KSCAA

Karnataka State Chartered Accountants Association ®

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- Unexplained Sources of Income
- CA as a Professional Director of Co-operative Bank
- GST in Instalments
- Financial Reporting & Assurance

From the President

Dear Professional friends,

I feel truly privileged to write to you as the President of this association and communicate my thoughts through this message. I have taken up this post at a time when there are changes happening around the world and everyone has been caused by nature and we humans are learning to respond. Our association is no different, we are equally trying to cope with changing times to meet the ends. The profession of accountancy which we thrive has also been in the brink of sea change, hopefully for good and we may derive intrinsically better values by adapting to change. The association has toiled hard to reach where it has reached today, and the dreams and wishlist are bucket full to us, I hope with the support of my team these can be achieved comfortably. I would like to keep our wishes as an inclusive list. We will be open to any suggestions, any feedback and any constructive criticism on how best we can better serve members.

The recent GDP numbers of India hit the newspaper headlines; economic output shrank by 23.9 per cent in the first quarter of FY21. Economists believe that the economy is set to enter a recessionary phase with most of the contraction expected to continue in subsequent quarters. Technically on the verge of recession with weak investment and capital spending coupled with subdued consumption demand continue to negatively impact economy. Most analysts anticipate contraction in subsequent quarters also. The worry is also with political and military tension, the surge may be drastically disastrous.

Representations

We had three influential and important representations which was moved to various departments, one was to the **Ministry of Corporate Affairs**, to move the AGM beyond 30th September 2020 in background of Pandemic. The representation met a favourable outcome with immediate relief on extension. Second one was to **Director of Co-operative Society (Audit), Karnataka** on various pain points including suggestions, which was also positively well received by the department. And third was jointly by various professional associations to **Income Tax department** to cure certain maladies in 26AS and TDS.

Direct Taxes:

On the direct taxes front, we have witnessed a massive rejig in the department across India, pursuant to the *announcement of Transparent Taxation*. There is diversion/re-designation of many Officers to Regional e-Assessment Centre in Karnataka and Goa region vide order dated 02.09.2020 which also has also provided a list of residual posts. It appears that more than 70% of the posts have been consumed by ReAC. This indicates a massive change in the landscape of how the assessments/non- assessment works will be conducted under this 60-year-old Act. We should also wait and watch how faceless appeals will be implemented. To ensure a seamless flow of information, CBDT has also provided *functionality for certain Institutions to check ITR compliances*.

Indirect Taxes:

GST has completed its 3 years and is stepping into 4th year. If I recollect this journey, it has been turbulent and marred by far too many issues ranging complex laws, faulty implementation, frequent changes in law & procedures, GST rate changes and portal related technological glitches. When GST was ushered in on 1st July 2017, it was tipped as a revolutionary path breaking tax reform of the century and our Hon. Prime Minister termed it as a 'Good and Simple Tax'. But it hasn't lived up to its expectations because of issues well known to everyone. Stepping into its 4th year, the Council realised, in order to make GST a 'Good and Simple Tax', the law needs to be stable and less complex. As it is said 'never late than ever', it is never too late to take right steps. In that direction, the Council has taken few bold steps by *scrapping new return filing system - GST RET-1, ANX-1 & 2, GST - Sahaj & Saral* instead deciding to *streamline the existing return filing system* for making it more taxpayer friendly, which are welcome measures. The GSTN portal has enabled 2 new features, namely, *GSTR-2B, an autopopulated static report* pushed every 12th of the month which will enable taxpayers in availing input tax credit rightly and another report in *PDF generated from filed GSTR-1* for the month to provide a guidance for taxpayer in preparing *Table 3 of the GSTR-3B*. Hon. Finance Minister has further assured that GST rate changes will be made an annual affair. These measures surely go a long way in making the GST laws stable. I earnestly hope that some radical changes will be brought to make this law taxpayer friendly, which is the need of the hour in these distressed times.

Corporate and Business Laws:

The MCA had issued a circular on 17th of August clarifying the extension of AGM for the financial year ended 31st March,2020. The MCA had clarified that the companies unable to hold the AGM ought to file Form No GNL –1 seeking extension in time in holding of AGM. Further the ROC- Karnataka issued an order on 8th of September providing *extension of 3 months for holding AGM without any requirement to file Form No GNL-1*.

MCA has notified the provision for *Placement of Annual Return* on the Company website. Henceforth, every company having a website shall place a copy of the Annual Return on the website of the Company and also the web-link of such annual return shall be disclosed in the Board report.

MCA has relaxed the deposit norms for *startup companies* allowing *additional 5 years time* to *repay deposits of Rs. 25 Lakhs* or more. Post this amendment, the Startup companies are now required to repay the deposits within *a total period of 10 years time*.

MCA has also amended the CSR rules to include activities such as incubators or research and development in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government and also widened its scope by including Ministry of AYUSH.

Also to facilitate India's fight against COVID-19 CSR Policy definition is amended to include any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to prescribed conditions.

Conclusion:

With so much of confusion and anxiety which prevails at this juncture of humanity and world, the necessary for professionals and intellectuals to business and common man is also high. I remember what World-renowned neurologists and author Ben Carson in his book - *Think Big: Unleashing Your Potential for Excellence* says, “Knowledge is the key that unlocks all the doors. You can be green-skinned with yellow polka dots and come from Mars, but if you have knowledge that people need instead of beating you, they'll beat a path to your door”. This must be the guiding force for us to reflect on how the intelligent can turn intellectual to help the world in need at this time.

Happy reading and stay safe!

Yours Sincerely,

CA. Kumar S Jigajinni
President

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Unveiling Theme Logo for the year 2020-21:

Evolution is an existential reality of growth of an organisation, through the journey it uplifts many under its banner and signals growth. The evolution is two factored, one is change and other is excel, which is practiced persistently by perfectionists. Over the years with conscious nature to evolve and consistent practice to excel, resultant empowerment amongst our members is fructifying. This juxtaposition signifies that evolution is outwardly faced and excel is inwardly, and eclipsing out the empowerment to our members. With new team and vigour in place, we pledge to this continuous process of "EVOLVE-EXCEL-EMPOWER"

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Taxation of Unexplained Sources of Income

■ CA. S. Krishnaswamy

1. *Unexplained sources of income are subject to higher rate of tax although forming part of total income.*
2. *A new twist to tax rate enhancing normal rate.*
3. *Penalty is also higher and different rate if accepted or contested.*
4. *Law requires change.*

1. The Income Tax Act, 1961 provides a special tax treatment for incomes classified under the following heads -
   a. Sec.68 Cash credits
   b. Sec.69 Unexplained investments
   c. Sec.69A Unexplained money etc.
   d. Sec.69B Amount of investments etc. not fully disclosed in books of account
   e. Sec.69C Unexplained expenditure etc.
   f. Sec.69D Amount borrowed or repaid on hundi.
2. Section 115BBE is enacted by the Finance Act, 2012 w.e.f. 01.04.2013 and these income were aggregated for the tax payers and tax levied at the appropriate rates.

   The reason and purpose of the provision was explained by the explanatory memorandum to the Finance Bill, 2012 as under-

   a. "Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income, if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate.

   b. In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of 30% (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years."
3. Section 115BBE is amended by the Taxation Laws (Second Amendment) Act, 2016, w.e.f. 1-4-2017 to make it harsher for taxing the unexplained income as per the provisions of Section 68 or 69 or 69A or 69B or 69C or 69D. Through this amendment the tax rate increased to 60% from 30%.
4. The amended Section 115BBE read as follows-

   "Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

   115BBE. (1) Where the total income of an assessee,-

   (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or

   (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the income-tax payable shall be the aggregate of —

(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1)."

5. The purpose and object of the amendment was explained in the statements of objects and reasons-

   a. "Concerns have been raised that some of the existing provisions of the Income tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assessees are subjected to tax at a higher rate and stringent penalty provision."

   b. "Currently, there is uncertainty on the issue of set-off of losses against income referred in section 115BBE of the Act. The matter has been carried to judicial forums and Courts in some cases has taken a view that losses shall not be allowed to be set-off against income referred to in section 115BBE. However, the current language of section 115BBE of the Act does not convey the desired intention and as a result the matter is litigated. In order to avoid unnecessary litigation, it is proposed to amend the provisions of the sub-section (2) of section 115BBE to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D."

6. It is to be noted that this special rate is penal in character and provision for special penalty is also provided at a higher rate than applicable to non-disclosure of other types of income even if an assessee succeeds in penalty proceedings, the penal tax remain; this appears to be wholly illogical.

7. To add to the pain of an onerous tax rate, higher penalty to prevent the tax payer in contesting the addition in appeal the penalty provisions are structured to thwart an independent decision whether or not to file an appeal. When the addition is not contested, the penalty is lower and if contested, and the assessee does not succeed, the penalty is higher, look at the provisions of Section 115BBE.

   This again appears to be against all known cannons of taxation when tax payer's rights to contest an addition to returned income must be without fetters. These provisions require legal reforms in the interest of natural justice. It is a matter of opinion on the adequacy or inadequacy of evidence and not in absolute terms. The word '*unexplained*' not defined in the bunch of sections 68, 69, 69A, 69B 69C and 69D. It generally means in the text of numerous judicial decisions available it is not that no explanation was offered but the explanation offered was not to the satisfaction of the assessing authority hence the addition made under any of these section is highly subjective, debatable, rebuttable and should not attract a penal rate of tax when separate penalty proceedings are provided. Take for example an estimate case dealing with property construction where the cost shown by the assesse is substituted with a higher value and the difference treated as unexplained. In such cases the penalty has been cancelled on appeal but the penal rate remains. Is this not an anomaly?

   It will therefore be seen as held in various judicial decisions that assessment and penalty proceedings are different, in assessment the initial burden of proof is on the assesse but in penalty proceedings the onus is on the department. Hence by tweaking the penal element to the tax rate itself, even while keeping penalty proceeding as an add-on defies all principles of tax justice, lands the assess in double jeopardy. Add insult to injury, like the stick and carrot policy, the penalty provisions are structured in a way to deter aggrieved tax payer to contest the addition, stating that if contested higher rate of penalty if agreed a lower rate of penalty. If my memory is correct, one of the earlier reforms committee had suggested to reduce litigation that if an assessee agrees to the addition penalty action should not be taken.

8. The other important amendment brought was by way of insertion of section 271AAC which provides as under-

"271AAC. (1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section."

Penalty shall be levied at 10%, in addition to tax u/s 115BBE. Further a surcharge of 25% on such tax was also imposed by amending sub section (a) in section 2 of chapter II of Finance Act 2016.

The total tax in the cases covered u/s 115BBE is worked out as under-

a. Tax on income U/S 115BBE 60%

b. Surcharge 25% of such tax

c. In case where income not included in return filed U/S 139 Penalty u/s 271AAC 10% of such tax.

9. **Case Laws:**

- In the case of **Vijaya Hospitality and Resorts Ltd. v. CIT [2020] 419 ITR 322 (Ker.)** pertaining to Assessment Year 2013-14 where the Principal Commissioner, in exercise of powers under section 263 of the Act, revised the assessment order on the ground that set off of brought forward loss against income under section 68 of the Act was incorrect, the Kerala High Court held that amendment brought in section 115BBE(2) by Finance Act, 2016 whereby set off of losses against income under section 68 was denied, would be effective from 1st April 2017, and therefore, for Assessment Year 2013-14, there was no bar with respect to allowing set off of carried forward unabsorbed depreciation on fixed assets against such income under section 68.

  A similar view was taken by the Jaipur and Chandigarh benches of the Income Tax Appellate Tribunal in **ACIT v. Sanjay Bairathi Gems Ltd. [2017] 166 ITD 445 (Jp.)** and **Famina Knit Fabs v. ACIT [2019] 176 ITD 246 (Chd.).**

- A controversy arose after the decision of Hon'ble Gujarat High Court in **Fakir Mohmed Haji Hasan v. CIT (2001) 247 ITR 290 (2002) 120 Taxman 11 (Guj.)** to the effect that business loss cannot be allowed to be set off against unaccounted income (covered u/s 69A) and its subsequent consideration in **Dy. CIT v. Radhe Developers India Ltd. [2010] 329 ITR 1/[2011] 198 Taxman 58 (Mag.)**, which created a contrary effect, as a result of which business losses were allowed to be set off against such income. The Tribunal/ Court allowed the loss against unaccounted income covered u/s 68 to 69D, following the decision of Apex **Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC)** (refer- Satish Kumar Goyal v. JCIT [2016] 70 taxmann.com 382 (Agra - Trib.); K.R. Automobiles v. ACIT [2014] 47 taxmann.com 383 (Ahmedabad - Trib.); CIT v. Shilpa Dyeing & Printing Mills (P.) Ltd [2013] 39 taxmann.com 3 (Gujarat); Gaurish Steels (P.) Ltd. v. ACIT [2017] 82 taxmann.com 337 (Chandigarh - Trib.)]. Probably, in order to set the controversy at restand also to curb the practice of laundering of unaccounted money (covered u/s 68 to 69D falling in Chapter VI of Income Tax Act) by taking advantage of basic exemption limit and paying no taxes on such unaccounted money, section 115BBE was introduced.

- The Kerala High Court clearly ruled in the case of **CIT vs Mohammed Kunhi (1973) 87 (ITR) 189 (Ker)** that a penalty cannot be levied on the basis merely of an estimate of cost of a construction of a building built by an assessee with his funds. In this case before the Hon'ble High Court, an addition was

made to the income returned on the score that the cost of construction as disclosed in the assessee's books was lower than the estimated cost of the building as rendered by a valued. The Learned Judges held that a mere estimate of cost cannot constitute material on which a finding of concealment can be rendered. in that case, some explanation had been offered by the assessee as to why the construction was at an economical cost. This explanation was not accepted by the Income Tax Officer. The learned judges held that even if the assessee's explanation was not acceptable, it would still require some further material to support the finding that the assessee had concealed its taxable income. We respectfully agree with this view.

