

KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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Reopening of Assessment | GST | Financial Reporting | Introspection of Oneself | Constitutional Validity of the IBC | Paid tenure for the Elected Representatives



Ekata

Together we can

31st KSCAA Annual Conference 2019





Dear Professional friends,

At the onset, I wish to express my happiness and gratification before you all for making our 31st KSCAA Annual Conference 'Ekata' a grand success through your active participation and support. An event of this magnitude typically takes about three month of

toil by the office bearers, the Executive Committee and members of Sub Committee to flag off. And there is a very thin line to differentiate and bring through success and there is a very thin line to differentiate and bring through success, thereby margin for error is rather less. A lot of midnight oil is burnt literally and metaphorically to put forth such an event. Time and again, we are able to succeed only due to the Team KSCAA and great support and affinity extended by our members and well-wishers. I must acknowledge and say this has been really a monumental and instrumental factor for success of this annual event.

My gratitude list and heart goes to our Past Presidents, Past Secretaries, well-wishers, Executive Committee members, Sub Committee members, District Associations and various Branches of ICAI, resource persons for their yeomen services, sponsors, publishers and other stakeholders without whose collective support none of this would have been possible. I would like to harp upon the critical element of belongingness and patronage which is the essential ingredient for long standing association to stand vibrant in the changing times. And, we are really strong on this Element!

News Roundup

The GSTN (Goods and Services Tax Network) has enabled an option of 'Annual Return Tab' for filing Annual GST Return. The option for the filing of GSTR-9 (annual return) and GSTR-9A (annual return for composition taxpayers) has been recently added to the GSTN portal along with detailed "how-to" guide for return filing, terms and FAQs. So, registered taxpayers, who are eligible to file the annual return form, i.e., both GSTR 9 and GSTR-9A, can do so by visiting the government website on the before the due date for annual returns.

The government has made buying homes easier by slashing the Goods and Services Tax (GST) tax on under-construction properties. Rates have been cut from 8% to 1% for affordable homes and from 12% to 5% for regular units. Moreover, the size of what constitutes an affordable home has too been revised. A 60 sq. mtrs unit in a metro and 90 sq. mtrs home in a non-metro, valued at up to Rs.45 lakh, will now fall under affordable housing. The

government, however, has also eliminated input tax credit (ITC) benefit to builders, which the builders were required to pass on to buyers. Elimination of ITC could impact the base prices of properties.

UDIN is an initiative taken by ICAI to curb misrepresentation. Some mischievous persons posing as Chartered Accountants forge signatures on documents to mislead regulators and tax authorities. With the use of UDIN, Banks, RBI, SEBI, Income Tax Department etc. can check the validity and authenticity of the documents issued by Chartered Accountants. ICAI mandated the use of UDIN whereby all the practicing Chartered Accountants are required to generate UDIN for all Certificates issued with effect from 1st February 2019. As part of Phase II of UDIN initiative, the ICAI has made it mandatory for all GST & Tax audit Reports issued on or after 1st April 2019. Further, ICAI has clarified that UDIN is also applicable for Bank Audits too. Therefore, members are requested to adhere to the same while conducting Bank Audits.

As the keepers of financial discipline in the country, this situation should worry us all the more. Given our training, exposure and skills, we can play a crucial role in reversing rising trend of NPAs and vigilantly keeping our banking system healthy. By lending credibility to their financial statements, audits and auditors have an extremely important role to play in building a resilient banking industry. As such, the exercise of Bank Branch Audit assumes paramount importance for the banking industry, the banking regulator, our members, as well as the nation as a whole.

Let's conduct these audits in the most professional manner keeping a broader national vision in mind. You will be aware that to help you to carry out this nationally important assignment in most proficient and 'value add' manner. Let's also ensure compliance with relevant Standards on Auditing while carrying out Bank Audit engagement.

With a deep sense of relief and satisfaction, I wish to conclude my message with a thought -

"Coming together is a beginning; keeping together is progress; working together is success".

Long live Team KSCAA!!

Sincerely,

CA. Raghavendra Shetty
President

From the President



KSCAA

News Bulletin

March 2019

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REPRESENTATION ON APPLICABILITY OF DOUBLE ENTRY SYSTEM OF ACCOUNTING FOR PLANNING AUTHORITY

To,

Date: 14th Feb 2019

Shri U T Khadar

Hon'ble Minister for City Corporations & Urban Development Authorities
Government of Karnataka

Hon'ble Sir,

Re: REPRESENTATION ON APPLICABILITY OF DOUBLE ENTRY SYSTEM OF ACCOUNTING FOR PLANNING AUTHORITY

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.

Herein, we are presenting before your goodselves the need for 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 wish to present before your good selves the Statutory Provision under Section 68C (1) of the Karnataka Town and Country Planning Act, 1961 wherein it mandates that every Planning Authority, as defined under Section 2(7) (a)(i) and (ii) of aforesaid Act, shall maintain proper accounts and other relevant records and further prepare annual statements including **Balance Sheet**. The transcript of the provisions is presented below for your easy reference.

68C. Accounts and Audit.—(1) Every Planning Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as may be prescribed. (2) The accounts of every Planning Authority shall be subject to audit annually by the Controller of State Accounts. (3) The accounts of every Planning Authority as certified by the Controller of State Accounts together with the audit report thereon shall be forwarded annually to the State Government and the Board

2(7) 'Planning Authority' means,—

(a) in the case of—

(ia) the local planning area comprising any "urban area" defined in the Karnataka Urban Development Authorities Act, 1987, the Urban Development Authority of such urban area; The reasons for the request is as outlined below:

(ii) any other local planning area in respect of which the State Government may deem it expedient to constitute a separate Planning Authority

The provision specifying the maintenance of Balance Sheet impresses upon the adoption of Double Entry System of Accounting and the need to get the books of account audited the Controller of State Accounts and under Income Tax Act, 1961 and GST Acts, if the receipts cross the threshold prescribed thereunder.

Another point of mention is about **BUDA (Bellary Urban Development Authority)**, which has been proactive to adopt Double Entry System of Accounting and had the accounts audited by the Controller of State Accounts. Also Audited u/s 44AB of the Income Tax Act and filed income tax return as per provisions of the Income Tax Act by engaging the services of Chartered Accountants.

We hereby appeal your good selves to consider the supra issues and to kindly direct all the Planning Authorities in Karnataka to adopt Double Entry System/ Accrual System of Accounting, as required u/s 68C (1) of the Karnataka Town and Country Planning Act, 1961 and have the books of account audited as per applicable provisions of Income Tax Act and GST Act and avail the services and expertise of Chartered Accountants in addition to the Statutory Audit by the Controller of State Accounts.

We would be highly thankful if you could do the needful at the earliest so as to facilitate statutory compliance and oblige.

