KSCAA

Karnataka State Chartered Accountants Association ®

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

31st KSCAA Annual Conference 2019

Ekata

Together we can

15th & 16th March 2019
Friday & Saturday

Bunts Sangha Auditorium
Attiguppe Metro Station, Chord Road,
Vijayanagar, Bengaluru - 560 040

Together We Serve
Together We Grow

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From the President

Dear Professional friends,

I am happy to invite you to our 31st KSCAA Annual Conference, to be held on 15th and 16th of March 2019. The theme for the Annual Conference is 'Ekata – together we can'. KSCAA strongly believes "Growth is never by mere chance; it is the result of forces working together". In this earnest, 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. This can be achieved only with unity, belongingness, empathy, sharing of knowledge, collaboration, networking for win-win and this KSCAA Annual Conference stands and intends to ignite participants on the path.

I congratulate our incoming ICAI President and Vice president, CA. Prafulla Chhajed and CA. Atul Gupta for being elected for the term 2019-20. I'm sure, in the times of dynamic challenges the able leadership will lead the ICAI to new heights.

News Roundup

ICAI has made it mandatory to issue certificates and reports with UDIN. UDIN would plug in the loop of fake certificates issued by non-CA's, misrepresenting and misleading the stake holders as CA. This was a month with many changes in GST, method of utilising the ITC is tweaked by allowing the utilization of SGST for IGST liability unless credit of is CGST is totally utilized. Government has now allowed multiple registration within the same state for a person irrespective of business vertical. New provision has been inserted so as to allow ITC on activities mentioned in Schedule III (other than sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building) by removing it from the ambit of exempt supplies. Ministry of Corporate Affairs issued a recent notification dated 22nd January, 2019 in continuation of notification issued by Ministry of Micro, Small and Medium Enterprises dated 2nd November, 2018 for filing of half yearly return MSME I by specified companies whose payment cycle, while dealing with MSMEs, exceeds 45 days from the date of acceptance or the date of deemed acceptance. The initial reporting of all outstanding dues is to be done within 30 days from the date of publication of this notification i.e., by 21st February, 2019. For the purpose of initial reporting, specified companies are required to report the dues outstanding to MSMEs for a period exceeding 45 days as on the date of this Notification as on 22nd January, 2019.

With elections around the corner, the interim budget throws some of the populist schemes to the citizens, more specifically to the middle-class earning citizens. The Interim budget 2019 proposes to exempt Individual tax payers upto income of Rs. 5 lakh by a tax rebate. Presenting its budget, Interim finance minister Mr. Piyush Goyal said "India's growth story is poised to become 5 trillion economy, we aspire to become 10 trillion economy". With this number, it benchmarks India as one of the largest growing economy second to China and the challenges in the growth is also magnanimous and dynamic as it can be. Fiscal deficit has been pegged down to 3.4% and CAD (Current account deficit) likely to be 2.5% of the GDP and inflation was 2.1% in the month of Dec 2018 and is a job 'commendable'.

The direct tax collection has raised to whooping Rs. 12 lakh crores from its halfway mark of Rs. 6.38 Lakh crores in 2013-14. Income tax return have practically turned electronic from its manual return with more than 99% opting to file through e-filing and in assurance to ease of doing business, around 99.54% of the return have been accepted with any call for scrutiny. Further, the government laid down to convert almost all the scrutiny and verification to electronic by an anonymized tax system without intervention of any tax officials. GST collection for the month of Jan 2019 crossed more than one lakh crore.

Representations

KSCAA has made representation to the Hon'ble Minister of Urban Development & Housing, Mr. U. T. Khader, impressing the Urban Area Development Authorities to adopt the Double Entry/ Accrual System of Accounting; Tax Audit under Income Tax Act along with filing of Income Tax returns and applicability of GST Audit. We have also showcased the benefit and the regulatory mandate u/s 68C (1) of the Karnataka Town and Country Planning Act, 1961 in clear terms to the authorities and are awaiting a favorable outcome.

I personally appeal to the members to bring opportunities alike the one above to KSCAA, which we as an association can pursue the matter for favorable outcome and benefit our fraternity.

Upcoming Events and programs

We are organizing workshop on the topic 'Practical approach – NCLT procedures' on Saturday 2nd March 2019 at VVN Trust, Basavangudi, Bengaluru. We are also organizing workshop on the topic 'RERA' on Wednesday 20th February 2019 at Belagavi.

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

For registrations, please visit www.kscaa.com.

As Vincent Van Gogh said "Great things are done by a series of small things brought together", we at KSCAA are making an attempt to bring along those small steps with representation and our conference is also chosen on the concept of 'Ekata - together we can', signifying that our opportunities are directly proportional to the collaboration and cooperation we extend to each other in this journey of fraternity.

Sincerely,

CA. Raghavendra Shetty
President

Together We Serve
Together We Grow

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CONTENTS

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Karnataka State Chartered Accountants Association ®

organizes

A Practical Approach - NCLT Procedure

By **Advocate Saji P John**

On **Saturday, 2nd March 2019** I Time : **5 pm to 7.30 pm**

Venue : **Vasavi Vidyanikethan Trust (VVN)**
No.3, Vani Vilas Road, V.V. Puram,
Basavanagudi, Bengaluru – 560 004

Fee: **Rs.350/-** (Inclusive of GST)

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CA Raghavendra Shetty
President

CA Kumar S Jigajinni
Secretary

KSCAA *jointly with* CREDAI Belagavi

organizes

Seminar on RERA

By **CA Vinay Thyagaraj**

at **Belagavi**

on **Wednesday, 20th February 2019** I Time : **10 am to 2 pm**

Seminar Convener: **CA. Ganesh V Shandage,** Belagavi
Contact: +91 99750 16580

Entry restricted only to life time members of KSCAA from Belagavi.

CA Raghavendra Shetty
President

CA Kumar S Jigajinni
Secretary

Re-opening of Assessment – Income-Tax Act, 1961

CA. S. Krishnaswamy

- Reason to believe income has escaped assessment-live link
- Income chargeable to tax has escaped assessment-defined.
- Recording of reasons and communication
- Filing of return-seeking reasons-objection for re-opening.
- Time limit for re-opening
- Sanction should be obtained.
- Issue of notice u/s 148 and Sec. 143(2) and Time limit.
- In pursuance of an appeal.
- Time limit for completion of assessment.
- Sections 147 to 153 of Income Tax Act 1961.

Income escaping assessment is captured in a slew of sections of the Income tax Act, 1961 that lays down the procedure recognising that the finality of a completed assessment must not be disturbed except in a case where belief of escapement of income exists.

I. • **Formation of belief:**

It was held in the case of **Rajesh Shantilal Shah vs. ITO (2018) 408 ITR 485 (Guj) (HC)** that when the belief was founded on no material whatsoever and too inadequate to form a belief that income chargeable to tax had escaped assessment, the notice for reopening of the assessment is bad in law.

• **Live link:**

In the case of **M/s. AMSA India P. Ltd. v. CIT (2017) 393 ITR 157/ 82 taxmann.com 29 the Delhi HC** held that the material should have a **live link** with the assessee`s suspected income or non-disclosure of a material fact. In absence of live link the reassessment was held to be bad in law

• **Cogent Evidence:**

The ITAT-Delhi held in the case of **Jagat Singh vs. ACIT (2018) 68 ITR (Trib) 498** that where there is not cogent material or evidence before AO to initiate reassessment proceedings, the reopening of assessment becomes invalid.

II. There are different situations in which the norms for re-opening can vary.

II.1 In respect of an assessment never made before.

II.2 **Where an assessment made u/s 143(1):**

It was held in the case of **PCIT vs. Laxmiraj Distributors Pvt Ltd [(2019) 410 ITR 495 (Guj)]** that there is a vital distinction between reopening of an assessment where the return of an assessee has been accepted under section 143(1) of the Act without scrutiny and where the scrutiny assessment has been previously framed. In the former case, the Assessing Officer cannot be stated to have formed any opinion and therefore, unlike in the latter case, the **concept of change of opinion would have no applicability.** Despite this **clear distinction**, the common thread that would run through both sets of exercises of reopening of assessment is that the Assessing Officer must have **reason to believe** that income chargeable to tax had escaped assessment. Such reason to believe, as held by Supreme Court in case of **Commissioner of Income Tax vs. Kelvinator of India Ltd. reported in [2010] 320 ITR 561**, would mean a **tangible material** to enable the Assessing Officer to come to a conclusion that there is escapement of income from assessment. The reason must have **live link** with the formation of the belief. At the same time, the Supreme Court in case of **ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd (2007) 291 ITR 500 (SC)** had reiterated that at stage of issuance of notice for reopening of assessment the question is whether there was relevant material on which a reasonable person could have formed the requisite belief and the final outcome of the proceedings is not relevant."

