

KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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English Monthly
for Private Circulation only

Annual General Meeting

On Saturday, 20th July 2019 at 6.00 PM
at Maple Hall, Pai Vista, Banashankari 2nd Stage, Bengaluru



Together We Serve
Together We Grow

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Dear Professional Friends,

As the saying goes '**time and tide waits for none**', and the time really flies. Many thoughts and ideas to implement!!! but too little time to accomplish everything. Had a chance to lay my hands on few of them, but, suddenly realised, I am writing my last message as a President of this illustrious Association. Time really

flies, isn't it. I would reckon this term as one of the memorable phases which will be remembered and cherished for life.

Took the mantle of the Association at a time when it's peaking, members' expectations and bench marks were set high. Time tested way was to build a **TEAM - Together Everyone Achieve More**, to multiply efforts, accomplish goals faster. Hence, we began the year with the Theme - '**Together we serve, together we grow**'. We adopted bottom up approach, activated the committees, delinked it from office bearers and gave a free hand to organize workshops and seminars by building a proper ecosystem of adequately manned sub-committees. Noticeable results are before you.

Experience needs to be experienced. However, one cannot remain complacent and wait to learn from one's own mistakes as time is too short, it is always better to learn from the experience of others. In that front, we proactively reached out to Past Presidents, Secretaries, Senior members and well-wishers regularly for learnings and advises, some of them volunteered to mentor committees which had a multiplier effect in reaching desired results faster. Such learnings made us to emerge as stronger individuals and now, we have large pool of young, energetic, self-motivated and selfless leaders to serve this glorious Association in years to come.

We realised there is no dearth of talent among our members, but there is real dearth of platforms to show case such talents. This kindled an idea, why not create a platform for our members and their families, which lead to the birth of '**KSCAA Habba**', a multifaceted cultural program to express their inherent talents. It was truly satisfying to note that the program was well received and appreciated by everyone.

Living to the true spirit '**Co-exist, compliment and be a force multiplier**', Association conducted host of value added workshops and seminars across the State alongside ICAI to disseminate knowledge to members and trade, an intensive study group '**Trust Clinic**' on Trust and NPOs is a huge hit among members. We joined hands with some of India's most prestigious professional bodies like BCAS, LCAS, IMC Chamber of Commerce, CAA etc., in populating various issues and grievances of members and trade before regulators and the experiences were very satisfying. Association partnering with ICAI and district associations pulled off a mega state level sports and talents event which was held simultaneously across the State and we were overwhelmed by the outpour of participants and satisfied by the good responses received from members.

News Roundup:

Proposed amendments to IT Act have seen lot of efforts to incentivize start-ups, simplify tax compliance, widen and

deepen the income tax base and to plug the loophole for possible tax evasion. While the focus is likely to shift to immediate July deadline (with MoF stating that there is no proposal to extend deadline for filing returns), professionals should wait and watch for developments on DTC (with increased terms of reference), MLI (Union Cabinet approving its ratification), faceless assessments and the approach of Tax Authorities towards revised compounding guidelines. We may expect complete change in the Tax Payer and Tax Authorities relationship in the future.

Representations:

During this period we have represented with Finance Ministry and MCA on the need to have an extension for DPT-3 forms as well as the need to have an unified form for MSME, DPT, and other ancillary declaration under Annual Return itself. Also, we have submitted representation on pursuing transparency in audit empanelment and allotment of DCC banks in Karnataka to the authorities

It is with a great contentment that I end my tenure as President of the Association, one of the finest professional bodies I have been associated with in my life. I honestly believe that this Association with its proven credentials is on a solid foundation to embrace the future.

Before I signoff, I would like to convey my sincere appreciation to the many people who walked the talk with me. Immense thanks to Immediate Past President CA. Raghavendra T.N, Past President CA. Raghavendra Puranik and all my office bearers CA Chandrashekar Shetty, CA Kumar Jigajinni, CA Chandan Hegde, CA Pramod S Rao and All EC members worked meticulously with me to drive KSCAA on the way to success throughout the year. I also appreciate the intense efforts of all the Sub Committee Conveners and members, Past presidents, Mentors and well-wishers who have wrestled with troubled waters, tough timelines and resource constraints to come up with excellent programs during the entire year. Many, many thanks to all the conveners, coordinators, contributors and resource persons, it is your indefatigable efforts that have raised the benchmarks KSCAA is known for.

Last but not the least, I would like to thank whole-heartedly each and every member of the over 3,000+ strong KSCAA family for their profuse support and enthusiastic participation in all activities that have made the Association the proud winner it truly is! It was a great team effort true to saying, '**Together we serve, together we grow**' and I truly believe we lived up to the expectations.

At the AGM of the Association on 20th July 2019, I will pass the baton to the new team. I convey my best wishes to them for the coming year.

I signoff for the last time by quoting 'Albert Schweitzer' on Success:

"Success is not the key to happiness. Happiness is the key to success. If you love what you are doing, you will be successful."

I wish each one of you a lots of Success in all your Professional Endeavours.

Sincerely,

CA. Raghavendra Shetty
President

KSCAA

News Bulletin

July 2019

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By **CA. Prateek Marlecha**
CA. Praveenkumar Gella

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CA. Naveen Khariwal

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CA. Krishna Upadhya S

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

ELECTION 2019-2020

FINAL LIST OF CANDIDATES CONTESTING FOR ELECTION TO THE EXECUTIVE COMMITTEE OF THE ASSOCIATION FOR THE YEAR 2019-2020

S.NO	CANDIDATE NAME	M.NO	PLACE
1	AKASH U HEGDE	LA-170	BANGALURU
2	CHANDAN KUMAR HEGDE A.	LC-067	BENGALURU
3	CHANDRASHEKARA SHETTY	LC-060	BENGALURU
4	CHANDRASHEKHAR S MUCHCHANDI	LC-072	BENGALURU
5	GANESH VISHWANATH SHANDAGE	LS-336	BELAGAVI
6	GOWRISH BHARGAV K.V.	LG-132	SHIVAMOGGA
7	JIGAJINNI KUMAR SHIVALINGAPPA	LJ-049	BAGALKOT
8	NAGESWARAN R.	LN-081	BANGALURU
9	PRAMOD S.	LP-152	BENGALURU
10	PRAVEEN S. SHETTAR	LP-157	MASUR
11	SHIVAPRAKASH VIRAKTAMATH	LS-521	BENGALURU
12	SUJATHA G.	LS-449	BENGALURU
13	SUNIL BHANDARY	LS-556	BANGALURU
14	VIJAYKUMAR M. PATEL	LV-234	BENGALURU

CA. T.M. DILEEP KUMAR
Chief Election Officer

CA. MADDANASWAMY B.V.
Election Officer

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CHARITABLE TRUSTS CARRYING COMMERCIAL ACTIVITIES

CA. S. Krishnaswamy

1. The Income Tax Act 1961 defines the expression 'Charitable Purpose' in Sec.2(15) of the Act. Controversies have arisen in interpretation of a new proviso which was inserted w.e.f 01.04.2016.