Thanking you,

Yours sincerely,

For **Karnataka State Chartered Accountants Association ®**

CA. Raghavendra Shetty
President

CA. Kumar Jigajinni
Secretary

CA. Vijay Sagar Shenoy
Chairman, Representation Committee



REOPENING OF ASSESSMENT – SEARCH CASES

CA. S. Krishnaswamy

'Assumption of jurisdiction u/s. 153A invalid if no incriminating material found'

- a. Introduction
- b. Lead cases-incriminating materials - invocation of Sec. 153A.
- c. Sec.153C -Assessment of income of any other person.
- d. Judicial decisions
- e. Conclusion

A special Section 153A was inserted in the Income Tax Act, 1961 w.e.f 01-06-2003 by Finance Act, 2003. Replacing the block method of assessment in search cases, further amendment was made by adding a 4th proviso w.e.f 01-04-2017. Before insertion of the 4th proviso there has been considerable litigation on the question whether this section can be invoked only when **incriminating material** found at the time of search or not. A prepondering view is that it can be invoked only when incriminating material was found at the time of search. The lead cases –

1. CIT vs. Kabul Chawla (2016) 380 ITR 573 (Delhi).
2. CIT (Principal) vs. Meeta Gutgutia Prop. M/s. Ferns “N” Peals (2017) 395 ITR 526 (Delhi) (para 10) held “it was only if during the course of search u/s 132 incriminating material justifying the reopening the assessment for six previous years was found that the invocation of sec 153A qua each of the assessment years would be justified.”
3. PCIT vs. Dharmapal Premchand Ltd. (2018) 408 ITR 170 (Delhi) held that if what was seized did not constitute incriminating material, the essential jurisdictional fact for justifying the assumption of jurisdiction under section 153A did not exist.
4. The Department is relying on The Karnataka High Court in the case of M/s. Canara Housing Development vs. DCIT (2015) 274 CTR 122 (Kar). However, in this case the Court was required to answer the following question-

“When once the proceedings under Section 153A of the Act is initiated, whether the Commissioner of Income Tax can invoke the power under Section 263 of the Act to review the order of assessment passed by the Assessing Authority?” - holding that the power of Sec.263 cannot be exercised when the earlier order made u/s 143(3) does not exist. In passing, the Court mentioned in Paragraph 10 -

“Initiation of proceedings under Section 153A is not dependent on any undisclosed income being unearthed during such search.” although such a question had not been referred to the Court. Therefore it can be construed that this opinion is not germane to the decision and therefore not legally binding as a precedent. It is an obiter dictum.

‘Obiter dictum’ refers to an opinion or a remark made by a judge which does not form a necessary part of the court’s decision.

It would therefore appear that decisions on the question holding that if no incriminating material is found at the time of search resort cannot be made to Sec.153A was not brought to the notice of the Court.

In another decision of Karnataka High Court in CIT v. IBC Knowledge Park (P.) Ltd. (2016) 385 ITR 346 (Kar) referred to later the Court held that invoking Sec.153C (assessment of any other person) incriminating material must be found at the time of search. The ratio decidendi of this case will apply to the interpretation of Sec.153A and therefore can be taken as an authority for holding if no incriminating material found at the time of search Sec.153A cannot be invoked.

5. It was observed in the case of CIT vs. Chetan Das Lachman Das vide ITA No.2021/2010 (Delhi HC) order pronounced on 7th of August 2012 that “Section 153A (1) (b) provides for the assessment or reassessment of the total income of the six assessment years immediately

preceding the assessment year relevant to the previous year in which the search took place. There is no condition in this Section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or information available with the Assessing Officer which can be related to the evidence found. This, however, does not mean that the assessment under Section 153A can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.”

6. It was held in the case of PCIT vs. Kurele Paper Mills P Ltd (2016) 380 ITR 571 (Delhi) that “this Court declined to frame a question of law in a case where, in the absence of an incriminating material being found during the search under section 132 of the Act, the Revenue sought to justify initiation of proceedings under section 153A of the Act and make an addition under section 68 of the Act on bogus share capital gain. The order of the CIT (A), affirmed by the ITAT, deleting the addition, was not interfered with.

In CIT vs. Kabul Chawla (2016) 380 ITR 573 (Delhi), the Court also took note of the decision of the Bombay High Court in CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR (Bom); (2015) which accepted the plea that if no incriminating material was found during the course of search in respect of an issue, then no additions in respect of any issue can be made to the assessment under sections 153A and 153C of the Act.

In CIT vs. Anil Kumar Bhatia (2012) 211 Taxman 453 (Delhi), the Court did not express any opinion as to whether Section 153A can be invoked in a case where no incriminating material was found during the search as it was in fact dealing with a case where incriminating material had been found.

It was held in the case of DCIT vs. A. E. Exports (2019) 69 ITR (Trib) 503 (Jaipur) that no additions could be made in the absence of incriminating material found during search.

It appears that a number of High Courts have concurred with the decision in Kabul Chawla beginning with the Gujarat High Court in PCIT vs. Saumya Construction (P) Ltd (2016) 387 ITR 529 (Guj).

• **Section 153A reads as -**

“Assessment in case of search or requisition:

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b) in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years]

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years];

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous

year in which search is conducted or requisition is made [and for the relevant assessment year or years].

- **Insertion of 4th Proviso to Section 153A w.e.f 01-04-2017 as follows:**

“Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless-

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
- (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1 ...

Explanation 2 ...”

The insertion of 4th proviso makes it abundantly clear that resort to Sec.153A can be made only if incriminating material is found at the time of search.

- **Incriminating Material:**

Section 132 or Section 153A did not use the phraseology “incriminating material”. Therefore, any material which was unearthed during search operations or any statement made during the course of search by the assessee is a valuable piece of evidence in order to invoke section 153A of the Income Tax Act, 1961.

- **Similar is the situation when seized materials refers to any other person- Sec.153C:**

In Kamleshbhai Dharamshibhai Patel vs. CIT (2013) 31 Taxmann.com 50 (Guj) on considering Section 153C, it was observed that the said section begins with a non-obstante clause. Requirements for assuming jurisdiction under section 153C (1) are, that the Assessing Officer is satisfied that any valuable assets or books of account or document seized or requisitioned **belongs to a person other than the person referred in section 153A of the Act.** In such a case, he shall handover to the Assessing officer naving jurisdiction of such other person, the

books of account or document or documents or valuable assets seized or requisitioned should belong to a person other than a person referred in section 153 of the Act.

It was held in the case of **CIT v. IBC Knowledge Park (P.) Ltd. 2016 TaxPub(DT) 2423 (Karn-HC) (2016) 385 ITR 346 (Kar)** that-

“Materials such as books of account, documents or valuable assets found during a search should belong to a third party which would lead to an inference of undisclosed income of such third party. Such an inference should be recorded by the Assessing Officer having jurisdiction over the searched persons and communicated to the Assessing Officer having jurisdiction over such third party along with the seized documents and other incriminating materials on the basis of which the Assessing Officer having jurisdiction over such third party would issue notice under Section 153C. On receipt of the aforesaid material, the Assessing Officer having jurisdiction over such third party would proceed against the said third party. Thus, where **no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, Section 153C would have no application.** Thus, the detection of **incriminating material** leading to an inference of undisclosed income is a sine qua non for invocation of Section 153C of the Act.”