- In the case of **Salem Sree Ramvilas Chit Company (P) Ltd. v. DCIT [2020] 114 taxmann.com 492 (Mad.)** the assessee challenged an assessment order making additions in respect of cash deposited by the assessee in the demonetisation window by way of a Writ Petition before the Madras High Court. The High Court while setting aside an assessment order observed as under-

  "15. The Government of India has introduced E-Governance for conduct of assessment proceedings electronically. It is a laudable steps taken by the Income-tax Department to pave way for an objective assessment without human interaction. At the same time, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and statement of accounts of an assessee without a personal hearing. The respondent should have to be therefore at least called for an explanation in writing before proceeding to conclude that the amount collected by the petitioner was unusual.

  16. In my view, the petitioner has prima facie demonstrated that the assessment proceeding has resulted in distorted conclusion on facts that amount collected by the petitioner during the period was huge and remained unexplained by the petitioner and therefore same was liable to be treated as unaccounted money in the hands of the petitioner under section 69A of the Income-tax Act, 1961. Therefore, the impugned order making the petitioner liable to tax at the maximum marginal rate of tax by invoking Section 115BBE of the Income-tax Act, 1961 placing reliance on the decision of the Honourable Supreme Court in Smt. Shrilekha Banerjee v. CIT, 1964 AIR SC 697 appears to be misplaced.

  17. Since the assessment proceedings no longer involve human interaction and is based on records alone, the assessment proceeding should have commenced much earlier so that before passing assessment order, the respondent assessing officer could have come to a definite conclusion on facts after fully understanding the nature of business of the petitioner. It appears that the return of income was filed by the petitioner on 02-11-2017. However, the assessment proceeding commenced much later towards the end of the period prescribed under section 153 of the Income-tax Act, 1961. In my view, assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the petitioner and the respondent Assessing Officer."

- The Hon'ble Gujarat High Court in the case of **CIT Vs. M/s Shilpa Dyeing and Printing Mills (P) Ltd.(2014) 381 DTR 381 (Guj)** has held that "We may further notice that the decision in case of Fakir Mohmed Haji Hasan Vs. Commissioner of Income Tax (supra) came-up for consideration in case of Deputy Commissioner of Income Tax Vs. Radhe Developers Incia Ltd. and anr (2010) 329 ITR 1 (Guj) (supra), it was observed as -

- The decisions of this Court in the case of Fakir Mohmed Haji Hasan (supra) and Krishna Textiles (supra) are neither relevant nor germane to the issue considering the fact that in none of the decisions the Legislative Scheme emanating from conjoint reading of provisions of sections 14 & 56 of the Act have been considered."

- The Apex Court in the case of **D.P.Sandu Bros. Chembur P. Ltd**. (supra) has dealt with this very issue while deciding the treatment to be given to a transaction of surrender of tenancy right. The earlier decisions of the Apex Court commencing from case of United

  Commercial Bank Ltd. vs. CIT (1957) 32 ITR 688 (SC) have been considered by the Apex Court and, hence, it is not necessary to repeat the same. Suffice it to state that the Act does not envisage taxing any income under any head not specified in section 14 of

the Act. In the circumstances, there is no question of trying to read any conflict in the two judgments of this Court as submitted by the learned Counsel for the Revenue."

(Also refer Gaurish Steels Pvt. Ltd. vs. ACIT, 43 ITR (Trib.) CHD-Trib)

- In the case of **ACIT Cen Cir 13, Mumbai vs Rahil Agencies**, Mumbai on 23 November, 2016 ITAT Mumbai held that-

"19. We have considered rival contentions and found that by applying provisions of Section 115BBE the AO has declined set off of business loss against income declared during the course of survey/search. The provisions of Section 115BE are applicable on the income taxable under section 68, 69, 69A, 69B, 69C or 69D of the Act. The income declared by the assessee is unrecorded stock of diamond found during the course of search. The assessee is in the business of diamond trade and such stock was part of the business affair of the company. Therefore since income declared is in the nature of business income, the same is not taxable under any of the section referred above and accordingly section 115BBE has no application in case."

- In the case of Jaipur ITAT , ITA No. 431 & 432/ JP/2016, **M/s Choice Buildestate Pvt. Ltd., Jaipur vs. ITO, Jaipur Order dated 28/03/2018**, it was held that-

"… If the Assessing Officer harbours any doubts of the legitimacy of any subscription he is empowered, nay duty bound, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company. We therefore agree with the contentions of the ld AR that in absence of any falsity which have been found in the documents so submitted by the assessee company to prove the identity, creditworthiness and genuineness of the share transaction, these documents cannot be summarily rejected as has been done by the Assessing Officer in the instant case. .."

- The validity of this amendment to section 115BBE by the Taxation Laws (Second Amendment) Act, 2016 has been challenged before the Jodhpur bench of the **Rajasthan High Court in Deepak Maratha v. UoI, through the Ministry of Finance & Anr (Civil Writ Petition No. 3625/ 2020)**. By order dated 6th March 2020, the High Court has issued notice to the Ministry of Finance and as an interim measure directed that no coercive steps shall be taken against the petitioner towards recovery.

10. **Conclusion:**

The Finance Act, 2012 introduced a new section to provide for higher rate of tax for unexplained sources of income and also higher rate of penalty. Penalty is also higher and different tax rate if accepted or contested. It is therefore important to strengthen evidence in respect of these categories like cash credits. The law is very harsh and requires change and normal assessment proceedings and normal rate of tax should apply.

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Faceless Assessment – A Paradigm Shift

■ **Mr. Prabhakar K.S**

A faceless system will lead to reduced compliance burden, lower cost of compliance and reduced litigation.... there may be some teething troubles, but they can be addressed...
***Sri. Ajay Bhushan Pandey**, IAS, Finance Secretary, GoI.*

1. Introduction

As they say, setting goals is the first step in turning the invisible into the visible, late Sri. Arun Jaitely, then Finance Minister, in his Budget speech for 2018-19 on 1st February 2018, sets an invisible goal by proposing a landmark change in assessment proceedings under the Income Tax law to turn the 70 years conventional 'face to face assessment' to a 'faceless assessment' is visible and fully operational now. In 2016, as a trial, the e-Assessment was introduced in Delhi and Mumbai. After gaining much experience, the pilot project was extended to 102 cities with the key objective of reducing the interface between the assessee and the department. As said, the Central Government vide the Finance Act 2018 has introduced e-Assessment proceedings by inserting suitable provisions 'Section 143 (3A) to adopt e-Assessment Scheme, Section 143 (3B) to provide exceptions, modifications, Section 143 (3C) to complete due Parliamentary proceedings, on a pan-India basis. In simple terms, it can be termed as '*Jurisdiction-Free Assessment*' for scrutiny related assessments, wherein the system envisaged allocation of a particular taxpayer's profile to an undisclosed assessing officer deputed in other region of the country using technology. For instance, a Bangalore based taxpayer can be assessed by an Assessing Officer deputed at Chennai or vice versa.

On 5th July, 2019, Hon'ble Finance Minister, in her maiden Budget Speech, referring to the existing system's flaws in the 'scrutiny assessments' stated that a high level of personal interaction between the taxpayer and the department, is leading to undesirable practices on the part of tax officials. To eliminate such instances, the need for e-Assessment mechanism with no human interface was felt. To start with, e-Assessments were introduced only to those cases requiring verification of certain specified transactions. Under this scheme, a set of cases were selected for scrutiny and allocated to assessment units in a random manner and notices were issued electronically by a Central Cell, without disclosing the name, designation or location of the Assessing Officer where the Central Cell functioned as a single point of contact between the taxpayer and the department. Accordingly, an e-Assessment Scheme 2019 was duly notified on 12th September, 2019 and in its 1st phase, about 58,320 cases were chosen. The Finance Act, 2020 further amended and brought in a considerable amount of changes therein, Notification issued on 13th August, 2020 and renamed the 'e-Assessment Scheme' as 'Faceless Assessment Scheme'.

2. Transparent Taxation

On 13th August, 2020, the Hon'ble Prime Minister while launching the platform for "Transparent Taxation – Honoring the Honest", set the stage for pan-India Faceless Assessment, Transparent Taxation on the same day replaced 'July 2019's version of e-Assessment' and 'Faceless Appeal Scheme' with effect from 25th Septebmer, 2020, which will eliminate the territorial jurisdiction. Consequently, the Income Tax Department is in full swing of overhauling exercise of setting up its regional e-Assessment Centres (ReAC) across 20 cities having a National e-Assessment Centre (NeAC) in Delhi. It is reported that about 4,000 officers are diverted and assigned to the faceless assessment system and about 2,000 officers will be in the residual jurisdiction, however, these officers will perform other functions such as public outreach, taxpayer education & facilitation, grievance, collection and recovery of tax, audit functions and judicial functions like order giving effect to Commissioner Appeals – CIT (A), Income Tax Tribunal, High Courts, Supreme Court, Settlement Commission (ITSC), etc. Accordingly, detailed guidelines have been issued on the reallocation of cadres' roles, responsibilities and functions (for Karnataka & Goa Region, see Annexure). An official Communication in this regard reads as *"All these (faceless assessment) functions will be through electronic means, for which the national e-assessment centre (NeAC) will be the getaway... for all the flow of information. The officers*

and staff in the ReACs will perform the functions relating to the assessment and verification function under the income tax act…but all communications from the department to the taxpayer…will be in the name of the NeAC,". The faceless scheme will be led by 30 Chief Commissioners of Income Tax (CCITs), 154 Principal Commissioners of Income Tax (Pr.CITs). Similarly, 32 Chief Commissioners of Income Tax (CCITs) and 96 Principal Commissioners of Income Tax (Pr. CITs) will be in charge of the residual jurisdiction. *Certain Exceptions where* No change in International Tax, Transfer pricing and Investigation charges which will continue under the current role. Further, the power of conducting surveys will be exercised only by the Investigation Directorates only.

3. Functional Aspects

a) National e-Assessment Centre (NeAC) –

1. To specify format, mode, procedure and processes after approval from the Central Board of Direct Taxes (CBDT).
2. To allocate e-Verification cases to Verification Units by using automation.
3. To send all Notices and Communication electronically.
4. To assign cases to Assessment Units (AUs) by using automation.
5. To provide technical inputs to Technical Units (TUs) including on those issues - Transfer Pricing, Legal, Technical, Data Analytics, Forensic Accounting.
6. To inform AUs if Assessee fails to comply with a notice.
7. To select Draft Assessment Order for review & allocate to Review Unit (RU) through automation.
8. To provide opportunity to taxpayer in case of any order prejudicial to Assessee before finalizing an assessment order.
9. To finalize assessment orders.
10. To transfer all electronic records to jurisdictional Assessing Officers for post assessment work.

b) Functional Aspect - Regional e-Assessment Centres (ReAC)

1. Assessment Unit (AU) - To identify issues, seeks information and analyse materials to frame the draft assessment order.
2. Verification Unit (VU) – To work in faceless eco system, conduct e-Verification, enquiry, examination of books of account and witnesses, recording of their statement through electronic mode, physical enquiry, if required, in a prescribed manner.
3. Review Unit (RU) – To review of Draft Assessment Order whether material evidence brought on record, facts incorporated, due consideration of judicial decisions, etc.

All these actions will be approved by the respective Range Heads. Further, responsibility and ownership will be solely rests on the concerned officers who involved and outstanding performances will be rewarded.

4. Income Tax Assessment – Pre & Post-August 2020

Issues	Pre–August 2020	Post-August 2020
Case Selection	System & Manually	No manual selection No discretion to any officer in selection of cases
Jurisdiction	Territorial Jurisdiction	Dynamic Jurisdiction spread across country
Issuance of Notices	System	System generated Notices with mandatory DIN Issued electronically No discretion in issuance of notices
Scrutiny Assessment	Physical Meetings between the taxpayer and the Assessing Officer	No physical meetings with any officer No disclosure of officer's identity No human interface at any stage
Approach	Wide discretion Varying interpretation	No discretion with any individual officer. Team based assessment Draft in Bengaluru, Review in Chennai, Finalization in New Delhi

5. Cases covered under Faceless Assessment Scheme

1. All existing cases where the Notices under section 143(2) issued by NeAC.
2. All pending and future cases pertaining to where -
   - returns of Income filed and selected for Scrutiny.
   - notices under section 142(1) issued for filing the returns but no return has filed such.

- assessee has not filed his return of income under section 148 and a notice under section 142(1) calling for information issued.

6. Challenges and Responsibilities of 3 Ts – Taxpayer / Tax Professionals / Tax Department Personnel

Taxpayer: No doubt, the Faceless assessment frees a taxpayer from visiting the concerned jurisdictional assessing officer but not from the serious responsibilities. Firstly, he shall keep update his 'Income Tax Profile' with active e-mail id and mobile number so he can receive assessment related e-communications promptly. Secondly, he is under obligation to reply / to provide such information as required by assessing officer electronically within the prescribed time. If he feels that the reason being provided therein is not valid, he can reply his objections suitably. Thirdly, as per Tax Charter, he is expected to be honest, compliant, well informed, keep accurate records, responds in time and more important is paying due taxes in time.

Tax Professional: With the introduction of faceless assessment, a Tax Professional's responsibility also manifold increased. He shall upgrade his knowledge of other interconnected domains, say Goods and Service Tax, Money Laundering laws, Foreign Exchange Law, Banking Law, technical, drafting and presentation skills to communicate with the concerned officers more effectively, up-to-date knowledge on notifications, circulars, amendments, judicial precedents and a thorough understanding of his clients' nature of business, monetary and non-monetary transactions, accounting policies, banking and financial arrangements, non-disclosed tax avert steps are must to avoid any unnecessary complications during the faceless assessment proceedings and not but last is having integrity and ethics at highest level goes a long way.

Tax Department Personnel: The success of faceless assessment, faceless appeal and tax charter are squarely rested on the department personnel. During this transition, about 53% of the 40,000 Income Tax Officers involving across assessment, technical and legal units, digital infrastructure. The Income Tax Employees Federation and the Income Tax Gazetted Officers' Association, representing nearly 97% of the department's cadre, have approached the Central Board of Direct Taxes, with their concerns and apprehension on work related aspects and large amount of cadre level restructure. Its representation further revealed that the morale of tax officers is 'very down' due to delays in career progression since last five years. As per Tax Charter, the Department is committed to providing a fair, courteous, and reasonable treatment under all circumstances, to treat taxpayer as honest, provide complete, accurate information and issue timely decisions, collection of correct amount of tax, respects the privacy and confidentiality of taxpayers among others. Hopefully, the initial dissident note will be addressed and won't hinder the success of the faceless regime.