In the case of **PCIT vs. Shadiman Investment Pvt Ltd (Bombay HC),** the submission of the Department that in the view of **ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd (2007) 291 ITR 500 (SC)** the AO can reopen the assessment for "whatever reasons" is preposterous-cannot lead to fishing inquiry. AO has to apply his mind to the information received by him from the DDIT (Investigation) and cannot act on **borrowed satisfaction.**

II.3 Where an assessment made earlier u/s 143(3).

The phrase "**reason to believe**" has led to litigation. The belief must be tangibly established. The Section cannot be invoked for review of assessment already made (change of opinion). Again re-opening cannot be based on borrowed

satisfaction derived from some other agency like an investigation wing where there is no application of mind and independent of judgement.

It was held in the case of **Prashant s. Joshi vs. ITO [2010]324 ITR 154 (Bom)** that proper reasons to believe is must, even if there is no assessment u/s. 143(3) and only reasons recorded by Assessing officer must be considered.

Addition made solely on the basis of AIR information is not sustainable in law as held by ITAT, Bengaluru in the case of **Aarti Raman vs. DCIT in ITA No.245/Bang/2012 decided on 05.10.12.**

- **AO must apply his mind on material before invoking reopening and re-opening based on reason to suspect is invalid:**

The ITAT, Mumbai in the case of **Urvish B. Mehta vs. ITO vide ITA No.2259/MUM/2016 order pronounced on 10th of Oct 2018** held that-

"..Assessing Officer has acted merely on the basis of the statements/affidavits of the thirteen parties without carrying on any further verification or independent enquiry before issuing notice u/s. 148 of the Act and thus has completely failed on the duty casted upon him to independently apply his mind on the material received from the DGIT (Inv), Mumbai."

"..there was complete failure on the part of the Assessing Officer to establish a **live link** between the materials which came to the AO and escaped assessment. The case of the assessee is supported by the decision of the Apex Court in the case of **ITO v. Lakmani Mewal Das** in which the Hon'ble Apex Court has held that the power of Income Tax Officer to reopen assessment though wide, are not plenary and absolute and the words of statute are **"reason to believe" and not "reason to suspect"**. But in this case only the AO has "reason to suspect" and not "reason to believe". We, therefore after taking into account the ratio laid down by the various decisions and facts of the case before us, are inclined to hold that reopening of assessment not initiated validly and is void-ab-initio. Accordingly, we quash the reopening of assessment."

- **Assessing Officer cannot initiate reopening when enquiry was already made-**

It was held in the case of **ACIT vs. M/s. KAD Housing Ltd. [(2019) 69 ITR (Trib) 550 (Delhi)]** that during the course of the original assessment proceedings, the Assessing Officer had made elaborate enquiry to examine the facts and after satisfying himself he accepted the matter as genuine. Hence, there was no failure on the part of the assesse to disclose fully and truly all material facts which were considered **as new tangible material** to validate the reopening of the assessment. Hence, the reopening is bad in law.

- **Mere Change of Opinion; Notice not valid:**

  - It was held in the case of **Giriraj Steel vs. DCIT [(2018) 402 ITR 204 (Guj)]** that a detailed questionnaire had been issued to the assesse along with the notice u/s 142(1) of the Income-tax Act, 1961. The submission of details and explanation furnished by the assesse clearly showed that it had explained that the firm was converted into a company with all assets and liabilities and that the profit earned by the firm was disclosed in the profit and loss account of the company. The AO, upon being convinced by the explanation given by the petitioner, had accepted the return of income as filed by the petitioner during the course of scrutiny assessment. The AO in the assessment order had recorded that after verification and discussion and form the data made available, the total income of the assesse was computed as nil. Evidently therefore, the AO has applied his mind to the fact that the assesse had filed a nil return of income and had accepted it. Under the circumstances, the reason recorded for reopening the assessment reflected a **mere change of opinion** hand hence notice issued was not valid.
  - It was held by Gujarat HC in the case of **Friends of WWB, India vs. DCIT [(2018) 402 ITR 350 (Guj)]** that the AO had raised written queries during the original assessment and answers were given by the assesse to such questions. This included the applicability of the amended Sec.2 (15). The AO in the order of assessment did not, with the aid to such provisions, hold that the activities of the trust are not for charitable purpose. He, thus, accepted the assessee's stand in this regard. Any attempt now to **re-examine this issue would be considered as change of opinion** and clearly impermissible even if it was within the period of four years. The notice of reassessment was not valid.
  - The assessing office cannot make roving enquiries after the assessment is completed and collect information on escapement of income and resort to reopen.
  - It was held in the case of **M/s. Devansh Exports vs. ACIT (ITAT Kolkata) order pronounced on 15th Oct 2018** that-

"..it is a case of the AO seeking to make fishing and roving inquiry without any basis. We have no hesitation in concluding that initiation of reassessment proceedings in the present case was not valid as the mandatory requirement of such 147 has not been satisfied."

- It was held by the Delhi HC in the case of **M/s. FIS Global Business Solutions India Pvt Ltd vs. ACIT vide No.W.P.(C) 12277/2018, C.M. APPL.47539/2018**
- held that the notice given for reopening the assessment based on audit objections is unsustainable. The audit objection merely is an information. Change of opinion based on mere information is not permissible.

III. <u>Objections of assesse for re-opening must be dealt with:</u>

It was held by the Delhi HC in the case of **M/s. SCAN holding P Ltd vs. ACIT [(2018) 402 ITR 290 (Delhi)]** that it was alleged that the notice referred to the compliant made by the former statutory auditor, a chartered accountant. The AO had merely observed and recorded that the **<u>objections raised</u>** by the assesse were untenable and wrong, without elucidating and dealing with the contentions and issues raised in the objection. The AO had not applied his mind to the assertions and contentions raised by the asseessee and the core issue to be examined and considered. The reassessment proceedings were not valid.

- **<u>Original assessment gets restored on cancellation of reassessment:</u>**

It was decided by the Tribunal and affirmed by the P&H HC in **Patiala Improvement Trust vs. ACIT (2018) 409 ITR 43 (P&H)** that where the reassessment order was annulled, the original order gets restored following the law of principle of doctrine of merger.

IV.1 <u>The assessee is entitled to ask for reasons for re-opening of assessment and to file objections if any. The objections must be considered if not the proceedings will be invalid:</u>

- The following dictum was laid down by the Hon'ble Supreme Court in the judgment reported in **(2003) 259 ITR 19 in the case of GKM Drivershafts (India) Ltd. vs. ITO.**

"…we clarify that when a notice under s. 148 of the IT Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years."

- The Madras HC in the case of **Manjula Athur vs. ITO vide W.P.No. 33318 of 2017 and W.M.P Nos. 36760 of 2017 and 2328 of 2018** held that though the petitioner has sought for the reasons for reopening the assessment on 12.12.2017, the Assessing Officer has not furnished the reasons recorded for reopening the assessment to the petitioner. The respondent had not furnished the reasons recorded for reopening the assessment to the petitioner.
- It was held in the case of **M/s. IOT Infrastructure and Eng. Services Ltd. vs. ACIT (2010) 329 ITR 547 (Bom)** that the reassessment framed by the assessing officer without disposing of the primary objection raised by the assessee to the issue of reassessment notice issued by him was liable to be quashed.

IV.2 <u>Recording of reasons and communication:</u>

- It was held in the below cases that recording of reasons before issue of notice is mandatory and communication thereof to party concern is mandatory.
  - **CIT vs. Blue Star Ltd. (2018) 162 DTR 302 / 301 CTR 38 (Bom)**
  - **Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj)**
  - **Nandlal Tejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)**

  However, if assessee does not ask for s. 147 reasons & object to reopening, ITAT cannot remand to AO & give assessee another opportunity as held in **CIT vs. Safetag International India Pvt Ltd [2012] 332 ITR 622 (Delhi High Court).**
- It was held in the case of M/s. **Sabharwal Properties Industries Pvt. Ltd. v. ITO (2016) 382 ITR 547 (Delhi) (HC)** that the reasons recorded for reopening the assessment have to speak for themselves. The reasons must provide a live link to the formation of the belief that income had escaped assessment. These reasons cannot be supplied subsequent to the recording of such reasons either in the form of an order rejecting the objections or an affidavit filed by the Revenue.

