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Karnataka State Chartered Accountants Association ®

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Adventure in the Nature of Trade on Sale of Converted Agricutural Land

Analysis of exemption from GST on supply of services

REIT - What Lies Ahead for Investors?

Financial Reporting and Assurance

Constitutional Validity of the Insolvency and Bankruptcy Code

Features of Karasamadhana Scheme under Commercial Taxes - 2019

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From the President

Dear Professional friends,

The season of election starts on 11th of April 2019, the largest democracy in the world steps to choose its leader who will lead India for next five years. The election in India has vast and interesting history, the sheer volume, demographic challenge and economic spending makes a case study of itself. The results of elections can be changed by voting and the franchisee needs to be exercised with diligence, caution and care. With around 280,000 Chartered Accountants, who associate themselves to an elite profession, must surely ensure to make time on the day of election and vote for the future of the country.

With Chaitra masa, shift of spring to summer signifies the change in climate – while its vacation for kids on one hand, time for Chartered accountants to join the family to refresh and enjoy. On the other hand, the closure of financial year clocks them to gear up for the upcoming financial audit season.

The season of summer is very scorching and the impact of deteriorating climate and its effect on the day today functioning is visibly seen, as a chartered accountant its impact should not be viewed individualistically but with its ever cursing and changing ratio of industry and business. Some of the most draught effected districts of Karnataka, have challenges on scaling up the means of economics while human gambles hard with nature. With credit facility severely monitored, dynamics would only somber with poor rain, constant raise in temperature and change in climate.

New Roundup

- The Income tax return for the AY 2019-20 has been released by the government with some major changes in disclosure and realignment of ITR forms. The departments ever hunger for data has to be seen with automation of IT scrutiny, therefore members may approach the filing with caution. We wish the government to release the schema also, so that my fellow professionals receive sufficient time to file the IT return and tax Audit.
- For the FY 2017-18, GSTR 9 is available online for filing and the last day to file is extended to 30th June 2019. Composition scheme for services has been introduced from 1st of April 2019 with 6% GST and the scheme needs to be opt for composition.
- Builders and home buyers are trying to understand the best deal for them under the new Goods and Services Tax (GST) rates for ongoing projects and it seems to be turning into a double-edged sword for some. Real estate developers have time until May 10 to decide on whether to stick to the old 12 (residential) or 8 per cent (affordable housing) rate with input tax credit or the new 5 per cent (residential) and one per cent (affordable housing) rate with no credits. However, the choice between the two rates for ongoing real estate projects is not proving to be an easy one with concerns over how the over-used credit will be calculated and adjusted in case the new rate is taken and the customer reaction if the builder chooses to stay with the old rate and there is no reduction in the prices.
- The anomaly regarding input tax credit utilisation due to insertion of Section 49A by the Central Goods and Services Tax (Amendment) Act, 2018 has been corrected by CBIC, which is a much needed relief to tax payers. The sequence of Integrated GST credit utilisation as per newly inserted Rule 88A will be, the IGST credit will first be utilised against IGST liability and the balance credit will be available for set off against Central GST or State GST based on the option of the taxpayer. This correction will do away the unwanted credit accumulation which had crept in due to insertion of Section 49A and improve the cash flow of retailers.
- The Ministry of Corporate Affairs (the MCA) in the month of January & February 2019 has issued the amendments notification under the Companies Act 2013 (the Act). Companies (Incorporation) Rules, 2014 mandating all the companies incorporated prior to 31 December 2017 to upload all their particulars of various compliances including details of registered office in Form INC 22A Active. Due Date is 25th April 2019. Changes in Companies (Acceptance of Deposits) Rules, 2014 mandating all companies to file a return of deposits in Form DPT 3 with the MCA, furnishing information about file the transactions that has not been considered as deposit or both under the Companies (Acceptance of Deposits) Rules 2014 (Deposit Rules). Due date of filling is on or before 22nd April 2019.

Upcoming Events and programs

We are organizing workshop on the topic 'GST Annual returns and Audit guidance on filing and reporting' on Friday 10th May 2019 at VVN Trust, Basavangudi, Bengaluru. We are also organizing workshop on the topic 'Recent Amendment in GST, Analysis of notification and Circulars' on Friday 17th May 2019 at VVN Trust, Basavangudi, Bengaluru.

I wish to conclude my current months message with a quote by Andy Warhol

"They always say time changes things, but you actually have to change them yourself."

I feel it apt to the profession which is ever changing and adapting to business and regulatory requirement and will continue to do so.

Sincerely,

CA. Raghavendra Shetty
President

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Together We Grow

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CONTENTS

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BASAVANAGUDI CPE STUDY CIRCLE

Key Matters for consideration by an Auditor in Audit

Brief of the Program: A session on key aspects for consideration by auditors on audit engagements from planning to completion of an engagement. The session would cover aspects relating to appointment and acceptance of engagement, planning and executing the engagement covering guidance as stated in related Standards on Auditing.

Spot Registrations Only

By **CA. Madhavi D K**

on **Friday, 3rd May 2019** at **4 pm to 7 pm**

Fees: **Rs. 100/-** Per Participant

CPE 3 Hrs.

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

Contact: **CA. Maddanaswamy B V** - +91 93412 14962
CA. Raghavendra T N - +91 98801 87870

Participation limited to 75 Members on First Come First Serve Basis

Karnataka State Chartered Accountants Association ®

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Workshop on GST Annual Return and Audit Guidance on Filing and Reporting

By **CA. R. Mahadev**
CA. Akbar Basha

On **Friday, 10th May 2019** I Time : **4.30 pm to 8 pm**

For Online Registration Visit: **www.kscaa.com**

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

Fee: **Rs.400/-** (Inclusive of GST)

Discount Available for online Registration Coupon Code **DISC5**

Contact: **CA. Sujatha Raghuraman,** Chair Person- Indirect Tax Committee, KSCAA +91 99455 98565
CA. Nagappa B Nesur, Convener-Indirect Tax Committee, KSCAA, +91 98867 11611

CA. Raghavendra Shetty President
CA. Kumar S Jigajinni Secretary

Karnataka State Chartered Accountants Association ®

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Workshop on Recent Amendments in GST Analysis of Notification and Circulars

By **CA. Annapurna Kabra**
CA. T.N. Raghavendra

On **Friday, 17th May 2019** I Time : **4.30 pm to 8 pm**

For Online Registration Visit: **www.kscaa.com**

Venue : **Sharadha Sabhangana**
KLE Society's Nijalingappa College,
No.1040, 2nd Block, Rajajinagar, Bengaluru - 560 010

Fee: **Rs.400/-** (Inclusive of GST)

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CA. Raghavendra Shetty President
CA. Kumar S Jigajinni Secretary

Adventure in the Nature of Trade on Sale of Converted Agricutural Land

CA. S. Krishnaswamy

One of the major issues that arise on the sale of converted agricultural land is, if it gives raise to business income or capital gains. The tax department is of the view that conversion of agricultural land into non-agricultural character and division of it into easily marketable sites constitutes adventure in the nature of trade and therefore the gain is treated as business income denying lower rate of tax and any exemption that is available for capital gains like investment in Bonds or in properties.