7. Issues for further deliberations

Since the faceless assessment scheme restricts 'personal hearings' for select few cases, it is suggested to extend to more complex matters such as Transfer Pricing adjustments, related party transactions, cross border and domestic high stake M &A transactions, huge additions with an upper limit, issues involving General Anti-Avoidance Rules, Mutual Agreement (MAP) and Advance Pricing Arrangements (APA) where face to face discussions is much warranted. For instance, recently a number of disputes at the Tribunal level resolved upon timely invocation of MAP and APA arrangements'.

8. Conclusion

Before parting, it is very opt to quote the recent Hon'ble Madras High Court's observations on e-Assessment in M/s. Salem Sree Ramavilas Chit Company Pvt. Ltd. v. Dy. CIT, W.P. No. 1732 of 2020 dated 04.02.2020, while set-aside the Tribunal Order, the court rightly observed that the assessing officer shall understand the assessee's nature of business and facts of the case before passing the Order. As said, an equal amount of responsibility lies with on assessee to provide all such requisite information called for early completion of the assessment. As Finance Secretary said, e-Assessment process may face some technical glitches in its initial days for which Department as well as technical backbone is closely monitoring and well equipped to address them. The new system will definitely reduce the interaction between the taxpayer and the assessing officer to a maximum extent or almost 'nil' barring few circumstances, curb corrupt practices and ensures transparent and no-harassment regime in coming days.

Annexure

1. *ReAC Diversion Order Dated 2nd September, 2020 Issued by Office of the Pr. CCIT, Karnataka & Goa Region, Bengaluru.*
   https://drive.google.com/file/d/1-zTLniuTW6m6k2LCFUX4lKeyTox9Cg52/view?usp=sharing
2. *ReAC Residual Merger Order Dated 2nd September, 2020 Issued by Office of the Pr. CCIT, Karnataka & Goa Region, Bengaluru.*
   https://drive.google.com/file/d/1ysJH1WUwJQoJaw Fq1aY1GS_nInqrpYi9/view?usp=sharing

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The New Face of Faceless Assessments!!

■ CA. Mayank Mohanka

"Anonymity is the fame of the future."
- John Boyle O' Reilly

Well Yes Friends, FACELESS ASSESSMENTS have become a REALITY now…

Our Hon'ble PM **Sh. Narendra Modi** has launched a new platform for **Transparent Taxation for 'Honouring the Honest Taxpayers'**, coining three new terms viz. ***Seamless, Painless & Faceless***, for showcasing the perceived changed nature of the tax administration in India. The thrust of this taxation platform is on ***Faceless Assessments, Faceless Appeals and Taxpayers' Charter.***

It may be recollected that on 7-10-2019, delivering on the promise made to taxpayers in the budget speech of the Hon'ble Finance Minister, the ***'E-Assessment Scheme, 2019'*** contemplating within its fold, the use of artificial intelligence, machine learning, algorithm based automated allocation system, automated examination tool and risk management functionalities, has been launched by the Hon'ble Revenue Secretary, with the inauguration of the National e-Assessment Centre (NeAC) in New Delhi.

In the first phase, the IT department had selected limited cases on pilot basis for scrutiny under the new 'E-Assessment Scheme, 2019'. **However, as usual, our Hon'ble PM Sh. Narendra Modi, going by his well-known image of initiating bold reforms and inducting surprise element in his policy announcements, has extended the coverage of the 'E-Assessment Scheme 2019' [now being renamed as the 'Faceless Assessment Scheme, 2019' (the Scheme) vide CBDT vide its Gazetted Notification S.O. 2745 dated 13.8.2020), to most of the assessments w.e.f. 13.8.2020.**

The assessments being covered under the new Faceless Assessment Scheme, 2019, are more popularly being referred to as the ***'Faceless Assessments'*** or the ***'Jurisdiction-less Assessments'***. Let us understand, why these assessments are being referred so.

(a) **Faceless Assessments:** These assessments are being referred to as **'Faceless'** simply because the assessee will not get to see the face of his/her AO or in other words, the assessee will not be able to know as to who will conduct his/her assessments. The Faceless Assessments, completely eliminate the physical interface between the assessee and the AO and instead involves the electronic interface right from the selection of the cases for the scrutiny purpose with the help of '**automated allocation system'** involving therein an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources, and the conduct of assessments exclusively in electronic mode via the '**e-Proceedings'** utility of the e-Filing portal of IT department's website, and finally the review and examination of the assessment orders using **'automated examination tool'** involving therein an algorithm for standardised examination of draft assessment orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion.

(b) **Jurisdiction-less Assessments:** These assessments are being referred to as **'Jurisdiction-less'** because these are conducted by a Team/Group of Expert IT Officers at multiple-level assessment units viz. NeAC, Regional e-Assessment Centre (ReAC), Verification Unit, Technical Unit and Review Unit, and shall not be conducted by an individual jurisdictional AO. The cases shall be assigned by NeAC to an assessment unit in any ReAC based on 'automated allocation system' as discussed above.

The CBDT vide its Order u/s 119 of the Income-tax Act, 1961 ('the Act') bearing F.No. 187/3/2020-ITA-I, dated 13.8.2020, has directed that in order to ensure that all assessment orders are passed through the Scheme.

However, two exceptions have been provided and these are:

(i) Assessment orders in cases assigned to Central Charges (Block Assessment Cases u/s 153A/153C);

(ii) Assessment Orders in cases assigned to International Tax Charges.

It has also been stipulated in the CBDT order that any assessment order which is not in conformity with the Scheme, shall be treated as non-est and shall be deemed to have never been passed.

1.1 DIFFERENCE BETWEEN OLD E-ASSESSMENT SCHEME, 2019 & NEW FACELESS ASSESSMENT SCHEME, 2019

Inspite of the much hype and hoopla doing the rounds in the media channels and newspapers, concerning the new taxation platform , ***ironically,*** the ***practicalities and nuances of these notified amendments in the E-Assessment Scheme, 2019,*** by CBDT, have been somehow, overlooked and ignored in the Tax Circles and by the assessees and taxpayers. So, for the ready reference of the worthy readers, the exact nature, significance and implications of these amendments in *the E-Assessment Scheme, 2019,* as notified by CBDT, are being discussed and analysed as under:

S. No.	Parameters	Old Scheme	New Scheme
1.	**Nomenclature**	E-Assessment Scheme, 2019	Faceless Assessment Scheme, 2019
2.	**CBDT Notification in exercise of the powers conferred by section 143(3A) of the Act**	S.O. 3264 (E), dated 12.9.2019	S.O. 2745 (E), dated 13.8.2020
3.	**Applicability**	On pilot basis: 58,319 Regular Assessments under section 143(3), for AY 2018-19,	(i) **All Regular Assessments** under section 143(3), for AY 2018-19; (ii) All pending Income Escaping Assessments / Reassessments under section 147, as on 13.8.2020; (iii) Best Judgement Assessments u/s 144.
4.	**Applicability of Income Tax Rules, 1962**	No specific mention of applicability.	Made applicable
5.	**Enlargement in Function of Technical Unit (TU)**	Technical assistance on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or other technical matters.	Technical assistance on **audit** in addition to legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or other technical matters.
6.	**Enlargement in Scope & Coverage**	Covered only 58,399 regular assessments u/s 143(3), for AY 2018-19, on pilot basis.	By virtue of insertion of new clause (iii) in para 5. *Procedure for assessment,* the undermentioned cases are now being covered in the Scheme: "where the assessee – (a) has furnished his return of income under section 139 or in response to a notice issued under subsection (1) of 142 or sub-section (1) of section 148; and a notice under sub-section (2) of section 143 has been issued by the Assessing Officer or the prescribed IT authority, as the case may be; or

S. No.	Parameters	Old Scheme	New Scheme
			(b) has not furnished his return of income in response to a notice issued under sub-section (1) of section 142 by the Assessing Officer; or (c) has not furnished his return of income under sub-section (1) of section 148 and a notice under subsection (1) of section 142 has been issued by the Assessing Officer.
7.	**Enabling Provision for undertaking Best Judgement Assessment/ Exparte Assessment u/s 144 of the Act.**	There was no enabling provision	An enabling provision has been specifically inserted
8.	**Jurisdictional Unit for drafting Revised Draft Assessment Order**	The Revised Draft Assessment Order, incorporating the suggested modifications by the Review Unit (RU), was also being prepared by the same ReAC, which has prepared the original draft order.	Such order, incorporating the suggested modifications by the RU, is to be prepared by a new ReAC, selected by NeAC on random allocation basis, and not by the old ReAC, which has prepared the original draft assessment order.
9.	**Power to Transfer Assessment Cases to the Jurisdictional Assessing Officer**	The power to transfer assessment cases to the jurisdictional AO, lies solely with the NeAC	The Principal Chief Commissioner or Principal Director General, NeAC, is authorised to transfer certain assessment cases to the jurisdictional AO, only after getting the prior approval of the Board. The situations and circumstances in this regard are yet to be notified.
10.	**Right of Personal Hearing by the Assessee**	By virtue of a right vested in the scheme, the assessee was entitled to personal hearing, by way of video conferencing/telephony, in case of disagreement with the additions/disallowances proposed in the draft assessment order, in all assessment cases.	The assessee is not having any 'by-default' right of personal hearing and the assessee may only request for a personal hearing by way of video conferencing/ telephony, in case of disagreement with the additions/disallowances proposed in the draft assessment order. The Chief Commissioner or the Director General, ReAC, may approve such request for personal hearing, if he is of the opinion that the case falls in the list of specified circumstances as notified by CBDT. The circumstances where the request of the assessee for personal hearing via video conferencing may be approved are yet to be notified by CBDT.

S. No.	Parameters	Old Scheme	New Scheme
11.	**Mode of Communications between the assessee and NeAC, ReAC, Technical Unit, Verification Unit and Review Unit**	All communications between the assessee, NeAC, ReAC, Technical Unit, Verification Unit and Review Unit, were to be exchanged exclusively by electronic mode.	All communications between the assessee, NeAC, ReAC, Technical Unit and Review Unit, shall be exchanged exclusively by electronic mode. However, in the cases of enquiry or verification being conducted by the Verification Unit, in certain specified circumstances, yet to be notified by CBDT, the conventional means of communication, i.e. physical interface may be adopted.
12.	**Authentication of Electronic Record**	The authentication/signing of the electronic record was to be done by affixing the digital signature, both by the assessee and the assessing authority i.e. NeAC.	The authentication/signing of the electronic record has to be done by NeAC by affixing its digital signature, and the assessee shall authenticate the electronic record by affixing his/her digital signature, in cases where the assessee is required under the Rules to furnish his/her return of income under digital signature and in any other cases, either by affixing digital signature or under the electronic verification code.
13.	**Power to specify format, mode, procedure and processes**	The Principal Chief Commissioner or the Principal Director General, NeAC, were vested with the power to specify format, mode, procedure and processes under the Scheme.	Same process with the prior approval of CBDT.

1.2 DIFFERENCE BETWEEN TRADITIONAL E-PROCEEDINGS ASSESSMENTS & NEW FACELESS ASSESSMENTS

In para 1.1 above, we have analysed and understood the points of distinction between the Old E-Assessment Scheme, 2019 and the Scheme. However, for better and clear understanding of the worthy readers, it is also essential and desirable to know the distinction between the traditional e-assessments conducted via e-Proceedings functionality of the e-Filing portal of the IT department and the new faceless assessments being conducted under the Faceless Assessment Scheme, 2019. Thus, for ready reference, these points of distinction are being tabulated as under:

S. No.	Particulars	Conventional Assessments via e-Proceedings	The Scheme
1.	**Applicability**	Regular Assessments under section 143(3)	(i) Regular Assessments under section 143(3); (ii) Reassessments under section 147; (iii) Best Judgement Assessments u/s 144.
2.	**Assessment Year**	Till AY 2017-18	From AY 2018-19 onwards for All Regular Assessments and w.e.f. 13.8.2020, for all pending Re-Assessments.
3.	**Assessing Authority and Notice under section 143(2) Issuing Authority**	Jurisdictional AO	NeAC

S. No.	Particulars	Conventional Assessments via e-Proceedings	The Scheme
4.	**Reply Period of Notice under section 143(2)**	As specified in the Notice under section 143(2)	Within 15 days from the date of receipt of such Notice under section 143(2)
5.	**Assignment of Case**	Jurisdictional	The NeAC assigns the case to a specific assessment unit in any one Regional e-Assessment Centre through an automated allocation system.
6.	**Inquiries during the course of assessment proceedings**	Jurisdictional AO Issues Notices/Questionnaires under section 142(1) of the Act.	The NeAC may issue appropriate notice or requisition u/s 142(1), to the assessee for obtaining any further information, documents or evidence as required by the assessment unit in the ReAC, to which the case has been assigned by the NeAC.
7.	**Provision of Draft Assessment Order**	Only applicable in the Cases of References to Transfer Pricing Officers (TPO) resulting in Variation and Foreign Companies passed by the Jurisdictional AO	Applicable in all assessments under section 143(3) of the Act.
8.	**Action on Draft Assessment Order**	Not Applicable	The NeAC shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to: (*a*) finalise the assessment as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or (*b*) provide an opportunity to the assessee, in case a modification is proposed, by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order; or (*c*) assign the draft assessment order to a review unit in any one Regional e-Assessment Centre, through an automated allocation system, for conducting review of such order.
9.	**Final Assessment Order**	Passed by the Jurisdictional AO	The NeAC sends all the e-replies and submissions of the assessee containing the justification for revision of the draft assessment order to the regional assessment unit for revision of the draft assessment order.

