of SBO and the guidance provided by the Courts in rulings of Yum Restaurants, Amco Power, Just Lifestyle etc (e) Does SBO disclosure under the Companies Act 2013 needs to be in line with reporting related to shareholders and ownership information in Form ITR-6 applicable to companies, which requires "ultimate beneficial owners" to be revealed (f) In a case where a SBO is declared under the Companies Act, can the tax officer review payments made to such SBOs for unreasonableness or excessiveness under Section 40A(2)(b) of the Income Tax Act [though threshold for substantial interest under Section 40A(2)(b) of the Income Tax Act is higher ie 20 percent as compared to SBO rules under the Companies Act 2013 ie 10 percent]. While the SBO rules specifically require identification of a "natural person" as SBO, under the provisions of Income Tax Act, a person other than an individual (ie natural person) could be a beneficial owner.

Significantly, the Rules place onus on companies to seek information and send notices to persons it knows or has reason to believe to be a SBO. If the SBO fails to make declaration, fine in range of INR 0.1 million to INR 1 million and where the failure is a continuing one, a fine which may extend to INR 1,000 per day of default has been prescribed under the Companies Act 2013. If a company fails to maintain registers and/ or file returns with the Registrar of Companies or denies inspection of the register of SBO, the company and every officer in default is punishable with a fine in range of INR 1 million to INR 5 million and where the failure is a continuing one, a further fine which may extend to INR 1,000 for every day during which the default continues. A wilful suppression of material information or submission of false information by a person makes him liable under fraud under Section 447 of the Companies Act. The Committee set up to review offences under the Companies Act 2013, has in the recently issued report, recommended that these penalties should continue as it related to important disclosures, which when not made vitiates the records of the Company. One must also understand the non-monetary consequences of failure on part of SBO to make the disclosures. Under the rules, a Company can approach the National Company Law Tribunal through a petition upon failing to receive necessary data from a SBO and could obtain an order suspending rights of the defaulting shareholder, including voting and dividend rights and restriction on transfer of interest attached to the shares in question.

As India Inc acclimates to the new disclosure regime on SBO, the writing on the wall is clear - this is the onset of a new era of transparency in the corporate world and the corporate veil is no longer unimpeachable or sacrosanct. The counter-argument to the introduction of SBO disclosure rules is that it may set India back on its ease of doing business. Press articles suggest that amid concerns from the corporate sector, the Government is set to rework disclosure requirements to provide for complexities involved in reporting SBO in step-down subsidiaries, besides clarifying norms for trusts holding shares in companies, even as it is looking at amendments to the law to block benami holdings. After having worked on the contours, the Ministry of Corporate Affairs has issued Companies (Prospectus and Allotment of Securities) Third Amendment Rules 2018 on September 10, 2018 to notify its plan for dematerialisation of shares for unlisted public companies in the first phase (rules effective from October 2, 2018) pursuant to having ensured that the real ownership is revealed through SBO disclosure exercise. In addition to enhancing transparency in ownership of corporates, having shares in dematerialised form would also bolster the KYC framework for unlisted public companies and prevent instances such as pledging of duplicate shares. Absence of stamp duty unlike in case of transfer of shares in physical form, simplified transfer process and mitigation of risks

(Contd. on page 26)

High Court's Jurisdiction under Article 226

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Article 226 of the Constitution states that every High Court shall have the power to issue to any person, authority, or Government, directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari for the purpose of enforcement of any fundamental rights conferred under Part III of the Constitution and for any other purpose. This rather simply worded Article is pregnant with purpose and meaning, and the extent of the High Court's jurisdiction and powers under Article 226 has been the subject matter of numerous judgments. This article briefly discusses the scope of the High Court's powers under Article 226, as well as the limitations on such powers.

One of the first few judgments that expounded the law on Article 226 was K.S. Rashid & Son v. Income Tax Investigation Officer, AIR 1954 SC 207, wherein the Supreme Court observed as follows:

> *"It is to be noted first of all, that prior to the commencement of the Constitution the powers of issuing prerogative writs could be exercised in India only by the High Courts of Calcutta, Madras and Bombay and that also within very rigid and defined limits. The writs could be issued only to the extent that the power in that respect was not taken away by the Codes of Civil and Criminal Procedure and they could be directed only to persons and authorities within the original civil jurisdiction of these High Courts. The Constitution introduced a fundamental change of law in this respect. As has been explained by this Court in the case referred to above, while article 225* of the Constitution preserves to the existing High Courts the powers and jurisdictions which they had previously, *article 226* confers, on all the High Courts, new and very wide powers *in the matter of issuing writs which they never possessed before. "The makers of the Constitution" thus observed Patanjali Sastri C.J. in delivering the judgment of the court, "having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights, and, finding that the prerogative writs, which the courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the State's sphere, new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc. 'for any other purpose' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England." There are only two limitations placed upon the exercise of these powers by a High Court under article 226* of the Constitution; one is that-the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued' by the court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories.

It can thus be seen that the High Court's powers under Article 226 are both extraordinary and wide, with the only two constitutional limitations relating to the territory within which the Court can exercise its vast powers. It is also pertinent to note that the framers of the Constitution thought it fit to confer such vast powers on the High Court specifically in order to protect certain basic rights by providing a quick and inexpensive remedy for the enforcement of such rights. Therefore, Article 226 cloaked the High Courts with the power to issue writs, directions, and orders to ensure that people's fundamental and other legal rights are protected and enforced. It may be noted at this stage that, as opposed to Article 32, the High Courts have the power under Article 226 to issue such writs, directions, and orders for not only the enforcement of fundamental rights, but also "for any other purpose." The powers of the High Court under Article 226 are, therefore, wider than the powers of the Supreme Court under Article 226. In short, the High Court was conferred with vast powers with the purpose of providing a quick and inexpensive remedy to the people for enforcement of their fundamental or other legal rights.