The key words in the new proviso are "the advancement of any object advancement general public utility." The advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for consideration.

The proviso was further amended from time to time placing a monetary limit for purposes of applying the proviso.

2. The definition has two parts (1) the main Section which is an inclusive section refers to –

"relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

3. The second is newly inserted proviso which is 'advancement of any other object of general public utility' reads-

'Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- (i) *such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) *the aggregate receipts from such activity or activities during the previous year, do not exceed **twenty per cent** (w.e.f 01/04/2016) of the total receipts, of the trust or*

institution undertaking such activity or activities, of that previous year;"

4. From the definition it can be understood that the activities concerning relief of the poor, education, yoga, medical relief, preservation of environment, watersheds, forests, wildlife, preservation of monuments or places and the advancement of any other object of general public utility are charitable activities when such activities are carried for the benefit of the public.

Further, the Act restricts the definition in the case of other objects involving the advancement of any other object of general public utility, when such activities involves commercial activities and in turn it shall not be regarded as charitable subject to the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts w.e.f 01.04.2016 (Earlier monetary limits - a) Rs.10 lakhs w.e.f 01.04.2009; b) Rs.25 lakhs w.e.f 01.04.2012).

Any income of a trust being profits and gains of business, shall not qualify for exemption unless the business is incidental to the attainment of the objects of the trust and separate books of account are maintained in respect of such business as per Sec 11(4A).

Main section Case law:

As far as the main Section is concerned the leading decision today is **Queen's Educational Society vs. CCIT [2015] 372 ITR 699 (SC)** which overruled some of the other High Court decisions.

Case laws:

- A. **On the Main Section – Business activity is incidental to the objects and others:**

- 4.1. It was held by the Supreme Court in the case of **Asst. CIT vs. Thanthi Trust (2001) 247 ITR 785(SC)** that- "all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is

utilized by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust. In any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee.” A specific section 11(4A) deals with a business activity incidental to the objects of a trust. For example, a blind school manufactures articles from the disabled students.

4.2. The Supreme Court in the case of **P. Krishna Warriors** held with reference to Income Tax Act, 1922 that “if the trust carried on business and the business itself is held in trust and the income from such business is applied for application for the charitable or religious purpose of the trust, the conditions prescribed and fulfilled and the income is exempt from taxation.”

4.3. In the case of **Deputy Director of Income-tax (E), Trust Circle-IV, New Delhi v. Institute of Chartered Accountants of India [2016] 70 taxmann.com 54 (Delhi - Trib.)** the Assessing Officer denied exemption to assessee mainly on the ground that ICAI was involved in commercial activities as it received coaching fees from the students of CA while giving coaching to the CA students. Further, it was held that assessee's case fell under the category of General Public Utility and proviso to section 2(15) was clearly applicable in this case and computed income of the ICAI as any Association of Person (AOP).

The Delhi Tribunal held this case-

“The issue in dispute is squarely covered by the various decisions of the ITAT, High Court and the Supreme Court of India in assessee's own cases in preceding assessment years wherein exemption to the assessee under section 11 has been allowed holding that the assessee is an educational institution. Thus, respectfully following the same it is to be held that ICAI is an educational institute and hence its income will be exempt under section 11 as education falls within meaning of charitable purpose under section 2(15)”

4.4. It was held in the case **Suvasini Charitable Trust vs. DIT vide ITA No.ITA No. 4330/Del/2012 pronounced on 17 March, 2016** that -

“If the aforesaid provisions are considered in juxtaposition to the assessee's case, it can be said that the main objects of the assessee which relates to the imparting education and medical relief to

the poor is undoubtedly charitable in nature. In the present case, establishment of Cafeteria to provide hygienic vegetarian foods to the people/tourist visiting Akshardham is claimed to be established for attaining the main object of improving the standard of health. In the instant case, the use of Cafeteria is not prohibited for any particular caste or creed. In other words, this Cafeteria is open to all and the income generated from the said Cafeteria is claimed to be utilized for the main objects of the assessee. The said claim of the assessee was not rebutted by bringing any cogent material on record.”

4.5. It was held by the ITAT Delhi in the case of **DivyaYogMandir Trust Vs JCIT (2013) 37 Taxman.com 227 (Delhi-Trib.)** that-

“We find that the section deals with cases where the business itself is settled to take care of interest for a charitable purpose. Sub section (4A) of section 11 also exempts income tax of a business carried on by the trust so long as the business carried on by the trust is (a) incidental to the attainment of main objects (b) feeds the charitable objects (c) separate books of accounts are maintained in respect of the same, even on fulfilment of the aforesaid conditions profit from such business are exempt u/s 11/12 of the Act. Thus it is clear that the charitable trust can carry on business and utilize its profits therefrom for the charitable purposes **but a charitable trust cannot have its purpose, an activity that involves the buying and selling of goods and making profits.** The business undertaking of the appellant as discussed above are thus the means for effectuating a charity, but not a charitable object itself. We find that in the case of appellant before us the activity of manufacturing and sale of ayurvedic preparations has been undertaken only for the purpose of effectuating the charitable objective of providing 'medical relief to the society at large on a genuine need was felt to provide superior quality ayurvedic preparations at economical prices in order to attain effective medical results. Only **because the activity carried on yielded profits a negative inference cannot be drawn** that the activity was undertaken with the sole intention of earning profits. It is also pertinent to note that the total donations / voluntary contributions received by the appellant trust during the assessment year under consideration amounted to Rs.3,89,14,100/- only. Whereas the total revenue expenditure incurred by the appellant trust in the

assessment year under consideration for undertaking its charitable activities amounted to Rs.48,54,93,383/- (excluding depreciation). Further it is apparent from page 26 ITA No. 387/Del/2013 of the paper book i.e. Income and expenditure account for the year ending 31st March, 2009 that substantial capital expenditure has also been incurred by the appellant trust in pursuing its charitable activities. We also find that the donations / contributions received by the appellant trust constituted only a minuscule portion of the heavy outlay of expenditure incurred in pursuing the charitable activities.”