V. <u>Issue of notice u/s 148 and Sec. 143(2) and Time limit.</u>

- Issue of notice beyond limitation period is bad in law as held in **Kanubhai M. Patel (HUF) vs. Hiren Bhatt (2010) 43 DTR 329 (Guj).**
- It was held by the SC in the case of **ACIT & Anr. v. Hotel Blue Moon ((2010) 321 ITR 362 (SC)** and followed by ITAT Kolkata in the case of **Pankaj Dutta vs. ITO vide I.T.A. No. 2206/Kol/2016** that the issuance and service of notice under section 143(2) is mandatory and not

procedural and hence, reassessment order invalid due to want of notice under section 143(2).

- It was held in the case of **CIT vs. Mani Kakkar (2009) 18 DTR (Del) 145 (Asst Yr 2001-2002)** that no notice u/s. 148 having been served on the assessee prior to re-opening of assessment.
- It was held by the ITAT Madras in the case of **A. Sridevi vs. ITO (2018) 408 ITR 83 (Mad)** that a reassessment notice does not become vulnerable merely on being reopened for a second time in the context of omission of material facts relevant for assessment which was not disclosed, so that such reopening cannot be interfered by exercise of powers through a writ under article 226 of the Constitution.
- In the case of **K.M.Bansal vs. Commissioner of Income Tax and Another [1991 SCC Online AII 1283]**, the Hon'ble Allahabad High Court came to the conclusion that "the function of the Assessing Officer at the stage of issuance of notice under Section 148(1) is administrative in nature. It becomes quasi-judicial once the notice is served upon the assessee.

VI. <u>Time limit for re-opening:</u>

- It was held in the case of **M/s. Hitech Outsourcing Services vs. PCIT (2018) 408 ITR 129 (Guj) (HC) and M/s. Zuari Foods and Farms P Ltd vs. ACIT vide Bombay High Court pronounced its' order on 13th of March, 2018** that notice issued after the expiry of four years and where there was no failure on the part of the assessee to disclose necessary facts, notice of reopening on this issue was not permissible.
- Re-opening cannot be done beyond a period of four years as applicable on the basis of any amendment in the law with retrospective effect as held in –

  Denish Industries Ltd. vs. ITO 2004 (271) ITR 340 (Guj HC)

  SIL Investments Ltd vs. DCIT 2011, 9 Taxmann 143 (Delhi HC)

  CIT Vs. Aashni Leasing & Finance Limited 2010 TIOL 661 (Guj HC)
- In **PCIT vs. Santech Solutions Pvt Ltd (2018) 409 ITR 301 (Mad),** the HC Madras held that the law that only failure to disclose material facts can justify reassessment proceedings for years beyond the four-year time limit.
- <u>Time Limit for issue of notice under Sec 148:</u>

Generally	4 years have lapsed from the end of relevant assessment year
Where in the case, income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 1 Lac or more	Not more than 6 years have lapsed from the end of relevant assessment year.
Where in the case of income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.	Not more than 16 years have elapsed from the end of relevant assessment year

VII. <u>Sanction should be obtained:</u>

- It was held in the case of **M/s. Premier Vyapaar Pvt Ltd vs. ITO (2018) 68 ITR (Trib) 551 (Kolkata)** that assessing officer applying for approval but issuing notice before grant of approval is void-ab-initio.
- Hon'ble Delhi High Court in the case of **Pr. CIT vs. M/s NC Cables Ltd. in ITA No. 335/2015** has held that competent authority has to **<u>authorize</u>** the reassessment notice, and apply his mind and form an opinion. The **<u>mere appending of the expression 'approved' says nothing</u>**.
- The approval is no approval in the eye of the law, having been granted without application of mind as held in various decisions as follows-
  - **Sunil Agrawal vs. ITO in ITA No. 988/Del/2018**
  - **Virat Credit & Holdings (P) Ltd. vs. ITO in CO No. 57/Del/2012 in ITA No.89/Del/2012.**
  - **Hari Ram Gupta vs. ITO ITA No.5111/Del/2013.**
  - **Tara Alloys Ltd. vs. ITO in ITA No.2421/Del/2017 I.T.A Nos.409 & 419/Agra/2017**

VIII. <u>Time limit for completion of assessment.</u>

The order u/s. 147 has to be passed within nine months from the end of the financial year in which the notice u/s. 148 has been served. – section 153(2). If during the reassessment a reference is made to TPO then time limit will be twenty one months from the end of the F.Y. in which the notice u/s. 148 has been served.

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

The Income-tax Act provides a complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities. The assessee must register his objections if any in the light of various judicial pronouncements.

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Analysis of exemption from GST on supply of services:

Notification No. 12/2017 Central Tax(Rate) Dated 28.06.2017

Exemptions Relating to Banking and other Financial Services:

CA Raghavendra C R & CA Bhanu Murthy J S

The Notification 12/2017-CT(R) dated 28.06.2017 issued by the Central Government in exercise of powers under Section 12 of the CGST Act prescribes exemption from payment of GST on various services. Among them, we are discussing four entries which pertain to banking services, in this writeup.

The said entries are extracted hereunder:

Sl.no	Heading	Description of Services	Rate	Condition
26	Heading 9971	Services by the Reserve Bank of India	Nil	Nil
27	Heading 9971	Services by way of: (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil
34	Heading 9971	Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service. **Explanation** — For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.	Nil	Nil
39	Heading 9971 or Heading 9985	Services by the following persons in respective capacities – (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or (c) business facilitator or a business correspondent to an insurance company in a rural area.	Nil	Nil

Entry No. 26:

Services provided by the RBI are exempt from the GST net.Though RBI undertakes mainly that of the regulatory functions, it also has banking activity with other banks. Through this exemption, any service, which is liable to GST, are exempted so as to keep RBI out of tax net.

Entry No. 27:

This entry envisages exemption to two services, namely, services of lending loans and services of sale/purchase of foreign currency between banks.

As far as the first of the two is concerned, the exemption is not new to indirect tax law as the same was housed in Section 66D(n)(i) of the erstwhile Finance Act, 1994 (as amended on 01.07.2012). Further, it shall also be noted that unlike the second set of exemption, which is applicable to banks or authorised dealers of foreign exchange, the exemption to GST is not limited to banks alone. The exemption is based on nature of services and loans and advance by persons other than banks would also get covered under this entry.

It may be noted that 'money' is neither 'goods' [as defined in Section 2(52)] nor 'services' as defined in Section 2(102)]. However, Section 2(102) defines 'services' to include "activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged". Therefore, a specific exemption has been set out herein to exclude form GST, the activities of extending of deposits, loans or advances, insofar as the consideration is interest or discount.

However, if the transaction does not fit into the meaning of 'loan', 'deposit' or 'advance', even if the transaction is intrinsically a "financial transaction", it would slide out of the sweep of the exemption. Therefore, the notification grants a narrow exemption to lending transactions, that too only to the extent of interest on loans and advances. Consequently, all other charges on lending transactions, such as processing fees, documentation charges, service charges (other than 'interest' or 'discount') would be liable for GST.

Whereas, the expression 'interest' is defined in Clause 2(ze) of the Notification to mean interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

Further, the following questions in respect of this entry were clarified vide FAQs on banking dated 27.12.2017:

- *Whether "Bill of Supply" must be issued by a bank for exempt services like interest on loans and advances, inter-se sale or purchase of foreign currency amongst banks?*

  It was answered that banks may issue any other document in lieu of bill of supply in view of Rule 54(5) of the CGST Rules.

- *Whether tax is payable on interest charged by the Banks on the outstanding amount of gold (metal) loan?*

  It was answered that the gold (metal) loan only provides an option to the jeweller to avail a loan and pay for gold (metal) at a future date. For this facility, the jeweller pays interest to the Bank. The grant of loan and levy of interest is dependent on the purchase of gold, and therefore, part of the same transaction or facility; therefore the interest, which is the consideration, will not be exempt as per provisions of section 15(2)(d) of the CGST Act, 2017.

- *Whether interest on a finance lease transaction is taxable under GST?*

  It was answered that a finance lease is a method of borrowing against the asset. In a financial lease the ownership of the asset is with the bank. In essence, it is a 'purchase the asset and lend it further' transaction for bank. Therefore, neither the services are purely in the nature of extending loans nor the consideration for a financial lease is purely in the nature of interest. Thus, interest on finance lease transactions will be taxable under GST.