“Further, in the judgements referred to by the learned counsel for the Revenue, where incriminating material leading to undisclosed income of another assessee was detected in a search operation, in those cases, reopening of the concluded assessment have taken place. **There has been no single decision cited by the learned counsel for the Revenue where the assumption of jurisdiction of the Assessing Officer is in the absence of any incriminating material or undisclosed income** having been detected during the course of search leading to reopening of a concluded assessment. In the instance case, though documents belonging to the assessee were seized at the time of search operation, there was no incriminating material found leading to undisclosed income. Therefore, assessment of income of the assessee was unwarranted. Consequently, no satisfaction was recorded in the case of the assessee.”

In Savesh Kumar Agarwal vs. Union of India (2013) 35 Taxmann.com 85 (Allahabad) the question considered was whether on receipt of satisfaction note, the Assessing Officer had not found anything adverse against the assessee and seized goods having been released in favour of the assessee, notice could be issued under section 153C of the Act to file returns for six years. The stand of the Revenue therein was that the Assessing Officer could still proceed under Section 153A of the Act in order to find out the source of income. In that case the writ petition filed under Article 226 of the Constitution of India challenging the notice was dismissed on the premises that the power under section 153C exists in the Assessing Officer, if he is satisfied with regard to the need for examination of source of income.

• **Further reference can be made to the following judgements-**

- Sri Sri Gruhanirman India Pvt Ltd vs ACIT (2018) 67 ITR (Trib) 178 (Hyd)
- CIT vs. Deepak Kumar Agarwal (2017) 398 ITR 586 (Bom)
- Aravali Trading co vs. ITO (2008) 220 CTR (Raj) 622 (para 8)
- CIT vs. Ram Avtar Verma (2017) 395 ITR 252 (Delhi)
- CIT vs. SKS Ispat and Power Ltd. (2017) 398 ITR 584 (Bom)
- ITO vs. Shlok Fashions Pvt Ltd vide ITA No.695/Kol/2017 Dt.7/12/2018
- Vikarm Goyal vs. DCIT ITA No.174/Jaipur/2017
- CIT(P) vs. Mahesh Kumar Gupgta (2016) TIOL-2994-HC-DEL-IT

- CIT(P) vs. Devangi alias Rupa (2017) 394 ITR 184
- CIT vs. Jai Kumar Bakliwal (2014) 366 ITR 217 (Raj)

• **Conclusion:**

The prepondering opinion (before 01-04-2017 when 4th proviso was inserted) is that an assessment u/s 153A cannot be made when there is no incriminating material found during search so is it in the case of 3rd party referred in Sec.153C. The phrase incriminating material has also been discussed in the judicial decisions cited earlier.

Sec.153A also provides in sub-section (2) that if any proceeding initiated or any order of assessment or reassessment made has been annulled, then the assessment or reassessment relating to any assessment year which has abated shall stand revived with effect from the date of receipt of the order.

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**KSCAA WELCOMES
NEW MEMBERS - FEBRUARY 2019**

S.No.	Name	Place
1	Prathik J. Jain	Davanagere
2	Sunitha D	Tumkur
3	Vijay Patel	Bengaluru
4	Arpitha V.T.	Bengaluru
5	Srikanth S.	Bengaluru
6	Jaypal Parmar	Bengaluru
7	Akshaya Kumar M.R.	Bengaluru
8	Lakshmi B	Bengaluru
9	Shreekrishna P. Aital	Bengaluru
10	Prathima Vankadaru	Bengaluru
11	Swarnalatha V.	Bengaluru
12	Sirantadka Subrahmanya Bhat	Bengaluru
13	Sobhanadri V.	Bengaluru
14	Gurumoorthy Subray Bhat	Bengaluru
15	Sanjay Kumar Gouthamchand Surana	Bengaluru
16	Porwal - K.M.	Vijayapur
17	Shivayya Yammi	Bagalkot
18	Ashok Malipatil	Bijapur
19	Chandrakanth Kapatkar	Bijapur

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EMPLOYER OBLIGATORY SERVICES ELIGIBLE FOR GST ITC



CA. Madhukar N Hiregange & CA. Mahadev R

Effective from 1st February 2019, most of the changes proposed by CGST (Amendment) Act 2018 were given effect in CGST Act 2017. Important changes were providing of provision for payment of GST under reverse charge mechanism only on specified class of supplies by specified class of registered persons, non-requirement of treating certain activities of Schedule III as exempt supplier for reversal of credit. Certain changes were also made in the input tax credit restrictions provided in Section 17(5) of CGST Act 2017 allowing credits on inputs or services which are obligatory for employer to provide to employees under any law for the time being in force. In this article, certain categories of supplies which are obligatory have been identified and discussed.

Obligatory services allowed for ITC

In terms of Section 17(5) (b), the ITC would **not** be eligible on following supply of goods or services or both-

- (i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance and health insurance. In case of leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) of Section 17 (5) except when used for the purposes specified therein, credit is restricted.

Proviso provides for ITC in above cases when 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 centre;
- (iii) Travel benefits extended to employees on vacation such as leave or home travel concession:

Proviso is provided to clarify that the input tax credit in respect of such goods or services or both would be eligible where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Referring the provisions, one doubt which could arise is whether the proviso added to allow credit on

employer obligatory services is applicable only to (iii) above for travel benefits or for all services listed in (i) to (iii). Considering the intentions of the law makers and provision as existed before the amendment, it appears that the intention is to allow credit in case of (i) to (iii).

Prior to the amendment, only on ITC relating to rent-a-cab, life insurance and health insurance was allowed where it is notified by government as obligation of employers. Supplies like food and beverages were not covered earlier.

Supplies which are obligatory for employers

With effect from 1st February 2019, the tax payers need to ascertain the supplies which are mandatorily being provided to the employees to claim the credit. Supply of food through canteen, rent-a-cab facilities for women employees, mandatory insurance policy could be few which need to be considered.

Canteen facility

Section 46 of the Factories Act 1948 provides for making rules by State governments requiring factories with more than 250 workers to have a canteen. As held in case of *Ferro Alloys Corporation Ltd. v. Government of Andhra Pradesh Labour Employment and Technical Education (Labour II) Deptt, 2003 (96) FLR 160*, the mode in which the specified establishment must set up a canteen where it is left to the discretion of the concerned establishment to discharge

its obligation of setting up a canteen either directly or by employment of contractor.

Therefore, factories with more than 250 workers are employed should be eligible for ITC of GST paid on food and beverages employed. There could be establishments where canteen facilities being provided though not mandatory under any law. In such cases, ITC would not be eligible.

There could also be cases where partial amounts recovered from the employees towards the canteen facility which requires payment of GST by the employer / registered persons. In such cases, in terms of notification no.11/2017-CT, GST rate of 5% would be applicable and no other rate can be applied. Once 5% rate is applied, the same is subject to condition that no ITC on goods or services is claimed. Therefore, no ITC would be eligible where amounts are being recovered from the employees.

Tax payers could undertake cost benefit analysis considering the eligibility of credits in case of canteen recovery. If no amounts are recovered, credit of 5% would be eligible. If amounts are recovered, cost would be 10% [5% charged by caterer + 5% liability to be discharged by employer]. If amounts recovered are less than 10%, then option of not recovering any amounts from employee could be better.