- 4.6. Further, the ITAT mentioned a lead case of the Supreme Court decision in the case of **ACIT vs. Surat Art Silk Cloth Manufacturers 121 ITR 124 (SC)** that the expression 'for the purpose of profit' implies that the predominant object should be to earn profit. Further to determine the predominant object, **what is required to be examined is the objects of the society and not the quantum of surplus** though such quantum may become relevant in certain circumstances.

The same ratio has been laid down by the Supreme Court in the below cases-

- CIT vs. Andhra Pradesh State Road Transport Corporation 159 ITR 1(SC)
- Victoria Technical Institute vs. CIT 188 ITR 57 (SC)
- Thiagarajar Charities vs. ACIT 225 ITR 1010 (SC)
- Aditanar Educational Institution vs ACIT 224 ITR 310 (SC)
- CIT vs. Bar Council of Maharashtra 130 ITR 28(SC)
- American Hotel Lodging Association Education Institute vs. CBDT 301 ITR 86 (SC)
- CIT vs. Delhi Kannada Education Society 246 ITR 731 (Delhi)
- CIT vs. Samaj Kalyan Parishad vs. ITO 291 ITR (AT) 1 (Delhi SB)

5. **On the Proviso:**

- 5.1. It was held in the case of **Jammu Development Authority vs. CIT** vide order dated 14.06.2012 reported as (2012) 52 SOT ASR 153 following the judgement of **PUDA vs. CIT (2006) 103 TTJ CHD 988** that “if activities of any Institution/Trust/Society under the fourth limb i.e. ‘the advancement of any other object of general public utility’ are in the nature of trade, commerce or business for cess or fee and the receipts therefrom cross the prescribed limit (which for the

year under consideration was 25 Lakhs or more) then they are not eligible to continue with registration u/s 12A and the same is required to be withdrawn.”

- 5.2. In the decision of the Coordinate Amritsar Bench of the Tribunal in the case of **Hoshiarpur Improvement Trust (291 CTR 352)** did take the note amendment to section 2(15) by Finance Act 2015 w.e.f. 2016 and held that “the new proviso, with effect from 1st April 2016, seeks to exclude, from the scope of section 2(15), the situations in which even in the course of pursuing advancement of any objects of general public utility when any activities in the nature of trade, commerce or business etc is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, unless, the activity level remains within the threshold limit i.e. receipts from such activities are less than twenty percent of total receipts of that year.”
- 5.3. It was held in the case of **DIT (Exemption) v. Khar Gymkhana [2016] 385 ITR 162/240 Taxman 407/70 taxmann.com 181 (Bom.)** has duly taken note of the provisions of section 13(8) of the Act inserted vide Finance Act 2012 w.e.f. 1.4.2009 as well as the CBDT Circular No.21 of 2016 and held that “merely because in one year income of assessee-trust exceeded **prescribed limit provided** under second proviso to section 2(15), that by itself, could not warrant cancellation of registration of trust, however, where the receipts are hit by the proviso to Section 2(15) of the Act, the benefit of exemption to its income for the previous year relevant to the subject assessment year will not be available. However it has been further held that if this happens on continuous / regular basis, it could justify further probe / inquiry before concluding that the trust is not genuine.”
- 5.4. The **CBDT issued a circular dated 19.12.2008**, paragraph-3 thereof reads as under:
“3. The newly amended s. 2(15) will apply only to the entities whose purpose is ‘advancement of any other object of general public utility’ i.e., the fourth limb of definition of ‘charitable purpose’ contained in s.2(15). Hence, such entities will not be eligible for exemption under s. 11 or under s. 10(23C) of the Act, if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of activity.”

5.5. The Hon'ble Karnataka High Court in the case of **Visvesvaraya Technological University vs. Assistant Commissioner of Income Tax (reported as 362 ITR 279)**. "A table showing income from Admission/ Training fee, training expenses, profit and profit percentage for the financial year 2008-09 to 2015-16 has also been furnished to submit that the appellant has been earning huge profit from training activity also which is unjustified and unwarranted considering the charitable objects of the appellant. It has been, therefore, contended that the income earned by the assessee is not only in the direct contrast to post amendment of Section 2(15) and its proviso and that the surplus accumulated over the years has not been ploughed back for the charitable purposes. It has therefore been submitted that the lower authorities rightly denied the claim of exemption to the assessee u/s 11 of the Act for the year under consideration."

However, on appeal the Supreme Court held that the mere generation of surplus, if ploughed back for educational purposes, it would not lose its character as a charitable institution. However in this case the assessee was arguing that it is a government institution which is exempt. Not accepted by the SC

6. **Queen's Educational Society vs. CCIT [2015] 372 ITR 699 (SC)**.

In Para 8.13, the principle of law was summed up:

1. It has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.
 2. The test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit.
 3. The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.
- and held-

"8.15 As a sequel to the aforesaid discussion, these petitions are allowed and the impugned orders passed by the Chief Commissioner of Income Tax withdrawing the exemption granted under

Section 10(23C)(iv) of the Act are hereby quashed. However, the revenue is at liberty to pass any fresh orders, if such a necessity is felt after taking into consideration the various propositions of law culled out by us in para 8.13 and various other paras.

8.16 The writ petitions stand disposed of in the above terms."

7. **On kalyana mandapams**

It was held in the case of **DCIT(E) vs. Willingdon Charitable Trust [2018] 67 ITR (Trib) 230 (Chennai)** that the two Kalyana Mandapams were held under trust by the assessee. The income of the trust was applied for running women's hostels for working women and girl students. When the assessee established that the income derived from the business was utilized towards fulfilment of the objects of the trust, the assessee was entitled to exemption u/s 11. It was not the case of the Department that the income from the two kalyana mandapams was not used for charitable activities. Therefore, the running of the kalyana mandapams, hotels, auditoriums by the assessee could be said to be incidental to the attainment of the objects of the assessee which was constant and unchanged since its formation and of charitable nature, including more particularly for education, medical relief and relief of the poor and since income arising therefrom was being utilized or applied for the stated charitable objects of the assessee, albeit in many cases through other similarly placed charitable trusts, having charitable objects particularly of the first three limbs of the section 2(15), the assessee was eligible for exemption u/s 11 including on the income derived from the properties held under trust and the Assessing officer was directed to allow exemption u/s 11 for the assessment year 2010-11.