Despite the vastness of the High Court's powers, there are, however, certain self-imposed limits, keeping in mind the framers' intention behind the insertion of the provision. In K.S Rashid, the Supreme Court observed that "the remedy provided for in article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere." In Sangram Singh v. Election Tribunal, AIR 1955 SC 425, the Supreme Court lucidly explained the limitations on the High Court's powers under Article 226 as follows:

> *"The High Courts do not, and should not, act as Courts of appeal under article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on, themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be."*

The Supreme Court has repeatedly stressed on the need for High Courts to exercise their extraordinary jurisdiction sparingly and that the powers conferred by the Constitution should not be used in any given case, for which remedies are already provided under the respective laws. More specifically, the Supreme Court has held in a number of judgments that the High Court's jurisdiction under Article 226 should be invoked only in cases where there is substantial injustice that has been caused or is likely to ensue as a result of non-interference, thus fulfilling the Constitution framers' intention behind the insertion of Article 226.

The Supreme Court, in State of Uttar Pradesh v. Mohammed Nooh, AIR 1958 SC 86, succinctly observed as to when it would be appropriate for the High Courts to exercise their extraordinary jurisdiction. The relevant observations are as under:

> *"where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it confirmed what ex facie was a nullity for reasons aforementioned."*

Therefore, the Supreme Court has very clearly observed that in cases where the order of a lower court/authority is so patently erroneous/obtrusive, or if it has acted wholly without/in excess of its jurisdiction, or in cases where there has been a violation of the principles of natural justice, or in cases where the actions impugned offend the High Court's sense of fair play, the High Courts ought to exercise their extraordinary jurisdiction to right such wrongs. The law laid down in Mohd. Nooh has been reiterated in a number of cases over the years. In State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499, the Supreme Court referred to a number of its earlier judgments on the law relating to the discretionary powers of the High Courts under Article 226 and held as under:

> *"In Harbans Lal Sahnia v. Indian Oil Corporation Ltd., [2003] 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.*

The Court further relied on Ram & Shyam Co. v. State of Haryana, AIR 1985 SC 1147, and held that in cases where the appeal is from "Caesar to Caesar's wife," the existence of an alternative remedy would be a mirage and an exercise in futility. Therefore, another exception to the general rule is in cases where the remedy provided under the statute/rules is virtually before the same/subordinate authority and the remedy would, hence, prove to be illusory. Reference may also be had to the recent judgment of the Supreme Court in Commissioner of Income Tax v. Chhabil Dass Agarwal, (2014) 1 SCC 603, where a number of judgments on the issue regarding exercise of the High Courts' jurisdiction under Article 226 have been discussed. ***(Contd. on page 23)***

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

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at BEL SPORTS GROUND, BENGALURU

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- ★ VOLLEY BALL - CA's
- ★ TUG OF WAR - CA's & Family
- ★ ATHLETICS - CA's & Family

DATE: **25th November 2018**

at KGS CLUB CUBBON PARK, Opp. MS Building, BENGALURU

- ★ Shuttle Badminton - CA's & Family
- ★ Lawn Tennis - CA's
- ★ Table Tennis - CA's
- ★ Chess - CA's & Family
- ★ Carrom - CA's & Family
- ★ Musical Chair - CA's & Family

FAMILY EVENTS

- ★ Dance
- ★ Singing
- ★ Instrumental
- ★ Rangoli
- ★ Drawing Junior & Senior
- ★ Flower Decoration
- ★ Pick & Act

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CA Kumar S Jigajinni
Secretary
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Sports & Skill Development Committee, KSCAA

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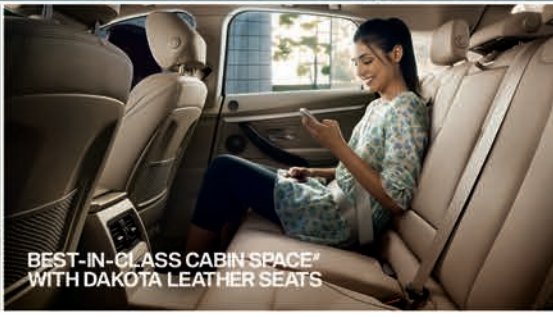
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Workshop on FEMA


CA Sandeep Jhunjhunwala


Sri Suhas Bendre, HSBC


CA Vaidehi G


Sri S Mohammed Kader, Standard Chartered


Sri Vivek Bajaj, Standard Chartered


CA Santhosha Kumar


Cross section of participants

One Day Seminar on ICDS I TO X, Recent changes in Tax Audit Report-3CD & GST Audit at Shivamogga

CA Rakshith Kothari


CA Deepak Chopra


CA T.N. Raghavendra

Workshop on GST Audit and Tax Audit


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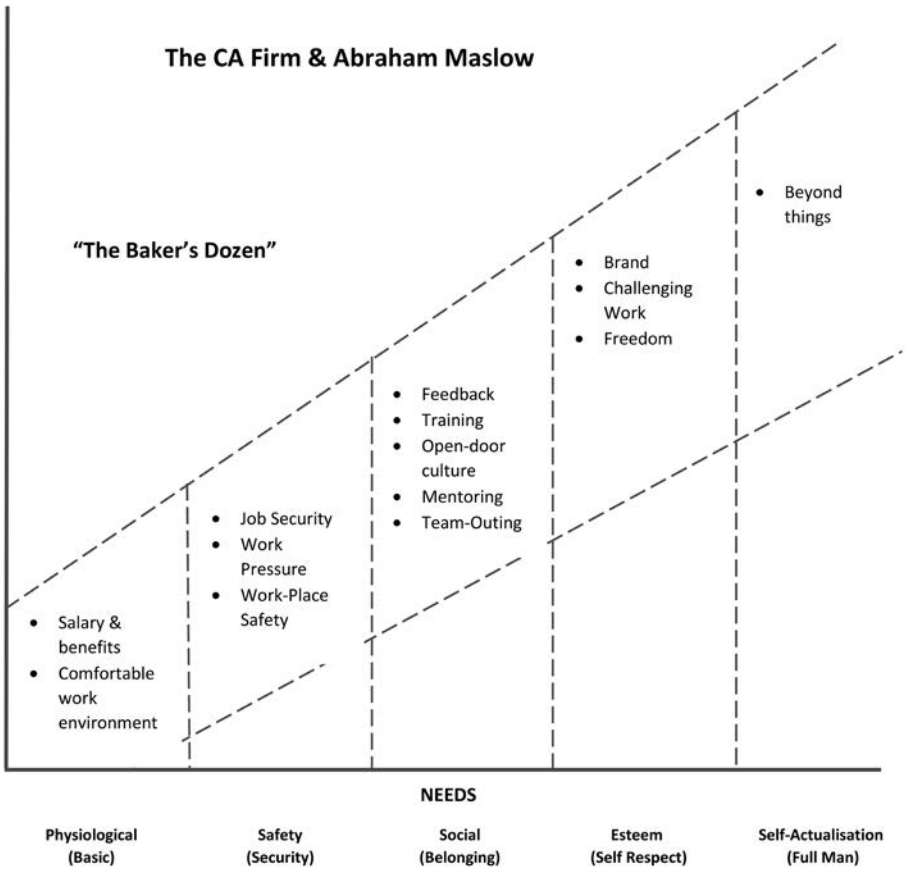
OFFICE 2030
Abraham Maslow and the 21st century audit firm