- *Is interest on debt instruments exempt from GST?*

  It was answered that as debt instruments such as debentures, bonds etc. are in the nature of loans, interest thereon will be exempt from GST.It was also clarified that Commercial Paper and Certificate of Deposit and Promissory Notes are also not liable for GST.

Second part of the exemption entry relates to the transactions between banks of authorized foreign exchange dealers relating to purchase or sale of foreign currencies.

Entry No. 34:

This entry too is not new to the indirect tax law. A similar entry featured in the mega exemption notification w.e.f 08.12.2016 under the erstwhile service tax law. The essential ingredients of this entry are that: (a) the customer must use any of the card payment services for making any payment, and (b) the payment made must be below Rs. 2000/-.

Generally, when a customer of a bank uses credit card or debit card to make any payment, say for the purchases made in a provision store, the bank collects a small portion

of the amount paid as service charges from the provision store. By virtue of this exemption now, where value of one transaction does not exceed Rs. 2000/- then, the bank shall not charge GST from the provision store, on the charges recovered towards settlement of the said amount.

Entry No. 39:

Business facilitators and Business correspondents are mainly, NGO or other such organizations which are used by the banking companies to enable the outreach of the banking facilities to rural areas or to areas where the banking facilities are not reached. The main difference between Business facilitator and a Business Correspondent is that, in the case of facilitator, the intermediary only promotes or facilitates opening of account or loan transactions, whereas the actual banking is done by the banks itself. However, in case of Business correspondent, to limited extent, the banking (i.e accepting deposits, allowing withdrawal of money from account, extending small loans, recovery of such loans) are allowed to be undertaken by the correspondent. For such activities, facilitator or correspondent would get commission from banks.

For the purpose of this entry, the expression"business facilitator or business correspondent" is defined to mean an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by the Reserve Bank of India.

The essential ingredients of this entry are:

- A person providing the services in a capacity of business facilitator or a business correspondent
- Such services are provided to banking company with respect to accounts in rural area or to insurance company in rural area.
- The benefit of exemption also extends to any person providing services as an intermediary to a business facilitator or a business correspondent with respect to the above services.

In Circular No. 86/05/2019-GST dated 01.01.2019, as regards what constitutes 'accounts in rural area branch', it is clarified that the procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted for the purpose of this exemption also.

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Interim Budget of 2019 – A "trailer" ahead of General Elections

CA Sandeep Jhunjhunwala

"Mein ek paun rakhta hoon, hazaro rahein phoot padti hai" – quoted the Finance Minister, enthusiastically and optimistically, in his budget speech of 2019. The interim Budget of 2019 has been unique in many ways – a budget first time ever presented by a Chartered Accountant, a Budget where the Finance Minister has applauded and thanked the taxpayer citizens of India for their valuable contribution to nation building and a budget which presented a 10-dimensional vision for the next decade. Though a vote-on-account does not bring with it, immense changes, this year has been different as several important changes were proposed that could reduce tax burden on the middle-class tax payers and some policy announcements directed for MSMEs and rural agrarian population. This being the current Government's last budget before the general elections later this year, speculation was rife that tax sops, new schemes and tax changes would be in the offing. In addition to a formal and on-record "Thank You", the Government, has indeed, handed over a "goodies bag" to the taxpayers in the form of numerous beneficial announcements.

As per the Budget announcement, individuals with income up to INR 5 lakhs will not have to pay any income tax on account of increased rebate proposed under Section 87A of the Income Tax Act. The Finance Minister in his budget speech mentioned that individuals with gross income up to INR 6.5 lakh will not need to pay any tax if they make investments in provident funds and prescribed equities. This, being, an interim budget, the Finance Minister had a very limited flexibility to tinker around the existing slab structure or rates under the income tax legislation. The opposition has been crying foul alleging a breach of constitutional propriety, given this manoeuvring around tax rebate and other populist schemes announced by the outgoing Government in the interim budget. The income tax department now may observe that the number of returns with taxable income less than INR 5,00,000 suddenly upsurge, on account of the rebate proposed (which earlier could be returns with income reported of amounts less than INR 250,000). Though a meagre increase, the standard deduction has been pegged up from existing INR 40,000 to INR 50,000. Budget 2018 had introduced a standard deduction of INR 40,000 for the salaried class, in lieu of deductions of INR 15,000 for medical reimbursement and INR 19,200 for transport allowance. This increase of standard deduction would provide tax benefit in the range of INR 1,000 to INR 3,500 (approximately) across the board, depending on the tax slab of the individual. Thresholds for deduction tax at source on interest pay-outs by post office and bank deposits have been raised from Rs 10,000 to Rs 40,000. This would result in higher interest credits in the account of the individual holders, a part of which was getting locked on account of TDS, which was to be subsequently claimed as refunds from the income tax authorities. This upward revision of TDS threshold, in addition to reducing the withholding tax compliance burden for banks and post offices, should also immensely help taxpayers falling below the exemption slabs of income.

On the housing side, as an amendment to Section 54 of the Income Tax Act, the benefit of rollover of capital gains has been proposed to be increased from one residential house to that of two now, for a taxpayer having capital gains upto INR 2 crores. This benefit could be exercised once in the lifetime of the taxpayer. Earlier, a home owner could save capital gains tax on a sold property by reinvesting the amount into another house property in India within a stipulated time period. However, the income tax provisions did not allow investment of such amounts into two properties, which is now possible. This is a marvellous step and could boost sales in both primary and secondary real estate markets. The requirement of deducting tax at source on rental payments is now applicable if the annual rental payment exceeds INR 2.4 lakhs. This has been increased from the earlier annual limit of Rs 1.8 lakhs. Considering the rising inflation, which

the Finance Minister considers as "hidden and unfair tax" on middle class, the proposed increase in TDS threshold on rental payments is a welcome rationalization measure for landlords letting out small properties, and may indirectly push sales of affordable housing. Presently, income tax on notional rent is payable if one has more than one self-occupied house. Considering the difficulty of the middle class having to maintain families at two locations on account of their job, children's education, care of parents etc, the Finance Minister has proposed to exempt levy of income tax on notional rent on a second self-occupied house. However, deduction on account of borrowed capital has been retained at the existing limit of INR 2 lakhs.

Relief provided to the real estate sector on taxation of unsold stock in trade, has provided a much-needed breather to the developer community, which is reeling under the pressure of disruption caused by emerging legislations such as Real Estate (Regulation and Development) Act, 2016, Goods and Services Tax, after effects of demonetisation and mounted-up inventory. Till now, unsold inventory over one-year-old was considered stock-in-trade and the builder had to pay notional rent on those units. Section 23(5) of the Income Tax Act is proposed to be amended to provide that in case of building or land, held as stock in trade and which is not let out, the annual value of such property for a period of two years, from the end of financial year in which the certificate of completion of construction is obtained, shall be taken as "Nil". Last year, changes were made in the income tax law to impose two new taxes (proclaimed as "Sin taxes") on real estate developers on the unsold developed stock - Section 23(5) making it mandatory for developers to pay tax on unsold stock over one year period, based on their notional rental income and Section 28(via) imposing 30 percent tax on fair value of unsold stock which a developers leases. The interim budget for 2019-20 also extended the tax benefit period under Section 80-IBA of the Income Tax Act, for players developing affordable housing projects, for one more year till March 2020. The Government had laid extraordinary focus on affordable housing with the launch of Pradhan Mantri Awas Yojana (PMAY), with a target of building 20 million affordable houses by March 2022. Announcements related to streamlining the stamp duty levy should bring operational convenience and rationalise stamp duty structure for financial transactions. This should also clarify stamp duty incidence on issue and transfer of shares and debentures – an area where the Government is headed towards mandatory dematerialisation to counter malpractices such as benami shareholding and back-dated issuance of instruments.