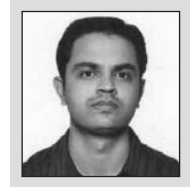
8. **Conclusion:**

A distinction must be made when surplus are generated between the main Section and the proviso. In both cases the concept of dominant activity is relevant as pointed out by the Apex Court in **Queen's Educational Society vs. CCIT [2015] 372 ITR 699 (SC)** which is the benchmark decision in the issue.

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IMPACT – WRONG TYPE OF TAX PAID AND WRONG CLAIM OF ITC



CA. Madhukar N Hiregange & CA. Mahadev R

The GST audit season has started and recently the due date also got extended till 31st August 2019 for filing the reconciliation statement in form GSTR-9C and annual return in form GSTR-9 and GSTR-9A for the FY 2017-18. GST being new law, there were (are) lot of confusion in understanding of the law which could have led to non-compliance, errors in payments, claim of ITC etc. Few of them could have get clarified. Now, during the audit or annual return process many of these issues are arising and identified. Few of the common issues are wrong type of GST paid on outward supplies and wrong type of ITC claimed on inward supplies.

In this article, we have analysed the possible implication and solutions which could be helpful to tax payers and the professionals in finalising the reports with the least impact.

Supplies and types of taxes

Even though the GST law is publicised as ‘one nation, one tax and one market’, there are different types of taxes prescribed depending place of supply. In case of inter-State supply, the type of tax payable is IGST whereas in case of intra-State supply, the type of tax payable is CGST and SGST. Compensation cess wherever payable would be extra in addition to these taxes payable.

In terms of Section 7 of IGST Act, the supply of goods or services, where the location of the supplier and the place of supply are in two different States, two different Union territories or a State and a Union territory would be considered as inter-State supply. This would cover even transactions such as imports, supplies to / by SEZ units / developers, supplies where exports where place of supply is outside India.

In terms of Section 8 of IGST Act, supply of goods or services where the location of the supplier and the place of supply of goods are in the same State or same Union territory would be treated as intra-State supply. This would exclude all inter-State supplies.

Wrong type of tax paid on outward supplies

IGST to be paid in case of all supplies which are held to be inter-State supplies and in case of intra-State supplies, CGST + SGST to be paid. However, there are many instances wherein the tax payers have paid wrong type of tax. Broadly, following could be the categories of errors in such cases:

- a. Correct type of tax charged in invoice say IGST and collected from customers. However, while paying Karnataka SGST and CGST paid wrongly.
- b. Wrong type of tax charged in invoice say IGST instead of CGST and SGST and collected from customers. However, while paying correct type of taxes IGST paid.
- c. Wrong type of tax charged and collected from customers. Such wrongly collected taxes paid.

In case of first category, where charge and collection is right but payment was wrong, the tax payers could take the shelter under the circular no.26/26/2017 wherein it has been clarified that such errors could be rectified by paying correct type of tax and adjusting the over paid tax from subsequent period liability. Alternatively, even refund could be opted.

In second category, the supplier has collected the wrong type of tax but paid correct type of tax, there should not be any issue. However, since the invoice would have been issued with wrong type of tax, the recipient may face challenge with respect to ITC. For example, for inter-State supply to Tamilnadu, the Karnataka supplier has charged CGST + SGST instead of IGST. The recipient in Tamilnadu would not be eligible to claim ITC of CGST + SGST. Such errors should have been rectified only through issue of credit note for wrong type of tax and then debit note with correct type of tax. The recipient would be eligible for ITC based on such debit note. It is important to note that such debit note would be eligible document for ITC only if issued within due date

of filing GST return for September of subsequent financial year. Wherever, recipient voluntarily changed the type of tax in books for ITC claim there could be dispute on eligibility.

Third category is where issues could arise. The simple solution looks to be to pay correct type of tax and claim refund of wrongly paid tax. However, due to absence of refund mechanism for such cases and the time involved, wherever the stakes are high this solution does not seem to be practical or feasible.

Initial confusion

Third category of error discussed earlier is mainly noticed in case of services due to wrong understanding of place of supply. For example, repair and maintenance service provided to registered person outside the State was charged with CGST + SGST instead of IGST.

The other example could be intermediary service provided to customer outside India charged with IGST instead of CGST and SGST. The confusion was mainly on account of unclear provisions in IGST law. In terms of Section 8(2) of IGST Act which defines the intra-State supplies has a provision stating that **subject to the provisions of section 12**, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply. Section 12 is applicable to determine the place of supply for service provided where supplier and recipient both in India. Section 13 would be applicable to determine the place of supply when either supplier or recipient of service is outside India.

In case of intermediary services, the place of supply in terms of Section 13(8) of IGST Act would be the location of the supplier of services. Therefore, the confusion is with regard to type of tax payable in such cases. One argument is that as Section 8(2) states subject to Section 12 and not Section 13, in such cases, IGST is payable treating it as inter-State supply as even Section 7(5) (c) has a residuary entry stating that supply of goods / services in the taxable territory, not being an intra-State supply and not covered elsewhere in Section 7 would be inter-State supply. Another argument is that, since recipient is outside India the law should have been subject to Section 13 and because the place of supply

and location of supplier is within the State, CGST + SGST is payable.

There was an advance ruling dated 10th August 2018 by Maharashtra Authority of Advance Ruling in case of *M/s. Micro Instruments* wherein it was held that in case of intermediary services provided to customers outside India, IGST to be paid. Thereafter, in December 2018, there is a clarification issued by the CBIC through FAQ for banking, insurance and stock brokers sector (question 25) clarifying that, in case of intermediary services as the location of supplier and place of supply are in same State, such supplies will be treated as intra-State supply and Central tax and State tax or Union territory tax, as the case may be, will be payable. The FAQ could be relied upon as it appears to be in line with the law as advance ruling is specific to applicant and does give much confidence of its correctness.