CA V Pattabhi Ram

What are the needs of the members of an audit firm today? And how critical are they: hygiene or motivational? This article takes you through by borrowing ideas from Abraham Maslow and Herzberg.

This is the 75th anniversary of one of the pioneering theories of motivation: the Maslow's Hierarchy of Needs. It's incredible that what Abraham Maslow, the famed psychologist, wrote in 1943 resonates with Generation Y and Generation Z, although the nature of needs is different. As you get to run your audit firm into the third decade of the 21st century, it is necessary to know what drives your team. Maslow spoke of five needs and the fact that lower ones need to be addressed before moving to higher ones.

We take each one of them, in turn, in the ascending order of needs.



1. PHYSIOLOGICAL NEEDS

According to Maslow, physiological needs are basic needs for human survival. Money is the medium to meet those needs.

a. Salary & Benefits: What constitutes today's 'needs' for survival are different from what they were when Maslow propounded his theory.

"To a man with an empty stomach, food is God;" said Mohandas Gandhi. While that is still true, world poverty is no longer at the level at which it was when the Mahatma strode the world like a colossus.

Financial independence is one of the primary reasons why a person pursues employment. To attach value to money does not mean being materialistic. Whether we like it or not, for today's generation, financial compensation is the most important criteria. You, therefore, need to compensate the team members reasonably well, in line with comparable firms.

As they climb up the ladder, these members expect the pay to be commensurate with the effort, time, and strain that work demands. They also expect transparency about processes and criteria that determine their financial growth in the organization.

b. Comfortable work environment: Access to clean restrooms, requisite breaks, 5-day work life, good cafeteria, suitable leave structure, plus a reasonable HR policy are a few of the critical requirements. Breaks would of-course depend on person to person and should hence be left to the individual to decide.

The physiological needs are 'hygiene' factors, not motivators. It means that while their presence may not act as a stimulator, their absence can be a de-motivator. The term "hygiene" is used

in the sense that these are maintenance factors. In contrast, motivators are intrinsic to a job and give real satisfaction.

2. SAFETY NEEDS

Once the physiological needs are met, next comes the safety needs. In an audit office, it is about safety regarding the job, health, and workplace.

a. Job security: The days of job security are gone. Even in government jobs, one can be sacked. There are no jobs for life. That said, employees must not be made to be on the lookout for job safety continually. You cannot run a race, by frequently looking backward. While complacency and unprofessionalism must not be tolerated, a hire-and-fire culture does not yield results in the long run. Good firms take time to assess and recruit employees; and turn to fire them only as a last resort. If at all a person has to go, there must be an exit interview with a senior director in the organization where the party is heard out, the reasons for the pink slip explained, and the partying is pleasant without burning of bridges. Under no circumstance should HR alone handle this job.

b. High-pressure environment: While challenges are enthralling, care must be taken to not induce too much of stress on employees. This has long-term consequences. Understaffing is not a wise strategy. The modern workforce looks out for mental health as much as physical health and family time. Top-heavy firms must periodically assess the appropriateness of such a structure, and see that there is adequate bench-strength.

c. Workplace safety: Since a lot of women work in organizations, it is essential that adequate checks be in place when they work late hours, and facility is provided to all employees to be dropped home. This is truer in an era where people commute long distances, and traffic snarls are the rule rather than the exception.

All these safety needs are hygiene factors.

3. BELONGING NEEDS

Third on the ladder is to have a 'sense of belonging.' This is what Maslow had famously called social needs. People like to be liked. Team members must take pride in the fact that they work for your firm. They must come to work every Monday with a smile and must feel it's worth working with you.

Feedback, staff training, an open-door culture, mentoring, and team outing can bring in the sense of bonding.

a. Feedback: Reviews must be continuous. A two-way feedback system, preferably after every assignment, must be implemented. The immediate supervisor as also the functional head should give such feedback. These must not become a rote procedure; instead, they must be acted upon expeditiously.

b. Staff Training: In a world where knowledge is increasing at break-neck speed, if you do not update yourself you will rapidly become a museum piece. Training has to be continuous, and not an off-season affair. Firms can also take up the cost of studies and certifications, subject to the candidate passing the exam.

c. Employee-focused, open-door culture: All firms, especially medium-sized ones, must ensure that their workplace does not reek of office politics, lest it becomes an unpleasant environment. Directors and senior audit managers must be approachable and adopt an open door style of management. Partners must also be accessible on an emergency basis. When a team member wants to deal the partner directly, the partner must do so and not let an executive assistant take his role.

These three are hygiene factors, and the next two that come up are motivating factors.

d. Mentoring: A proper system of mentoring must always be in place for everyone. This is the best way to ensure a smooth transition in roles. Try to understand employees' areas of interest and nurture them appropriately. Assign more work on such areas of interest and put them on to bosses who share the enthusiasm.

e. Team outings and fun: All work and no play makes an employee dull. While different people have a different perspective of what constitutes fun and relaxation, firms must engage in activities to foster team bonding and a better understanding of colleagues. Do not make them obligatory though!