1. The Hon'ble Apex Court in the case of **G. Venkataswamy Naidu vs. CIT (1959) 35 ITR 594(SC)** observed that the following factors are relevant for deciding the character of a transaction-

   (1) Was the purchaser, a trader and whether the purchase of the commodity and its resale allied to his usual trade or business or incidental to it?

   (2) What is the nature of commodity purchased and sold and in what quantity was it purchased or resold?

   (3) Did the purchaser by any act subsequent to the purchase **improve the quality of commodity** purchased and thereby made it more readily resaleable?

   (4) What were the incidences associated with the purchase and sale and whether they are akin to the operations usually associated with trade or business?

   (5) Are the transactions of the purchase and sale repeated?

   (6) In regard to the purchase of the commodity and its subsequent possession by the purchaser, does the element of pride of possession come into picture?

2. Applying this decision, the Income Tax Appellate Tribunal, Jaipur in **Mahaveer Yadav vs. ITO vide ITA No.209 of 2017 pronounced on 27/02/2018** held that –

   "Now, applying the parameters set by the Hon'ble Supreme Court in the present case, the sequence of events leading to the eventual sale of the land plots do not seem to help the cause of the appellant. The appellant had inherited the land which was an agricultural land at the time of inheritance. Then the appellant had developed part of the agricultural land into 34 smaller plots, developed access road within the plotted land and sold to individual purchasers as residential plots over a period of 3 years. Thus, **the nature of the land had undergone irreversible change**. The development of land was done with the undisputed intention of exploiting the land assets to maximize the gain. The exploitation of the land assets was done over a period of 3 years and the entire area has been developed as a residential colony with school and hospital working on the sold land.

   If we look at the sequence of events as mentioned above, I have no doubt whatsoever, that the motive, intention and realization of the entire scheme of thing adopted by the appellant was to **maximize the value of the asset** and using it for business purposes. In that pursuit the appellant had constantly tried and execute different methods at different time exploiting the resources and maximize the profit out of it. It is a continuous process right from the inheritance of land and till the eventual sale of such residential plots. The registering and stamp duty authorities have also recognized plots. The registering and stamp duty authorities have also recognized the plotting as residential plots which is very much evident from the registered sale deeds and the stamp duty paid on such transfer of residential plots.

   2.1 In this regard, I have also noted the above mentioned Apex Court Judgment where it has said that just as the conduct of the purchaser subsequent to the purchase of a commodity improving or converting it so as to make it more readily resalable is a relevant factor in determining the character of the transaction, so would is conduct prior to purchase be relevant if it shows a design and purpose.

2.2 I have **clearly noted a purpose and design** in the utilization of the land and it all pointed towards a business sense and eventually a business transaction. The appellant has cited Hon'ble Rajasthan High Court judgment in the case of **Sohan Khan and Mohan Khan as reported in 304 ITR 194(Raj.)**, in favour of his claim. I have perused the judgment. However, the concluding para of the judgment has itself said that

> "it is the different story that the question, as to whether a particular transaction falls within the category of adventure in the nature of trade "or is merely a transaction of transfer of capital asset, depends on appreciation of facts"

I have found that the present case is distinguished from facts of the case decided by the Hon'ble Rajasthan High Court judgment. In the present case it is not only the mere sale and purchase of lands. It is a sequence of events showing exploitation of the land purchased, over a period of time that shows the intent and motive of the appellant in the present case as is discussed in details above"

3. **A contra view:**

In a recent decision of the ITAT Bengaluru in the case of **Smt. Janaki Amma vs. ITO vide ITA Nos.2807 to 2810/Bang/2018 pronounced on 13th of March 2019** held that-

> "Applying the ratio of the aforesaid judgment (supra) and considering the totality of the factual matrix and circumstances of the assessee's case, I am of the considered view that the assessee purchased the agricultural lands with the intention to cultivate them and has also cultivated them for a short period of about a year after purchase thereof; as borne out by the RTC produced.
>
> Subsequently, according to the assessee, finding that there is no proper source of water, the assessee converted the said lands into residential sites.
>
> It is also seen from the material on record that even after forming the residential sites, the assessee did not immediately sell the sites to infer that there was any intention by her to carry on trade. The assessee continued to hold these residential sites for 12 years without selling these sites.
>
> Therefore, in my view, from the factual circumstances of the case on hand, as discussed above, it is manifestly clear that there was no intention on the part of the assessee to carry on any business or trade with regard to this property.
>
> ……..
>
> On an overall consideration of the factual matrix of the case, as discussed above, I am of the view and hold that the income from the sale of sites during the period relevant to Assessment Years 2010-11 to 2013-14 have to be treated at 'Capital Gains' and not 'Business Income'. Consequently, the grounds raised by the assessee on this issue is allowed."

4. **An irreversible change – hence adventure in the nature of trade:**

The ITAT Jaipur in the case of **Ramswaroop Saudagar vs. Income Tax Officer** vide ITA No. 329/JP/2017 pronounced on 22/8/2018 held that -

> "Although the land was agricultural land and situated in the limits of city of Dausa. It was developed into 23 plots of various sizes and sold during the year. The nature of land had gone irreversible change from agricultural to residential plots, therefore, we are agree with the finding of the ld. CIT(A) that this was an **adventure in the nature of trade and income has to be taxed under the head 'profit and gains of business and profession'**. We have also considered the various case laws relied upon by the ld AR of the assessee during the hearing of appeal, in all these cases, the facts were at variance to the facts of assessee's case. Therefore, none of the ratio laid down by the Hon'ble Courts is applicable to the assessee's case, accordingly, findings of the ld. CIT(A) on this issue is sustained. However, the provisions of Section 45(2) of the Act provides that the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market

value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. Apparently these provisions of Act have not been taken into consideration by the ld. CIT(A), therefore, in the interest of justice and equity, the Bench find deem it fit to restore the issue back to the file of the ld. CIT(A) to give effect to the provisions of Section 45(2) of the Act. Hence, the issue is restored back to the file of the ld. CIT (A)."

The gist of most of the cited judgments hinge broadly on the parameters set by the Hon'ble Supreme Court in the case of **G. Venkataswamy Naidu vs. CIT (1959) 35 ITR 594(SC)**. Therefore it is pertinent to go into the rationale and the parameters set by the Apex court in the said judgment.

The relevant part of the judgment is reproduced as under:

"The tribunal and the High Court have found that the transaction in question is an adventure in the nature of trade; and it is the correctness of this view that is challenged in the present appeal. The expression "adventure in the nature of trade" is used by the Act in S. 2, sub-s. (4) which defines business as including any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture. Under s. 10, tax shall be payable by an assessee under the head profits and gains of business, profession or vocation in respect of the profit or gains of any business, profession or vocation carried on by him. Thus the appellant would be liable to pay the tax on the relevant amount if it is held that the transaction which brought him this amount was business within the meaning of s. 2, sub-s. (4) and it can be said to be business of the appellant if it is held that it is an adventure in the nature of trade. In other words, in reaching the conclusion that the transaction is adventure in the nature of trade, the tribunal has to find primary evidentiary facts and then apply the legal principles involved in the expression "adventure in the nature of trade" used by s. 2, sub-s. (4). It is patent that the clause " in the nature of trade" postulates the existence of certain elements in the adventure which in law would invest it with the character of a trade or business; and that would make the question and its decision one of mixed law and fact. This view has been incidentally expressed by this Court in the case of Meenakshi Mills, Madurai (I) in repelling the appellant's argument based on the decision of the (I) [1956] S. C. R. 691."