Possible solution

In terms of Section 19(1) of IGST Act and Section 77(2) of CGST Act, where a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is **subsequently held** to be an intra-State supply or vice versa, would be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

Since there is no revenue loss to the government though there could be difference in the State government which could be benefitted, the provision Section 77 and Section 19 have been inserted. The question is who has to hold a particular transaction as inter-State or intra-State. Considering the provisions powers of department in terms of Section 73 and Section 74 to demand taxes, it appears that it has to be held by the department who would get powers to grant refund of wrongly paid taxes as well.

Wrong type of ITC claimed

Another common issue observed during audits are claim of wrong type of credits which could lead to denial of credits or loss of credit due to time limit and payment of interest due to wrong claim. The different type of errors observed in ITC claim along with possible solutions are discussed below:

Sl.No.	Type of error	Possible solution
1	ITC claimed on restricted goods / services in Section 17(5) of CGST Act	Reverse/payback along with applicable interest. If sufficient ITC balance is there, an argument could be taken on non-applicability considering proposed amendment in Section 50 to levy interest only on net liability after ITC adjustment. Not free from litigation.

Sl.No.	Type of error	Possible solution
2	IGST amount in invoice claimed as CGST + SGST credit or CGST + SGST charged within State claimed as IGST	Revenue neutral. There may not be need of reversal/ pay back as it does not lead to overall excess claim of ITC. However, department could still dispute stating that SGST/ CGST cannot be cross utilised and credit claim by converting it as IGST to utilise for all types of payment is not right.
3	Credit of CGST + SGST of other State claimed as CGST + SGST or as IGST credit within the State	Credit would not be eligible and requires reversal. Argument could be taken that CGST credit should not be restricted. However, the same is subject to litigation as it is charged for intra-State supplies. Few advance rulings also disallowed it.
4	Invoice raised from Maharashtra with IGST to Branch A (bill to) Karnataka but shipped to Branch B in Kerala. ITC claimed in Branch B.	Credit should be claimed in Branch A. Even GSTR-2A would support this claim as type of GST would be depending upon the bill to location. Branch B should be eligible to claim credit based on invoice from Branch A.
5	Invoice raised and goods shipped from Maharashtra with IGST to Branch A Karnataka but credit claimed in Branch Kerala.	Credit to be reversed in Kerala. If time limit lapsed for claim of credit, Karnataka would not be able to take credit. Remote possibility is to contend that GSTR-3B is not a return prescribed and time limit for taking credit for FY 2017-18 is date of annual return (Recent HC decision of Gujarat in case of AAP and Co. could be relied upon)
6	CGST + SGST paid on import supplies under RCM claimed as credit instead of IGST payment	Type of tax paid could be questioned which however, may not have much impact due to revenue neutrality. Tax paid on import supplies eligible for credit based on self-invoice.
7	GST wrongly paid and credit claimed on unspecified categories of expenses – Ex: Rent-a-Cab	Revenue neutral. There may not be any dispute as it is paid and taken as credit.
8	ITC claimed on invoices received towards advance payments without receipt of goods	One of the conditions for credit claim is receipt of goods. In case of advances, supplier has the obligation to issue receipt voucher instead of invoice as per GST law. There could be interest demand for early claim of credit. Remote possibility is to argue based on Section 12 which states that <i>'supply' shall be deemed to have been made to the extent it is covered by the invoice.</i> This contention may or may not be accepted by the department. As there is no interest on interest, tax payers could wait and decide.

Conclusion

The law after so many changes is not clear which is evident from advance ruling and FAQs discussed. Therefore, a practical action could be that additionally liability need not be discharged by the tax payers until held by the department to be wrongly paid and refund sanctioned as payment could be block the funds till refund is sanctioned. In case of ITC claim, the impact of wrong claim to be ascertained to suggest for payment of interest or entire credit reversal or both. Similar to this there could be many issues which lacks clarity. Ex: Wrong type of tax paid in case of reverse charge mechanism. Professionals need to analyse the implication considering the revenue neutrality, reporting requirements in GSTR-9C considering the latest clarification on role of professionals in press release dated 3rd July 2019.

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FILING THE GST ANNUAL RETURN

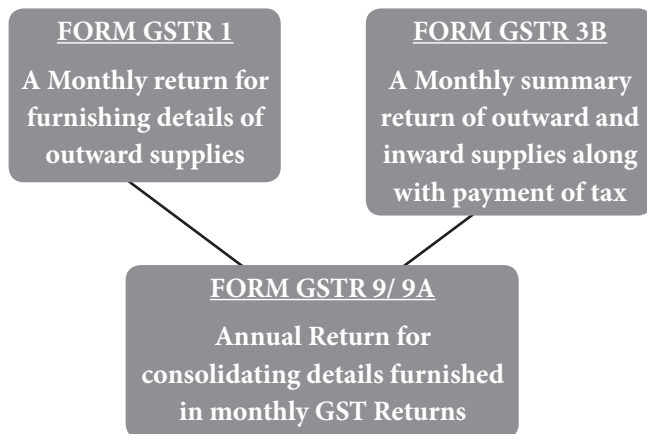
CA. G B Srikanth Acharya

It is just above two years since the implementation of the Goods and Services Tax (GST) Act, in the country. The GST Law, being one of the biggest reforms in Indirect taxation, has undergone massive changes right from the day of its inception till present, with the government issuing timely notifications and clarifications, steering towards 'ease of doing business', and automation and simplification of the compliances and procedures. Until now, the registered persons under GST have filed monthly/quarterly returns, declaring the tax liability for that tax period (month/quarter) by furnishing details of outward supplies, inward supplies, tax payable and tax paid for the period in GSTR-1 and GSTR-3B. Now comes the time to file the GST Annual return for an entire financial year, for the very first time.

This article deals with some of the important aspects of filing of GST Annual Return.

What is GST Annual Return?

GST Annual Return is a consolidation of the outward and inward supplies made by a registered person during a financial year. Annual Return under GST is to be filed in FORM GSTR 9.



The main purpose of GST Annual return is to determine the final tax liability on the taxpayer for the financial year. Being the last return for a financial year, it is of great significance.

Who is required to file Annual return?