S. No.	Particulars	Conventional Assessments via e-Proceedings	The Scheme
			In the cases, where no objections are filed by the assessees, the NeAC finalises the assessment based on the Draft Order only. Upon receiving the Revised Draft Assessment Order, the NeAC may: (*i*) in case no modification prejudicial to the interest of the assessee is proposed, finalise the assessment based on such revised draft assessment order; or (*ii*) in case modification prejudicial to the interest of the assessee is proposed, an opportunity of personal hearing by way of video telephony only may be provided to the assessee, and based on the response of the assessee, the same procedure of revision and finalization is to be followed and Final Assessment Order is then passed by the NeAC.
10.	**Mode of Interface between the Assessee and the Assessing Authority**	Electronic Mode via the 'e-Proceedings' functionality in the ITBA Module. However, after serving the Show Cause Notice, an opportunity of Personal Hearing to the assessee involving physical interface between the assessee and the jurisdictional AO is to be provided. However, practically there was no bar on physical interface between the assessee and the jurisdictional assessing officer.	Electronic Mode via the 'e-Proceedings' functionality in the ITBA Module. However, after serving the Show Cause Notice, an opportunity of Personal Hearing to the assessee via video telephony only may be provided to the assessee in certain specified circumstances

For more information regarding Faceless Assessment ecosystem and Procedures, please visit
https://kscaa.com/wp-content/uploads/2020/09/Faceless-Assessment-Appeals-and-Taxpayers-Charter-by-CA-Mayank-Mohanka.pdf

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Option of Payment of GST in Instalments


■ **CA. Madhukar N Hiregange & CA. Mahadev R**

Entire world is badly impacted by COVID 19 disease. Many of the industries such as travel, education, construction and food & restaurant are severely hit. Industries such as pharma, insurance, healthcare are least impacted. India is no exception with several businesses getting shut down in this pandemic. In order to facilitate the businessmen in these bad times, several measures were taken and being taken by the Indian governments. In GST also there were measures taken to assist the suffering businessmen like extension of due dates, exemption from payment of interest for specified period, relaxation from several compliances which were very necessary. One of the pain points in these times for tax payers is payment of tax itself even though the recovery of the principal is being delayed. In this article, we have analysed if the GST payment can be deferred further by the tax payers.

Time of supply for payment of GST

In terms of Section 12 and Section 13, the liability to pay GST would arise at the time of supply as determined in these two sections. In case of goods, it would arise on date of invoice which should be raised on or before the movement of goods. In case of services, the time of supply would be the date of invoice which should be issued within 30 days with few exceptions such as banking services where 45 days applicable. If consideration received in advance, then time of supply would be date of such advance. Presently, advance amount received towards supply of goods would not be liable for GST till supply of goods.

Cashflow woes for tax payers

Due to the time of supply concept, GST has to be paid by the suppliers on supply of goods or services irrespective of receipt of consideration from the customers. Due to the present economic conditions, the suppliers have not been able to realise the due amounts from customers. There is also a risk that many of the past dues would become bad. Suppliers are also forced to provide discounts to realise the pending amounts from customers wherein the benefit of GST deduction may also not possible. This is due to the fact that most of such discounts could be post-supply discounts due to COVID 19 which would not have been agreed prior to or at the time of supply in terms of Section 15. Considering that the standard GST rate applicable is 18%, it is not easy for the tax payers to pay GST without realising amounts from the customers.

Option of payment of GST dues in instalment

One common demand from many of the tax payers is to provide the option of payment of GST based on realisation basis which existed in erstwhile service tax law for few years. However, this facility does not seem to be anywhere in the list of GST council for consideration. This is also not easy as central government is struggling in even making payment of GST compensation dues owing to reduced collections from March 2020.

The other option which many tax payers looking for is payment of GST dues in instalment.

GST provisions related to payment in instalment

In terms of Section 80 of CGST Act 2017, the taxable person may make an application to the commissioner to extend the benefit of GST payment in instalment. However, this option would not be available for liability which is ***self-assessed in any return.*** The application should be made in writing in form GST DRC-20. The Commissioner may permit for payment of due amounts in instalment for a period not exceeding 24 months. He would be considering the financial ability of the taxable person as well before allowing for instalment payment.

Points to be noted when opting for instalment are below:

1. Due amount to be paid along with interest applicable as per Section 50.
2. If there is default in any installment payment, whole outstanding balance would be liable for payment without further notice.
3. Installment facility would not be allowed if the taxable person has already defaulted in payment of GST for which recovery process is on.

GST payment in instalment due to COVID 19 situation

From above discussions, it is clear that there is no provision to pay GST in instalment due to COVID 19 situation. In terms of Section 80, the instalment option not available for amounts due as per self-assessed returns. It is interesting to note that without payment of GST amount due, the GST returns in form GSTR-3B cannot be filed on the GST portal. Therefore, it can easily be argued that the instalment option should be allowed for amount due from regular tax payers which is not self-assessed till declared and filed in GST return. The tax payer can make an application stating the reasons for delay which could be due to the present COVID 19 situation and opt for payment of GST in instalment. However, this extended meaning may not be accepted by the tax department as taking this contention means that there would be almost all situations where option of payment of GST in instalment would be available.

Recent court ruling

In a recent decision in case of *Pazhayidom Food Ventures (P) Ltd - WP(C).NO.14275 OF 2020 (H) dated 24th July 2020*, the Kerala High court allowed the petitioner to pay the GST arrears due for FY 2018-19 in installment on account of the present COVID pandemic situation even though the tax department argued that there is no provision in GST which allows for such installment payments.

The court held that the petitioner is not disputing his liability to tax or the quantum thereof for the period in question and seeking only instalment facility to pay the admitted tax. Accordingly, the facility of paying pending GST in installment was allowed.

The tax payers can also rely on this decision to consider the option of payment of tax in installment. Even though it is a writ petition ruling in Kerala, the decision can be relied on by the tax payers in other States as well unless contrary ruling given by any high court. This is based on the principle of 'satre decisis' which is a legal doctrine that obligates courts to follow historical decisions, while rendering a decision on similar facts and circumstance.

Conclusion

Though the situation seems to be changing for better as compared to past few months, few industries are struggling or on the verge of closing down. The government could provide some relief to those specific industries in terms of GST. The tax payers may also consider the instalment option where it is difficult to pay the tax dues. It may be noted that there is an interest of 18% per annum applicable for delayed payment which needs to be considered before taking decision on paying tax in instalment. Professionals could assist the industries or associations to represent the problems of industries including the GST payments.

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OBITUARY

We deeply regret to inform sad demise of our senior fraternity

CA. Subramaniam Chittur

passed away on 6th September 2020

He was a person who touched many lives through his inspirational speeches. He went on to transform and mentor the young minds who later became great communicators and leaders.

He was the architect of Toastmaster's movement in India, a forum to bridge the gap in public speaking. He stood as a pillar of strength in building the KSCAA Eloquent Professionals, Bangalore CA Toastmasters Club, ICAI-SICASA Speakers Forum, ICAI Orientation and MCS programmes and many more. Caring thoughts are with you as we share this sympathy. May you forever live on in our hearts.

May his soul rest in peace.

Refund of Input Tax Credit on input services for Inverted Duty Structure

■ CA. G B Srikanth Acharya

Generally, refund means an amount of money to be given back. Under the GST regime, a tax refund is a payment to the taxpayer when the tax payer pays more tax than they owe. Section 54 of the CGST Act, deals with refund of tax. Refund in GST arises when the GST amount paid is more than the GST liability. There are many cases where refund can be claimed, like;

- Refund of unutilized Input Tax Credit (ITC) on account of exports without payment of tax;
- Refund of tax paid on export of services with payment of tax;
- Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- Refund of unutilized ITC on account of accumulation due to Inverted Duty Structure;
- Refund to supplier/recipient of tax paid on deemed export supplies;
- Refund of excess balance in the Electronic Cash Ledger;
- Refund of excess payment of tax;
- Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
- Refund on account of assessment/provisional assessment/appeal/any other order;
- Refund on account of "any other" ground or reason.

Refund of unutilized ITC on account of accumulation due to Inverted Duty Structure

The GST Act does not define the term "Inverted Duty Structure". However, it is understood as a situation where the rate of tax on inputs purchased (i.e. GST rate paid on inputs received) is more than the rate of tax (i.e. GST rate payable on outward supplies) on outward supplies. Sub-section (3) of Section 54 of the CGST Act, provides for refund of unutilized input tax credit on account of Inverted Duty Structure.

Example: Ganesh Spinning & Weaving Mills Pvt Ltd purchases input raw material at 18% and pays a GST of Rs.1,00,000 and the GST charged on the final product is at 5% say Rs.65,000. In this situation, the company is paying more GST on inputs used than the final product which can be referred to as "Inverted Duty Structure of GST".

Relevant Definitions:

The term "***Input tax credit***" is defined in Section 2(63) means the credit of input tax.

The term "***Input tax***" is defined in Section 2(62), in relation to a registered person, it means the Central tax, State tax, Integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) The integrated goods and services tax charged on import of goods;

(b) The tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) The tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act; (d) The tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) The tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy.

The term "***Input***" is defined in Section 2(59) means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

The term "***Input service***" as per Section 2(60) means any service used or intended to be used by a supplier in the course or furtherance of business.

As per Section 54(3) of the CGST Act, 2017, Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the Electronic Cash Ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

A registered person may claim a refund of ***any unutilized input tax credit*** *on account of Inverted Duty Structure (Rate of tax on Inputs > Rate of tax on Outputs & Output services) at the end of any tax period.*

As per Rule 89(5) the Refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services.

- "Refund amount" means the maximum refund that is admissible;
- "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;
  - (Sub-rules 4A and 4B prescribe the mechanism to allow the refund of the accumulated input tax credits with respect to other inputs and input services to the extent used in making the exports, without the payment of IGST, out of the inputs procured under exemption.)
- "Turnover of inverted rated supply of goods" means the value of inverted supply of goods made during the relevant period;
- "Tax payable on such inverted rated supply of goods" means tax payable on such inverted rated supply of goods under the same head i.e. IGST, CGST, SGST;
- "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2 of CGST Act, excluding the value of exempt supplies other than inverted-rated supplies, during the relevant period;
- "Relevant period" means the period for which the claim has been filed.

Notifications and circulars related to refund of inverted duty structure:

Notification no: 21/2018- Central tax, had amended Rule 89(5) of CGST Rules, 2017, the definition of Net ITC from 'input tax credit **availed on inputs and input service** during the relevant period' to input tax credit **availed on inputs** during the relevant period'.

Circular No. 125/44/2019 has clarified that clause (59) of section 2 of the CGST Act, defines **input** as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

Thus, inputs do not include services or capital goods. Therefore, clearly, the intent is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.

It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

Input tax arises under any or all of the following situations:

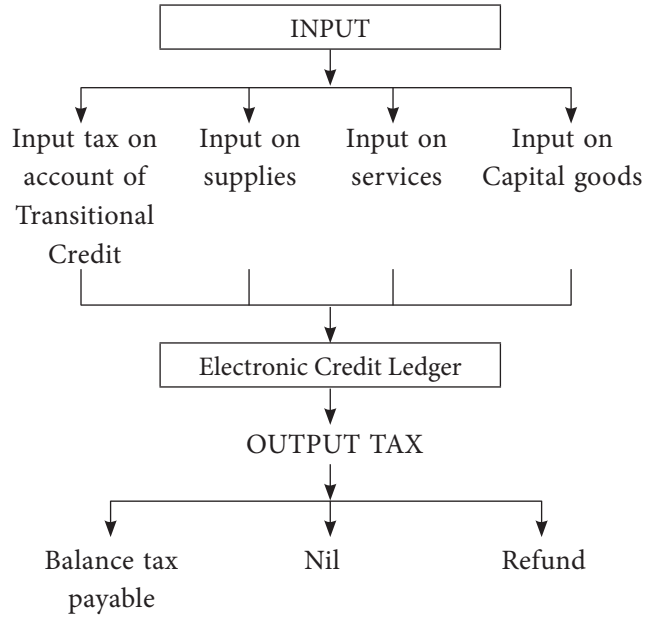
- ✓ Input Tax on account of transition credit
- ✓ Input on purchases of goods
- ✓ Input on Services
- ✓ Input on Capital goods

All these Input Tax Credits on all such accounts get into a common pool called "**Electronic Credit Ledger**" where the output Tax liability gets set off. The net result would be either Tax Payable or Nil Tax or Refund. Here we can see that once the Input Tax arising from different streams as mentioned above gets into the Electronic Credit Ledger,

it just gets merged and accumulated as **Input Tax Credit only**. And beyond the Electronic Credit Ledger, there is no bifurcation or differentiation between the various forms of input tax credits lying in that ledger.

If there is no mechanism in the Statute to set off the output tax against any specific form of input tax credit lying in the accumulated account in the Electronic Credit Ledger (like for example, output tax payable should be set off against inputs only and not input service or capital goods as such) and then only in case of refund if such bifurcation is asked then it is inappropriate and not valid.

The above explanation can be better understood through a chart shown below:



Except for the limited and specific restriction contained in Section 54(3) of the CGST ACT, there are no other restrictions to claim refund of input tax. In such an event the Rule providing for the mechanism for the refund of tax has to be necessarily in consonance with Section 54(3) of the Act. Nonetheless, the Rule over-rides the Section by imposing restrictions on its own, which is totally contrary to Section 54(3) of the Act.

The Rule 89(5) is also is in conflict with clause (62) and clause (63) of Section 2 of the Act.

By restricting the refund on input service a huge amount of taxpayers is being lost which is directly impacting their business activities and which further affects the Nation's economy.

Why refund of ITC relating to Input service should be granted?

Exclusion of "input service" for refund of any unutilized input tax credit is contrary to the provisions of Sub-section 3 of Section 54 of the CGST / SGST Act, 2017, which provides for claim of refund of "**ANY UNUTILIZED INPUT TAX CREDIT**". Use of word **"ANY"** infers that, ITC relating to all inputs. Further the definition of "input", "input tax", and "input tax credit" includes ITC on input service. Thus "goods" and "services" are both part of the "input tax" and "input tax credit". It is a well settled principle that, formula and rules prescribed cannot override section. Rule is only an advice to interpret the law defined in section.

In this regard various petitions have been filed so far and in one of the petition filed by M/s. VKC Footsteps India Pvt Ltd, the **Hon'ble Gujarat High Court** allowed the refund on ITC of input services.

The summary of the judgment is as below,

The **Hon'ble Gujarat High Court in case of M/s VKC Footsteps India Pvt Ltd** reported in 2020-TIOL-1273-HC-AHM-GST has pronounced that formulae given in explanation to rule 89(5) of CGST Rules, 2017 allowing only ITC of 'inputs' in "NET ITC" is a violation of section 54(3) of CGST Act, 2017. "Net ITC" should mean "input tax credit" availed on "inputs" and "input services" as defined under the Act. Thus, now the taxpayers will be eligible to claim a refund of input services in case of an Inverted Duty Structure.