Transportation facility

Transportation facility provided to women employees could be another category of service which could be considered for credits. Many State government laws provide for women employee's safety. Respective State government laws to be understood for this. In Karnataka, in terms of Karnataka Shops and Establishment Rules 1963, there are few conditions / restrictions for having women employees working for night shifts. Though generally they should not be working beyond 7 PM, with approval industries such as IT companies, hotels are permitted to employ women beyond this. There is a need for providing pick and drop facility free of cost with adequate security (working beyond 8.30 PM) to such women based on Karnataka Government circular no. ITD/180/PrS/2015.

In case of IT/ITES companies, travel expenditure for women employees could be common. Segregation towards transportation facilities provided based on the circular could

be maintained separately for claiming the ITC. Similarly laws of respective States need to be seen for such eligibility.

EDLI facility

Employee Deposit Linked Insurance Scheme Act 1976 (hereinafter referred to as 'EDLI') applies to all employees whom the provisions of EPF Act 1952 is applicable. Under the scheme the employees would be covered with claim amount of nearly 30 times of salary in the event of death. This requires contribution only from the employer. Insurance companies like LIC provide these schemes. The GST paid on such schemes would also be eligible for the ITC.

Other insurance schemes

Schemes like accidental insurance scheme **could** also be eligible for credit though may be disputed as health insurance. If such schemes are mandatory under any law, then the credit could be taken and moreover, it is incurred in furtherance of business.

Insurance schemes for constructions workers could be made mandatory very soon which could be mandatory in construction industry such as health, accident etc. Once it is done, the construction industry would be eligible for credit of GST paid on such insurance schemes as well.

Conclusion

Benefits discussed above eligible for credits are only illustrative. There could be many other benefits such as providing drinking water facility is mandatory under the establishment laws of many State governments. ITC on packaged water would be eligible for credit. Professionals could guide the tax payers after understanding the industry needs and statutory provisions governing such industries. As the GST law is still in developing stage, there could be disputes on employee related credits. It would be a good idea to write to the department quoting the provisions of applicable law which mandates certain benefits to employees eligible for credit.

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CONSTITUTIONAL VALIDITY OF THE INSOLVENCY AND BANKRUPTCY CODE

Adv. Vikram A. Huilgol

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

Introduction.

On January 25, 2019, the Supreme Court passed a judgment in Swiss Ribbons Pvt. Ltd. v. Union of India, 2019 SCC OnLine SC 73, upholding the validity of various provisions of the Insolvency and Bankruptcy Code, 2016 (“the IBC” or “the Code”). The elaborate judgment gives a very interesting insight into the legislative intent behind a number of provisions of the IBC and the working of the code. This is the first of a two-part analysis of the Supreme Court’s judgment and the provisions of the IBC that have been discussed therein. This part primarily deals with the contention relating to hostile discrimination between financial and operational creditors. The remainder of the Supreme Court’s judgment will be addressed in the second part in the following month.

Background.

The IBC was introduced in 2016, and the legislative intent behind its enactment is clearly set out in the preamble, which reads as follows: “An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such person, to promote entrepreneurship, availability of credit and balance the interests of the stakeholders.” Therefore, the primary reason for enacting the IBC was to consolidate the disparate laws that were applicable to insolvency resolution processes, in order to ensure that asset value is protected to the maximum extent possible, which would in turn serve the interests of the insolvent entity, as well as its creditors and other stakeholders. In Swiss Ribbons, the Supreme Court succinctly captured the *raison d’être* for the IBC by observing as under:

“The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete.

Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment.”

In order to achieve its objectives, the IBC provides creditors with a mechanism to initiate insolvency proceedings in the event that the entity is unable to pay its debts. The debtor itself also has an option to take recourse to the IBC in case it wishes to avail of the processes provided under the Code.

The Judgment.

The petitioners before the Supreme Court assailed various provisions of the IBC. The more technical contentions raised were as follows: (a) that the appointment of members of the NCLT and NCLAT was contrary to the Supreme Court’s earlier judgment in Madras Bar Association v. Union of India, (2015) 8 SCC 583; (b) that the NCLAT Bench being constituted to sit only in Delhi was contrary to the judgment in Madras Bar Association v. Union of India, (2014) 10 SCC 1; and (c) that the Tribunals are functioning under the wrong ministry, that is, under the ministry of Corporate Affairs and not the Ministry of Law and Justice.

The above contentions were rejected by the Court, based on the following submissions made by the Union of India: (a) the process of selection of members of the NCLT and NCLAT was conducted by the Selection Committee

constituted under Section 412 of the Companies Act, 2013; (b) Circuit Benches of the NCLAT would be constituted in other cities within a period of 6 months from the date of the Supreme Court's order; and (c) that the Union was strictly following the mandatory allocation made as per the rules of business (the Court, however, expressed that it is "high time" that its judgment in Madras Bar Association would be followed in letter and spirit and the administrative support for the Tribunals would be from the Ministry of Law and Justice).

Having dealt briefly with the technical contentions, the Court proceeded to address the most critical issue that was before it – whether the classification between financial creditors and operational creditors under the IBC survived the test of Article 14 of the Constitution, or whether the classification was discriminatory and arbitrary, and, therefore, unconstitutional.

Sections 5(7) of the IBC defines a "financial creditor" to mean "any person to whom a financial debt is owed. A financial debt has been defined under Section 5(8) to mean "a debt along with interest if any, which is disbursed against the consideration for the time value of money" and, inter alia, includes: (a) money borrowed against payment of interest; (b) any amount raised by acceptance under any acceptance credit facility; (c) any amount raised pursuant to a note purchase facility or through issuance of bonds, notes, debentures, loan stock, and other similar instrument; (d) liability in respect of any lease or hire purchase contract deemed as a finance/capital lease under Indian Accounting Standards; (e) any derivative transaction; and (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing. Pertinently, it has been expressly clarified that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing.

An "operational creditor," on the other hand, has been defined to mean "a person to whom an operational debt is owed." Section 5(21) defines an "operational debt" to mean "a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority." Therefore, operational creditors would include employees, goods suppliers, service

providers, and the Central and State Government to whom the corporate debtor owes dues, such as arrears of tax.

The petitioners pointed out various provisions, which treated financial and operational creditors differently. For instance, under Section 8 and 9 of the IBC, an operational creditor must mandatorily give notice of default, following which the debtor is entitled to dispute the claim of the operational creditor. Pertinently, in the case of an operational debt, the debtor may, if an application is filed before the adjudicating authority, show that the debt is disputed, in which case, the application would be rejected. On the other hand, in the case of a financial debt, no notice is required to be given to the financial debtor and he is not entitled to dispute the debt. Therefore, in the case of a financial debt, the provisions of the IBC would get triggered at the behest of a financial creditor, without having to provide an opportunity to the corporate debtor to dispute the genuineness of the claim. Under Section 7(4), it is up to the NCLT to ascertain the existence of a default based on the evidence provided by the creditor and either admit the application, if a default has in fact occurred or dismiss the same, if no default is found to have occurred. The petitioners contended that the abovementioned differential treatment of operational and financial creditors is not based on any intelligible differentia that has a nexus to the object sought to be achieved by the IBC and that, therefore, the provisions fall foul of the right to equality enshrined under Article 14 of the Constitution.