Every person registered under GST, irrespective of their turnover, is required to file the GST Annual return, except:

- i. Input service distributor (ISD),
- ii. Person required to deduct tax at source or collect tax at source (TDS/ TCS) under GST,
- iii. Casual taxable person, and
- iv. Non- resident taxable person;

It is to be noted that even if the business was inactive during the year or the supplies made by the registered person are 'Nil' rated; the person is required to file annual return under GST.

Prescribed Form for Annual Return

There are three forms prescribed for Annual Return under GST. The applicable form is to be decided depending on the type of registration and the nature of business, as specified in the table below:

Sl.No.	FORM	Applicable to
1	GSTR 9	Regular Taxpayer filing periodic GSTR 1 and GSTR 3B
2	GSTR 9A	Composition Taxpayer filing periodic GSTR 4
3	GSTR 9B	E-commerce operator filing periodic GSTR 8

Annual return under GST is required to be furnished for every financial year electronically, on or before the 31st day of December following the end of such financial year, in the prescribed forms as mentioned above.

For instance, the due date of filing Annual return for the Financial Year 2017-18 as per the law is on or before 31st December, 2018. However, the competent authority has extended the due date of filing the GST Annual return for the Financial Year 2017-18 to 31st August, 2019.

In the meanwhile, we have completed another financial year and we are nearing the due date for the next financial year (2018-19), for which the due date is 31st December, 2019.

Consequences of not filing GST Annual Return within the due date

The government has provided sufficient time to the taxpayers, practitioners and other stakeholders by extending

the due date of filing GST Annual Return thrice, from 31st December 2018 to 31st March 2019, to 30th June 2019 and now finally to 31st August 2019. The taxpayers should take benefit of extended date to file the Annual Return on time and avoid any consequences of delayed filing of the Return.

Non-filing of Annual Return under GST attracts late fee as follows:

- Late fee of Rs. 100/- under CGST and Rs. 100/- under SGST, that is, Rs. 200/- per day of default.
- The late fee is subject to a maximum amount calculate at 0.25% of the turnover of the taxpayer in the state or union territory where he is registered.

Delayed filing of GST Annual Return will not only attract late fee but can also be a cause for issue of notices, creation of tax demands and long-term litigation.

How do we go about filing the GST Annual Return?

The GST portal displays an auto-filled Annual Return for every registered person. The amounts in this are merely drawn from the periodic GST Returns- GSTR 1, GSTR 2A and GSTR 3B. There are cases where the auto-filled Annual Returns are being filed without any reconciliation and verification; which is incorrect.

The major task in filing the GST Annual Return is to reconcile and verify the amounts and to determine the correct amounts that have to be declared in the Annual Return. Also, after determining the correct amounts, the question that arises is- what has to be done with the tax liability short-paid or paid in excess, in the periodic returns? Or what has to be done with the Input Tax Credit not availed or availed in excess, during the financial year?

Let us first understand the procedure to determine the correct amounts.

The GST Law has classified transactions of a business into 'Outward supply' and 'Inward supply'. GSTR 9 requires disclosure of the amounts of outward supply (including inward supply liable to RCM) in columnar form, the columns being- 'taxable value' and 'tax amount'- CGST, SGST, IGST and Cess. It requires the disclosure of only 'tax amount'- CGST, SGST, IGST, and Cess for inward supply (other than inward supply liable to RCM).

The tax amount of Inward supply, that is, Input Tax Credit (ITC) has to be classified into ITC pertaining to Input, Input Services, and Capital goods. Out of the total amount of ITC, the amount of ITC reversed and ineligible under GST law has to be determined.

Further, the declaration at the end of the annual return FORM, that has to be signed by the taxpayer, reads as follows:

*"I hereby solemnly affirm and declare that the information given herein above is **true and correct** to the best of my knowledge and belief and nothing has been concealed there from and in case of any reduction in output tax liability the benefit thereof has been/will be passed on to the recipient of supply"*

It uses the words "true and correct" and not "true and fair". Also, it has to be noted that once filed, GSTR 9 cannot be revised. Hence, any incorrect detail can, not only attract demand of tax, interest and penalty, but can also lead to a long-term litigation and multiple implications thereof. Therefore, due care must be taken to fill in the details and to file the annual return.

There can be differences in the amounts declared in GSTR 1, GSTR 2A, GSTR 3B and books of accounts. The taxpayer must reconcile the data as per returns and books of accounts, and only the correct amounts should be declared in GSTR 9; whether they are as per GST returns or as per books of accounts. For 'Outward supply', reconciliation of GSTR 1, GSTR 3B and books of accounts has to be done, and the reconciliation of GSTR 2A, GSTR 3B and books of accounts for 'Inward supply'. Any excess liability arising due to such differences on reconciliation should be paid by the taxpayer in FORM DRC-03, before filing the Annual Return.

Earlier, Part II of the Annual Return read as "Details of Outward and inward supplies **declared** during the financial year". It has been amended and now reads as "Details of Outward and inward supplies **made** during the financial year". This clearly means that any additional liability pertaining to the financial year for which return is being filed, which was not declared in that year, but declared subsequently or not declared at all, also has to be disclosed in the annual return.

Scope of Annual Return

The scope of Annual Return has been restricted and it serves the sole purpose of declaring the total outward and inward supplies made by the registered person during the financial year. Any additional liability on account of error or omission in the monthly GST returns *cannot be paid* through the annual return.

Points to ponder

- In the case of a business having multiple GSTINs, a separate Annual Return has to be filed for each GSTIN.

- The Annual Return for FY 2017-18 has to be filed even if the status of GST registration is 'cancelled', 'inactive' or 'under-process', but was registered during FY 2017-18.
- If the taxpayer was a composition registered person for part of the year and a regular registered person for the other part, then he is required to file both GSTR 9 as well as GSTR 9A.
- Any amount of Input Tax Credit (ITC) which has not been availed and utilized in the periodic GST returns cannot be availed or utilized in the annual return.
- If there is tax amount wrongly paid through GSTR 3B, in excess to the actual amount payable, such excess amount paid cannot be claimed as refund but can be adjusted to reduce tax liability in subsequent tax periods by way of tax credit, by declaring such amount in the annual return.
- Any excess liability declared in the Annual Return has to be paid in FORM DRC-03 by the taxpayer. To pay such additional liability declared in the Annual Return, the taxpayer shall select 'Annual Return' in the drop down provided in FORM DRC-03.
- Even if there are no transactions made during the year, taxpayers are required to file a 'Nil' Annual Return.