5. **Not Adventure:**

The Hon'ble High Court in the case of **Hotel Sreeraj vs. CIT vide ITA No.282 of 2002 dated 6/12/2007** held that-

"We notice the following undisputed facts in this case. The assesse-Firm was running a hotel at Lavella, Road, Bangalore, for several years. Thereafter, the hotel was closed and the hotel premises was sold by converting it into small plots to difference persons under different sale deeds. The remaining plot was developed under a joint venture. The assesse filed the return of income showing the sale consideration as capital gains. The assessing officer accepted the return. Thereafter, the Commissioner of Income Tax, Bangalore, exercising his powers u/s 263 of the Income Tax Act re-opened the case and held that the intention of the assesse in selling the entire building converting it into small plots to 63 persons under separate sale deeds and developing the remaining portion of the property along with the developer under a joint venture amounts to business and does not attract the capital gain. Therefore, the Commissioner of Income Tax relying upon the judgement of the Supreme Court in Janaki Ram Bahadur Ram vs. CIT, Calcutta (57 ITR 21) set aside the order of assessment and remanded the matter to the assessing officer to pass an appropriate order after holding enquiry

…

It is not in dispute that premises of M/s. Hotel Sreeraj was a vast extent of property situated in Lavelle Road, Bangalore. It is also not in dispute that the hotel was run by the assesse for several years. After closing the hotel business, it was open

for the assesse either to sell the entire property under one sale deed or under difference sale deeds by converting it into bigger plots or smaller plots. If the assesse with an intention to get more sale consideration has sold the plots to 63 different persons and the remaining property is developed under a joint venture by applying the principles laid down by the Hon'ble Supreme Court in Janaki Ram Bahadur Ram's case, it cannot be held that it is business transaction."

6. **Conversion of agricultural land into sites constitutes conversion into stock-in-trade and provision of Section 45(2) which reads as follows will apply:**

"(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset."

The CBDT Circular No. 397, dated 16-10-1984 clarifies that capital gain in cases of converted assets in closing stock would be chargeable in the year when such converted asset is actually sold as stock-in-trade; in other words, not in the year of conversion, but the year of actual sale.

7. **Conclusion:**

The issue has to be resolved essentially on the facts of each case as analysed by the Apex court in the case of **G. Venkataswamy Naidu vs. CIT (1959) 35 ITR 594(SC) (Supra)** and other judicial decisions.

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Features of Karasamadhana Scheme under Commercial Taxes - 2019

CA. Annapurna D Kabra

Introduction

With the implementation and operation of GST, the Karasamadhana scheme is introduced third time under commercial Taxes in last three years with different features. In simple terms the word 'Kara' means tax and 'Samadhana' means Relief. Basically, the scheme is introduced for giving relief to dealers registered under different Karnataka Commercial Taxes. The Karasamadhana Scheme is introduced by Government of Karnataka through Government order No FD 9 CSL 2019 Bangalore dated 21st February 2019 and Corrigendum dated 28th February 2019. This is first time in history of Karasamadhana scheme, wherein it is made applicable even for the assessment orders which are passed after the scheme is notified. This gives extensive relief to dealers to complete their pending assessment or withdraw their appeal already filed by getting relief of enormous interest and penalty as the case may be.

Waiver of Interest and Penalty:

The scheme of waiver of Penalty and Interest as applicable under different commercial taxes i.e. The Karnataka Sales Tax Act 1957, The Karnataka Value Added Tax Act 2003, The Central Sales Tax Act 1956, The Karnataka Tax on Professions, Trades, Calling and Employments Act 1976, The Karnataka Tax on Luxuries Act 1979, The Karnataka Agriculture Income Tax Act 1957 , The Karnataka Entertainment Act 1958 and The Karnataka Tax on Entry of Goods Act 1979.

Due date for Assessment orders.

The scheme grants waiver of 100% Interest and Penalty payable by the dealer under the above Acts relating to the Assessments/Re-Assessments already completed or to be completed on or before 30.6.2019.

Payment of tax dues:

The Payment of arrears of tax should be made on or before 30.9.2019 and in case there are no arrears of tax and there is arrear of only penalty and interest then such penalty and interest will be waived.

Penalty for non- filing of Returns and VAT 240

Under the Karnataka VAT Act, it also grants waiver of penalty of Section 72(1)(a) or 72(1)(b) and Section 74(4) and consequential Interest subject to that Returns and Form VAT 240 are filed and the taxes are admitted and paid in full.

No waiver of Penalty

If the penalty is levied under section 10-A of CST Act 1956(**Imposition of penalty in lieu of Prosecution**) then such penalty is not eligible for waiver under this scheme.

Withdrawal of Appeal:

If any appeal is filed to Appellate Authority or Court, then the appeal can be withdrawn before filing the application for waiver of Interest and Penalty in **Annexure-I**. Such appellant should file the declaration as specified in **Annexure-II.** Such application and declaration should be filed separately for each year.

Amount paid at the time of Appeal:

Any amount paid at the time of filing the appeal or other applications shall be eligible for adjustment towards arrears of tax outstanding for the assessment year for which the benefits are claimed. The dealer will not be eligible for refund of amount that may become excess as a result of adjustments under this scheme.

Refund of Interest and Penalty already paid before introduction of Karasamadhana scheme:

In respect of cases where any appeal or other application is not filed, the dealer is not eligible for refund of any penalty or interest already paid either in full or in part under this scheme.

Can dealer file appeal after opting for this Scheme?

The dealer shall not file the appeal or other applications before any Appellate Authority or Court or shall not seek rectification of orders/proceedings after filing application for availing the benefits of the scheme or after availing the benefits of this scheme.

Not Eligible for this Scheme

- Where state has filed an appeal before the Karnataka Appellate Tribunal or the Central Sales Tax Appellate Authority or
- Where State has filed an appeal or revision or any kind of application before the High Court or Supreme Court or

- The Competent Authority has initiated Suo Moto Revision proceedings as on the date of this Government order or
- Any rectification is made to the Assessment order after 30.6.2019

Website to file Application

- The website to file the application is http://ctax.kar.nic.in or http://gst.kar.nic.in

Format of Annexure under Different Commercial Tax Acts

Sl. No	Particulars	Form No
1	Applications under KST and CST	Annexure-I
2	Applications under KVAT and CST	Annexure-IA
3	Applications under KTEG Act/ KTPTC&E/KTL Act/KAIT Act	Annexure-IB
4	Applications under KET	Annexure-IC
5	Specific Penalties under KVAT Act	Annexure-ID

Verification and passing of order by Concerned Authority

- After filing the application for waiver, the concerned authority will scrutinize and compute the actual arrears of tax, interest and penalty and if any discrepancy is found then the concerned Authority shall intimate to the applicant within 15 days from the date of application.
- After receipt of information from the concerned Authority, the applicant can pay the balance taxes within 15 days from the date of receipt of application or on or before 15th October whichever is earlier.
- The applicant shall become ineligible to avail this scheme if any partial amount is still outstanding as arrears on the specified date.
- The Applicant should file the application for waiver of penalty and interest and declaration for withdrawal of appeal. If the applicant fails to do so then the concerned Authority shall pass the speaking order rejecting the application.
- On satisfaction of the eligibility of scheme of the applicant, the Assessing officer shall pass the order for waiving the balance amount of arrears of penalty and interest payable as per **Annexure III** separately under the Relevant Act for each Assessment year relating to the relevant tax periods.
- The order shall be passed within thirty days from the date of making payment and will be served within ten days of passing the order. The concerned Authority shall assist the applicant for correct quantification of interest and penalty.