4. ESTEEM NEEDS

People want to have a sense of self-esteem. A large measure of that comes from working with branded firms, challenging work, and flexibility. How lovely it sounds when you say you are a part of a well-known firm. How beautiful it is if you can boast of doing offbeat work and claim to have flexibility in doing things. Each of these is a motivating factor.

a. Brand: Employees seek to work for established audit firms with niche branding in the market. Multi-city firms and multinational brands are usually preferred. So firms must continuously try to expand.

b. Challenging work: Horizontal and vertical exposure make work-life more interesting. Using technology aids such as statistical tools, audit software, internal social network, data analytics, cloud applications, continuous auditing aids and

collaborative team tools not only keeps employees engrossed, but also improves efficiency and effectiveness. Outsourcing or engaging non-accounting folks for administrative and rote work such as printing, xeroxing, formatting, proofreading, etc., can be used.

c. Flexibility and Freedom: There is now an increasing expectation of flexible work options. 'Work from home, flexible time, remote working, and benefits like "unlimited paid time off" are international buzzwords. Firms are increasingly using technology and cloud-based services for this purpose. So long as productivity is ensured and clients are made happy, time-off, holidays, family time and personal space must be respected. Of course, some of these can be offered only at certain levels and not at every conceivable level, lest the organization becomes amoebic and unstructured. Also, space for different working styles must be given. While work processes and expectations must be clearly communicated to employees, the team members must be given the space to explore and discover their paths. If each partner demands employees to learn up to their way of doing things, it could become frustrating. Bosses must not micro-manage. 'Review' is checking what they have and understanding why they have done it. Space for different working styles must be given. Guidance must be provided when needed, and reviews must be undertaken in detail.

5. SELF-ACTUALIZATION NEEDS

How do you help your members achieve self-actualization? How do you ensure that they do "what every man is best capable of doing?" One way is to allow them the laxity and space to pursue their personal interest that is not exactly connected with the interest of the firm. : if he is a painter let him use some office time when he is stressed, to paint. : if he is an ardent storyteller allow and encourage him to become an author.

On its part, a firm achieves self-actualization when it can get an ordinary team to do extraordinary work. If you hope to run audit firms in the 2020s remember, talent is not only going to be scarce but also expensive. You will have to work with what you have, convert them to world-beaters and lead an exciting outfit. Are you asking, "what if they learn in my organization and then leave?" Well, "what if they do not learn and stay back?"

And finally, trust your team.

About the author:

Pattabhi Ram is a CA by qualification, a writer by passion, and a teacher by accident. His maiden novel, Ticking Times, is set in the backdrop of the audit profession.

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High Court's Jurisdiction under Article 226

(Contd. from page 16)

In sum, even though the general rule is that the High Court will not exercise its writ jurisdiction in cases where there is an efficacious alternate remedy, the jurisdiction conferred under Article 226 is entirely discretionary and it is a rule of policy and convenience. As discussed earlier, there are certain well-settled broad principles to be applied by the High Courts in order to decide whether to exercise their jurisdiction or not. Needless to state, what exactly constitutes fit cases for the exercise of the High Courts' writ jurisdiction is highly subjective. There can, of course, never be a straightjacket formula to decide when Courts have to exercise their jurisdiction under Article 226. After all, the Constitution itself does not impose any limitations on the High Courts' powers under Article 226 (other than territorial restrictions) and, therefore, the powers are indeed vast and limitless.

That said, it is a fact that High Courts across the country have to decide on a daily basis whether to entertain or dismiss petitions filed under Article 226. In Karnataka, for instance, there are approximately over 60,000 writ petitions filed every year before the High Court. It is virtually impossible for the High Court to bear such a burden, which would be in addition to the High Court's appellate jurisdiction. Unfortunately, litigants have often misused Article 226 as a quick panacea for resolution of all their legal disputes. As mentioned earlier, Article 226 was inserted into the Constitution with the intention of providing a quick and efficacious remedy in cases where substantial injustice has been caused by the action/ inaction of statutory and governmental authorities. That power ought not to be abused by litigants in run-of-the-mill cases where statutes provide an efficacious alternate remedy. In my opinion, if the High Courts keep the original intention behind the insertion of Article 226 in mind, a number of frivolous petitions would be ousted at the initial stage itself, while providing relief in genuine cases for which Article 226 was originally intended.

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Analysis of the GST Amendment Act, 2018 – PART- I

CA Raghavendra C R & CA Bhanu Murthy J S

1. Amendment to Section 2 -Definitions:

   1.1. Adjudicating authority [Section2(4)]: Amendment to replace CBIC in the place of CBEC and also to exclude authority for anti profiteering referred to in Section 171(2). Orders of the authority for anti profiteering would not be considered to be appealable orders before appellate authority.

   1.2. Business [Section 2(17)]: Business is defined to include various transactions. Among other things, certain transactions relating to race clubs are covered under the definition of business. The present amendment is to the sub- clause relating to activities of a race club. In terms of the amendment, activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club, is defined as business. Earlier, only the services by way of totalisator and license to book maker in such club was covered.

   1.3. Business Vertical [Section 2(18)]: Definition of business vertical is omitted. Section 25(2) which provided for an option to an assessee to go for separate registration to business vertical is also being amended to provide that separate registration could be permissible for each place of business within a state.

   With this amendment, an assessee could obtain separate registration for each place of business within a State also.

   1.4. Cost Accountant [Section 2(35)]: The definition referred to Section 2(1)(c) of Cost and Works Accountant Act, 1959. However, the said section defines the term 'Council'. Cost Accountant is defined in Section 2(1)(b). amendment is to rectify the said anomaly. In terms of Section 2(1)(b) "cost accountant" means a person who is a member of the Institute.

   1.5. Local Authority [section 2(69)]: amendment to treat Development Board constituted under article 371J of the Constitution for development of Hyderabad -Karnataka region as local authority.

   1.6. Services [Section 2(102)]: To amend the definition o of service so as to include the activity of facilitating or arranging transactions in securities as services. This would lead to levy of GST on the charges levied by the agencies which facilitate the issue, sale or purchase etc., of securities.