Addressing the above contention, the Court referred to reports of the Bankruptcy Law Reforms Committee, the Notes on Clauses to the IBC Bill, and the Report of the Insolvency Law Committee, and held as follows:

"According to us, it is clear that most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and the like. The distinction between secured and unsecured creditors is a distinction which has obtained since the earliest of the Companies Acts both in the United Kingdom and in this country. Apart from the above, the nature of loan agreements with financial creditors is different from contracts with operational creditors for supplying goods and services. Financial creditors generally lend finance on a term loan or for working capital that enables the corporate



debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business. Financial contracts generally involve large sums of money. By way of contrast, operational contracts have dues whose quantum is generally less. In the running of a business, operational creditors can be many as opposed to financial creditors, who lend finance for the set up or working of business. Also, financial creditors have specified repayment schedules, and defaults entitle financial creditors to recall a loan in totality. Contracts with operational creditors do not have any such stipulations. Also, the forum in which dispute resolution takes place is completely different. Contracts with operational creditors can and do have arbitration clauses where dispute resolution is done privately. Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these qua operational debts are matters to be proved in arbitration or in the courts of law. On the other hand, financial debts made to banks and financial institutions are well-documented and defaults made are easily verifiable.

Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganization of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code."

Accordingly, the Court rejected the petitioners' contentions and held that the IBC rightly treats financial and operations creditors differently and that the differential treatment has a direct nexus to the object sought to be achieved by the Act, namely, the preservation of asset value of the corporate

debtor. More specifically, the Court observed that there is a greater chance of there being a genuine dispute regarding default of an operational debt, as opposed to financial debts, which are more structured and regulated. The Court, therefore, was of the opinion that the requirement of issuance of notice prior to filing an application in the NCLT was a necessity in the case of operational debts. The Court also reasoned that financial creditors would be more interested in the restructuring of the loan, as well as reorganization of the debtor's business, which would result in achieving the IBC's objective, that is, maximization of asset value for the benefit of all stakeholders.

The petitioners also contended that unless operational debts amount to at least 10% of the aggregate amount of debt, operational creditors have no voice in the committee of creditors, which amounts to hostile discrimination. It was specifically contended that Sections 21 and 24 of the IBC are arbitrary, as under the said provisions, operational creditors do not have even a single vote in the committee of creditors, which plays a vital role in the resolution process of the corporate debtor.

The committee of creditors is constituted under Section 21 of the IBC after collation of all claims and determination of the financial position of the corporate debtor. The Supreme Court observed that the essential function of the committee is financial restructuring of the corporate debtor by assessing the viability of the debtor and evaluating all alternative opportunities available. The committee is then required to prepare and submit a resolution plan. Once the resolution plan is approved by the committee by a vote of not less than 75% of the voting share of the financial creditors, the same is placed before the NCLT, which may then approve the plan. The plan is then binding on all the stakeholders. As can be seen, operational creditors have no say whatsoever in the committee, which was assailed by the petitioners before the Supreme Court.

The Court, however, rejected the contention, holding that, "since financial creditors are in the business of money lending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor." The Court further observed that, "on the other hand, operational creditors, who provide goods and services, are involved only in recovering amounts that are

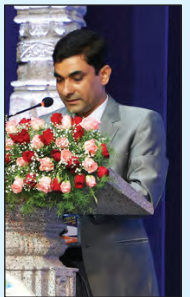
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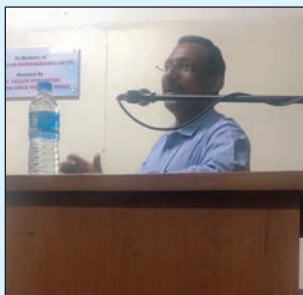




Workshop on RERA at Belagavi



A Practical Approach NCLT Procedure





INTROSPECTION OF ONESELF

CA. Sanjay Dhariwal

Introspection helps us recognize the positive and negative patterns in our life. Slowing down from life, breathing, just living, focusing and observing the moment is not a very common thing. Though it is the easiest thing to do, how many of us do it today?

In today's life where everything happens very fast with a click of button, the Google Era, where the life is so busy that we do not have time to sit and reflect. That is why introspecting is helpful to get back to living.

In our day to day activities we become so engrossed that we hardly have time to introspect of what we feel during the day. The things we did right but could have been done better or should not have done at all.

Many of us are under the belief that we are very busy and complain that there's no time to do things. When we do an introspection, we realize that during each day how much time we have wasted. Generally, there are 4 areas where we waste a lot of time.

1. Sleeping beyond what is required
2. Not eating right food at the correct time
3. Talking on matters which are not of your concern
4. Browsing data that are not required

That's why we should try to do a daily introspection and see how we have utilized the day? How many other activities we could have also done? How we can prioritize our activities?

This introspection can be done more effectively through the process of meditation. Some of us do introspection when we are walking and recollecting all the activities we have done in the past / on the same day.

People who are successful tend to do continuous introspection on regular intervals.

The purpose of self-introspect is as follows:

1. Observing the work done in the past
2. Evaluating the time which could have been better utilized

3. Correcting the flaws and improving your efficiency at work
4. Optimizing the efforts to a maximum level

What Is it required to be done in the process of introspection?

Identifying your weakness is difficult task. But doing an introspect will give the ability to identify them. Accepting weakness is a step closer to achieving your goal.

Once the weakness is identified the next thing is to work on the weakness, to either turn it into strength or minimize its effect on your growth.

The below are few points an how introspection helps:

1. Introspection helps us to define our own happiness

What makes one happy? This is something that needs to be known to everyone who wants happiness. Of course, happiness lies within yourself and not outside, which can be understood when we learn more about oneself through the medium of meditation.

What you really need to know is what makes one happy whether, when you talk to your best friend or when you see your child's innocent happiness of having achieved his/her task or when you take a walk in a garden with your pet?

Search far your happiness and do it daily which will trigger efficiency In executing the task.

2. Introspection helps you identify your fear and become stronger

Fear is something we all have in us, for some or the other thing in some or the other form.

Introspection takes you cose to your fears, allows you to identify them and then slowly learn to find out ways to handle it in a better way.

Recognizing what your fears are or what scares you is an achievement in itself.



3. Introspection helps you get things under your control

We need to accept the fact that we don't always have a control over many things. Things that are not under your control could be removed out of your focus through introspection.

For example, you have an important meeting scheduled today. An unexpected traffic jam on the road, on the day of your way delays you.

Can you do anything other than getting stressed over things that are not under your control?

Yes, don't take any stress, make a call to the person with whom you have the appointment, inform about the delay.

This can be understood when you introspect and let go things what's not under your control and focus your attention & energy towards things that can be changed or controlled.

4. Introspection will definitely help you find different & effective solutions

When life is just going on like a set pattern daily, your 24 hours are spent in a particular pattern and design. You keep repeating it every day, which will make you a robot. You begin to do things without being aware of what you are doing-

When you introspect, you realize that you are not being lively but mechanical.