The incumbent Government, walking on a tightrope stretched between expectations of the masses and gripping economic prerogatives, has done a balanced act by not upsetting the fiscal deficit too much. Mention of path breaking, technology intensive project to transform the Income-tax Department into a more assessee-friendly one is laudable. The Finance Minister's mission statement for getting the income tax returns within twenty-four hours (and refunds issued simultaneously) and anonymised back office for assessment of filed returns, is encouraging for the taxpayers of the country. Though the Finance Minister mentioned that India has become the world's second largest start-up hub, with job seekers becoming job creators, the plaguing issue of "angel tax" which has experienced a constant contention within the start-up community, did not get an attention. Overall, the Budget announcements has brought big cheers to the middle-class. The Government can clearly ask the question "How is the josh?" to its taxpayer citizens now, to get an answer - "Much High". India, surely, is taking long strides towards Vision 2030 of becoming a modern, technology-driven, high growth, equitable and transparent society. As customary, the interim budget estimates are presented for the full year, but the incoming government can completely give the budget a makeover or partially change it after coming to power. Exhorting that the interim Budget for 2019-20 would benefit all sections of the society, the Prime Minister had said that it is merely a "trailer" of what would guide India towards prosperity after the upcoming Lok Sabha elections. We eagerly wait to see what follows the "trailer" of the interim budget 2019.

The author is a Director of Nangia Advisors LLP (Andersen Global) and views expressed are personal.

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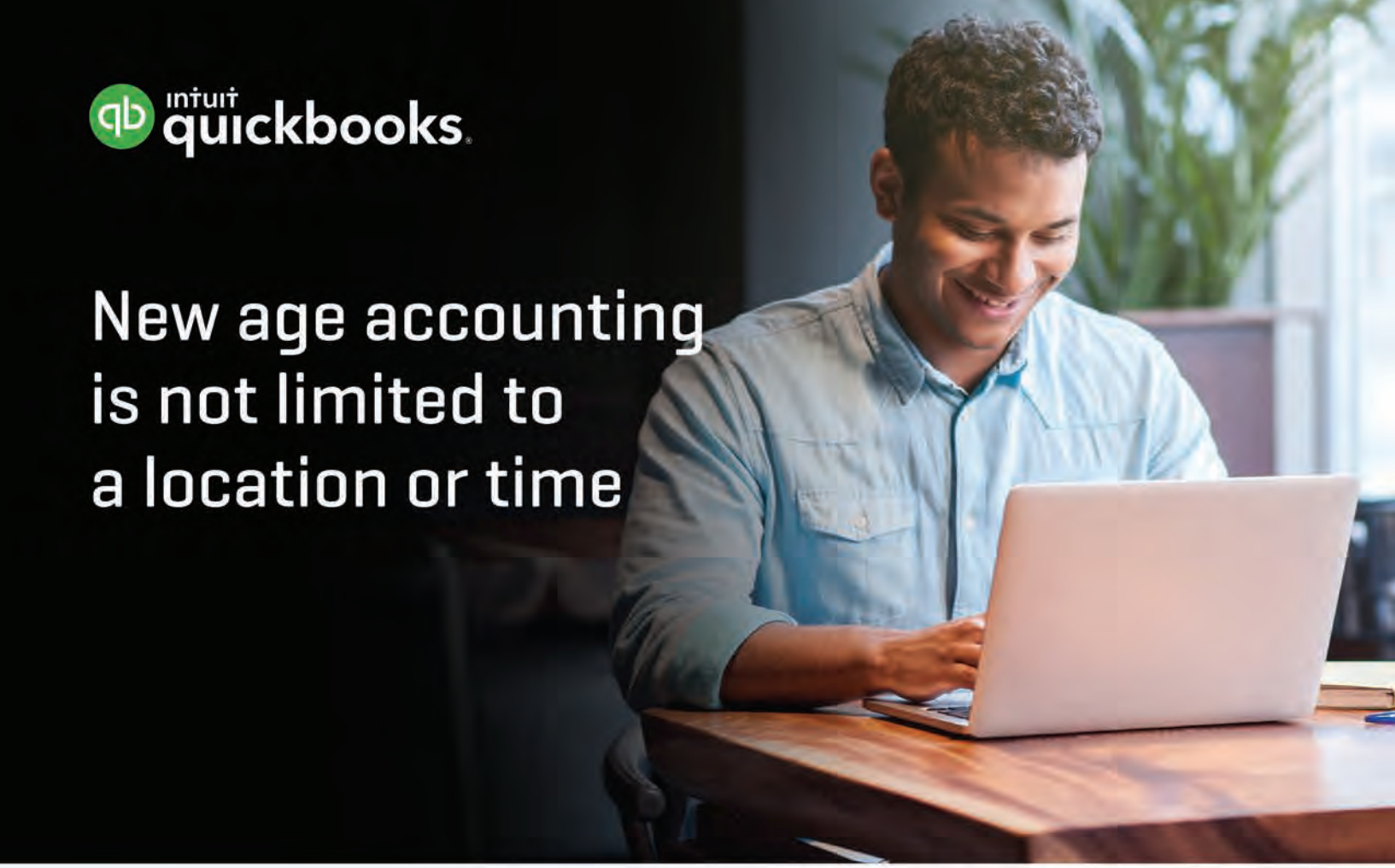

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Programme Structure

Friday, 15th March, 2019

08:30 AM	Registration
	INAUGURAL SESSION
09:30 AM	Inaugural Address by **Chief Guest** Release of Souvenir & Publications
10:45 AM	Inauguration of Exhibition & Tea Break
	FIRST TECHNICAL SESSION
11:00 AM	**Recent Changes in Reporting Requirements under Audit, Accounting and the Companies Act** **CA. K. Gururaj Acharya**
12:16 PM	**CA Talk - Sharing an inward transformational experience** **CA.V. Pattabhi Ram**, Chennai
12:30 PM	Sponsor Program
	SECOND TECHNICAL SESSION
12:45 PM	**Skill gap - are you equipped for future?** • Advent of new age technologies like AI, RPA, Block Chain / DLT in Accounting Profession • Challenges & Opportunities **CA.Vinod Kashyap**, New Delhi
01:30 PM	Lunch Break
	THIRD TECHNICAL SESSION
02:15 PM	**Taxation of Charitable Trust:** • Recent controversial issues on Assessment of Trusts U/S 10(23C) (iiiab), (iiiad) and ((vi) of the Income Tax Act, 1961 • Issues on FCRA (Amendments) **CA. Dr. N. Suresh**
03:20 PM	**CA Talk - Sharing an inward transformational experience** **CA. S. Venkatramani**
03:35 PM	Tea Break
	FOURTH TECHNICAL SESSION
03:50 PM	**E- Assessments under the Income Tax "Virtual Assessments will soon be a reality"** • Challenges & Readiness Eminent Speakers
06:15 PM	**FAMILY ENTERTAINMENT PROGRAMME**
08:30 PM	Family Theme Dinner

Saturday, 16th March, 2019

08:30 AM	Breakfast
	SPECIAL SESSION
10:00 AM	A Talk on Health & Wellness by **Dr. C. N. Manjunatha** Senior Cardiologist and Director Sri Jayadeva Institute of Cardiovascular Sciences and Research
	FIFTH TECHNICAL SESSION
10:45 AM	**Taxation of Co-Operatives: Vivisecting judical dichotomy in Income tax cases with special emphasis Section 80P of Income Tax Act** **CA. A. Shankar**, Advocate
11:45 AM	Tea Break
12:00 PM	**CA Talk - Sharing an inward transformational experience** Eminent Speaker
	SIXTH TECHNICAL SESSION
12:15 PM	**Change in Regulatory Landscape of Accounting Profession** • An honest introspection **CA. M. P. Vijay Kumar**, Chennai
01:30 PM	Lunch Break
	SEVENTH TECHNICAL SESSION
02:15 PM	**IBC - Creditors Regime or Stakeholders Conundrum** **CA. Sripriya Kumar**, Chennai
03:15 PM	Tea Break
	EIGHTH TECHNICAL SESSION
03:30 PM	**GST, a paradigm shift - Successes & Failures** Moderator: **CA. Sanjay Dhariwal** Panelists: **Shri. D.P. Nagendra Kumar,** IRS Principal Chief Commissioner GST **Shri. Srikar M. S.,** IAS Commissioner of Commercial Taxes (GST) **CA. Madhukar Hiregange** **CA. Jatin Christopher**
05:00 PM	**VALEDICTORY SESSION**

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Constitutional Validity of the Goods and Services Tax (Compensation to States) Act

Adv. Vikram A. Huilgol

High Court Government Pleader & Sr. Central Govt. Standing Counsel, CBIC

Introduction.

On October 3, 2018, the Supreme Court passed a judgment in Union of India v. Mohit Mineral Pvt. Ltd., 2018 SCC OnLine SC 1727, upholding the validity of the Goods and Services Tax (Compensation to States) Act, 2017 ("the GST Compensation Act"). In its judgment, the Supreme Court touched upon several important constitutional issues, specifically regarding the legislative competence of the Union Parliament to enact the impugned legislation. This article analyzes the judgment and the constitutional issues discussed therein.