Therefore, as per the provisions of sub-section 3 of Section 54 of the CGST / SGST Act, 2017, the legislature has provided that registered person may claim refund of "**any unutilized input tax**", therefore, by way of Rule 89(5)of the CGST Rules, 2017, such claim of the refund cannot be restricted only to "input" excluding the "input services".

Also imposing restrictions by way of Rules is not only impermissible but also illegal and ultravires to Section 54 of the Act.

Thus, the author is of the view that, section always prevails over rules therefore claiming refund of ITC on input services is in accordance with the provision of section 54 of the Act.

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Financial Reporting and Assurance - Referencer

■ CA. Vinayak Pai V

1. **UPDATES:** *Monthly Roundup*[1]

AS/Ind AS	• ICAI **Exposure Draft** o ***Guidance Note*** *on* ***Revenue From Operations*** *in case of* ***Contractors***.
	• ICAI **Release** o **New Compendium** of **Ind AS** - as on 1st April, 2020.
	• ICAI **Announcement** o **Conceptual Framework for Financial Reporting under Ind-AS** applicable for Standard-setting activity from accounting periods beginning from April 1, 2020, and for the preparers of financial statements from a future date.
IFRS	• IFRS Foundation **Publication** o IASB and IFRIC - **Revised Due Process** *Handbook*. • **Amendments** to IFRS o ***Interest Rate Benchmark Reform – Phase 2*** ▪ Amendments to IFRS 9, IAS 39, IFRS 7, IFRS 4 and IFRS 16.
Assurance	• **COSO** Guidance o ***Blockchain and Internal Control*** *: The COSO Perspective.*
	• **IAASB** Publication o **ISA 540** (Revised) **Implementation** - *Expected Credit Losses (ECL) Illustrative Examples* ▪ Illustrative Examples for **Auditing ECL Accounting Estimates.**
	• ICAI **Auditing Guidance** o ***Review Engagements on Interim Financial Information*** *in the Current Evolving Environment due to Covid-19.*
	• ICAI ***Guidance Note on Report under section 92E of the Income Tax Act, 1961 (Transfer Pricing)*** – Revised 2020.
Company Law/ SEBI	• SEBI **Consultation Paper** o *Format for* ***Business Responsibility and Sustainability Reporting***.
NFRA	• **Audit Quality Review (AQR) Report** in respect of Audit Done of **IFIN** for FY 2017-18 (17th August, 2020).

[1] *Updates for the month of August 2020.*

RBI	• Notifications o **Resolution Framework** for Covid-19 Related Stress. o **MSME** Sector – **Restructuring of Advances**. o **Basel III** Capital Regulations – Treatment of Debt Mutual Funds/ETFs. o System based asset classification – **UCBs.** o **Opening of Current Accounts** – Need for Discipline. o **New Definition of MSME** – Clarifications.
US GAAP	• FASB Accounting Standards Update (ASU No. 2020-06) o *Debt – **Debt with Conversion and Other Options** (Subtopic 470-20) and Derivatives and Hedging – **Contracts in Entity's Own Equity** (Subtopic 815-40)* - Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. • SEC adopts Rule Amendments o Modernization of **Regulation S-K** (Items 101, 103 and 105) - ***Disclosures of Business, Legal Proceedings** and **Risk Factors.***
Others	• GASAB Publication o ***Concept Paper** on **Natural Resource Accounting in India**.*

2. **AUDIT RELATED –** *Useful Extracts*

a) ***ICAI Accounting & Auditing Advisory – Impact of Coronavirus on Financial Reporting and the Auditors Consideration***

*"**Ind AS 16**[2] and **AS 10**[3] require that useful life and residual life of PPE needs revision in annual basis. **Due to Covid-19, PPE can remain underutilised or not utilised for a period of time. It may be noted that the standards require depreciation charge even if the PPE remains idle.** Further, Covid-19 impact may have affected the expected useful life and residual life of PPE.*

The management may review the residual value and the useful life of an asset due to Covid-19 and, if expectations differ from previous estimates, it is appropriate to account for the change(s) as an accounting estimate in accordance with Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors and AS 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies."

b) ***An NFRA order u/s 132(4) of CA, 2013***

A recent order by NFRA enumerated various sections of the Companies Act, 2013 that work together in reform of and restructuring of the regulatory structure for the audit profession. The same is extracted herein below.

a. *"Sec 132, that establishes the National Financial Reporting Authority (NFRA), defines its mandate and functions and vests it with the necessary powers, including the power to levy penalties on Chartered Accountants for professional misconduct;*

b. *Sec 133, which empowers the Central Government to prescribe Accounting Standards under the Act. These **accounting standards have** now, therefore, **the status of law, and are not merely guiding principles** that are issued by the ICAI;*

c. *Sec 143 (10), which empowers the Central Government to prescribe auditing standards under the Act. As explained above, **auditing standards are also now law;***

[2]Ind AS 16 – Property, Plant and Equipment

[3]AS 10 – Property, Plant and Equipment

d. *Sec 143 (2) of the Act, which requires the Auditor's Report to take into account the provisions of the Act, the accounting and auditing standards and the matters required to be included in the report by either the Act or the Rules or orders made under Sec 143 (11). This means that* ***compliance with accounting and auditing standards by a CA in his statutory audit of a company is a statutory duty, which carries with it a strict liability.***" (Emphasis supplied)

3. **ACCOUNTING CONCEPT IN BRIEF:** *Changes to an Accounting Policy* – **Ind AS**

An Ind AS preparer is required to **change an accounting policy** if such change is **required by an Ind AS** (new standard or revision of existing standard) or such a change **results in providing more reliable and relevant information**. Accordingly, a change in an accounting policy could either be on account of compulsion or voluntary basis.

The accounting for changes in an accounting policy is governed by **Ind AS 8,** ***Accounting Policies, Changes in Accounting Estimates and Errors.***

An entity is required to account for a change in accounting policy that results from the initial application of an Ind AS in accordance with its specific **transitional provisions**. Such specific transitional provisions may include "full retrospective" approach and a "Cumulative catch-up" transition approach. When an entity changes an accounting policy either **voluntarily** or upon the **initial application of an Ind AS that is silent with respect to specific transitional provisions**, then it is required to apply such change **retrospectively.**

In this context, it may be noted that **Retrospective Application** is *applying a new accounting policy to transactions, other events and conditions as if that policy had always been applied.*

4. **CASE STUDY:** *Reporting On A Key Audit Matter (KAM)* – **Management Override of Controls**

Background: Under SA 240, *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements,* the auditors are required to consider the risk of management override of controls. In the audit of Company A, the auditors believe that there is a risk that users have inappropriate access rights which allow them to override controls.

Assessment as a KAM: Due to the unpredictable nature of this risk, the auditors were required to assess it as a significant risk and identified it as one of the most significant assessed risks of material misstatement.

Audit procedures applied to obtain sufficient appropriate audit evidence: The following audit procedures were applied, inter alia, by the auditors to obtain sufficient appropriate audit evidence:

- The auditors **undertook specific procedures** relating to this risk as required by the SA. This included **profiling journal entries** and **focusing on unusual items**. They tested a sample of journal entries by tracing the journal entries to source documentation and testing whether the journals were appropriately approved, posted to the correct account codes and in the correct periods, and tested whether they were valid transactions.
- The auditors **evaluated** the **key judgements and assumptions** in **management's estimates** and testing for significant transactions outside the normal course of business.
- The auditors **undertook detailed testing** of **related party transactions** to understand the nature of the transactions and movements from the prior year.
- The auditors **assessed** the **impact of heightened access rights** in the accounting system over the relevant controls identified in a number of business cycles. They re-assessed the audit risk scoping over classes of transactions and account balances.
- The auditors **engaged technology audit and forensic specialist teams** to carry out **detailed testing** of **IT general/application controls** over the accounting system and other databases as well as tested relevant audit trails and audit logs.
- They undertook **additional audit procedures**, including; testing the manual reconciliations between other platforms and the accounting system; additional substantive testing across

revenue, expenditure and payroll transactions; and testing additional specific journal entries.

5. **FINANCIAL STATEMENT EXTRACTS:** *COVID-19* – **Emphasis of Matter**

Extracts from an Independent Auditor's Report (related to EOM - **COVID-19 impact** for FY2020) of a listed company is provided herein below.

Emphasis of Matter

We draw your attention to Note 3.19 of the Consolidated Ind AS Financial Statements which explains the uncertainties and the management's assessment of the financial impact due to lock-downs and other restrictions and conditions related to the Covid-19 pandemic situation, for which a definitive assessment of the impact in the subsequent period is highly dependent upon circumstances as they evolve.

Our opinion is not modified in respect of this matter.

Relevant Extract from the Notes to the Financial Statements

Note 3.19: The Group has taken due care in concluding on accounting judgements and estimates; viz., in relation to recoverability of receivables, assessment of impairment of goodwill and intangibles, investments and inventory, based on the internal and external information available to date, while preparing the Group's consolidated financial statements as of and for the year ended March 31, 2020. The Group continues to monitor the impact of Covid-19 on the operations and take appropriate actions as and when required. The actual impact of the global health pandemic may be different from that which has been estimated, as the Covid-19 situation evolves in India and globally.

6. **TRIVIA** - Extracts from an 118 year old US Annual Report[4]

Extracts from the Annual Report of *United States Steel Corporation* for Year Ending December 31, **1902**:

"Orders on Hand

The tonnage of unfilled orders on the books at the close of 1902 equaled 5,347,253 tons of all kinds of manufactured products. At the corresponding date in preceding years the orders booked equaled 4,497,749 tons. In many of the classes of heavier products, like rails plates and structural material, practically the entire capacity of the mills is sold up until nearly the end of the year 1903."

[4]*Source:* https://chroniclingamerica.loc.gov/data/batches/mnhi_bena_ver02/data/sn83045366/00206537358/1903041301/0243.pdf

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FAQs in Relation to Chartered Accountant as a Professional Director of Co-Operative Bank

■ CA. Umesh Bolmal

Q.NO-1

Why the Reserve Bank of India has issued a master circular and made it mandatory for every co-operative Bank to have at least TWO Professional directors in the Board of Management?

ANSWER

As per the recommendations made by the "Committee on Urban co-op Banks" headed by shri. Madhav Das regarding the Board of directors, the Directors of co-operative Bank must be knowledgeable and persons of high integrity and there should be professionalism in the management of the co-operative Banks. To ensure this fact every co-operative Bank should have at least TWO directors with suitable banking experience at senior management level or with relevant Professional Qualification in the field of Law, Accountancy or Finance.

Even as per Sec 28-A(4-A) of Karnataka co-societies ACT 1959 and as per Sec 24 of Karnataka souharda Sahakari Act 1997, every co-operative Bank should have TWO professional directors in the Board of Management.

To comply with this circular the majority co-operative Banks have co-opted Chartered Accountant as professional Director in the Board of management.

Q.NO-2

What are the duties and responsibilities of a Chartered Accountant who is a professional director in a co-operative Bank?

ANSWER

A Chartered Accountant who is a professional director of a co-operative Bank should act as EYES and EARS of Reserve Bank of India. He should guide the Board of Directors to manage the affairs of co-operative Bank in a professional way in order to protect the interest of that bank. He should also be in constant touch with the concurrent auditor and statutory auditor of the Co-operative Bank to know their suggestions and observations to improve the affairs of the co-operative Bank and guide the Board of Directors in this regard.

Q.NO-3

As per the Karnataka co-operative societies Act 1959 and also as per the Karnataka souharda sahakari Act 1997, a co-opted professional director has no voting right nor he can become the Chairman or Vice Chairman of the co-operative Bank. Many Chartered Accountants feel that the post of a professional director is only a decorative post having no power at all. Is it a fact?

ANSWER

As per the provisions of both Acts, a professional director who is a co-opted director has no right to become the office bearer of the co-operative Bank i.e. Chairman or Vice Chairman. He cannot exercise his voting right only in the election of office bearers of the bank. But he has every right to move the resolution in the Board meeting. He can participate in the discussion of the Board meeting and he can also record his dissent note or objection when the Board of Directors pass the resolution in the Board meeting, which is in contravention of the circulars of RBI or when the resolution passed is not in the interest of the bank.

Q.NO-4

Whether a Chartered Accountant can become the professional director in more than one co-operative Bank?

ANSWER

Legally there is no restriction for a Chartered Accountant to become the professional director in more than one Bank. However ethically it is not fair on the part of a Chartered Accountant to accept the post of a professional director in more than one bank.

Q.NO-5

Whether a Chartered Accountant who is co-opted by a co-operative Bank as a professional director should be the member of that co-operative Bank?

ANSWER

It is not legally necessary for a Chartered Accountant to become the member of the co-operative bank which has co-opted him as a professional director.

Q.NO-6

Whether the Chartered Accountant who is a professional director of a co-operative bank can accept the assignment of concurrent audit or statutory audit of the same co-operative bank?

ANSWER

Even though the circulars of Reserve Bank of India and the provision of the co-operative societies Acts in our state are silent on this issue, ethically a Chartered Accountant who is a professional director should not accept the assignment of the professional work of concurrent audit or statutory audit of the same co-operative Bank.

Q.NO-7

Whether the Board of Directors of a co-operative Bank can remove the Chartered Accountant, who is a professional director on the ground that they have only co-opted him as a professional director?

ANSWER

Once the Board of Directors co-opt a Chartered Accountant as a professional director of the co-operative Bank, he will continue in that position till the end of the term. The Board of Directors cannot remove the Chartered Accountant on the ground that they have only co-opted him as a professional director.

Q.NO-8

Whether a co-operative Bank can sanction loan to the relatives of a Chartered Accountant who is the professional director in the said co-operative Bank. The chairman and directors of the bank are under the impression that the circulars issued by the Reserve Bank of India applies only to the elected directors but not to the co-opted directors. The CEO of the Bank seeks your professional advice in this regard.

ANSWER

The circulars issued by the Reserve Bank of India applies to all the directors of a co-operative Bank including the co-opted directors. Hence the management of the co-operative Bank cannot sanction loan to the relative of the Chartered Accountant who is a Professional Director.