For example, making a small change in the route back home from office may bring up something really exciting.

You may find a new store on the way, you start exploring the store from where you decide to buy a small gift for your family.

You wouldn't have done this if you had taken your regular route. Now this small change may even overwhelm them in excitement

Likewise, keep doing things differently with awareness to see different and beautiful results.

Sanjay's way of Introspection

How does one Introspect "Sitting in Silence"?

I do lot of travelling. My team in the office always comments that my senior travels 32 days a month. Well that's a bit of an exaggeration. I do have an extensive travel schedule.

While in flight, I read 5 newspapers, at least in one aspect I want to match Mr. Warren Buffet.

While I am a part of the IDT committee, I had travelled with the chairman of the ICAI IDT Committee CA. Madhukar Hiregange, whom I consider as one of My Guru.

As talking to him I saw a book in his hand and I said "Sir, I read 5 newspapers but I am never able to read a book on flight'.

He replied with a very interesting answer saying, "Sanjay, you like variety and so you easily read those many newspapers because It covers subjects ranging from politics to fashion, even advertisements are from a range of different areas of interest".

After this input from my guru, I did a small introspection and realized it is not that why I can't read a book on a flight? I definitely can, but reading a newspaper is easy, so then I decided to carry a multiple books every time I travel and make it a point to read at least 50 pages of the book during my journey.

The effect of my introspection resulted that during the last 6 months I was able to read 8 books and I will continue to do so to achieve the comfort as the same as reading a newspaper.

This is how introspection helped me.

Another instance is when you are planning to buy a phone you do a lot of research with regarding to the price (budget), features, size of the phone, software etc... after which you buy a phone. This is usually a method followed by 90% of the population. But have we ever evaluated our self? Do you think we are cheaper than a mobile phone?

Now if you do the same kind of research, which is nothing but introspection of yourself, wouldn't you be able to give the best of yourself towards work, family or any other things.

Questioning yourself, your habits, your fears during your introspection may not necessarily give you an answer.

There could be a possibility that the question doesn't remain a question at all.

Questioning is a good way to go deeper into introspection.

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GOODS TRANSPORT AGENCY UNDER GST

CA. G B Srikanth Acharya

What is GTA?

Goods Transport Agency, as defined under clause (ze) of notification no. 12/2017-Central tax (Rate) means:

“any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.”

Thus, from above it is understood that GTA includes only those suppliers who issues a **consignment note** to provide services, not only of **transportation of goods by road** but also **services ancillary to transportation** of such goods, such as- loading, unloading, temporary warehousing, etc., which are not provided independently but provided to support the goods transportation services.

What is consignment Note?

Consignment note is not defined under the GST Act. However, the meaning of the same was defined in the Service Tax Rules, 1994, which says, *“consignment note means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.”*

Hence, under GST, the meaning of consignment note in context to GTA shall be- any document issued by the supplier of goods transportation services against receipt of goods for the purpose of transportation of such goods. Such document shall contain details such as-

- name of the consignor and consignee,
- registration no. of the goods carriage used to transport the goods,
- details of goods being transported, place of origin and destination,
- person liable to pay GST;

Also, such document should be serially numbered by the GTA.

Taxability under GST

Heading 9965 of Notification 12/2017- Central Tax (Rate) exempts following services from being taxable under GST:

“Services by way of transportation of goods:

- by road except the services of:*
 - a goods transportation agency;*
 - a courier agency;*
- by inland waterways.”*

Therefore, services by way of transportation of goods, other than those provided by a GTA or a courier agency, is exempt under GST.

As per notification 11/2017- Central Tax (Rate), amended by notification 20/2017, a GTA can opt for **either of the below** options to tax their supplies:

Sl. No.	Rate of tax	ITC	Reverse or Forward Charge
1	5%	Without ITC	Reverse Charge
2	12%	With ITC	Forward Charge

Therefore, if the GTA opts to charge 12% GST, it can claim Input tax credit. However, if it opts to charge 5% GST, then it shall not be allowed to take credit of input tax and the tax shall be paid by the recipient of the service on RCM basis.

Registration under GST

Every person whose turnover exceeds Rs. 20 lakhs in a year is required to be registered under GST. The same is applicable to GTA also. However, in case when GTA provides all the services to persons liable to pay tax under Reverse Charge Mechanism (as mentioned in following), then in such case, it is not required to obtain registration under GST even if the turnover in a year exceeds Rs. 20 lakhs. Further, if GTA provides service to an unregistered person and his turnover exceeds Rs. 20 lakhs in a year, then in such case he is required to get itself registered under GST.

Reverse Charge Mechanism

As per Notification 13/2017, a GTA who has **opted to pay tax at 5% or who provides services** in relation to transportation of goods by road **to following seven** persons, then tax shall be paid by the recipient of the service-

- a. any factory registered under or governed by the Factories Act, 1948; or
- b. any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
- c. any co-operative society established by or under any law; or
- d. any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or
- e. any body corporate established, by or under any law; or
- f. any partnership firm whether registered or not under any law including association of persons; or
- g. any casual taxable person

Further, RCM is **not applicable** in case when **supplies are made by GTA to persons registered** under CGST Act, 2017 **only for the purpose of deducting tax at source under section 51.**

Services by GTA specifically exempt under GST

Notification 12/2017- Central Tax (Rates) **exempts transportation of following goods by a GTA** from being taxable under GST:

- (a) agricultural produce;

- (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500/-;
- (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750/-;
- (d) milk, salt and food grain including flour, pulses and rice;
- (e) organic manure;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments.

Conclusion

From above, it is clear that, for a supplier of goods transportation services to be called as a Goods Transport Agency(GTA), it has to mandatorily issue a consignment note on receipt of goods for transportation. Under GST, goods transportation services provided by persons other than GTA is exempt to be taxed. Further, the recipient of the GTA service is liable to pay tax under GST, unless the GTA opts to pay tax at 12% and when the GTA opts for 5% GST, it cannot claim Input Tax Credit of inputs used in provision of GTA services.

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CONSTITUTIONAL VALIDITY OF THE INSOLVENCY AND BANKRUPTCY CODE

(Contd. from page 12)

paid for such goods and services, and are typically unable to assess viability and feasibility of business.” The Court, accordingly, found that there was an acceptable rationale behind the exclusion of operational creditors from the committee of creditors. The Court also observed that the interests of operational creditors were protected by virtue of the fact that the NCLT has to mandatorily approve the plan, keeping in mind, inter alia, the interests of operational creditors. Furthermore, the Court observed that Section

30(2)(b), read with Section 31, ensures that no resolution plan can be approved unless a minimum payment is made to operational creditors, being not less than the liquidation value. The Court, accordingly, concluded that the aforesaid provisions of the IBC, in addition to some other safeguards in the Code, sufficiently protect the rights of operational creditors. It was, therefore, held that there was no ground made out by the petitioners to show that the Code discriminates against operational creditors in a manner that offends Article 14.

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A FOUR-YEAR PAID TENURE FOR THE ELECTED REPRESENTATIVES

CA. V Pattabhi Ram

The Institute of Chartered Accountants of India (ICAI) is the country's accounting and audit watchdog. It operates as a self-regulatory body and is run by the members of the profession along with nominees of the Government of India.