Inference from the Scheme

- The Application to be filed separately for each assessment year under the Respective Commercial Tax Acts except in case of Karnataka Entertainment Tax wherein the application can be filed for each week/month/year electronically.
- The Copy of the Relevant Assessment order/Re assessment order and penalty order and proof of withdrawal of appeal or any other proceedings to be enclosed along with the Application.
- The scheme cannot be applied immediately after filing Form VAT 240. There should be an order for demand of taxes, interest or penalty or special penalty for late filing of VAT 240.
- Once the scheme is approved by the concerned Authority then the jurisdictional officer cannot reopen the case for any additional liability.
- If the dealer has preferred the appeal and paid 30% of disputed amount then such amount paid can be adjusted towards the tax due though 30% would have been paid for taxes, interest or penalty as the case may be.
- If the Appeal order has levied only interest and penalty and 30% of interest and penalty is paid at the time of appeal, then such amount can be claimed as refund under the state law.
- The waiver of interest and penalty is applicable only against the Assessment order and not in the cases where taxes are paid under protest.
- The Hon'ble Supreme Court in ***Instalment Supply Pvt Ltd Vs Union of India, AIR 1962 SC 53*** has stated that 'It is well settled that in matters of taxation there is no question of res judicata because each year assessment is final only for that year and does not govern later years because it determines only tax for a particular period'. Therefore, the same principle should be made applicable even if dealer avail Karasamadhana Scheme.
- There is no Provision of Revision of Application of Karasamadhana Scheme.
- The option to file for the scheme should be analysed diligently by examining the intricacies of Assessment orders/Proceedings as the case may be.

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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.

Last month, I had analyzed a portion of the Supreme Court's judgment in Swiss Ribbons Pvt. Ltd. v. Union of India, 2019 SCC OnLine SC 73, wherein the Court upheld the validity of various provisions of the Insolvency and Bankruptcy Code, 2016 ("the IBC" or "the Code"). To briefly recap what was discussed in last month's article, we had seen that the Supreme Court held that 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. Accordingly, the Court concluded that the IBC does not discriminate between operational and financial creditors in a manner that violates Article 14 of the Constitution. This month, I analyze the remaining part of the judgment and provide some of my views on the judgment, as well as the Code.

The Judgment.

The next major contention raised by the petitioners was that Section 12-A of the Code violates Article 14. Section 12-A permits the NCLT to allow the withdrawal of an application admitted under Section 7, 9, or 10 "on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors." The above provision was inserted vide an amendment with effect from 06.06.2018, as it was observed that there had been numerous instances where on account of a settlement between a particular creditor and the corporate debtor, permission was granted by the NCLT for withdrawal of the corporate insolvency resolution process. However, since insolvency proceedings are, necessarily, proceedings in rem, which affect a number of stakeholders, the Legislature thought it fit to insert Section 12-A, which required approval of ninety per cent of the voting share of the committee of creditors, in addition to the permission of the NCLT.

The main thrust of the petitioners' case was that the requirement to obtain approval of ninety per cent of the voting share of the committee of creditors was an arbitrarily high requirement. The Court rejected the said contention by observing that the resolution process, "being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim" As regards the adoption of a high threshold of ninety per cent, the Court observed that, "all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into." The Court further explained that Section 60 of the Code provides a safety valve against any possible arbitrary rejection of a settlement by the committee of creditors, where under, the NCLT can set aside any such decision taken by the committee of creditors. For the reasons explained above, the Court upheld that Constitutional validity of Section 12-A.

The next contention raised by the petitioners was regarding the establishment of private information utilities, whose primary objective is to create and store financial information of firms, which would then be used as evidence of a loan default in the event of any insolvency proceedings being initiated. The petitioners feared that such private information utilities, who would invariably be driven by profit motives, could misuse such information, and that the evidence provided by them would be used as conclusive proof of a default having occurred. The Court rejected this contention, too, by holding that the provisions of the Information Utilities Regulations provide sufficient safeguards against any potential misuse of information. The Court also observed that the information provided by the utility is only prima facie evidence of a default, which can be rebutted by the corporate debtor. Therefore, the Court upheld the constitution of the private information utilities.

The petitioners further contended that resolution professionals have been given powers of adjudication under the Code, and that the same is violative of the "basic aspects of dispensation of justice and access to justice." The Court negatived this contention, too, by holding that, "the

resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the committee of creditors and by the Adjudicating Authority." In short, upon an analysis of the provisions of the Code, the Court held that the resolution professional has no "adjudicatory powers," but is a facilitator of the resolution process, who is required to carry out his functions to the satisfaction of the committee of creditors and the NCLT.

The petitioners next attacked the vires of Section 29-A, which sets out the categories of persons who are disqualified from submitting a resolution plan. Section 30 of the IBC contemplates the submission of a resolution plan to the resolution professional, who is then required to examine the same and submit those eligible plans to the committee of creditors. The committee of creditors may then approve the plan by a vote of not less than 75% of the voting share of the financial creditors.

Section 29-A, which was inserted by way of an amendment in 2017, disqualified certain persons, such as undischarged insolvents, willful defaulters recognized by the RBI, persons convicted for certain offences, etc., from even submitting a resolution plan for consideration. The petitioners challenged the said provision, particularly clause (c), which effectively prevented erstwhile promoters of the corporate debtor, because of whom an account of the corporate debtor has been classified as an NPA, from participating in the resolution process. More specifically, the petitioners contended that the effective ban on participation of promoters of corporate debtors, without any mechanism to weed out those who are unscrupulous and have brought the company to the ground, as against persons who are efficient managers, but who have not been able to pay their debts due to various other reasons, would be manifestly arbitrary. It was further contended that Section 29A is contrary to the object of the Code, which was maximization of value of assets, as an erstwhile promoter, who may outbid all other applicants and may have the best resolution plan, would be kept out at the threshold, thereby impairing the object of maximization of value of assets.

In this regard, the Court referred to the object of Section 29-A, which was succinctly captured by the Supreme Court in the case of Chitra Sharma v. Union of India, WP (Civil) No. 744/2017 (Judgment dated 09.08.2018), as follows:

> *"31. Parliament has introduced Section 29A into the IBC with a specific purpose. The provisions of Section 29A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process.*
>
> *32. … The Court must bear in mind that Section 29A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a backdoor entry to erstwhile managements in the CIRP. Section 30 of the IBC, as amended, also clarifies that a resolution plan of a person who is ineligible under Section 29A will not be considered by the CoC…"*

Therefore, the intention behind the insertion of Section 29-A(c) was to ensure that those in the management of the corporate debtor and on account of whom the NPAs have arisen will not be permitted to apply for and get back the same enterprise at a discounted value. Having set out the object of the provision, the Court held that it cannot be said to be unconstitutional. The Court also held that the insertion of the provision did not result in any vested right being taken away.