Q.NO-9

A Chartered Accountant who is the co-opted professional director of a co-operative bank has tendered his resignation on the ground of ill health. The Board of Directors of the co-operative Bank seek your professional advice, whether to report the casual vacancy in the post of a professional director to the election commission as per Sec. 29E of Karnataka co-operative societies Act, 1959?

ANSWER

The Board of Directors of the co-operative bank can co-opt another Chartered Accountant as a professional director to fill up the casual vacancy. They need not report to the election commission in this regard.

Q.NO-10

In a co-operative Bank, one practising Chartered Accountant contested in the election and got elected. The Board of Directors seek your professional advice whether they should co-opt another Chartered Accountant as a professional director?

ANSWER

In my personal opinion, the co-operative Bank need not co-opt another Chartered accountant to comply with the circular of Reserve Bank of India. Since the co-operative Bank is already having a chartered Accountant who is an elected director. However the Board of Directors can co-opt two professional directors who are having other qualifications as per the circular of Reserve Bank of India.

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Understanding Neck & Low Back Pain

■ Dr. Vidyadhara S

What is pain?

Pain is a Protective reflex in response to an underlying injury/ damage. It is only a symptom and not a disease. Treat it like a friend and not an enemy.

More about pain:

Pain is a psychological expression of underlying actual or potential physical injury.

Pain has two components - physical (injury) and psychological (expression).Stress (extreme of any emotion such as anxiety, apprehension, fear etc) - amplifies pain and complicates pain.

How does pain get better?

Human body heals any injury / damage naturally; but it takes time. In 3-months, 90% of people get pain relief on their own. But, problem is that we are impatient and are offered with lot of options. We don't let the body heal injury naturally.

Bed rest >2 days delays recovery –worsen psychological component of pain. Active rest is the key to early healing.

Lumbar Belts/ Neck Collars >7 days are proven to be BAD - causes wasting of neck/trunk muscles. Hence avoid their long term use.

Physiotherapy/ pain killers are NOT effective in changing the natural course of healing. Analgesics can be taken on-demand basis.

In patients with >2 years of back & neck pain- incidence of depression is >80% and antidepressants are of proven benefit.

Smoking has direct link with back & neck pain because of its role in causation and acceleration of disc degeneration - Hence **quit** smoking.

Over weight increases strain on the back and thus causes back pain

MRI

Eugene Carraggee (Stanford University, USA) published a paper in New England Journal of Medicine 2005; 352: 1891-98. He analyzed MRI's of thousands of normal volunteers between 20-40 years of age who never had back pain. He found Slip Disc (55%), Disc Degeneration (60%), Annular Tears (30%) and high Intensity Zone (25%) in>80% of study population on MRI.

MRI is oversensitive and non-specific tool. It is very tempting tool to both the doctor and the patient. Once MRI is done, it is very difficult to stop as findings in the report are usually too exaggerated. MRI findings are not used as indication for surgery. We need to treat patient and not the MRI. If the patient deserves surgery clinically, then MRI becomes gold standard investigation to direct surgery to the exact pathology.

Do's and Don'ts:

When in pain, be with in its limits (listen to your body, not to anybody else) and Stay active. Don't provoke/increase the pain by any activity, as it means that the injury or damage is being increased before nature heals it.

When do we surgery / MRI?

(Indications for MRI and Surgery are the same)

A. **Absolute indications** (Surgeon sells surgery) - irrespective of duration of symptoms, time is money, delay causes increased damage - cry of the dying nerves

   1. Gross weakness of limbs
   2. Lose of control over urine/ motion

B. **Relatives indication** (Patient buys surgery) - as pain is subjective

   3. Functionally disabling pain >3 months (functional disability is the gap between the expectations

and abilities of a person - very highly individualized).

Natural History of Neglected Back/Neck pain:

Back/Neck pain has episodic occurrence. With increasing age and repeated episodes, natural healing capacity reduces and risk of recurrence and persistence of pain increases.

Prevention of Back/Neck pain:

Spine consist of 33 bones and every two bones are connected with each other by three joints (bearings). For these joints. Movement is life. If they don't move for a while, they get jammed and then they break on attempted/ forced movement.

So, flexible spine resists injury/damage while the stiff spine breaks with the smallest of jerks. The permanent solution is to keep all the joints (bearing) of the spine mobile everyday and get back the flexibility by gradual stretching in the form of lyengar Yoga. Yoga has been proven scientifically to be the best way to cure chronic back/neck pain (Williams K et al Spine 2009; 34:2066-76). lyengar yoga increases the flexibility of the spine as well as reduce the stress. Thus it targets both (physical and psychological) components of back/neck pain. Star on Yoga once pain subsides and continues for the rest of life. It is a way of life and not an exercise.

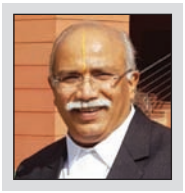
The author is HOD & Consultant Spine Surgeon, Manipal Hospital, Bengaluru and can be reached at e-mail: vidya007@gmail.com

KSCAA WELCOMES NEW MEMBERS - August & September 2020

S.No.	Name	Place
1	**Rajashekar Meti**	Hospete
2	**Datha Prasad Rao D**	Bengaluru
3	**Sundeep Kamath**	Bengaluru
4	**Phaneesha K K**	Shivamogga
5	**Sai Kiran Satrasala Veera**	Bengaluru
6	**Madhava Reddy MS**	Kalaburgi
7	**Darshan A.S.**	Tumakuru
8	**Pradeep Daithota**	Bengaluru
9	**Udaykiran N**	Bengaluru
10	**Priyanka Ladda**	Sedam
11	**Keerthi Murali**	Bengaluru
12	**Sachin Kamalakar Rangapur**	Bagalkot
13	**Nagendra M P**	Bengaluru
14	**Vasudevan N**	Bengaluru
15	**Manjunath C Gundagi**	Vijayapura
16	**Abhilasha Chaturvedi**	Bengaluru
17	**Gayithri**	Sagara

S.No.	Name	Place
18	**Shilpa B Banakar**	Bengaluru
19	**Keshav Inani**	Bengaluru
20	**Vrushali Nandkishor Bhutada**	Jamakhandi
21	**Mahendra B.H.**	Banahatti
22	**Santhosh Raj S**	Kasaragod
23	**Pinky G Bhonsley**	Bengaluru
24	**Shreehari U**	Kasaragod
25	**Sujeetkumar Hegde**	Bengaluru
26	**Ravi Garg**	Bengaluru
27	**Abhishek Tarale**	Belagavi
28	**Vishweshwar Bhat**	Bengaluru
29	**Shashikala S**	Bengaluru
30	**Alpalpa Nirmal Shah**	Bengaluru
31	**Shamita C Halli**	Bengaluru
32	**Sahita C Halli**	Bengaluru
33	**Anujkumar Laddha**	Hubballi
34	**Pooja Jain**	Bengaluru

Intellectual Property Rights and Protection in India



Intellectual Property Rights (IPRs) in India (part-1)

■ **Adv. M G Kodandaram**, *IRS, Assistant Director (Retd), NACIN*

Vocal for local

The Prime Minister of India in his Independence Day speech from the Red Fort on 15th August 2020 stated that the mindset of free India should be 'vocal for local' to achieve the goal of 'Aatmanirbhar Bharat' (self-reliant India). "We should appreciate our local products, if we don't do this then our products will not get the opportunity to do better and will not get encouraged," he said. Though the idea of our leader is positive, the ground reality is quite different as the Indian businesses and services, especially the huge numbers in MSME sector are not doing well as they are not able to impress, serve and retain their customers with quality goods and services. One of the measures that needs to be undertaken on priority by such businesses, to address and come out of the current red, is to gear up proper initiatives and steps to create, preserve and protect their Intellectual Property Rights, so that their customer base remains and expands.

It must be noted that the Intellectual property such as trademarks, patents etc., have greater significance for any large, medium or even a small scale entity or a startup as it can connect the customers to the product and service on a regular basis. By keeping constant focus on the requirements of the consumers, any business enterprise could receive continued blessings of the customer and grow to be a profitable venture. The IP so generated could also become an important source of revenue generation and further expansion, as they can be licensed to others around the globe for consideration (Royalty). The areas of management of Intellectual Property Rights (IPRs) have greater significance in the present day world of explosive technological developments. Exploitation and Management of IP includes the entire process of identifying, acquiring and protecting Intellectual Property of the organisation for the purpose of value and wealth generation. There is need of Chartered Accountants growing to become decision makers and advisers to their clients by being able to identify IP rights, get them granted through legal process, enable protection of such rights, and plan for licensing and growth of their clients on a regular basis. The IP, like any other tangible asset, could be employed for generation of funds, as the growing goodwill of the consumers in the market is the indicator of performance. With the rapid growth in diversified fields of technology, due to new scientific inventions and innovations, IPR protection and exploitation is the key to commercialisation and earning of profits for any organisation. They play a major role in gaining competitive advantage and edge for achieving higher economic growth in a market driven economy. It is felt that IPR requires greater attention and understanding by the industry, particularly the MSME sector in India.

In this regard the Central and State Governments have rolled out various measures to strengthen the IP wealth of enterprises in India as this will make Indian commercial venture reach out to the quality requirements of both the domestic and the international market. One such effort is building awareness on Intellectual Property Rights (IPR) with a purpose to enhance the alertness among the MSMEs, facilitate them to enable such entities to take measures for protecting their ideas and business strategies. With the above developments in the background an attempt is made to acquaint IPRs and their Protection in India, in a series of articles to follow. The practitioners are expected to know the ways of obtaining, managing, evaluating and ways of protecting such IPs so as to become strategic planners and add value to their profession and service.

Property and intellectual property

The term 'Property' is normally understood to mean something tangible, which may be movable thing like the goods, or immovable property / assets like land, buildings or huge plants and machineries embedded to the earth. A person is said to be the owner of such property when the ownership / titles in respect of such properties are recognized and vested by means of an appropriate law in their names. Ownership in a property enables such person to either allow or permit another person, the enjoyment of certain rights (possession rights, utility rights etc, normally called as licensing), without diluting the ownership rights, or to sell the titular rights to another, of course, both activities for commercial gain. Similarly the IP rights, a person's original or new or distinctive creation of the intellect, such as artistic, literary, technical or scientific creation, are being recognised by law and grant of exclusive rights to the inventor or creator or his assignee by the State [country], for a certain period of time. The IP rights are like any other tangible property rights, as they allow owners or creators of patents, trademarks or copyrighted works, symbols, names and images etc., to benefit from their own

work or investment and a tool to enhance their presence in the market place.

The grant of rights in Intellectual property insists on some amount of novelty or originality to seek and gain protection. At the same time, it does not provide perpetual and absolute monopoly over the property as they are duration specific. The rights are granted only after full and complete disclosure and examination by the authorities.

Authorities for granting of IP in India

Generally speaking, intellectual property law aims at safeguarding the inventors, creators and other producers of goods and services, of their intellectual efforts and skills in bringing out the inventive, original skills, by granting them certain rights, which enable them to monopolize the market and control their productions so as to get beneficial returns. Such rights granted are private / individual rights and if they are not properly awarded, may result in unfair monopoly in the market by the right holder who may indulge in over-exploitation of the market, thereby hurting the interests and rights of the Public and of other Persons at large. Therefore such rights are to be granted with certain inbuilt conditions such as, validity for a limited period only on full and proper disclosure, subject to compulsory licensing under certain circumstances, by Government in the interest of public by which the Public rights are also suitably rewarded under such laws.

In India the Department of Industrial Policy and Promotion (DPIIT), Ministry of Commerce & Industry is the nodal ministry which has been entrusted of implementing the IP Laws. This Office is taking all relevant and necessary steps to implement the objectives of National IPR Policy including strengthening IPR administration and management so as to ensure ease of access to all stakeholders. Further details can be obtained through the address http://www.ipindia.nic.in/

An exclusive professional body by name cell for IPR Promotion and Management (CIPAM) under the aegis of DPIIT has been formed to ensure focused action on issues related to IPRs and objectives of the policy. The CIPAM assists in simplifying and streamlining of IP processes, apart from undertaking steps for furthering IPR awareness, commercialization. The CIPAM in partnership with state departments and industry associations, in schools, universities and industries are conducting IPR awareness programmes in all the states. These programs have received a very positive feedback from business owners, students, academicians and other stake holders. Details can be accessed at http://cipam.gov.in/.

The Intellectual Property are regarded as property falling under Article 300A of Constitution of India, which says that "no person shall be deprived of his property save by authority of law". IP protection can be sought under Indian laws for a variety of intellectual efforts. In India the Intellectual property rights as a collective term includes the following independent IP rights granted under the various statutes for fulfilling the eligibility criteria discussed herein under.

Patents

The rights relating to new, original and useful inventions of products and processes are granted as per The Patents Act, 1970. In order to obtain the patent, an application, with full disclosure along with requisite fee has to be made to the patent office for grant of requisite rights. The eligibility criteria for an invention to cede patent rights are: (a) the invention should have Novelty; [N- Novelty]; (b) Such a product or process must be capable of industrial application [U- Utility]; and (c) It should be non-obvious, meaning that inventions which can be done by any ordinary skilled person are obvious and cannot be patented. For patentability there must be presence of an inventive step.

The invention of products and process relating to topics specified in Sections 3 and 4 of the Patents Act, 1970 are not eligible for award of Patent rights. The non-patentable subject matters are: the scientific principles, contrary to well established natural laws; formulation of abstract theory; frivolous inventions, prejudicial to morality or injurious to public health; method of agriculture or horticulture; method of treatment; admixtures; traditional knowledge; incremental inventions without increase in efficacy; and inventions related to atomic energy.

Once patent rights are granted, such invention cannot be commercially made, used, distributed or sold by anyone, without the consent of the owner. The patent owner has exclusive rights to grant permission / license the other parties for use of the invention on mutually agreed terms. However after the completion of 20 years from the date of filing of the application, the patent expires and enters the public domain. Any person could use the said invention, for commercial gain free of cost and without any preconditions. In other words, they become freely accessible / available for commercial exploitation by any other person, without any consent and conditions of the owner to be met. It is important to verify such expired patents from the registry so as to use them for exploitation with no cost.