There are 32 Central Council members (similar to MPs) representing five regions: North, East, West, South, and Central. In a nationwide poll, the CA community elects these members. Also, there are 64 Regional Council members (akin to MLAs) who are elected by CAs belonging to that region. These representatives are generally in practice, and very few have been from industry. All of them do an honorary job at the ICAI. This is my problem number one.

The election for the Council takes place once every three years. These three years is called a term. A candidate can be elected for a maximum of three consecutive terms. Most of the elected members have a high sense of service orientation and are ambitious enough to want to lead ICAI one day. Each year the central council members select one amongst them to be the President of the Institute. Every year the regional council members of each region choose one amongst them as the Chairman of the region. Here in comes my problem number two.

In this article, I explore two ideas of change whose time for implementation has come. One, compensate the council members for their efforts, to ensure transparency and accountability. Two, look at an alternative tenure for members.

But before that, we must look at another piece of detail. The Institute has a secretariat operating in New Delhi and at various regional headquarters. This is the equivalent of the bureaucracy (IAS) or the executive in governance. These men are the executors. The elected members act as the legislature, which is the rough equivalent of ministers. They are the lawmakers and vision setters. The ICAI's way of functioning has its parallel in industry bodies like the CII where the Chairman spends the entire year on CII work and is supported by the CII-secretariat. He holds

office only for a year and acts as the executive chairman of a company, driving growth. At ICAI too the President and the Chairman as the case may be has a one-year tenure.

MAKE THE COUNCIL JOB FULL TIME AND REWARD THEM

Let me now offer a solution to problem number one, namely the honorary position that members hold. I have always held the view that a council member should neither have any interest, pecuniary or otherwise in a CA firm nor be employed in the industry. This will ensure that there is no conflict of interest, perceived or otherwise. While it is possible for a member to maintain a Chinese wall between himself and the firm, Caesar's wife should be above suspicion.

Today, all members, without exception, declare that they are into the council for rendering service to the profession. It is therefore reasonable that they give up employment or practice, during this tenure. For sure, the council member needs to be compensated at fair rates. And this is something that the ICAI needs to work out because in the long run there is no free lunch. Mark it, the MPs and MLAs as also cabinet ministers including the prime minister and the chief minister draw a salary. So, why not the elected-CA? I am not suggesting a one rupee salary ; I am proposing a reasonably fat salary.

A FOUR YEAR TERM, TWICE OVER

The government spent Rs 3870 crore on the Lok Sabha elections for its 10.6-lac polling booths. This translates into Rs 36500 per booth. The ICAI has 147 branches, and at an average ratio of 3 booths (as opposed to locations) per branch, we can say there would be about 450 polling booths. Should the cost hence be $36500 \times 450 = 165$ lac i.e. 1.65 crore? Applying a conservative multiple of 2.5 to recognize the lack of economy of scale, and the huge time that it takes to do the vote count the number translates to Rs 4.1 crore. These are a crude back of the envelope calculations that may be wrong by a zillion mile but can be a good starting point. Remember election takes place in 147 of ICAI's branches.

People have to be moved, boarded and lodged; ballot papers have to be transferred, counted, etc.,

The expenditure ceiling per contestant is Rs 3 lac for the regional and Rs 6 lac at the central council. Given that 64 regional council members and 32 central council members are to be selected and taking a ratio of three contestants per vacancy we are looking at Rs 4.0 crore of spending. Then there are the about 1-lac voters be participating in this dance of democracy. If you take the average voter as earning Rs 5000 per day and if you say voting takes only a couple of hours we are still looking at Rs 12.5 crore. All of which adds up to about Rs 20 crore. It's a fairly expensive affair, indeed. I have no clue how much the ICAI spends.

It would, therefore, be good to enhance the current tenure of the council from three years to four years. Even if my costs are hopelessly wrong, remember the mandate in the other two institutions, the Institute of Cost Accountants of India and that of the Institute of Company Secretaries of India, is for four years each. The national parliament and the legislative assemblies are for five years each. So it is time that the tenure for the ICAI elected representatives is enhanced to four years. Remember, there was a move to integrate the three Institutes into one? To begin with, we can at least align the tenure of office-bearers.

The shifting from three to four years has to do with another critical matter. In a 3-year term, the council member works only two years, because he ends up spending the last year working for his re-election. In fact, being the president during the third year of a term is disadvantageous as half the council is on the campaign trail! Increasing the period to four years per cycle and restricting a person to serve two terms, i.e., in all eight years will meet the ends of justice. Remember the US president cannot hold office for more than eight years!

ELECTIONS NEED A CHANGE

Presently, we ask people to come down to vote at a polling booth, which is in a place different from where they live. Also, those who wish to vote have to travel long distances taking a break from office or personal work. As it is, many members do not seem to be keen on voting -- given their perceived apathy to the working of the Institute. The voting percentage in 2018 was around 42%, which is lower than the turnout in J&K, the lowest voting percentage amongst states in the 2014 Lok Sabha elections. The present way

of conducting elections is anachronistic. In the age of the Internet, this is unacceptable. We should come out of this. Should we not allow a person to cast his vote anywhere in India? Of course, the logical next step would be to let him vote online from the comfort of wherever he is. That is how banking happens. That is how elections should happen.

While the ICAI talks about the need for professionals traversing to the digital economy, its own methods of election and counting are grossly outdated. India shifted to EVM eons ago, while ICAI is still at the paper and count mode. While election results in the country are announced almost immediately after the elections, at ICAI, it is time-consuming, manual, and hence prone to errors. The method of computation makes the job that much more difficult. It is therefore crucial that electronic voting is initiated, and counting is made instantaneous.

What should be the tenure of the president and how should he be elected? We will talk about that on another day and at another time.

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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 <ul style="list-style-type: none"> Revised Guidance Note on <i>Accounting of Political Parties</i>
IND-AS (Indian Accounting Standards)	
1	Exposure Draft <ul style="list-style-type: none"> Amendment to IND-AS 1 and IND-AS 8 – <i>Definition of Material</i>
2	Exposure Draft <ul style="list-style-type: none"> Amendment to IND-AS 103 – <i>Definition of a Business</i>
3	ITFG (IND-AS Technical Facilitation Group) Clarification Bulletin No. 18 issued.
4	Education Material on IND-AS 111 – <i>Joint Arrangements</i>
IFRS (International Financial Reporting Standards)	
1	The IFRS Foundation has released the following Investor Publication: <ul style="list-style-type: none"> Analyzing lessee financial statements and Non-GAAP performance measures.
Assurance	
1	ICAI Announcement – <i>Clarification on Applicability of Rotation Principles on a Company</i> (Section 139 of Companies Act) where the company ceases to fall under the ambit of rotation principles in subsequent years – Announcement Withdrawn.
2	Exposure Drafts of Standards on Internal Audits (SIA) issued by ICAI <ul style="list-style-type: none"> SIA 110 – <i>Nature of Assurance</i> SIA 230 – <i>Objectives of Internal Audit</i> SIA 240 – <i>Using the Work of an Expert</i> SIA 360 – <i>Communicating with Management</i> SIA 370 – <i>Reporting Results to Management</i>
Company Law – Accounts and Audit Related	
1	Specified Companies (<i>Furnishing Of Information About Payment To Micro And Small Enterprise Suppliers</i>) Order, 2019 <ul style="list-style-type: none"> The period of thirty days for filing initial return in MSME Form 1 shall be reckoned from the date the said e-form is deployed on MCA 21 portal.
Certain Reserve Bank of India Notifications	
1	Kisan Credit Card (KCC) Scheme – Working capital for animal husbandry and fisheries
2	Credit Flow to Agriculture – Collateral Free Agricultural Loans