Background and petitioner's contentions.

Mohit Minerals filed a writ petition before the Delhi High Court praying that the Court declare the GST Compensation Act and the Rules issued thereunder to be unconstitutional. Mohit Minerals also sought quashing of notification Nos. 1/2017 and 2/2017 – Compensation Cess (Rate), which notified the rates of compensation cess that were leviable on certain goods and services. The primary ground of attack was that the Union Parliament lacked the legislative competence to enact the GST Compensation Act and, consequently, the Act, as well as the Rules and notifications issued thereunder, were illegal and unconstitutional.

In the above writ petition, the Delhi High Court passed an interim order dated 25.08.2017, inter alia, observing that the petitioner had made out a prima facie case that the Act lacked legislative competence, and that the compensation cess paid by the petitioner under the Act would be subject to the outcome of the writ petition. In a special leave petition filed by the Union of India challenging the interim order passed by the Delhi High Court, the Supreme Court transferred the writ petition to itself. The Supreme Court also transferred to itself another similar writ petition filed by another assessee and heard the matter on merits.

The petitioners primarily contended that the GST Compensation Act is repugnant to and transgresses the mandate of Section 18 of the Constitution (101st Amendment) Act ("101st Amendment Act"), which states that, "Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years." According to the petitioners, Section 18 of the 101st Amendment Act only empowered Parliament to compensate the States for loss of revenue on account of implementation of GST, and that the said provision did not enable Parliament to levy cess on goods and services. The petitioners also contended that two levies (basic GST + cess) on the same taxable event, namely supply of notified goods and services, would amount to double taxation, which is impermissible. The Union of India countered the arguments of the petitioners and justified the levy of GST Compensation Cess.

Judgment.

Before proceeding to analyze the Supreme Court's judgment, it would be useful to recollect that in one of my earlier articles in this journal, I had explained that Parliament and State Legislatures derive their power to legislate on specific subject matters from Article 246, read with the VII Schedule to the Constitution. Article 246(1) states that Parliament has exclusive power to make laws with respect to matters enumerated in List I in the VII Schedule ("the Union list"). Article 246(2) states that both Parliament and the State Legislatures have power to legislate on matters enumerated in List III in the VII Schedule ("the Concurrent list"). Article 246(3) empowers the State Legislatures to legislate on matters enumerated in List II in the VII Schedule ("the State list"). Article 246-A is the only exception to the general rule, where under an additional and independent source of power is conferred on both the Union and the States to legislate with respect to Goods and Services Tax. Furthermore, Article 248(1), which refers to the residuary powers of legislation, states that "subject to Article 246-

A, Parliament has exclusive power to make any law with respect to a matter not enumerated in the Concurrent or State List." Clause (2) of Article 248 clarifies the position that the residuary power under Article 248(1) includes the "power of making any law imposing a tax not mentioned in either of those Lists."

Coming back to the Court's judgment in Mohit Mineral, after observing that a cess is a "tax levied for some special purpose, which may be levied as an increment to an existing tax," the Court proceeded to hold that "there are more than one reason to uphold the legislative competence of Parliament to enact the Compensation to States Act, 2017." First, the Court relied on a Constitution Bench judgment in Union of India v. Harbhajan Singh Dhillon, (1971) 2 SCC 779, wherein it was held as follows:

> *"It seems to us that the function of Art. 246 (1), read with entries 1-96 List I, is to give positive power to Parliament to legislate in respect, of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly, we do not interpret the words "any other matter" occurring in entry 97 List I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the entries 1 to 96. The words "any other matters' had to be used because entry 97 List I follows entries 1-96 List I. It is true that the field of legislation is demarcated by entries 1-96 List I, but demarcation does not mean that if entry 97 List I confers additional powers we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of entry 97 List I is removed by the wide terms of Art. 248.* It is framed in the widest possible terms. On its terms *the only question to be asked is: is the mater sought to be legislated included in List II or List III or is the tax sought to be levied mentioned in List II or in List III: no question has to be asked about List I. If the answer is in the negative then it follows that Parliament has power to make laws with respect to that matter or tax."*

In Mohit Mineral, the Court observed that if the above question framed in Harbhajan Singh Dhillon were to be posed in the context of the GST Compensation Act, "we do not find any entry in List II or List III of the Seventh Schedule, which may refer to levying of cess in question." In other words, the Supreme Court held that the cess in question is not traceable to any of the entries in the State or Concurrent Lists and that, therefore, Parliament has, by virtue of its residuary powers under Article 248 read with Entry 97 of the Union List, the legislative competence to enact the GST Compensation Act. Thus, the Court held that the Act in question does not suffer from any infirmity.

In support of its conclusion that the enactment in question is constitutionally valid, the Court further observed that Article 246-A confers power on the Parliament and States to "make laws with respect to goods and services tax," and that "when express power is there to make law regarding goods and services tax, we fail to comprehend that how such power shall not include the power to levy cess on goods and services tax." Therefore, the Court recognized the power of Parliament, which unquestionably has the power to make laws with respect to GST, to enact a law that authorizes the levy of a cess in addition to the basic levy of tax.

The Court also rejected the argument of the petitioners that the levy of cess is contrary to the overarching scheme of the 101st Amendment Act and GST in general, which was to subsume various taxes that were earlier levied by the Union and States. In this regard, the Court held that though the 101st Constitution Amendment Act "was passed to subsume various taxes, surcharges and cesses into one tax but the constitutional provision does not indicate that henceforth no surcharge or cess shall be levied."

Lastly, the Court held that the levy of tax and cess on the same transaction is permissible in law. In support, the Court relied on various judgments, including Federation of Hotel & Restaurant Associate of India v. Union of India, (1989) 3 SCC 634, Governor General in Council v. Province of Madras, (1945) FCR 179 P.C., and Avinder Singh v. State of Punjab, (1979) 1 SCC 137, wherein it was held, in essence, that two taxes or imposts on two different aspects of a transaction are permissible. Accordingly, the Supreme Court held that the levy of GST as well as cess on the same transaction are permissible in law.

Analysis.

At the outset, I would like to clarify that I am in complete agreement with the eventual outcome, namely, that the GST Compensation Act is a constitutionally valid piece of legislation and that the cess imposed thereunder is, consequently, valid. However, with great respect, I would

like to make a couple of observations on some of the findings of the Supreme Court, which could result in certain unintended and far-reaching ramifications.

First, I am of the opinion that the Supreme Court has rightly traced the power of Parliament to enact the GST Compensation Act to the residuary power of Parliament under Article 248. It is interesting to note that the erstwhile service tax, which was levied under the Finance Act, 1994, was also traceable to Parliament's residuary power to legislate under Article 248, read with Entry 97 of the Union List. Furthermore, though the Supreme Court did not expressly state so in its judgment, the petitioners were incorrect in contending that the power to legislate the GST Compensation Act is traceable to Section 18 of the 101st Amendment Act. The said provision cannot, under any circumstances, be said to be the source of power to legislate the Act in question. Moreover, Section 18 did not effect any amendments or changes to the text of the Constitution. Therefore, in my opinion, Section 18 only provided a broad outline of the manner in which States were to be compensated for loss of revenue on account of introduction of GST. In fact, I firmly believe that even if Section 18 was missing from the 101st Constitution Amendment Act, Parliament would still have the legislative competence to enact the GST Compensation Act and levy the cess in question under Section 8 of the Act.

Second, as regards the observation of the Court that the power to levy a cess is a corollary of the power conferred to levy GST under Article 246-A, I believe that this could possibly be construed to mean that even the States have power to levy a cess of their choice. This is because Article 246-A confers power on both Parliament and the State Legislatures to make laws with respect to GST. Accordingly, if the power to make a law on GST includes the power to make a law in order to levy a cess, the State Legislatures could possibly levy a cess of their own choice, which, needless to state, would be contrary to the scheme and object of a nationwide uniform GST.

Lastly, with great respect, I disagree with the Court's reliance on judgments such as Federation of Hotel and Restaurants. In that line of judgments, the Supreme Court upheld the levy of various taxes on separate aspects of the same transaction. For instance, the levy of service tax and profession tax were held to be permissible in All India Federation of Tax Practitioners v. Union of India, (2007) 7 SCC 527, since they were imposts on different aspects of the same transaction. However, the levy of GST and compensation cess cannot be said to be on different aspects of a transaction since they are both levied on the supply of goods or services. Therefore, I am of the opinion that this line of reasoning adopted by the Supreme Court to sustain the levy may not be correct. Instead, the Supreme Court could merely have distinguished a tax from a cess and observed that the compensation cess, being only a temporary levy for a specific purpose, is legally permissible.