2. **Amendment to the definition of supply [Section 7] retrospective from 1.7.2017:** Section 7 which defines scope of supply has been amended to make it clear that the entries covered in Schedule II to the CGST Act, 2017 are merely for classification purposes and would not by itself constitute supply on stand alone basis.

   2.1. The sub-section (1A) makes it clear that where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

   2.2. Consequently, amendments also made in the section so as to incorporate the references to sub-section(1A).

   2.3. In terms of section 7(1)(c) the activities listed in Schedule I are termed as supplies even where such activities are not for consideration. Entry (4) of the said schedule provided that import of services by a taxable person from a related person in the course of business or commerce was deemed as service. The said entry has been amended to provide that import of services by 'a person' from related persons etc.

   This seems to cover import of services by a non taxable persons without consideration from a relative etc.

   2.4. In terms of Section 7(2) activities listed in Schedule III are not considered to be supplies for the purpose of levy of GST. This schedule is amended and following entries are added to the said schedule:

   a) Supply of goods from a place in the non taxable territory to another place in the non taxable territory without such goods entering into India.

b) Supply of warehoused goods to any person before clearance for home consumption.

c) High sea sales

3. **Amendment to levy of GST on reverse charge basis on supplies from un registered persons**:

3.1. Section 9(4) prior to its amendment provided for levy of GST on supplies to a registered person from an unregistered person.

3.2. With the amendment the levy on reverse charge is restricted on certain specified class of supplies as well as on specified class of recipients as may be notified on the recommendations of the Council .

3.3. This would ensure implementation of reverse charge scheme in a diluted form.

4. **Composition scheme [Section 10]**

4.1. Amendment to Section 10 which deals with composition scheme so as to raise the maximum limit of turnover for becoming eligible to this scheme to Rs. 1.50 crores. Further, the amendment makes it clear that the composition scheme is applicable only for the tax which is payable under Section 9(1), i.e. as a supplier of goods or services or both and the said scheme is not applicable to the taxes payable under other sub-sections of section 9.

4.2. Further, amendment also allows the composition taxpayers to supply services (other than restaurant services), for value not exceeding 10% of turnover in the preceding financial year, or Rs. 5 Lakhs, whichever is higher.

5. **Time of supply of goods and services [Sections 12 & 13]:**

5.1. One of the events for computation of time of supply under section 12 and section 13 referred to date of issue of invoice in terms of Section 31(1) and Section 31(2) respectively. Earlier there was no reference to other sub-sections under section 31.

5.2. The present amendment to the provisions of Section 12 & 13 is towards giving reference to entire section 31 (not restricting to sub section (1) or (2)). Thereby, the invoices issued under sub-section(4) /(5) continuous supply of goods or services, invoicing for goods sent on approval basis (section 31(7)) or special provisions relating to invoices as detailed in section 31(3).

6. **Input tax credit [Sections 16-17]**

6.1. Facility of deemed receipt, is extended to the services also. Where the services are provided to any person on direction of the recipient, then the same is deemed to be have been received by the recipient.

6.2. With introduction of new set of provisions under section 43A to facilitate filing of returns, the input tax credit is made subject to filing of the return under said new provision.

6.3. Value of exempt supply for the purpose of reversal of credit shall not include the value of supplies listed in schedule III except the activity of sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. This would ensure that items listed in Schedule III, with the above exceptions, is not considered as exempt supplies for the purpose of reversal of credit.

6.4. Input credit restrictions: The following would not be eligible for input credit:

a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver). In other words where the seating capacity is more than 13, the same would qualify as input.

b) vessels and aircraft.

c) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to above.

However, the credit on the above would be eligible in the following circumstances:

i) where motor vehicle, vessel or aircraft is used for making any of the following taxable supplies:

A. Further supply of such motor vehicles /vessel/ aircraft;

B. Transportation of passengers;

C. Imparting training on driving / navigation/ flying such motor vehicles / vessel/ aircraft;

D. Vessel or aircraft used for transportation of goods

ii) Insurance, servicing, repair and maintenance in respect of the above vehicles/ aircraft or vessel would be eligible, where

A. where the motor vehicles, vessels or aircraft are used for provision of supply as referred to above.

B. where such services are received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

d) the following supply of goods or services or both:

I. **Food, insurance and leasing etc.**

(i) food and beverages, outdoor catering,

(ii) beauty treatment, health services, cosmetic and plastic surgery,

(iii) leasing, renting or hiring of motor vehicles, vessels or aircraft referred above in the paragraphs (a) and (b) above except such vehicles etc., are used for the purposes specified therein.

(iv) Life insurance and health insurance.

However, input tax credit in respect of above referred goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

II. Membership of a club, health and fitness center;

III. Travel benefits extended to employees on vacation such as leave or home travel concession:

However, it shall be noted that the input tax credit in respect of such goods or services or both referred to above shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.

7. **Manner of Distribution of credit (ISD) [Section 20]**

7.1. Earlier, the value of turnover for the purpose of Section 20, in case of an assessee engaged in supply of both taxable and non-taxable goods, excludes value of duty of excise or the sales tax or VAT levied by states. However, the sales tax (CST) levied by Central Government was missed out. The present amendment is to cover the said CST also exclusion.

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Significant Beneficial Ownership disclosure and push for demat in unlisted firms - Attempt to identify true owners and lift corporate veil

(Contd. from page 14)

are among other advantages of dematerialisation. The rules notified for dematerialisation of shares currently applies to public unlisted companies and broadly provides that (a) Every unlisted public company is required to issue securities in dematerialised form and to facilitate dematerialisation of all its existing securities (b) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer is required to ensure that before making such offer, the entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act 1996 (c) Every unlisted public company is required to facilitate dematerialisation of all its existing securities by making necessary application to a depository and shall secure International security Identification Number (ISIN) for each type of security and to inform all its existing security holders about such facility, and (d) Audit report provided under Regulation 55A of the Securities and Exchange Board of India (Depositories and participants) Regulations, 1996 is required to be submitted by the unlisted public company on half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated [audited by a Chartered Accountant or a practicing Company Secretary for the purposes of reconciliation of the total issued capital, capital held by depositories in dematerialized form, details of changes in share capital during the period of audit etc]. The rules stay silent on the time period for completion of dematerialisation process for the existing securities of unlisted public firms. Sooner than later, the rules for compulsory dematerialisation of securities would be extended to private companies as well.