Industrial Designs

The rights relating to features of any shape, configuration and surface pattern, composition of lines and colours applied to an article, whether 2-D or 3-D are granted as per The Designs Act, 2000. It protects the aesthetic/ ornamental features of a product that could be industrially produced. It can be of a handicraft, watches, jewellery, fashion and luxury items, furniture a product, toothbrush, textiles or even any industrial

commodity. It is intended to promote innovative activity in the field of industries. In India the duration of protection of industrial design is for 10 years which can be extended for a further period of 5 years on application. This should be used by MSME sector to protect the outward look of their products so that competitors will not be able to copy such designs.

Layout Design for Integrated Circuits

The rights granted to integrated circuits designs are as per the Semiconductor Integrated Circuits Layout-Design Act, 2000 (SICLD Act). The aim of the SICLD Act is to provide protection of IP Rights in the area of Semiconductor Integrated Circuit, in Chip Layout Designs created and matters related to it. The SICLD Act empowers the registered proprietor of the layout-design an inherent right to use the layout design, commercially exploit it and obtain relief in respect of any infringement. The layout Design of Semiconductor Integrated Circuit of electronic gadgets such as mobile or smart phone, laptops, computer, watches, cameras, safety or health care devices, home appliances, etc. gets protection under the Act.

The eligibility Criteria for registration of a Semiconductor Integrated Circuits Layout Design (SICLD) are: (i) It should be Original; (ii) Should Not have been commercially exploited anywhere in India or convention country. (iii) It must be Inherently Distinctive. The registration of the layout design shall be only for the period of 10 years counted from the date of filing an application for registration or from the date of first commercial exploitation anywhere in any country, whichever is earlier.

Trademarks

The rights relating to any mark, name or logos under which trade is conducted, by which the manufacturer or the service provider is identified are granted under The Trademark Act, 1999. A trademark is a business identity, which helps us to identify and distinguish the goods made or services offered by a company or an individual. They may consist of one or a combination of words, letters, and numerals drawings, symbols, three- dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. Such words to obtain trademark rights must be unique and distinctive of the product or service. The trademarks applied for registration and pending grant are indicated as (kurry™) and once granted will be marked as (kurry ®). For service marks the words (SM) is generally used.

Trademarks existed in the ancient world also. The Indian crafts men used to engrave their signature on their jewellery or artistic creation around 3000 years ago. The trade mark, being a distinctive sign or logo, helps consumers identify and purchase a product or service in the market. Trademark rights may be held in perpetuity. A trademark gets protection for a period of 10 years from the date of registration and can be renewed every 10 years consecutively. The right to trademark subsists for the time ad-infinitum from generation to generation, successor to successor so long as the trade mark retains its registration. This is the surest way to get connected to regular customers and on gaining confidence of such consumers, retain their presence and expand customer base.

Geographical Indications

Rights relating to indications, which identify goods as originating in the territory of a country or a region or locality in that territory where a given quality, reputation or other characteristic of the goods, essentially attributable to its geographical origin are granted as per The Geographical Indications of Goods (Registration and Protection) Act, 1999 [GI]. A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country.

Geographical Indications (GI) on application with requisite fee are awarded primarily to agricultural or food products, natural or a manufactured product (handicrafts, handloom textiles or industrial goods) originating from a definite geographical territory. It is an exclusive right granted to a particular community or association of persons, producers, organisation or authority upon representing the interests of the producers in a particular region and therefore the benefits of its registration are shared by the all members of the association / community. Some well-known Indian GIs of goods are Darjeeling Tea, Kullu Shawl, Blue Pottery of Jaipur, Banaras Sarees, Thanjavur Art Plate, Makrana Marble, Hyderabad Haleem, Nashik Valley Wine, Basmati Rice, Bikaneri Bhujia, Chanderi Sarees etc. Keeping in view the large diversity of traditional products spread all over the country, the registration under GI will be very important in future growth of the tribes/communities / skilled artisans associated in developing such products and protection to their geographical advantage. Also, piracy in geographically specific goods can be checked.

The central government has established "Geographical Indication registry" at Chennai where right holders from all Indian jurisdictions can register their GI. Under these rules protection under GI is granted for 10 years and renewal is possible time to time for further 10 years and can last forever on timely renewals.

Copyright

The Rights relating to expression of ideas in material form, including Literary, Musical, Dramatic, Artistic, Cinematography work, Audio tapes & Computer software and neighbour rights are granted under The Copyright Act, 1957. The Copyright generally means legal rights granted to the creators for their literary and artistic works, such as novels, poems, plays, reference works, newspapers and computer programs, databases, films, musical compositions, and choreography, paintings, drawings, photographs, sculpture, architecture, advertisements, portraits, landscape, fashion or event photography, maps and technical drawings and similar original expressions. Copyright subsists in a work by virtue of creation and therefore it is not mandatory to register. However it is always recommended to register a copyright for better enforceability, since registered copyrights have more evidentiary value in courts.

Always the creator of such original work is called the owner of the work. Creators may sell the rights with or without relinquishing ownership rights of their works to individuals or companies, in return for payment, referred to as royalties.

The Works covered under Copyrights are classified as follows: (1) Literary including Software eg., Books, Essay, Compilations, Computer Programs; (2)Artistic eg., Drawing, Painting, Logo, Map, Chart, Plan, Photographs, Work of Architecture; (3) Dramatic eg., Screenplay, Drama; (4) Musical eg., Musical Notations;(5) Sound Recording eg., Compact Disc; (6) Cinematograph Films eg., Visual Recording which includes sound recording.

The Literary, Dramatic, Musical or Artistic Works are protected for the entire Lifetime of the author plus 60 years from the death of the author. The Sound Recording and Cinematograph Films are awarded protection upto 60 years from the year in which the recording / the film was published. In the case of broadcasters/ performers, reproduction right shall subsist until 25 years from the calendar year next following the year in which the broadcast / performance is made. The protection period in all cases are counted from the beginning of the calendar year next following the year in which the work is first published.

Plant Variety

The Rights for Plant breeding and plant variety are granted under The Protection of Plant Varieties and Farmers Rights Act, 2001 [PPVFR]. The PPVFR Act recognises the individual and community roles played by farmers and their interests in improvement and conservation of varieties in plants and agriculture. The objective of the PPVFR Act is to recognize the role of farmers as cultivators and conserve the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution. This further stimulates investment for R & D for the development of new plant varieties to facilitate the growth of the seed industry. Such protection is a unique aspect of Indian IP Regime which recognises the farmers as cultivators, conservers and breeders.

The act provides protection to "The new, extant, farmer's, essentially derived variety" on the criteria of whether the variety has novelty, distinctiveness, uniformity and stability, traditionally cultivated or genetically engineered. Under the Plant Act, the researcher has the liberty to conduct experiment with a registered variety, and the farmer has been given the exclusive right to save, use, sow, re-sow, exchange, share or sell his farm produce including seed or a variety protected. However, the farmer is not allowed to sell the branded seed of a protected variety. Further, a certificate of registration for a variety issued under the Act shall confer an exclusive right on the breeder or his successor, agent or licensee to produce, sell, market, distribute, import or export the variety. The duration of protection of registered varieties is different for different crops. For trees and vines it is 18 years, for other crops 15 years and for extant varieties 15 years from the date of notification of that variety.

Trade Secrets

There is no specific law in place in India to Undisclosed Information / Confidential Information / Trade secrets, which are at present protected under Common Law approach which is a difficult proposition to protect. Any invention or knowledge which in not innovative, may not patentable, but useful for business and provides economical benefits can be kept as trade secret. Normally the technological information or process such as recipe, idea, device, software, blue prints, pattern, formula, maps, architectural plans and manual or any commercial information or business strategy or secret in form of any data compilation or data bases, marketing plans, financial information, personal records, R&D Information, Software Algorithms, Inventions, Designs, Formulas, Financial Records, Ingredients, lists of Customers, Devices, Methods, Contact Details of Customers and Strategies or Policies of a Company i.e., any confidential business information that provides an enterprise a competitive edge can be protected as trade secret. At present, the normal recourse to protect trade secrets could be to sue for breach of contract, by invoking provisions of contract law or the equitable doctrine of breach of confidentiality.

Traditional Knowledge and Traditional Knowledge Digital Library

The Traditional Knowledge and profit sharing are implemented through the Biological Diversity Act, 2002. The Traditional knowledge (TK) generally refers to the matured long-standing traditions and practices of certain regional, indigenous, or

local communities. Some forms of traditional knowledge are expressed through stories, legends, folklore, rituals, songs, and even laws. Such wisdom has been accumulated over the years and has been used and passed down through several generations.

The Indian Traditional Knowledge is an important asset because it is the place where lots and lots of valuable resources are found and most of the products are an outcome of a historic knowledge of common persons of the community. Such traditional knowledge of several products and processes in India should be protected from being misused by other countries, as had happened in the cases of Basmati rice, haldi, neem and Yoga. The traditional indigenous products and culture of producing certain products should be documented in such a way that they are not pirated by other countries, claiming them as their property. To protect our indigenous traditional knowledge from bio-piracy, there is a great need for a rigid legislative framework in place. One such effort has come in the form of Biological Diversity Act, 2002 which has preservation of biological diversity and provide a mechanism for equitable sharing of benefits arising out of the use of traditional biological resources and knowledge as an objective.

India's efforts on revocation of patent on wound healing properties of turmeric at the USPTO and the patent granted by the European Patent Office (EPO) on the antifungal properties of neem are well known. India's traditional medicinal knowledge exists in local languages such as Sanskrit, Hindi, Arabic, Urdu, Tamil etc. is neither accessible nor comprehensible for patent examiners at the international patent offices. In order to maintain traditional knowledge, the Traditional Knowledge Digital Library (TKDL) was set up in 2001 by the Council of Scientific and Industrial Research (CSIR) in collaboration with the Ministry of Ayush. The objective of TKDL is to maintain the ancient and traditional knowledge derived from different Vedas as well as traditionally passed verbal knowledge, especially about medicinal plants and traditionally used formulations in Indian systems of medicine. The TKDL also serves as a non-patent database search platform to encourage modern research based on traditional knowledge. The researchers should use this as a source for bringing up new innovative products and practices in India.

Scenario of IPRs in Global trade:

From the above it is clear that the intellectual rights granted are varied and it takes much toll on the part of both the right holder as well as the state authorities to protect/enforce these rights. Further the rights are protected under national laws and therefore are enforceable within their national territories only. Therefore protection beyond national territory is much more complex and complicated. As there is upsurge in international trade, Protection of IPR, at the border is the key for a successful business around the globe. Globalization, multilateral trade and the new economic order are continuously reducing the geographical barriers to trade, rendering the global trade very challenging. The IPs have become important parameters influencing trade, and the transfer and exploitation of technology. As generation of intellectual property is closely linked to innovations, there is now competition in innovation. In other words, each player in a given field would try to outpace and overtake its competitors by introducing new products through new innovations. Therefore, one expects that a large number of IP rights would be generated and protected all over the world including India. The current importance of IPRs is dictated by the reasons such as (a) Increasing global competition; (b) Vanishing geographical barriers to trade;(c) Emergence of rapidly changing technologies; (d) Shortening of product life cycle necessitating quick introduction of new products; (e)Need to make high investment on R&D, production, marketing etc; (f) Need for human resources with a high level of skills etc.

The announcement of "the National IPR Policy" on 13th May 2016 by the Union government is a great step forward for India. The policies are aimed at increasing the IPR outreach, speed up approvals and enhance commercialisation. It aims to promote strong IP regime in the country and encourage innovation in order to achieve Country's industrial and economic development goals. This will provide efficient IP ecosystem and build up pace of industrial growth in the country.

Conclusions

As all of us are aware the whole world is turning out to be one market and unless the IP rights are suitably protected nationally as well as internationally, the very purpose for which these rights are conferred gets defeated. It will certainly cast dark shadows in further technological developments much needed for a prosperous, happy and healthy society. Therefore there is need for all industrial and commercial entrepreneurs to know more about the IP rights, wherein the need to take measure for creation of appropriate IPs, have necessary action plan for protection and exploitation of such IPs so as to gain advantage in the commercial places and market. For India to grow as one of the strong economic powers the author is of the firm belief and opinion that the enterprises should have proper IP strategy so as to strengthen their business strategy.

(To be continued as a series in 'Intellectual Property Rights and Protection in India')

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Photo Gallery

Webinar on GST-Recent Decisions by Hon. High Courts and Supreme Court by CA. V Raghuraman, Bengaluru on 18th August, 2020

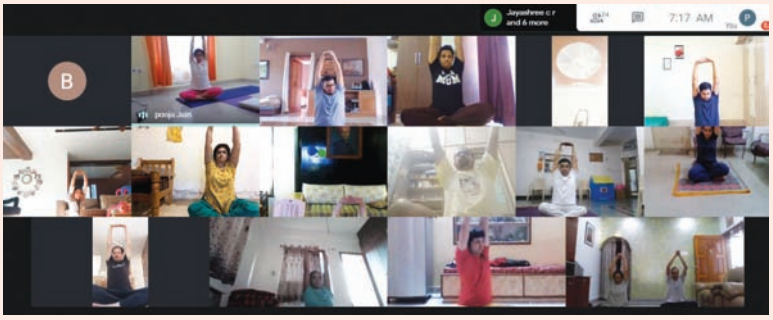
Webinar on Different Assessments under GST Law by speaker CA. A Saiprasad, Bengaluru on 21st August, 2020

Webinar on GST on Immovable Properties & Liquidated Damages by Adv. Sujit Ghosh, New Delhi on 29th August, 2020

Webinar on Faceless Assessment, Appeals and Taxpayers Charter by speaker CA. Mayank Mohanka, New Delhi on 5th September, 2020

Webinar on Audit under Karnataka Cooperative Societies Act, 1959 & its recent developments by speaker CA. B V Ravindranath, Sagar on 11th September, 2020

On behalf of the KSCAA, honoured newly elected Offfice Bearers of Bagalkot District Chartered Accountants Association (BDCAA) President CA Radheysham Mundra, Vice President CA Venugopal Kasat and Secretary CA Subhash Sangannavar



Yoga for Immunity by CA. Pooja Jain - 7 days batch from 4th September, 2020

Team KSCAA met Dr. B. V. Murali Krishna, Additional Commissioner of Commercial Taxes, e-Governance and discussed about conducting programs jointly with department

Team KSCAA Interaction with Shri. Tejasvi Surya, MP Bengaluru South

Team KSCAA met Shri. C V Sajeevan, RoC Karnataka and thanked him for considering joint representation from KSCAA in extending the AGM dates by 3 months from the due date

Karnataka State
Chartered Accountants Association®

REPRESENTATION SEEKING RELIEF MEASURES IN THE AUDIT OF CO-OPERATIVES

To,

Date: 24th August 2020

The Director
Department of Co-operative Audit
No. 17, Jayanivasa, Shankarmutt Road, Basavangudi, Bangalore-560 004

Hon'ble Sir / Madam,

SUBJECT: REPRESENTATION SEEKING RELIEF MEASURES IN THE AUDIT OF CO-OPERATIVES

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an Association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the problems / hardships faced by Chartered Accountants and business community.