In conclusion, with the above exceptions, the Supreme Court's judgment lays down the correct position in law, and ensures that the transitioning from the earlier indirect tax regime to the current one is not confronted with yet another hitch.

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Financial Reporting and Assurance

CA Vinayak Pai V

1. Changes To Financial Reporting And Assurance Literature – Monthly Roundup

AS (Accounting Standards)	
1	Exposure Draft of **AS 18 – *Revenue*** • To replace AS 9 – *Revenue Recognition*
2	Exposure Draft of **AS 11 – *Construction Contracts*** • To replace AS 7 – *Construction Contracts*
3	Exposure Draft **AS 41 – *Agriculture*** • New accounting standard under the AS framework
IND-AS (Indian Accounting Standards)	
1	ICAI **Educational Material on IND-AS 110** – *Consolidated Financial Statements.*
2	Revised edition of Compendium of ***ITFG Clarification Bulletins*** released by ICAI.
IFRS (International Financial Reporting Standards)	
1	New lease standard **IFRS 16 – *Leases*** has come into effect on January 1, 2019.
2	Tentative Agenda Decisions by the **IFRS Interpretations Committee:** i. Customers **right to access** supplier's **application software**. ii. Over Time **transfer of constructed good**. **iii. Physical settlement** of contracts to buy or sell a non-financial item. iv. Sale of **output by a joint operator**. **v. Curing** of a credit **impaired financial asset**. **vi. Credit enhancements** in the measurement of **expected credit losses.**
Assurance	
1	**Guidance Notes on Audit of Banks** (2019) Issued • Section A – *Statutory Central Audit* • Section B – *Foreign Exchange Transactions and Integrated Treasury* • Section C – *Bank Branch Audit Other Than Foreign Exchange Transactions*
2	Guidance Note on **Reports in Company Prospectuses** (2019)
3	Unique Document Identification Number (UDIN) **mandatory for all certificates** with effect from February 1, 2019.
Company Law – Accounts and Audit Related	
1	Companies (Amendment) Ordinance, 2019
2	Specified Companies (***Furnishing of information about payments to micro and small enterprise suppliers***) Order, 2019 • Every specified company to file in MSME Form I details of all outstanding dues to micro or small enterprises suppliers existing on date of notification of order within 30 days from date of publication of notification. • Every specified company to file a return (MSME Form I) by October 31 for period April to September and by April 30 for the period from October to March.

3	Companies (***Acceptance of Deposits***) Amendment Rules, 2019 • Companies to file a **onetime return** of outstanding receipt of money or loan by a company not considered as deposits.
Certain Reserve Bank of India Notifications	
1	**Basel III Capital Regulations** – Review of Transitional Arrangements – Notification dated January 10, 2019
2	**External Commercial Borrowings** (ECB) Policy – New Framework

2. **Case Studies Section (Case 1) – Impact Of New IND-AS Revenue Recognition Standard**

IND-AS 115 – *Revenue From Contracts With Customers* (based on its IFRS counterpart standard IFRS 15) is effetive from the current fiscal. The new standard inter-alia provides guidance on accounting for multiple-element arrangements where the concept of "distinct good or service" comes into play. A good or service promised in a contract is distinct if it meets both the following criteria i.e a) it should be **capable of being distinct** and b) it should be **distinct within the context of the contract**.

Case Study:

The following case study is based on quarterly results of a company based on information available in the public domain

- The Company evaluated its open arrangemets on out-licensing with reference to **upfront non-refundable fees** received in earlier periods and applying the requirements of IND-AS 115 concluded that some of the performance obligations in the contracts with customers **may not be "distinct performance obligations"** and therefore would **need to be bundled with subsequent supply obligations.**
- Consequently, the company has recognized an incremental **deferred revenue** relating to such open contract.
- The company has not restated comparative period figures since it has adopted the new revenue recognition standard using the **cumulative effect approach.**

3. **Upcoming Changes: AS 18 – *Revenue* - Aligning With IND-AS**

Our Institute has issued an exposure draft of AS 18 – *Revenue* to replace extant AS 9 – *Revenue Recognition* which is one more step taken towards bringing the AS framework closer to IND-AS. Key points of distinction between the exposure draft and AS 9 are summarized herein below.

a. Broader **definition** of revenue.

b. Single model for services revenue recognition viz. **Stage of Completion Method** in contrast with extant Completed Services Contract Method and Proportionate Completion Method.

c. Revenue recognition based on ***transaction price***.

d. Exposure draft provides guidance on application of the recognition criteria to the ***separately identifiable components*** of a single transaction in order to reflect the substance of the transaction.

e. **Impairment of trade receivables** and accounting for **interest income** scoped out and addressed in the standard on financial instruments.

f. Guidance provided with respect to revenue recognition in case an entity is under any obligation to provide free or discounted goods or services or award credits to its customers due to any **customer loyalty programs.**

g. Relatively more **detailed disclosure requirements** with respect to revenue line item.

4. **Case Studies Section (Case 2) - IND-AS Transition Impact**

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

IND-AS Measure	Transition Impact (%)
Net profit for the comparative period	**Increase** of **6.8%**
Total **Equity at date of transition**	**Decrease** of **2.0%**
Total income for the comparative period	**Increase** of **0.3%**

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

- Under AS, **goodwill** was amortized based on its useful life. Under IND-AS, goodwill is not amortized. Upon transitioning to IND-AS, amortization expense pertaining to goodwill has been reversed.
- Under AS, other **intangible assets** were amortized based on their useful life. Under IND-AS, the company has estimated the useful lives of certain intangibles (trademarks and copyrights) to be indefinite.
- Under AS, **provision for doubtful debts** was made as per management policy based on ageing analysis of debtors. Under IND-AS, the company applies the expected credit loss (ECL) model for recognizing impairment on trade receivables (financial assets).
- Under AS, **deferred premium on forward contracts** was being recognized under other current assets. Under IND-AS, forward contracts are recognized as financial assets/liabilities and measured at FVTPL with changes in fair value being recognized in the Statement of Profit and Loss.
- Under IND-AS, **investments in mutual fun**ds were being measured at cost. Impairment, if any, was provided for, against cost of investments. Under IND-AS, the same is being measured at fair value.
- Under IND-AS, **bank overdrafts** which are repayable on demand and form an integral part of the entity's cash management system are included in cash and cash equivalents for the purposes of presentation of the statement of cash flows. Under AS, in the absence of similar accounting guidance, bank overdrafts were being considered similar to other borrowings with movements being reflected in the financing activities section of the Statement of Cash Flows.

5. **ICAI Clarification On Applicability Of Auditor Rotation Principles**

   Our institute has released an announcement clarifying applicability of rotation principles (Section 139 of Companies Act) where the company ceases to fall under the ambit of rotation principles in subsequent years. The view expressed therein is provided herein below.

   Once a company ceased to fall under the ambit of rotation principles, the company can appoint any chartered accountant/firm as an auditor of the company irrespective of the fact that the same CA/firm was an auditor of the company in previous years.

6. **Back to Basics Section: IND-AS Accounting For Investments in Associates – A High Level Overview**

   Herein below are discussed the salient aspects of IND-AS accounting for **Investments in Associates**.

   - Associates are entities over which the Group has the ability to exercise **significant influence** but not control, **generally** accompanies by a shareholding of between **20% and 50%** of the voting rights.
   - The **equity method** is used to account for a group's investment in associates.
   - Under the equity method of accounting, investments are **initially recognized at cost**. The group's **share of post-acquisition profits or losses** in recognized in the Statement of Profit and Loss and its **share of post-acquisition** movements **in other comprehensive income** is recognized in other comprehensive income.
   - The cumulative post-acquisition movements are adjusted against the **carrying amount of the investment**.
   - When the group's **share of losses** equals or exceeds its interest, the group does not recognize further losses, unless it has incurred obligations or made payments on behalf of the associate.
   - **Unrealized gains on transactions** between the Group and associates are eliminated to the extent of the Group's interest. **Unrealized losses** are also eliminated unless the transaction provides evidence of an impairment of the asset transferred.
   - The equity method of accounting is **discontinued** from the date an investment ceases to be a joint venture or associate which is the date on which the Group ceases to have significant influence over the investee or on the date it is classified as held for sale.