Interesting times lie ahead for corporate India!

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Tips to optimise exam preparation for CA Students

CA Chinmaya Hegde

Population of India is approximately 132 crores (and growing) whereas Population of Chartered Accountants is around 2.7 Lakhs which accounts for 0.02%. So as a student of CA course you are set to become something special. There is a saying "If you want to shine like a Sun, first burn like a sun". You can't expect different output by giving same input. If you want extraordinary result, then you should be ready for extraordinary inputs. Keeping this overall objective in mind below are the key points that can be applied for increasing chances of success in a CA examination.

Does luck matter in CA?

Yes. It does. After all what is "Luck". It's a situation where opportunity meets preparation. If you are not prepared, however luckier you may be, success will never come.

Increase your luck through increased preparation than waiting for something to happen.

Is Passing subject different from passing an exam?

Yes, It is

It is because of aggregates. Imagine in a group you have scored 40% in all 4 subjects. Can you confidently say you have passed? No, you can't. You might have cleared the subject but not the exam. The solution to this "aggregate" problem is trying to score 60+ in a subject or two which will happen only when you provide extra attention to a subject.

Pick a subject of your choice where you can put extra effort and solve the issue of aggregate

Is time table approach required for CA preparations?

Yes. It Does. But don't create too detailed time table where revising time table itself needs one more time table. Try to create overall time table such as 15 days per subject or 2 subjects to be completed in 25 days etc, so that your mind can easily remember the time table at any given point in time.

Have a plan for the goal, but don't make planning itself the goal.

Reading single subject is better or multiple subjects?

I believe multiple subjects provide better understanding than concentrating on single subject. For example, you enjoy the taste of food when it has varieties such as sweet, salt, spice etc rather with same kind. Similarly, the subject. At the same time don't read too many subjects in a day where you don't remember what you have read few minutes back. Try to have one theory and one practical subject in a day so that you don't get bored with reading and not tired with writing.

Follow portfolio approach (combination of theory and practical) to avoid monotony.

How many Revision required before exam?

Answer to this question is subjective. It depends on the subject. For example, if you are good at accounts may be one revision is sufficient and if you are not good at remembering stuff theory subjects may need more revision. But yes at least one revision is required.

If your vision is to become CA, have lot of revisions

Is examination practice required during preparations?

A definite yes. Write mock exams at institute/academy/ home even if you are not fully prepared. This is because only when you write you convert thoughts into writing. After all, examiner can only read your writings and not your mind☺. Also, when you prepare you know a concept is from that topic or chapter. But in question paper only question will be there and you have to identify the topic. This requires lot of writing practice.

If you don't have enough examination practice then institute will make you practice in many exams.

How to cover 100% syllabus of all subjects?

Even if you want to leave some question in exam, you should know which topic the question is from. So don't involve in selective study. At the same time, It's not possible for any human to be perfect in all subjects of CA examination being a professional course. Confusing? Wait. Follow this approach called as "Water-Down" Approach. You cover all the chapters, but vary the level of depth depending on your comfort with the subject and importance from exam point of view.

For effective syllabus coverage follow the approach of "Know everything in something and something in everything"

How many books to refer?

Having more books doesn't mean person is intelligent or knowledgeable. If that's the case a librarian would have been the most knowledgeable person in the world. So keep one book per subject for reference. Don't fall for temptations from colourful books available. I strongly recommend ICAI books are the best for examination conditions.

Create summary charts so that revision before the exam day becomes easier.

After all its just an exam. Nothing beyond that. Give your best of efforts. Hope for the best results.

"Success is Not Permanent & Failure is Not Final!. Never Stop Working after Success & Never Stop Trying after Failure"

About the Author: CA Chinmaya Hegde is a Rank holder at all three levels of CA Examinations.

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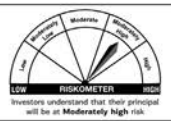
PROTECTING INVESTING FINANCING ADVISING
A joint venture with Sun Life

Evan Esar: "Some taxpayers close their eyes, some stop their ears, some shut their mouths, but all pay through the nose."

Scheme *	1 Year	2 year	3 year	5 year	7 year	10 year	12 year	15 year	Inception
Aditya Birla Sun Life Tax Relief 96	19.71	18.37	16.4	25.89	18.93	14.95	14.54	19.38	25.42

* as on 3rd sept. 2018

Scheme:	This product is suitable for investors who are seeking:
Aditya Birla Sun Life Tax Relief '96 (An open ended equity linked saving scheme with a statutory lock-in of 3 years and tax benefit)	• long term capital growth • investments in equity and equity related securities, with tax benefit under section 80C, subject to eligibility Investors should consult their financial advisors, if in doubt about whether the product is suitable for them.



Investors understand that their principal will be at **Moderately high** risk

Mutual Fund investments are subject to market risks, read all scheme related documents carefully.

Advt.

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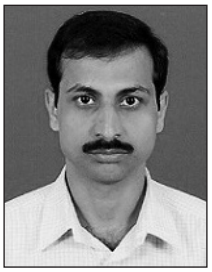

CA Shivaprasada V
Member

CA Lakshman
Member

JOINT REPRESENTATION ON REVISED TAX AUDIT REPORT IN FORM 3CD FOR AY 2018-19 – RECOMMENDATIONS SOLICITING IMMEDIATE INTERVENTION

21st August 2018

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

Respected Sir,

Sub: Revised Tax Audit Report in Form 3CD for AY 2018-19 – recommendations soliciting immediate intervention

This communication is with reference to Notification No. 33/2018 dated 20th July 2018 wherein several amendments to the Tax Audit Report in Form 3CD have been notified.