The next ground of challenge was that the period of one year from the date of classification of an NPA prescribed under Section 29-A(c) was manifestly arbitrary. In this regard, it is pertinent to note that Section 29-A(c) disqualifies promoters of a corporate debtor under whose management an account of a corporate debtor has been classified as an NPA and at least one year has elapsed from the date of such classification. The petitioners contended that the period of one year prescribed under Section 29-A(c) was arbitrary. The Court, while dealing with this contention, referred to the definition of an NPA under the RBI Master Circular dated 01.07.2015, according to which, accounts are declared as NPAs if defaults are not resolved within a period of 90 days from the date on which they become due. A grace period of one year is thereafter given to the defaulter to pay off the debt. Under Section 29-A(c), it is only after the lapsing of the one year period that a promoter of the corporate debtor is disqualified from submitting a resolution plan. The Court, accordingly, found that there was a rational basis behind the prescription of a one-year period under Section 29-A(c), as financial institutions do not, as a matter of practice, declare an account to be an NPA prior to lapsing of the one-year period after the initial 90 days prescribed under the RBI Master Circular. Therefore, the Court upheld the validity of the one-year period, too. The Court also repelled the challenge to Section 29-A(j), which debarred certain connected persons/related parties from submitting a resolution plan.

Lastly, the petitioners questioned the validity of Section 53 of the IBC on the ground that the said provision violates Article 14 of the Constitution. Section 53 sets out the order of priority in which proceeds from the sale of liquidation assets shall be distributed. The order of priority prescribed under Section 52 is as follows: (a) insolvency resolution costs and liquidation costs are to be paid in full; (b) workmen's dues for the period of 24 months prior to the liquidation commencement date and debts owed to secured creditors who have relinquished their security are ranked equally; (c) employees' dues (other than workmen) for the period of 12 months prior to the liquidation commencement date; (d) financial debts owed to unsecured creditors; (e) amounts owed to the Central/State Governments in respect of a period of 2 years prior to the liquidation commencement date and debts owed to a secured creditor for any amount unpaid following the enforcement of a security interest are ranked equally; (f) any remaining debts and dues; (g) preference shareholders; and (h) equity shareholders and partners. The petitioners contended that in the order of priority, operational and unsecured creditors, who are way down in the pecking order will virtually get nothing from the liquidation proceeds.

The Court negatived this contention, too, observing that the differential treatment meted out to financial and operational debts has a rational nexus to the object sought to be achieved by the Code. In this regard, the Court observed that the repayment of financial debts must be prioritized as it would ensure the flow of capital back into the economy, as banks and financial institutions would, with the money that has been paid pack, lend the same to fresh entrepreneurs, thus helping the economy and furthering the object of the Code.

Comments and Conclusion.

On a reading of the Code and the judgment of the Supreme Court upholding the validity of its various provisions, the most striking aspect is how heavily loaded the IBC is in favour of banks and financial institutions. In almost all respects, financial creditors have been given priority over operational creditors, who, pertinently, include workmen, employees, and even the Government. The justification for the preferential treatment is uniformly that banks and financial institutions are the backbone of the economy, who ensure the re-flow of capital into the economy. This purely capitalistic argument in an economy such as India's is, at best, tenuous. I am not for a moment suggesting that capitalism should not find a place in the Indian economy. However, I am of the opinion that the rather extreme position adopted in the Code is a bit of a stretch, especially in a country where the very preamble to the Constitution recognizes her as a socialist economy. I, for one, am a little uncomfortable with operational creditors having virtually no say in the resolution process and further being placed so low in the order of priority in the distribution of liquidation proceeds. The Code ought to have drawn a finer balance between the interests of financial creditors and operational creditors, such as workmen. Even Government dues, which, after all, is public wealth, ought not to have been placed so low down in the pecking order.

That is not to suggest that the aforesaid reasons are sufficient for striking down the provisions as being unconstitutional. The Supreme Court has exhaustively analyzed the impugned provisions of the Code and the legislative intent behind them. However, with great respect, I feel that the Court could have dedicated some more space to the provisions relating to the public information utilities, who, at first glance, appear to have given wide-ranging powers to collect and use financial data of various agencies. Given that the Court addressed so many wide-ranging issues in the Aadhar case relating to private information, I feel that a little more analysis of the powers of the information utilities under the Code was warranted. I feel that the Court could also have addressed in more detail the issues relating to the order of priority under Section 53. A provision that prioritizes the liquidation costs, which will include the resolution professional's fees, over Government and workmen's dues is, in my opinion, highly questionable, and the Court should have called upon the Government to explain in greater detail why such an order of priority has been adopted under the Code. That aside, the manner in which the Court has dealt with the various issues, particularly the challenge to Section 29-A is commendable.

Finally, the judgment discussed above covers only a miniscule portion of the multitude of issues that the Code gives rise to. The very landscape of corporate India has been resculpted by the Code, and the number of orders and judgments being passed on an almost daily basis by the NCLTs and the NCLAT is proof of how many unresolved issues remain. The coming years will be very interesting to see the direction in which the Code moves by way of judicial interpretation.

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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 Services by / to the Government – Part-1

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
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) **provided to the** Central Government, State Government or Union territory or local authority or a Governmental authority 1[or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution	Nil	Nil
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply **provided to the** Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil
4	Chapter 99	Services **by** [*] governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution	Nil	Nil
5	Chapter 99	Services **by** a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution	Nil	Nil

Definitions

Whereas, the expression "**central government**" is not defined in the Act. However, the expression 'government' is defined u/s 2(53) as the Central Government. Similarly, the expression 'government' in the corresponding SGST Acts would be defined as the respective **state governments**.

The CBEC's education guide of the service tax regime further elaborates that as per Section 3(8) of General Clauses Act, 1897, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

Similarly, a Government Company under section 619 of the Companies Act, 1956 is also not 'government'. In the case of Steel Authority of India Ltd Vs Shri Ambica Mills Ltd (1998) 1 SCC 465, it was observed that even if all shares of company are owned by Government of India, the company is not a department of the Government. It has personality distinct from Government of India. It would have a separate

legal existence with its own assets and liabilities, and would sue or be sued in its own name.

In case of statutory corporation discharging several sovereign functions as per the statute under which it was set up, the same held to be a wing of the 'government' in case of CCE Vs Maharashtra Industrial Development Corporation 2018 (9) GSTL 372 (Bom).

It is also clarified that regulatory bodies like Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India would also fall out of the scope of 'government'.

"**Local authority**" is defined in Section 2(69) of the Act is defined to mean:

a. a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

b. a "Municipality" as defined in clause (e) of article 243P of the Constitution;

c. a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

d. a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

e. a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

f. a Development Board constituted under article 371 of the Constitution; or

g. a Regional Council constituted under article 371A of the Constitution;

In this regard, CBIC has clarified that a statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. This was premised on a stance that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) and that it is a separate juristic entity from the state.