We congratulate and applaud all your efforts of the department, for an excellent way in which it has been striving hard to discharge its statutory duties and functions as conferred under slew of the provisions, especially u/s 63 of The Karnataka Co-operative Societies Act of 1959 ('the act') and rule 29-A, 29-B, 29-C, 29-D, 29-F, 29-G, 30 and 30-A of The Karnataka Co-operative Societies Rules of 1960 ('the rules').

Chartered Accountants who are on the panel of auditors as maintained by your department are the members of The Institute of Chartered Accountants of India (ICAI). ICAI is a statutory body set up under an Act of Parliament in the name of The Chartered Accountants Act of 1949. ICAI is the professional accounting body which trains and regulates the profession of Accountancy in the country. It is the only licensing cum regulating body of the financial audit and accountancy profession in India. ICAI in addition to the role of training its members extensively and elaborately, acts as the regulator of this profession of Chartered Accountancy in India. In its role as a regulator, it formulates Accounting Standards in keeping pace with changing economic-scenario, suggests various governmental agencies in framing the accounting and auditing standards, frames & monitors the standard on auditing and enforces the ethical values as enshrined in Code of Ethics and proactively takes action against its erring members who are found guilty.

We wish to state that we have written to your goodselves on various occasions, populating issues and possible solutions which arise while discharging the duties as an auditor of the Cooperative societies. There are certain unaddressed genuine concerns which are have been causing unwarranted difficulties and hardship to our members while performing their audit of Co-operative societies in the state. We thought to bring these concerns on the table through this representation, we urge you to take cognizance of these concerns and hardships as faced by our members and provide amicable resolutions to enable our members to discharge their onerous audit function in a more efficient and effective manner in future.

i. **Letter from Joint Directors seeking certain details-**

Recently, some of our members are in receipt of a letter from the Joint Director seeking among many things, details of following information from our members –

- Name, qualification and experience of individual staff members employed
- Number of audits being handled of Co-operative societies
- Number of audits being handled of Souharda societies
- District wise break up of audits being handled of Co-operative societies and Souharda societies

The letter further mentions, in case of non-submission of details or delay in submission of such details by the members, the letter contained a scathing warning of consequences of rejection from acceptance of audit reports by the department.

It was appalling to note that the said letter does not overtly mention any relevant provisions of the statute or rules conferring those powers to the officer. It is a generally accepted cardinal principle of every officer of the Government that while sending communications, should clearly make a mention of relevant provisions of the law under which he is exercising powers for sending such communications. Thus, the concerned officer does not have any statutory jurisdiction for sending such letter to our members seeking details mentioned therein. Ergo, our members are not obliged to respond to such letters written without the authority of law. Regretfully, it seems to us that this letter was written with a prejudiced approach and out of spite by the said officer.

We request you to issue necessary instructions to your concerned officers to kindly restrain from sending such extra jurisdictional communications in future and withdrawal all such communications if already sent.

ii. **Submission of 'A Statement'-**

Regarding the department's requirement that all our members to submit periodic monthly audit progress report in form name 'A Statement' to jurisdictional DD or JD.

We would wish to bring to your kind notice that our members are governed by the strict code of ethics of ICAI which espouses the manner and conduct of members during their professional practice. Further, our members are also required to adhere to the Standards of Auditing as prescribed by ICAI while discharging their onerous duty as an auditor of any client, including co-operative societies. These Standards of Auditing are mandatory in nature and are followed by all our members across India.

We regret to mention that, the requirement of furnishing of the periodical statement amounts to an excessive intrusion by the department in to the normal working of our members. Therefore, puts an unwarranted shackle on the paths of efficient discharge of their onerous duties as an auditor of the co-operative societies. These type of unwarranted reporting practices, is not in vogue in the audits performed by our members under Companies Act, Income tax Act, Goods and services Act, etc. However, these statutes prescribe penal consequences where the reporting time lines are defaulted. In case of co-operative audits, our considered view is that the requirement of submission of this statement is a misplaced & impractical concept. Department in our considered and humble view has arrogated to itself the power of requiring compliance of submission of this statement by our members *sans* statutory jurisdiction.

We plead to withdraw this requirement of submission of 'A Statement'.

iii. **Attending monthly meetings-**

Aside from the requirement of submission of periodic monthly statement as referred above, our members have been also asked to physically come and attend periodical review meetings at the DD or JD offices to discuss and give an account of the progress of the audits being carried. This stance of the department of holding these review meetings and requiring the physical presence of our members in such meetings is unwarranted, unreasonable and causes undue inconvenience for our members. This goes on to indicate that the department is excessively interfering in the discharge of onerous audit functions by our members. In this regard we wish to bring to your knowledge that, the practice of holding these type of review meetings is not followed by any of the tax or regulatory authorities such as Ministry of corporate affairs, Income tax department and Goods & services tax department.

We therefore request your good selves to obliterate the requirement of holding such meetings and dispense on the requirement of our members' attendance in such meetings.

iv. **Submission of Audit reports digitally-**

Today we all are living in a digital era where almost all regulatory and revenue authorities like Ministry of corporate affairs, Income tax department, Goods and services tax department, etc accept audit reports from our members in digital mode after DSC authentication. Considerable enabling provision in Information Technology Act 2000, has allowed numerous departments to move to digital era and allowed smooth functioning of such departments. This is the current practice and so also a way forward trend with which these authorities would continue to function in future. The department still follows the traditional practice of accepting manual audit reports in paper form which requires unproductive travel and visit time to departmental offices. In this regard, we request your good selves to take leaf out of it and put necessary digital forms and put IT processes in place for enabling reporting of audit reports by our members in digital online mode. This would undoubtedly be fast, convenient, efficient and transparent way to conduct the affairs of audit function, which would enormously help our members, the Department of co-operative audit & the Registrar.

The departmental present requirement on submission of audit reports is that our members or their representatives submit a physical form and electronic form of audit report at DD or JD office.

On the premise of digital mode of report submissions, we hereby request to please obliterate the present practice being followed by your department and migrate towards more transparent and efficient system of report submissions.

v. **Empanelment of auditors-**

The list of auditors is prepared and maintained in accordance with first proviso to section 63(1) of the Act read with rule 29-B. In terms of these provisions the department needs to check the bona fide character of the applicant for empanelment and check whether he possesses necessary qualification and experience as espoused in explanation (i) and (ii) of section 63. It is however observed that, our member applicants who have submitted the application form for empanelment along with all supporting necessary documents have unnecessarily been called to visit department office premises in Bengaluru along with original source documents and scanned images of all documents in pen drive or compact disk form. You may be aware that our members are located in across various districts of state of Karnataka, they have been called to personally come travelling from far off places like Raichuru, Bidar, Belagavi, etc. and visit your office to take the stamp of validation for inducting in to the panel of auditors. After our members have submitted the applications at your office either personally or by postal route either way, why are they called to visit the department personally. We thought it is pertinent to mention that, the application for empanelment by our members is set to knot the department as long as such members do not personally come and visit your office. Further, the department does not have any time threshold on the disposal of empanelment application as few of applications of our members are kept on hold with the department for more than 1 year.

In this regard, we may please suggest that, in order to comply with the requirement of sub rule 2 of rule 29-Bof the rules whereby Director is duty bound to scrutinise the empanelment applications received from our members, this activity of scrutiny of applications may be delegated to jurisdictional DD or JD who are demographically closer in proximity to our members in their respective districts. Our suggestion is based on our understanding that the definition of expression 'Director' as provided in section 2 (a-4) of the Act *inter-alia* includes both DD and JD as well. This would make a world of a positive difference to our members by obviating their need of undertaking unwarranted travel to Bengaluru from far-off remote locations in the state for producing original education qualification certificates and scan images of all documents in pen drive or compact disk form.

We beseech and implore your good selves to

- **dispense this type of uncalled and unwarranted requirement of personal meetings which is nothing but only a source of causing undue hardship and difficulty to our members located at remote places in the state.**
- **do the needful to ensure that the process of empanelment of auditors becomes very convenient, smooth, simple, transparent and efficient without compromising on the requirements that the statute has with respect to scrutiny of application, qualification and experience of our members.**
- **dispose the application in time bound manner as few of applications of our members are kept on hold with the department for more than 1 year without any reason.**

With regard to points i, ii and iii as mentioned above, we would urge to draw your kind attention to section 63(20) of the Act of 1959 read with sub rule (10) of 29-B of the Rules, which empower your good selves only to "**co-ordinate**" with the co-operative societies and the auditors for ensuring completion of audit of accounts on a timely manner.

Also sub rule (12) of rule 29 of the Rules provides competence to your good selves to issue necessary **"Guidelines"** to the auditors for the purpose of ensuring timely completion of audit.

As per our reading of the provisions of the statute and rules referred above, we submit to your good selves that the department has *power or competency to issue only necessary guidelines and not mandatory instructions* to the auditors for the conduct of audit of co-operative societies. Under the garb of this specific power as referred above, the departmental officers have been issuing slew of various types of mandatory instructions to our members with negative consequences on non-compliance. The various letters or communications which contains these instructions to our members, to our surprise do not contain specific provisions of law under which such instructions issuing powers are used by such officers. Ergo, these mandatory instructions such as submission of monthly A Statement, attendance at the monthly meetings at department office, letter seeking certain details from auditors, etc. are ex facie bad in law and hence patently do not warrant reply or compliance by our members.

We implore on you to interfere at this time and pass necessary advice and guidance to your departmental officers that they exercise reasonable care while issuing instructions and circulars, that they abstain from sending any future communications *sans* statutory jurisdiction and also *sans* mention of relevant jurisdictional provisions.

We at KSCAA sincerely hope that the department and auditors need to work in harmony and cohesively to benefit the stakeholders at large. We believe that various pain points, issues and practical difficulties of our members along with suggestions as listed in the foregoing pages would invite your kind consideration. We are also optimistic that your good selves would definitely make an 'all out' effort to ensure that the necessary steps would be taken to provide relief and resolution on all these issues.

CA. Chandrashekara Shetty
President

CA. Chandan K Hegde
Secretary

CA. Sateesha Kalkur
Chairman, Representation Committee

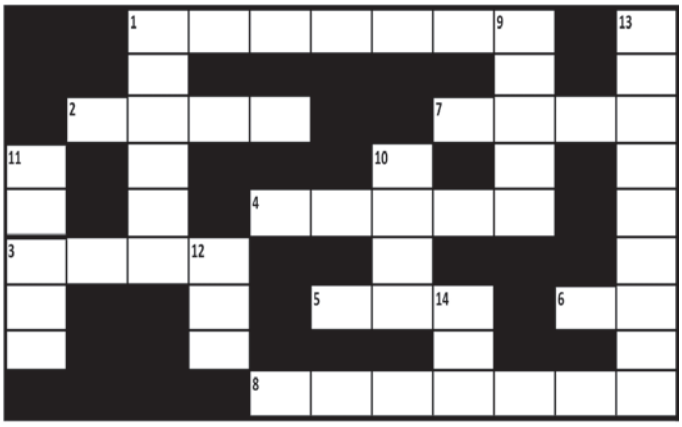
JOINT REPRESENTATIONS:

1. Representation on Request for extension of due date for holding Annual General Meeting (AGM) under the Companies Act, 2013 for companies whose financial year has ended on 31.03.2020

2. Representation on Request for making necessary legislative and procedural amendments in the Income-tax Act, 1961 to ensure transparency in claim of Tax Deducted at Source (TDS) and to reduce hardships to the tax payers

For above said representations, please visit: www.kscaa.com

CROSS WORD 1



DOWN	
1	Examining and certifying a subject matter belonging to another party (6)
9	Earnings generated and realised on an investment over a particular period of time (5)
10	One of a homonym word, is the most common word used across audit reports (4)
11	Investors/traders track this regularly. (5)
12	..... is the total asset being controlled by the mutual fund. (3)
13	One of the fundamental principles of professional ethics relevant to an auditor while conducting an audit of financial statements. (9)
14	A type of return filed to declare that no amount has been paid as taxes in the respective financial year. (3)

ACROSS	
1	A fixed sum of money paid each year (7)
2	The abolition of tax on this in 2005 made India the most liberal stock market regimes.(Abbreviation) (4)
3	This is considered to be a strategic asset of a business (4)
4	The factor which if present in Financial statements, require auditor to report as per SA 240 (5)
5	Track the GST application status in the GST portal with this (abbreviation) (3)
6	First word of ABCD of emerging technologies (abbreviation) (2)
7	Type of financing where an organisation borrows money to be paid back at a future date with interest (4)
8	The purpose of SQC1 is to offer guidance with respect to the responsibilities of a firm for the system of..... control for its audits and reviews. (7)

Answers will be published in next month's News Bulletin.

SUDOKU-1

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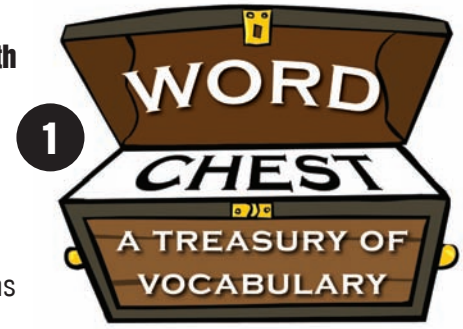

Word of the month
Equanimity

What is this?
Maintaining composure in stressful situations

Use instead of:
Calmness, Composure

How can I use it?

- ✓ People engage in meditation to strengthen their ability to preserve their *equanimity* in times of stress.
- ✓ He accepted both the good and the bad with *equanimity.*

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47th Annual General Meeting - Photo Gallery

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