At the outset, an important issue that is required to be addressed is the need for distinction between a "report" and a "certificate"; and in the above context, also the distinction between an audit report to be issued by the CA fraternity, an investigation report, as also a "certificate". Conceptually, there is an unfortunate mix up of these three very different aspects while enacting amendments to Form 3CD from time to time. While issuing an audit report, the auditor verifies the accounts and the particulars forming part of the report so as to opine that the details provided therein are true and correct to the best of his knowledge. On the other hand, an investigation report would entail an in-depth enquiry into the details with one of the objectives being discovery of issues that may not have been reported or which are not easily ascertainable. Since Form 3CD (an annexure to Form 3CA) is merely verified by the tax auditor, it cannot be continually amended so as to stretch the role of the tax audit professional to that of an investigator who passes value judgments on matters like impermissible avoidance arrangements and income chargeable to tax under section 56(2)(x) of the Income-tax Act, 1961 ('ITA').

We understand that representations on this front have also been made by various other organisations and therefore, to avoid duplication and with due respect for your valuable time, we have only covered the key issues that require immediate action.

1. **Timeliness of the Notification/ amendments**

   Before providing suggestions regarding the amendments notified, we would like to highlight that the notification has been issued on 20th July 2018 (almost 4 months into the Assessment Year) introducing a host of major amendments and reporting disclosures for AY 2018-19. Your Honour would appreciate that the time available to implement the revised Form 3CD is quite less so to enable the tax audit professionals to perform their obligations in a timely and effective manner. Even the Delhi High Court, in the case of Avinash Gupta vs Union of India ([2015] 378 ITR 137), had directed the CBDT/ Government to ensure that the forms prescribed for the audit report are made available on 1st April of the assessment year.

   In view of the above, it is suggested that the amendments introduced by Notification No. 33/2018 (subject to the suggestions provided in the ensuing paragraphs) should be made applicable to AY 2019-20 instead of AY 2018-19.

2. **Broadening the role and responsibility of tax audit professionals**

   As explained in the preamble, the role of a tax audit professional is to verify and certify the verifiable (numerical) particulars presented in Form 3CD and thereby, indirectly assist the revenue authorities in determining the taxable income of the tax payer. However, it would not be appropriate for tax audit professionals to pass value judgments on matters which is the prerogative of the revenue authorities.

   It is suggested that the revised form be appropriately modified in consultation with the stakeholders.

Further to the above-mentioned high-level recommendations, suggestions regarding specific amendments have been covered below.

3. Insertion of Clause 30C – regarding "impermissible avoidance arrangement" ('IAA') referred to in section 96 of the ITA

Clause 30C requires determination of whether the tax payer has entered into an IAA and reporting of the nature of and tax benefit arising from such arrangement.

An IAA would attract General Anti-Avoidance Rules where such arrangements are purposefully designed with the intention of tax avoidance. Given the limited scope of work in the purview of tax audit professionals, it would not be possible for them to certify the existence of any such arrangement without a detailed investigation, and would result in unreasonable burden on the tax audit professionals. Moreover, it would be a subjective judgment and cannot be determined by a tax audit professional. In fact, considering that even an Assessing Officer would be required to approach the Approving Panel in order to characterise an arrangement as impermissible avoidance agreement, it would be practically impossible for a tax audit professional to comment on the same. Here, it may not be out of place to mention that an Approving Panel would be headed by a High Court judge. This being the case, it would be appreciated that a tax auditor would be expected to match the expertise of a judge in the context of passing a judgement on a highly subjective matter.

With respect to disclosure relating to provisions of GAAR, there are no objective criteria laid down in law to determine whether a transaction would be subject to GAAR and thus, there is lot of subjectivity involved therein. Further, the tax auditor not only has to determine the tax benefit arising to the tax payer but also has to determine the tax benefit arising to all parties involved in the arrangement. It is very likely that the tax auditor would not have any professional connection with the other parties and the said parties could even be located in other countries. Therefore, in such cases, it would not be possible for the tax auditor to report these details.

We are happy to note that the CBDT has already deferred this clause upto 31st March, 2019. However, mere deferment will not ease the problems faced by tax auditors. It only serves as a temporary respite.

It is suggested that Clause 30C be appropriately modified so as to require the tax auditor to only report objective information that would be helpful for the revenue authorities in determining whether a particular arrangement falls within the purview of section 96.

4. Insertion of Clause 29A and Clause 29B – reporting on income chargeable under section 56(2)(ix) and section 56(2)(x) of the ITA

Clause 29A requires the auditor to certify whether any amount received is in the nature of income from other sources under section 56(2)(ix) or section 56(2)(x) of the ITA. In terms of section 56(2)(ix), which refers to forfeited sum of money, it would only be possible for the tax auditor to report the transaction in the year of forfeiture (and not the year of receipt) and even that would not be possible without using investigative techniques which would entail analysing every long-term outstanding.

In case of section 56(2)(x) of the ITA, given that the provisions are already ambiguous and subject to a host of varied views and interpretations, requiring a tax audit professional to determine whether a particular receipt is income chargeable under section 56(2)(x) is akin to expecting the tax auditor to pass value judgment on such transactions.

It is suggested that these clauses be modified so as to require only objective reporting of transactions.

5. Insertion of Clause 30A and Clause 43 – reporting required in cases where the time limit expires *after* the time limit for issuing tax audit report

Clause 30A requires reporting regarding a primary adjustment that may have been made in the previous year (i.e. FY 2017-18) in case of a tax payer. One of the reporting requirements is to confirm whether any excess money has been repatriated to India within the prescribed time limit i.e. 90 days from the end of filing the tax return (where the adjustment is made *suo motu* by the tax payer or as per the APA) or 90 days from date of assessment or appellate order (if accepted by the tax payer). In no case would the time limit of 90 days have expired for an adjustment made in FY 2017-18 before the time limit for issuing tax audit report. At best, the details can be provided regarding an adjustment made in FY 2016-17.

Similarly, Clause 43 requires reporting regarding the country-by-country report to be furnished under section 286 of the ITA in respect of international groups. One of the requirements is to confirm whether the said report has been furnished and the date of doing so. However, the time limit for furnishing the said report as per section 286(2) is 12 months from the end of the reporting accounting year. Thus, for reporting of accounting year 2017-18, the time limit would expire only on 31 March 2019, which is after the due date for furnishing the tax audit report.