"**Governmental Authority**" is defined in the exemption notification 12/2017-CT(R) dated 28.06.2017 (as amended from time to time) as an authority or a board or any other body:

a. set up by an Act of Parliament or a State Legislature; or

b. established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

It may be observed here that not all local bodies fall within the definition of "local authorities" as defined in Section 2(69) above. However, if such local bodies fulfill the ingredients of "governmental authority", exemption can still be availed under sl no. 5 of the exemption notification. The FAQs issued by CBIC illustrates that, local developmental authorities set up by state governments to undertake developmental works like infrastructure, housing, residential & commercial development, construction of houses, etc., under the Town and Planning Act and other developmental authorities such as Delhi Development Authority would constitute "governmental authority".

'Government Entity' is defined in para 2((zfa) of the notification as an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

Article 243G of the constitution delineates powers, authority and responsibilities of Panchayats with respect to implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the and Eleventh Schedule. The said schedule enumerates the following:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.

7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Similarly, **Article 243W** delineates powers, authority and responsibilities of municipalities with respect to implementation of schemes as may be entrusted to them including those in relation to the matters listed in the and twelfth Schedule. The said schedule enumerates the following:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries

"**Pure services**" in sl no. 3 above, would mean services not involving transfer/sale of any goods or supply of composite involving goods. In Dhananjay Kumar Singh 2019 (21) GSTL 219 (AAR – GST), it was observed that colony Maintenance services provided to Chhattisgarh Housing Board which involves solid waste management, water supply operation, door to door garbage collection and disposal, cleaning of colony would qualify as pure services.

This is further elaborated in the FAQs released by the CBIC. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, in case of governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares, the scope of the service involves maintenance work and supply of goods, which

falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

Summary of the exemption entries (3-5) is as below:

A. **Sl No. 3**:

a. **Service provider**: Any person

b. **Service recipient**: Central Government, State Government or Union territory or local authority or a Governmental authority or a Government entity.

c. **Nature of service which qualify for exemption**: Pure services, i.e, excluding works contract service or other composite supplies involving supply of any goods, services by way of any activity in relation to any function entrusted to :

i. a Panchayat under article 243G; or

ii. a Municipality under article 243W.

B. **Sl No. 3A:**

a. **Service provider**: Any person

b. **Service recipient**: Central Government, State Government or Union territory or local authority or a Governmental authority or a Government entity.

c. **Nature of service which qualify for exemption**: Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply and such supply shall be by way of any activity in relation to any function entrusted to:

i. a Panchayat under article 243G; or

ii. a Municipality under article 243W.

C. **Sl No. 4**:

a. **Service provider**: Governmental Authority.

b. **Nature of service**: In relation to any function entrusted to a municipality under article 243W.

D. **Sl No. 5**:

a. **Service provider**: Governmental authority.

b. **Nature of service**: In relation to any function entrusted to a Panchayat under article 243G.

Similar exemptions were also provided under the erstwhile Service Tax provisions.

It is interesting to note that section 7(2) of the CGST Act, 2017 empowers Central Government, on recommendations of the GST Council, to treat certain activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as neither supply of goods nor as supply of services.

In terms of said provisions, Notification No. 14/2017 CT(R) dt. 28.06.2017, following activities are notified as neither supply of goods nor as supply of services:

Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution.

In summary, the any activity in relation to function entrusted, to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution:

a. If provided by the Central Government or State Government of Union Territory or local authority would not be treated as supply;

b. If such activities are provided by Governmental authority, the same would be exempted from levy of GST in terms of entry 4 & 5 above.

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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: kscaacorporatelawcommittee@gmail.com

REIT – What Lies Ahead for Investors ?

CA. Sandeep Jhunjhunwala

Real Estate Investment Trust (REIT) is a globally accepted investment vehicle for passive participation in real estate properties. First conceptualised in the United States, REIT has been in existence in several developed and emerging economies now, providing a stable investment alternative for retail investors. Modelled similar to mutual funds, REIT, as an investment concept, provide investors an opportunity to own underlying commercial real estate and access dividend-based income from rent yielding assets and capital appreciation from property prices. REITs provide a way for individual investors to earn a share of the income produced through commercial real estate, without actually having to directly own commercial real estate, which is a capital-intensive investment. The REIT regulations issued by the Securities and Exchange Board of India (SEBI) have created a detailed ecosystem by outlining the role and responsibilities of each stakeholder in the REIT structure and laying down the conditions for operating and managing a REIT in India, including asset and income restrictions, net asset value declaration, audits, insurance, income distribution and governance aspects. The Embassy Office Parks REIT IPO, which flagged off REIT listing in India, witnessed sluggish response by the skeptical individual investors, whereas the institutional investors lapped up the offer passionately, with an overall subscription of 2.57 times as per the NSE data. The quota for institutional investors was subscribed 2.15 times and non-institutional 3.10 times of the issue. Though this oversubscription of REIT is a very encouraging sign for the commercial real estate sector, a dipstick analysis of the subscription records would primarily reflect the lack of awareness among the individual (non-institutional) investors and "trust deficit" associated with real estate sector. While the real estate stratosphere has been institutionalised by the Real Estate (Regulation and Development) Act of 2016, the commercial domain in Indian real estate, which is revolutionised by equity REIT structure now, would operate under the aegis of SEBI, giving it the much-needed operational transparency. Residential real estate segment, which is facing the heat on account of dearth of institutional funding, is not included under REIT coverage in India.

One of the key investment conditions for REIT is that at least 80 percent of REIT assets is to be invested in completed and rent generating properties. The balance 20 percent of investment could be made in assets that are under construction, debt (listed and unlisted), mortgage backed securities, equity shares of listed companies deriving 75 percent or more of their income from real estate activities, Government securities etc. The distribution conditions specify that at least 90 percent of net distributable cash flows of the REIT shall be distributed to the unit holders. Such distributions should be declared once in 6 months every financial year and paid within 15 days of declaration. In case of sale of property or equity interest in SPV, proceeds are not required to be redistributed to the unit holders, provided that there is a plan to re-invest such proceeds within a period of 1 year. Else, 90 percent of the proceeds are required to be redistributed to the unit holders. The investors should note that in the real estate sector, both rental income and capital appreciation from property depends on its location and surrounding infrastructure. REITs, as a mode of indirect investment in the sector, pacifies these risks through diversified portfolio of rent yielding properties.

REITs are structured as flow-through or hybrid pass-through entities to avoid the double taxation of income and facilitate distribution of majority of income cash flow to investors without taxation at the collective level. The special taxation provisions under Sections 10(23FC), 10(23FCA), 10(23FD), 111A, 112A and 115UA of the Income Tax Act, 1961 deal with tax treatment of various streams of income accruing to unit holders of REIT. In summary, interest from SPV is taxable as interest income for the unit holder and withholding tax at the rate of 10 percent (5 percent for non-resident unit holders, subject to tax treaty) is to be deducted on distribution under Section 194LBA of the Income Tax Act. Long term capital gains earned by the unit

holder on sale of REIT units (where the holding period of units is more than 36 months) is taxable at the rate of 10 percent (plus applicable surcharge and cess) for gains over INR 1 lakh, whereas short term capital gains for sale of units held for up to 36 months is taxed at 15 percent (plus applicable surcharge and cess). No tax breaks are available under Sections 80C to 80U of the Income Tax Act for capital gains tax. On dividend distribution by the SPV, dividend distribution tax at 30 percent as per Section 115-O of the Income Tax Act is applicable and dividends are exempt in hands of unit holder. Onward distribution of rental income from property held directly by REIT and received by unit holders is construed as deemed income, retaining the same character and taxable at applicable slab rates and residential status.