Some of the major issues in GSTR 9

Sl. No.	Issue	Solution
1	Turnover is short-declared in GSTR-3B	GST liability on short-declared turnover should be paid along with 18% interest in Form DRC-03 and such amount shall be included in GSTR-9 under Table No. 4

Sl. No.	Issue	Solution
2	Declared excess turnover in GSTR 3B and paid tax on the same	Refund cannot be claimed now, for such excess tax paid. However, if the amount is huge, it is suggested to reduce the amount from outward liability of the subsequent tax period. Declare the correct outward liability in GSTR-9 (if the amount is not of significant value, it is not suggested to adjust the amount as it may cause problem in reconciliation of next year)
3	ITC available but not declared/availed at all in GSTR-3B	Unavailed ITC cannot be claimed now. However, such amount has to be disclosed in GSTR-9 under Table No. 8E (ITC available but not availed)
4	Ineligible ITC wrongly claimed in GSTR-3B	Amount of ITC wrongly claimed should be paid along with 18% interest in Form DRC-03. Total amount of ITC available should be shown in Table No. 6 and the ineligible amount should be shown in Table No. 7

The views expressed in this article are those of the author. While every effort has been made to ensure the accuracy and completeness of the information; the suitability, applicability or otherwise of the information provided in the article may differ based on the personal perception and understanding of the reader.

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FINANCIAL REPORTING AND ASSURANCE

CA. Vinayak Pai V

1. CHANGES TO FINANCIAL REPORTING AND ASSURANCE – MONTHLY ROUNDUP

IND-AS (Indian Accounting Standards)	
1	Ind-AS Transition Facilitation Group (ITFG) – Bulletin No. 20 issued
2	Ind-AS Transition Facilitation Group (ITFG) – Bulletin No. 15 Revised
IFRS (International Financial Reporting Standards)	
1	IFRIC – Tentative Agenda Decisions <ul style="list-style-type: none"> • IFRS 9 – Fair value hedge of <i>foreign currency risk on non-financial assets</i> • IFRS 15 – <i>Compensation</i> for delays or cancellations • IFRS 16 – Lessee’s <i>incremental borrowing rate</i> • IAS 16/IFRS 16 – Lease term and useful life of <i>leasehold improvements</i> • IAS 1 – Presentation of liabilities/ assets related to <i>uncertain tax treatments</i> • IAS 7 – Disclosure of <i>changes in liabilities</i> arising from financing activities • IAS 41 – <i>Subsequent expenditure</i> on Biological Assets
Assurance	
1	ICAI Clarification on Auditor’s Certificate on Return of Deposits (Rule 16 of Companies (Acceptance of Deposits) Rules.
2	ICAI - Illustrative Auditor’s certificate on Return of Deposits
3	ICAI Announcement - Requirement of mentioning UDIN while signing Audit Reports <ul style="list-style-type: none"> • Effective July 1, 2019 • UDIN to be mentioned immediately after ICAI’s membership Number while signing audit reports.
Company Law/SEBI – Accounts and Audit Related	
1	FAQs on Companies Act, 2013 (Revised edition) released by ICAI
2	MCA Notification dated July 1, 2019 – Form BEN-2 substituted
Certain Reserve Bank of India Notifications	
1	Large Exposures Framework – Revised Guidelines
2	Prudential Framework for Resolution of Stressed Assets
3	Prudential Norms for Classification, Valuation and Operation of Investment Portfolio – Sale of Investments held under HTM category
4	Sale of Securities held in HTM Category – Accounting Treatment
5	Security Measures for ATMs
6	Annual Return on Foreign Liabilities and Assets reporting by Indian Companies
7	Basel III Capital Regulations – Implementation of Leverage Ratio
USGAAP (United States Generally Accepted Accounting Principles)	
1	Proposed Accounting Standard Update <ul style="list-style-type: none"> • Improvements to Financial Instruments Topic 326 – Credit Losses <ul style="list-style-type: none"> ○ <i>Negative allowance</i> for purchased financial assets with credit deterioration; Transition relief for <i>troubled debt restructurings</i>; and <i>disclosures</i> related to accrued interest receivables

2. GETTING UP TO SPEED SECTION: IFRS – MEASUREMENT BASES IN THE NEW CONCEPTUAL FRAMEWORK

The new *IFRS Conceptual Framework* has **introduced guidance on measurement** and explains how to decide when assets and liabilities should be measured using historical cost and when they should be measured at current value. The factors to consider when selecting a measurement basis are relevance and faithful representation. It is also necessary to consider the nature of the information in both the position statement as well as in the performance statement. Current value measurement bases include the bases provided in the table herein below.

Current Value	<ul style="list-style-type: none"> Fair value 	The price that would be received to sell an asset or paid to transfer a liability, in an orderly transaction between market participants at the measurement date.
	<ul style="list-style-type: none"> For Assets - Value in Use For Liabilities – Fulfillment Value 	Reflects entity-specific current expectations about the amount, timing and uncertainty of future cash flows.
	<ul style="list-style-type: none"> Current Cost 	Reflects the current amount that would be paid to acquire an equivalent asset or received to take on an equivalent liability.

3. CASE STUDIES SECTION (CASE 1): IND-AS IMPACT – HFC

a) Background

- The HFC has adopted Ind-AS with effect from April 1, 2018, the date of transition being April 1, 2017.
- The financial results for 2018-19 have been prepared under Ind-AS that are applicable to the company based on MCA Notifications along with application of guidance/clarifications/directions issued by the National Housing Bank/other regulators.

c) Ind-AS Impact

Impact on Net profit for the period	Increase of 61.9%
--	--------------------------

d) Impact Drivers

Net profit as per AS	100.0
<i>Ind-AS Impact drivers</i>	
Effective Interest Rate for financial assets and liabilities recognized at amortized cost/net interest on credit impaired loans	(16.8)
Income on derecognized (Assigned) loans	64.5
Application of Expected Credit Loss (ECL)	5.3
Fair valuation of Investments	(0.1)
Fair valuation of Employee Stock-based Compensation	(1.5)
Reclassification of Actuarial Gains and Losses on employee benefits to other comprehensive income	0.2
Reversal of Deferred Tax Liability on Special Reserves	<u>10.3</u>
Total Impact	61.9
Net profit as per Ind-AS	161.9