It is suggested that the clauses should be modified to correctly reflect the year in which the reporting is to be made.

6. Modification of Clause 34(b) – details of statement of TDS/ TCS

Prior to the amendment, Clause 34(b) only required reporting of whether a statement of TDS/ TCS has been furnished within the prescribed time limit. However, the modified form requires a very detailed reporting of all the statements of TDS/TCS, whether or not filed within the prescribed time limits. Moreover, it also requires a list of details/ transactions that may not have been reported in the statements filed. Such a requirement is impossible to be complied with by a tax auditor in cases where large quantum of transactions is involved. In any case, details of the transactions are provided in the TDS returns filed by the tax payers and therefore, repetition of such information is not warranted.

It is suggested that the amendment made to Clause 34(b) requirement be withdrawn and the earlier requirement be reinstated.

7. Insertion of Clause 44 – GST reconciliation of total expenditure

Clause 44 is a very detailed reporting requirement for break-up of total expenditure of entities, registered or not under the GST Act. Your Honour would appreciate that a tax auditor is required to conduct the tax audit based on the income-tax provisions in view of the auditing and taxation aspects. Reporting on matters pertaining to the GST law, which itself is in an evolving stage, would require specialised knowledge on the law. Every tax audit professional may not be in a position to certify such details given the limited time as well as expertise of the GST law.

In any case, GST Audit is provided under the law which will get underway soon but is expected to be completed only after Dec'18. In the interim, it is not prudent to expect the Tax Auditor to conduct audit of GST related figures.

Moreover, there are other discrepancies regarding the reporting period (since GST was introduced only in July 2017). For example, whether total expenditure is to be reported or an item-wise break up is required and whether capital expenditure is also to be included, etc.

We are happy to note that the CBDT has already deferred this clause upto 31st March, 2019. However, mere deferment will not ease the problems faced by tax auditors. It only serves as a temporary respite.

In view of the above, it is suggested that the reporting required under Clause 44 should form part of the GST audit and therefore, the said Clause should be deleted.

We humbly request your Honour to resolve the above issues at the earliest in order to avoid unnecessary hardship being caused to the taxpayers and the tax audit professionals.

Thanking you,

Yours sincerely,

Raj Nair
President,
IMC Chamber of Commerce and Industry

Sunil Gabhawalla
President,
Bombay Chartered Accountants' Society

CA. Chintan M. Doshi
President,
Chartered Accountants Association Ahmedabad

Rasesh Shah
President,
Chartered Accountants Association Surat

Raghavendra Shetty
President
Karnataka State Chartered Accountants' Association

Gyanesh Verma
President
Lucknow Chartered Accountants' Society

REPRESENTATION ON HARDSHIPS FACED BY FINANCIAL STATEMENTS' AUDITORS IN COMPLYING WITH CERTAIN TERMS AND CONDITIONS OF REVISED RFP - REG.

Date: 20th August 2018

To,

The Director,
Directorate of Municipal Administration
VV Towers, Dr. Ambedkar Road, Bangalore

Hon'ble Sir,

SUBJECT: REPRESENTATION ON HARDSHIPS FACED BY FINANCIAL STATEMENTS' AUDITORS IN COMPLYING WITH CERTAIN TERMS AND CONDITIONS OF REVISED RFP - REG.

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.

At the outset, we would like to appreciate and sincerely thank you for having accepted most of the representation points regarding the harsh conditions laid down in RFP and support extended to us by revising the same. However, a few grey areas persist within the ambit of the conditions to be followed by auditors and we herein wish to seek your good direction to relax the few incongruences and hardships as outlined below-

1. **The allotment of audit assignments made on 6th August 2018 and the audit to be concluded within 10th Oct 2018, failing which penalty of 2% for every week of delay is stipulated:**

   Below pointers highlight the issues concerned on why it is very short span of time and needs extension:

   a) This period also coincides with the due date for filing of tax audit reports and income tax returns of business assessees which also involves tedious reporting pursuant to introduction of GST and related compliances. The Chartered Accountants across the board are engaged in these compliances all over the country and Karnataka having a fair share of businesses under audit is to be attended by the practising lot of Chartered Accountants. These hamper the allocation of resources for judicious conducting of audit on the part of the audit firm and therefore the quality of audit may suffer.

   b) Further, Municipal Elections have been notified and pursuant to this, the officials may not be present due to their election duties and therefore may not able to provide the relevant papers and audit would be delayed for lack of their preparedness and submission of the documents and completed accounts. Hence the audit team will be left with very little time and this would be a major constraint in timely completion of audits.

2. **As per Circular Reference 20246/DMA/18/KMDS/2017-18 dt 6.08.2018, "Photographs of the team in the ULB and the identifiable ULB has to be captured for each day of visit and provided as evidence":**

   In this regard we wish to highlight that the CA firms who were allotted audits were streamlined post elaborate filtering process. A point of mention here is that all the professional firms are of good standing with several years of professional experience and are governed by strict Code of Ethics, Rules and Regulations of the Institute of Chartered Accountants of India. As professionals, we always believe in delivering quality service and never weigh our service offerings with reference to monetary and other criteria like businesses. To say the least, this measure is very trivial, and an unfair treatment meted out to professionals. Positioning these measures does not auger well with the professional standing of the Chartered Accountants and it would be advisable to review the quality based on the output delivered vis-à-vis the timelines allocated rather than such measures.

This write-up is on the back of representation received from our practitioners who are allotted these audits after the elaborate screening process.

We would be highly thankful if you could extend the due date suitably to provide the audit teams with sufficient time to deliver quality audit in the wake of the Municipal Elections and preoccupation of the officials and audit teams in the Income Tax and Statutory Audit peak season as well as relax the photograph kind of obligations.

Thanking you,

Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra Shetty	CA. Kumar Jigajinni	CA. Vijay Sagar Shenoy
President	Secretary	Chairman, Representation Committee

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