Correspondingly, any distributions by REIT other than those which are characterised as interest or rent does not attract any withholding tax. Where the unit holder is a domestic company, the capital gains earned would be subject to Minimum Alternate Tax (MAT) under Section 115JB of the Income Tax Act. However, MAT paid by such companies would be available as credit, which can be set-off against future income tax liability of such company for a period of up to 15 years as per Section 115JAA of the Income Tax Act.

A relatively high minimum investment (INR 2 lakhs approximately) seems to be a clear deterrent for retail investors to participate in REIT, a new asset class to experience and explore. The Indian REIT regime aims to offer an organised and professionally managed ecosystem for retail investors and an exit platform to ease out liquidity burden. Though the Government significantly cleared the regulatory logjam through deliberative consultations in the last few years, a smoother legal obligation (stamp duty alignment etc) and logical tax structure (ironing out income tax issues at sponsor/ SPV level, leading to single point of taxation) might make this investment more worthwhile and appealing for the investors. The acumen of investing in real estate through REITs should gradually tide over the sentiment of having own property, similar to investing in gold bonds rather than buying physical gold. Time would testify this transition.

The views expressed in this article are personal views of the Author.

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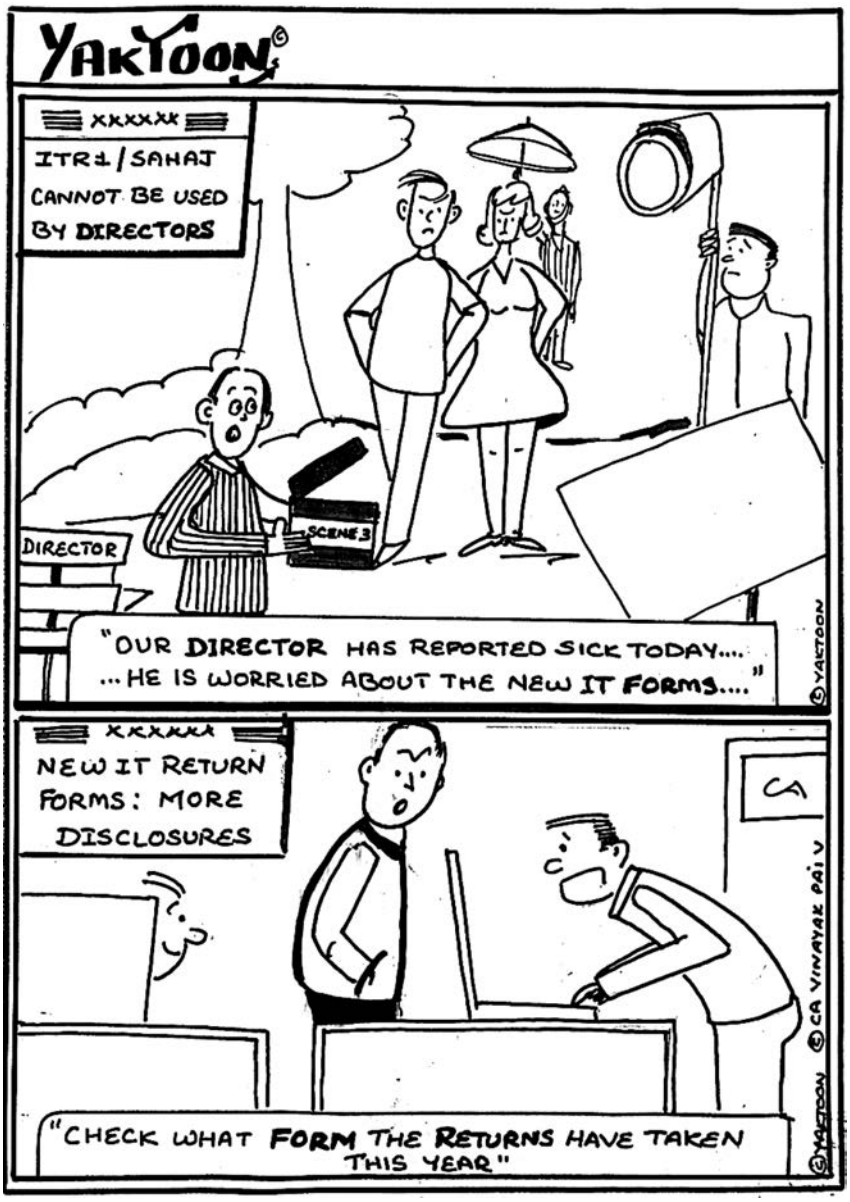

Financial Reporting and Assurance

CA. Vinayak Pai V

1. Changes To Financial Reporting And Assurance – Monthly Roundup

AS (Accounting Standards)	
1	Exposure Draft • **AS 17 – *Leases*** to replace AS 19 - *Leases*
IND-AS (Indian Accounting Standards)	
1	**IND-AS** implementation for **Scheduled Commercial Banks** (excluding Regional Rural Banks) **deferred by RBI** vide notification dated March 22, 2019.
2	Companies (Indian Accounting Standards) **Amendment Rules, 2019** effective April 1, 2019 • **IND-AS 116 – *Leases*** replaces IND-AS 17 - *Leases* • Amendments to IND-AS 101, IND-AS 103, IND-AS 104, IND-AS 107, IND-AS 109, IND-AS 113 and IND-AS 115
3	Companies (Indian Accounting Standards) **Second Amendment Rules**, **2019** effective April 1, 2019 • **IND-AS 109** -*Prepayment features with negative compensation* • **IND-AS 103** -*Business combination achieved in stages (Joint operation* • **IND-AS 12** - *Uncertainty Over Income Tax Treatments* • **IND-AS 19** - *Employee Benefits* • **IND-AS 23** - *Capitalization rate (General Borrowings)* • **IND-AS 28** - *Long-term interests in associates and joint ventures*
IFRS (International Financial Reporting Standards)	
1	IFRS Interpretations Committee Tentative Agenda Decision • Holdings of **Cryptocurrencies** • **Subsurface Rights** (IFRS 16 - *Leases*) • Effect of a potential discount on **plan classification** (IAS 19 – *Employee Benefits*)
2	**Supporting Modules** on ***IFRS for SMEs*** Standard issued
3	Document published • Disclosure Initiative – ***Principles of Disclosures*** project summary
Assurance	
1	**UDIN Mandato**ry in Phase II • **GST** and **Tax Audit reports** (Effective **April 1,2019**) • All other attest functions (Effective **July 1, 2019**)
2	FAQs on **UDIN for Bank Audit** issued by ICAI • UDIN is applicable to both Statutory Central Auditors and Statutory Branch Auditors for Certificates and Tax Audit Reports while conducting Bank Audit. • As per UDIN applicability (Phase 2), UDIN is not required to be generated for LFAR and other Bank Audit Reports now.