3	External Commercial Borrowings (ECB) Policy – ECB Facility for Resolution Applicants under Corporate Insolvency Resolution Process
4	Risk Weights for Exposures to NBFCs
5	Review of Instructions on Bulk Deposits
USGAAP (United States Generally Accepted Accounting Principles)	
1	Proposed Accounting Standard Update <ul style="list-style-type: none"> Recognizing and Measuring <i>Deferred Revenue in Business Combinations</i>

2. Case Studies Section (Case 1) - 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	Decrease of 80.5%
Total Equity at date of transition	Decrease of 21.3%
Operating Cash Flows for the comparative period	Increase of 6.2%

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

- **Hybrid perpetual securities** have been reclassified as equity under IND-AS based on its substance and the fact that the company has unconditional right to avoid making payments on the instrument as per contractual terms.
- **Duty saved** on import of capital goods and spares **under EPCG scheme** have been treated as government grant under IND-AS. Such benefits have been grossed up with the cost of the related asset and has been recognized as deferred income with the same being released to the income statement based on fulfilment of related export obligations.
- Under IND-AS, as permitted or required, certain items have not been recognized in profit or loss but included in other comprehensive income. The **concept of other comprehensive income** did not exist under AS.
- Upon transition to IND-AS, **long-term arrangements** have been assessed as being in the **nature of a lease** and classified as finance leases, where applicable. Under AS, such long-term contracts were treated as a normal contract for purchase of output.
- Under IND-AS, the company has recognized **deferred taxes on temporary differences** based on the balance sheet approach, in contrast with the earlier approach of recognizing deferred taxes on timing differences based on the Profit and Loss approach.
- Under IND-AS, **redemption premium, discount on issue, transaction costs** on issue of bonds and debentures are considered as effective finance costs and recognized in the income statement using the effective interest rate.

3. Case Studies Section (Case 2) - IND-AS Impact – NBFC

In this section, a case study summarizing the impact of IND-AS transition for a Non Banking Financial Company is provided. It may be noted that NBFCs transition to IND-AS from the current fiscal ending March 31, 2019.

IND-AS Impact:

- Additional provisioning to the extent of **10.4%** under IND-AS.
- Net-worth at end of comparative period declined by **7.6%** under IND-AS in comparison with AS reported figures.

	<i>Accounting Area</i>	<i>Impact Drivers</i>
1	Fee income and fee expenses	<ul style="list-style-type: none"> Booked upfront under AS whereas under IND-AS, the same is amortized on Effective Interest Rate Basis.
2	Interest income and interest expense	<ul style="list-style-type: none"> Under AS, the same was recorded at lending/borrowing rate whereas under IND-AS, the same is recorded at the Effective Interest rate. Income on credit impaired loan assets is recognized only when expected realization is higher than the loan amount outstanding.
3	Provisioning on Loan portfolio	<ul style="list-style-type: none"> Provisioning based on RBI norms whereas under IND-AS the provisioning has been applied using the Expected Credit Loss (ECL) Model.
5	Derivatives	<ul style="list-style-type: none"> Under IND-AS all derivatives are fair valued with fair value changes recognized in income statement. Under AS, derivatives covered by AS-11, premiums were being amortized while those derivatives covered by guidance note, the fair value changes were recognized in profit and loss.
6	Investments	<ul style="list-style-type: none"> Under AS, only decline in fair value recognized in the Statement of Profit and Loss whereas gains were not being recognized whereas under IND-AS, both fair value gains as well as losses are being recognized either in Profit and loss (FVTPL) or Other comprehensive income (FVTOCI) as applicable. Category-wise fair valuation under AS and Scrip-wise fair valuation under IND-AS

4. **Case Studies Section (Case 3) – Reporting On A Key Audit Matters (KAM) – Inventory Being In Excess Of Net Realizable Value For A Retail Company**

a) **Inventory being in excess of net realizable value:**

- The valuation of inventory **involves judgment** in recording provisions for slow moving or obsolete inventory.
- The significant judgments and **assumptions** as applied when calculating the provisions are: a) the forecasted sell through rates of current and prior season inventory to determine inventory to be sold via clearance channels, and b) the forecasted cash recovery rates on inventory sold via clearance channels.
- In addition, the company records **provisions for shrinkage and faulty inventory** that requires an estimate of expected inventory losses and realizable amounts.

b) **How the audit addressed the KAM and is reported in the Audit Report:**



- The auditors evaluated the forecasted sell through and cash recovery rates by **corroborating historical rates** and then assessing **management’s judgment as to changes** in customer behavior and macro-economic conditions and the impact of this on forecasted rates.
- The auditors performed **sensitivity analysis** over key judgments taken by management and assessed the impact of this sensitivity analysis on the provision value.
- The auditors **tested the integrity of the provision model** in order to ensure that it was using underlying data correctly and calculating the provision amounts accurately.
- The auditors **reviewed inventory write-offs** in the financial period to ensure that they were consistent with the total inventory provision held at the year-end.
- Ensured that the provisions recorded were **consistent with audit evidence obtained**.

5. Back to Basics Section: IND-AS Accounting For Deferred Taxes – A High Level Overview


Herein below are discussed the salient aspects of IND-AS accounting for **Deferred Taxes**.

- Deferred income tax is provided, using the **liability method**, on all **temporary differences** at the Balance Sheet date between the **tax bases** of assets and liabilities and their **carrying amounts** for financial reporting purposes.
- **Deferred income tax liabilities** are recognized for all **taxable temporary differences** except in respect of taxable temporary differences associated with *investments in subsidiaries*, where the timing of the reversal of the temporary differences can be **controlled** and it is probable that such temporary differences **will not reverse in the foreseeable future**.
- Deferred tax assets and liabilities are **not recognized** if the temporary differences arise from the initial recognition of goodwill, or from the initial recognition (other than by way of a business combination) of other assets and liabilities in a transaction that **affects neither the taxable profit nor the accounting profit**.
- Deferred income tax assets are recognized for all deductible temporary differences, **carry-forward of unused tax losses**, to the extent that it is **probable** that taxable profit will be available against which the deductible temporary differences and the carry-forward of unused tax losses can be utilized.
- The carrying amount of deferred income tax assets is to be **reviewed at each Balance Sheet date** and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred income tax asset to be utilized.
- Deferred tax relating to **items recognized in other comprehensive income** or **directly in equity** is also recognized in other comprehensive income or directly in equity.




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Income Tax Savings Schemes

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For further information / clarifications, please feel free to contact us:

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