4. EXTRACTS FROM ANNUAL REPORTS SECTION: NEW LEASES STANDARD

e) Background

- New Lease standard – **IFRS 16 - Leases**
- Corresponding standard under IND-AS: **IND-AS 116**
- Disclosure requirement accounting Topic: IAS 8 (**IND-AS 8**) – Disclosure w.r.t *new standards issued but not yet effective as of the reporting date* of entity.

f) **Extract from Annual Report**

- The company is **in the process** of finalizing **changes to systems and processes** to meet the accounting and reporting requirements of IND-AS 116 in conjunction with review of lease agreements.
- The company will recognize w.e.f April 1, 2019 new assets and liabilities for its operating leases of premises and other assets. The **nature of expenses related to those leases will change** from lease rent in previous periods to a) amortization charge for the right-to-use asset, and b) interest accrued on lease liability.
- Previously, the group recognized operating lease expense on a straight-line basis over the term of the lease, and recognized assets and liabilities only to the extent that there was a timing difference between actual lease payments and the expense recognized.
- **On transition**, for leases other than short-term leases and leases of low value, the entity will **recognize a right-of-use asset** of Rs. 5,623 crore and a **corresponding lease liability** of Rs. 6,555 crore with the **cumulative effect** of applying the standard by **adjusting retained earnings** net of taxes. There will be **consequent reclassification in the cash flow categories** in the statement of cash flows.

5. **CASE STUDIES SECTION (CASE 2) – REPORTING ON A KEY AUDIT MATTER (KAM) – RECOVERABILITY OF CUSTOMER RECEIVABLES**

a) **Background**

- **Ind-AS 109** requires recognition of an allowance for expected credit losses (ECLs) for all debt instruments not held at FVTPL.
- A significant financial asset in a typical balance sheet is trade receivables, which are referred to as “**Customer and Other Receivables**”.
- ECLs are based on the **difference** between the **contractual** cash flows due in accordance with the contract and all the **cash flows that the entity/group expects** to receive, discounted at an approximation of the original effective interest rate.

b) **Case Study: KAM – Recoverability of Customer Receivables**

- The entity, an Ind-AS reporting entity has **adopted Ind-AS 109** in the year and has revised its approach to provisioning accordingly.
- The entity’s **provisioning methodology** uses historical loss experience to quantify, on a discounted and probability weighted basis, the cash shortfalls expected to be incurred in various default scenarios for prescribed future periods. A number of manual overlays are then applied to address areas of identified risk that are not fully captured by the historical information. In arriving at these overlays the management has considered the current macro-economic environment.

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

- The auditors performed **controls testing on the origination and servicing** of the underlying customer receivables and related Information Technology Systems and substantively tested the year-end balances to which the management applied its provision methodology, as well as **tested the integrity of the provisioning model**.
- The auditors **used inhouse experts** to critically assess the management’s approach against the requirements of Ind-AS 109.
- The auditors **tested** historical default experience, payment history, recoveries and the stratification of the year end book by arrears position, customer credit ratings and expected month of default on a sample basis – being the **key drivers to the provision** calculated by management.
- The auditors **tested**, on a sample basis, the **appropriateness of management’s assumptions** based on the entity’s historical book experience and expected levels of future default. This included **critically assessing** expected **future customer payment assumptions** and **wider macro-economic factors**.

- The auditors **tested**, on a sample basis, whether the performing customer receivables were genuinely performing, in order to obtain evidence that **receivables are appropriately recorded**.
- The auditors **developed their own independent expectation** of the allowance amount and concluded that the position taken by the management was reasonable.

6. BACK TO BASICS SECTION: IND-AS ACCOUNTING FOR INTANGIBLE ASSETS – A HIGH LEVEL OVERVIEW

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

- **Goodwill** is considered to have an **indefinite useful life** and is accordingly not amortized.
- Goodwill is **tested for impairment annually**, or when indicators of impairment exist, and recognized at cost less any accumulated impairment losses.
- **Impairment losses on goodwill are not reversed**.
- **Development costs** are recognized as an asset only when the prerequisite criteria are met. In substance, these criteria include the condition that there will be probable future benefits that are directly attributable to the costs. Such assets are normally **amortized** on a straight-line basis **over their estimated useful life**. All other development costs are recognized directly as an expense when incurred.
- Other **acquired intangible assets** are recognized at historical **cost less accumulated amortization and accumulated impairment losses**, if any.
- Intangible assets **acquired as part of a business combination** are initially **recognized at fair value** at the date of acquisition and amortized over their estimated useful lives or other periods where specific contractual conditions apply.

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Illustration 5 of SA 700 (Revised) Auditor's Report on Financial Statement of Non-corporate entities

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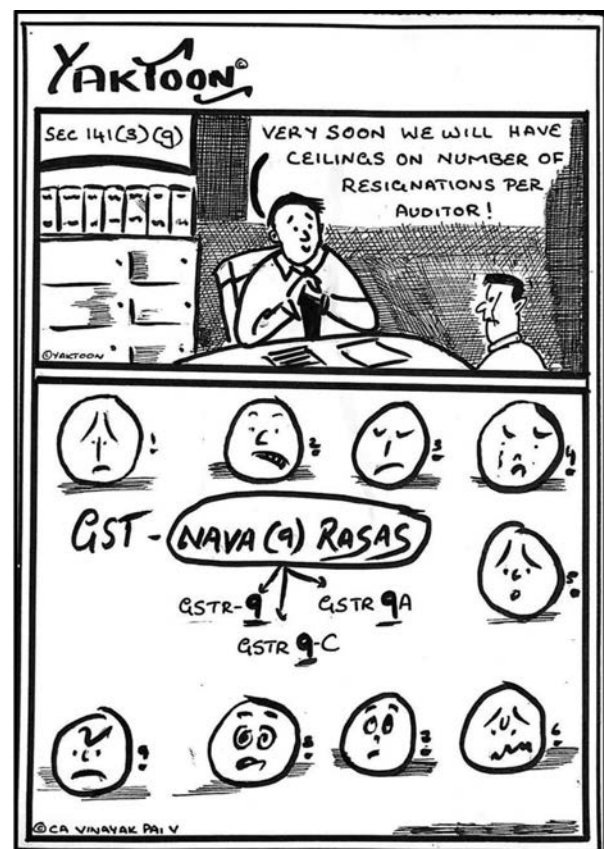
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