Company Law/SEBI – Accounts and Audit Related	
1	SEBI Circular dated March 29, 2019 • **Procedure and Formats** for **limited review/audit report of listed entity** and those entities whose accounts are to be **consolidated** with the listed entity.
Certain Reserve Bank of India Notifications	
1	Deferral of Implementation of **IND-AS**
2	**Trade Credit Policy** – Revised Framework
3	**White Label ATMs** In India – Review of Guidelines
4	**Interest Subvention Scheme** for Short Term Crop Loans during 2018-19 and 2019-20
USGAAP (United States Generally Accepted Accounting Principles)	
1	Proposed Accounting Standard Update (Revised) • Disclosure Framework – *Changes to the **Disclosure Requirements for Income Taxes***
2	Accounting Standard Update Issued • Improvement to **Accounting for Episodic Television Series** • ASU - *Improvements to Accounting for Costs of Films and License Agreements for Program Materials*

2. **New IND-AS Lease Standard Effective April 1, 2019**

IND-AS 116 - *Leases* is applicable under the IND-AS framework for annual periods commencing on or after April 1, 2019. This new standard is based on the corresponding IFRS 16 issued by the International Accounting Standards Board (IASB).

- IND-AS 116 defines lease as "**a contract is, or contains a lease** if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration".
- **Assets and liabilities arising from a lease** are initially required to be measured by the lessee on a present value basis. The measurement includes non-cancellable lease payments including inflation-linked payments and also includes payments to be made in optional periods if the lessee is reasonably certain to exercise an option to extend the lease, or not to exercise an option to terminate the lease.
- IND-AS 116 replaces extant IND-AS 17-*Leases* and **eliminates the classifications of operating and finance leases** from the **lessee's perspective.**
- Subject to exceptions, **a ROU (Right-Of-Use) asset** will be capitalized in the IND-AS balance sheet and would be measured at the present value of the unavoidable future lease payments to be made over the term of the lease.
- The **exceptions** relate to **short-term leases** (12 months or less) and **leases of low-value** (for example personal computers and small office furniture) where an accounting policy choice exists whereby either a Right-Of-Use asset can be recognized with the corresponding lease liability or the lease payments are expensed to the IND-AS Statement of Profit and Loss on an incurred basis.
- A liability corresponding to the capitalized lease will also need to be recognized, adjusted for lease prepayments, lease incentives received, initial direct costs incurred and an estimate of any future restoration, removal or dismantling costs.
- Accordingly, straight-line operating lease expense in the profit and loss of a reporting entity will be replaced with a depreciation charge for the leased asset and an interest expense on the recognized lease liability.
- It may be noted that operating lease expense forms part of operating costs layer of the income statement. Going forward, only the depreciation charge would form part of operating costs whereas the interest expense would be included under finance costs.
- In the earlier periods of the lease, the expenses associated with the lease will be higher when compared to lease expenses under IND-AS 17. However, the Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA)

measure will improve in general as the operating expense is replaced by the interest expense and depreciation in the Statement of Profit and Loss under IND-AS 116.

- The new standard does not substantially modify the financial accounting and reporting with respect to how a lessor accounts for leases.

3. **Case Studies Section (Case 1) – Reporting On A Key Audit Matter (KAM) – Inventory Provisioning For A Manufacturing Company**

a) **KAM – Inventory Provisioning:**

- The company manufactures and sells goods and is subject to **changing consumer demands and trends**, increasing the level of judgment involved in estimating inventory provisions.
- The **KAM** includes the consideration of **inventory provisions** relating to both finished goods and raw materials.
- Judgment is required to **assess the appropriate level of provisioning** for items that may be ultimately discarded or sold below cost as a result of a reduction in consumer demand, trading conditions and the company's brand strategy.
- **Management judgments** include expectations of future sales based on current forecasts and inventory liquidation plans.

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

- The auditors **critically assessed** the **basis for the inventory provisions** (for both finished goods and raw materials), the **consistency of provisioning** in line with policy and **rationale** for the recording of specific provisions in the context of management's key product strategies.
- The auditors **tested the provision calculations** and determined that they appropriately took into account the ageing profile of inventory, the **process for identifying specific problem inventory** and **historical loss rates**.
- The auditors **assessed the key assumptions** in management's estimate including expected future use of both raw materials and finished goods.
- The auditors satisfied themselves that both finished goods and raw materials inventory provisions have been prepared in line with policy and have been calculated and recorded based on historical trends, as well as management's expectations for future sales and inventory management plans.

4. **Deferral of IND-AS Implementation For Scheduled Commercial Banks**

The Reserve Bank of India vide Notification RBI/2018-2019/146 DBR.BP.BC.No. 29/21.07.001/2018-19 dated March 22, 2019 **deferred the implementation of** Indian Accounting Standards **(IND-AS**) for **scheduled commercial banks** (excluding Regional Rural Banks) since the legislative amendments recommended by the central bank are under consideration of the Government.

Accordingly, it has decided to defer IND-AS implementation till further notice.

5. **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 (NBFC) is provided.

The analysis provided herein below is based on index numbers with the net profit as per previously reported AS GAAP considered as the base figure.

		INDEX
Net Profit as per Previous GAAP		**100.0**
Transition impact drivers		
Expected Credit Loss Model	10.4	
Adoption of Effective Interest Rate ("EIR") for amortisation of income and expenses - financial assets at amortised cost	0.3	
Adoption of EIR for amortisation of expenses - financial liabilities at amortised cost	(2.6)	
Other impacts	(5.7)	
Net impact on P&L		2.5
Net Profit as per IND-AS		**102.5**
Other comprehensive income reported under IND-AS only		(0.1)
Total Comprehensive Income as per IND-AS		**102.4**

It may be noted that NBFCs transition to IND-AS in 2 phases (FY2018-19 and 2019-20).

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

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

- Subsidiaries are **consolidated** from the **effective date of acquisition** or up to the **effective date of disposal**, as appropriate, or the subsidiary meets the criteria to be classified as held for sale. The effective date is when control passes to or from the Group.
- **Control** is achieved when the Group has the **power** over the investee and is exposed, or has the rights to **variable returns** from its involvement with the investee and has the **ability** to use its power to affect its returns.
- The existence and effect of **potential voting rights** that are currently exercisable or convertible are considered in determining the existence or otherwise of control.
- Adjustments are made, where necessary to the financial statements of subsidiaries to **align their accounting policies** with those used by the Group.
- Where subsidiaries are not 100% owned by the Group, the share attributable to outside shareholders is reflected in **non-controlling interests.**
- Non-controlling interests are identified separately from the Group's equity and may initially be **measured** at either **fair value** or at the non-controlling interests **share of the fair value** of the subsidiary's identifiable net assets. The choice of measurement is made on an acquisition-by-acquisition basis.
- Changes in the Group's interests in subsidiaries, that do not result in a loss of control are accounted for as **equity transactions**.
- Where **control is lost**, a gain or loss on disposal is recognized in the consolidated Statement of Profit and Loss, calculated as the difference between the fair value of the consideration received plus the fair value of any retained interest and the Group's previous share of the former subsidiary's net assets. Amounts previously recognized in Other Comprehensive Income in relation to that subsidiary are reclassified and recognized through the income statement as part of the gain or loss on disposal.

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