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KEY UPDATES UNDER GST LAW

CA Annapurna Kabra

In GST Regime, various core activities by tax experts are rendered for business entities like identifying taxable transactions, Interpretation of classification entries, computation of turnovers, calculating eligible input tax credit, ascertaining tax liabilities and these activities are supplemented with procedural and legal requirements under the GST Regime. At the initial stage of implementation of GST law, certain activities were analysed during transitions like stock level to be maintained as on transition date, treatment of unutilized tax credit, balance as on transition date, tax credit on capital goods where only partial tax credit taken in pre-GST regime, treatment of tax already paid on goods lying in stock as on the transition date, sales return of goods sold in pre-GST period, treatment of earlier arrears of tax, change in terms of contracts and agreements, transformation of process and documentation, etc.

After the implementation of the GST law, there are various amendments happening at different point of time and therefore it is imperative to understand the scope, working and implications of such amendments and to comply with that it will be absolutely necessary to keep ourselves abreast of the amendments in GST law.

The following are the Recent key amendments in brief under the GST laws.

- The concept of **Business Vertical** is omitted.
- Separate registration for multiple places of business within a state is permissible subject to condition that they should have more than one place of business and should not be composition supplier and should comply with the GST law separately by applying separate registration, issuing Invoices for each place of business. Even input tax credit lying as a balance in electronic credit ledger will be transferred to the respective registered place of business and should be furnished in Form GST ITC-02A electronically.
- In case of proceedings of cancellation of registration, the registration shall be deemed to be **suspended** from the date of submission of application or the date from which cancellation is sought till the date of cancellation so that supplier will not file the return and nor make any taxable supply during such period. The proper officer may suspend the registration for such period as may be prescribed. The requirement of Filing of Annual Return remains unchanged.
- The credit note or debit note can be issued against **multiple Invoices or multiple bill of sale.**
- One of the clauses in the definition of **business** is substituted as "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**".**
- The Central Board of Excise and Customs **(CBEC)** is renamed as the Central Board of Indirect Tax and Customs (CBIC).
- The Scope of activities to be undertaken by the **Sales Tax Practioner** has been extended.
- The Time limit for furnishing the declaration in **Form ITC-04** in respect of goods sent or received from job work for the period July 2017 to December 2018 shall be extended to 31st March 2019.
- The time limit for furnishing the Return **(GSTR 7)** by a registered person required to deduct tax at source for the months of October 2018 to January 2019 is extended to 28th day of February 2019.
- The Composition Supplier (Any other supplier other than manufacturer, Restaurant services) are liable to tax at the rate of 1% (1/2%+1/2%) of the **turnover of taxable supplies of goods and services** in the state or Union Territory. Earlier it was only taxable supplies of goods.
- The **late fee payable** for composition tax payers (GSTR-4) and regular tax payers (Form 3B and GSTR-1) from July 2017 to September 2018 is waived, provided they furnish respective returns by **31st March 2019**.
- Details of outward supplies in Form GSTR-1 for the months/quarters **from July 2017 to September 2018** can be updated from December 2018 to March 2019.
- Details of input tax credit for the financial year 2017-2018 can be claimed in Form 3B till March 2019.

- The **TDS provisions** are not applicable between one person to another person specified under clause (a), (b), (c) and (d) of sub section (1) of section 51 of the said Act. The supply of goods or services in between the persons notified as deductor of TDS like Government, departments, PSUs, Local authority, Boards established by Government is exempt from TDS provision with effect from 1st October 2018.
- The **Anti Profiteering Authority** has been excluded from the definition of Adjudicating Authority.
- **The Reverse charge** is applicable when **security services** provided by any person other than body corporate to a registered person located in the taxable territory. The above is not applicable to notified Government Authorities and composition tax payers.
- The **Reverse charge provisions** have been extended to services provided by business facilitator to a banking company located in the taxable territory and the services provided by an agent of business correspondent to a business correspondent located in the taxable territory.
- The Government may **notify class of registered persons** and categories of goods or services or both received from unregistered supplier under reverse charge.
- **S**ervices provided by a **banking company** to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) is exempted from GST.
- Services provided by **GTA is exempted** if provided to a Department or Establishment of the CG, SG or UT or local authority or Governmental agencies, which has taken registration only for TDS Compliance and not for making a taxable supply of goods or services.
- Services provided by **Rehabilitation Professionals** recognized under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centres established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) is exempted from GST.
- The definition of **service includes** facilitating or arranging transactions in securities.
- The Composition scheme Turnover is increased from one crore to one crore and fifty lakhs.
- **Composition supplier** may supply services of value not exceeding ten percent of turnover of state or five lakh whichever is higher.
- Where the services are provided by the supplier to any person on the direction of and on account of such registered person then it shall be deemed that services are received by the registered person for fulfilling the condition of receipt of services to avail input tax credit.
- The value of **exempt supply** shall not include the value of activities or transactions specified in schedule III except sale of land and sale of completed building.
- The input tax credit is restricted on motor vehicle for transportation of persons having approved seating capacity of less than thirteen persons including driver except when they are used for further supply of such motor vehicle, transportation of passengers, imparting training on driving of such motor vehicles or for transportation of goods.
- The **Input tax credit on services** of general Insurance, Servicing, repair and maintenance of Motor Vehicle, Vessel or aircraft is available provided they are used for further supply of such motor vehicle, transportation of passengers, imparting training on driving of such motor vehicles or for transportation of goods or where they are engaged in the manufacture of such motor vehicles, vessels or aircraft or in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him.
- The input tax credit in respect of food and beverages, health services, renting or hiring of motor vehicles, vessels and aircraft, travel benefits to employees, life Insurance, health insurance etc., can be availed where the provision of such goods or services is obligatory for an employer to provide to its employees under any law for time being in force.
- The **Compulsory Registration** is applicable only to E-commerce operator who is required to collect tax at source under section 52.
- Special Economic Zone or Special Economic Zone developer have to apply for a **separate registration** as distinct from other place of business outside the SEZ in the same state
- The Compliance of **GST Audit is not applicable** to department of Central Government or a State Government or a local authority whose books of

Accounts are audited by C&AG in India or an auditor appointed for auditing the accounts of local authorities under any law for time being in force.

- The input tax credit on account of SGST shall **be utilized** towards payment of IGST only when the balance of the input tax credit on account of central tax is not available for payment of IGST.
- The Input tax credit on account of CGST/SGST shall be **utilized** towards payment of IGST/CGST/SGST as the case may be, only after the input tax credit available on account of IGST has first been utilized fully towards such payment.
- The **relevant date** for claiming the refund for inverted duty structure is due date of furnishing returns for the period in which claim for refund arises.
- The **eligible duties and taxes** for transitional credit excludes any Cess and Cess which is collected as additional duty of customs under section 3(1) of Customs Tariff Act 1975.
- When the inputs or capital goods are **sent to job worker** for processing then such goods should return within one year/three years as the case may be. It has been amended that on sufficient cause the Commissioner **may extend** further period of one year and two years respectively.
- The **Third schedule** which is neither supply of goods nor supply of services shall includes
  - supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
  - Supply of warehoused goods to any person before clearance for home consumption.
  - Supply of goods in case of High Sea sale.
- The Threshold limit of turnover for **exemption from registration** in the state of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand shall be increased to twenty lakhs.
- With the permission of RBI, the supply of services outside India shall be regarded as exports even if payment is received in **Indian Rupees**.
- **Recovery** of Taxes, Interest, fine, penalty etc. can be made from distinct persons even if such distinct persons are present in different state/union Territories.
- The Issuance of **E-way bill** will not be permitted if composition supplier failed to furnish the return for two consecutive periods and regular supplier failed to furnish the return for two consecutive months. The Commissioner may consider the request of such applicants on being sufficient cause shown for not furnishing the return subject to such conditions as may be prescribed.
- Supply of Food and beverages by **Educational Institution** is exempted from levy of GST based on Notification 12/2017 dated 28.6.2017. Whereas supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to **GST at 5%.**
- Taxable value for the purposes of GST shall include **the TCS amount** collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.
- The Commissioner extends the period for submitting the declaration in **FORM GST TRAN-1 till 31st March 2019**, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the council.

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KSCAA Corporate Law and Allied Committee

requests all members to share the pain points being faced by them

in the area of compliances of Companies Act to the below email address.

KSCAA will do a consolidated representation to MCA for addressing the issues.

Email: cadeepa2005@gmail.com

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