KSCAA

Karnataka State Chartered Accountants Association ®

NEWS BULLETIN

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Karnataka State Chartered Accountants Association

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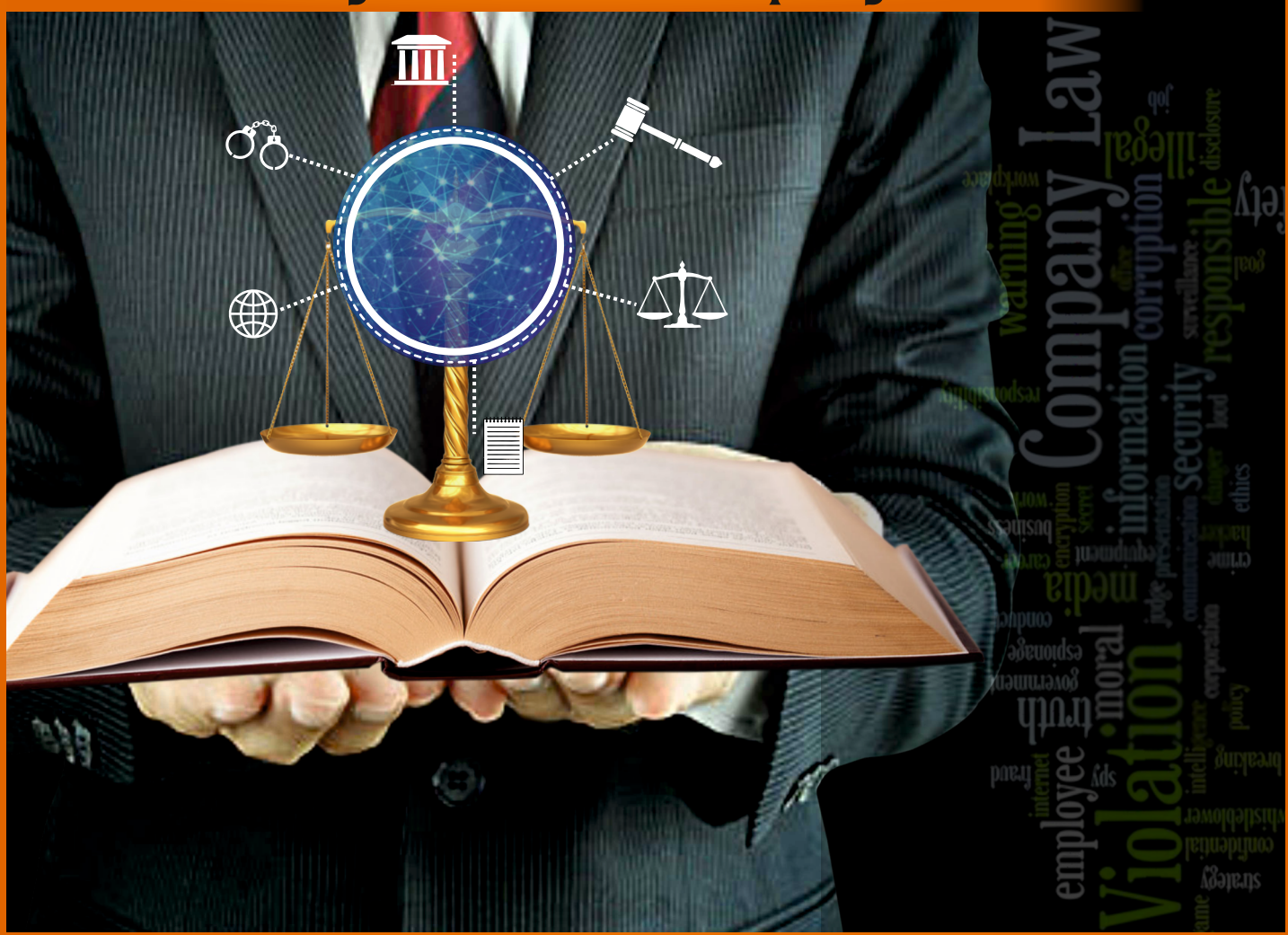
Corporate Law & Insolvency and Bankruptcy Code



EVOLVE EXCEL EMPOWER

- Powers of CIT (A)
- IPR in India
- FCRA
- GST-Rectification of Errors
- Financial Reporting & Assurance
- Updates under Indirect Taxes

From the President

Dear Professional Friends,

On the global business front, America's competition regulator filed an antiTRUST lawsuit against Facebook, alleging that it bought social-media rivals (WhatsApp and Instagram), to suppress competition. This follows a similar sweeping antiTRUST lawsuit against Google, arguing the company struck deals and engaged in other tactics to expand its search and advertising empires. With Apple and Amazon being on the radar of the competition watchdog, market dominance may become a thing of the past.

Back home, similar antiTRUST issues (Farm Bills, Anti-Cow Slaughter Bill, Anti-Conversion Bill, and the feud between Mistry and Tata Sons) have occupied the limelight and seems to be a long-drawn battle. Daily Coronavirus cases in the world's second-most populous country have stayed below 50,000 for a month, despite a busy festival season. Positive vaccination views, falling Coronavirus cases, and economic revival led to Nifty (breaching 13500 levels) and Sensex (above 46000 levels) making all-time highs. These Indices, considered to be a barometer / representative, bring cheers to otherwise dull 2020.

Representations

Our Association has made representation to the Hon'ble Finance Minister for extension of various time limits under Sections 54 to 54GB of the Income-tax Act, 1961 (the Act). Hoping that the concerned will lend ears to the difficulties faced by the assessees during these pandemic times. We undertake to be proactive in making appropriate representations before the concerned authority to redress the difficulties faced by the members and stakeholders if any. Thank you for placing TRUST and confidence in the Association, with your difficulties and issues.

News Roundup

Direct Tax

On the direct taxes front, while the professionals are busy meeting the Reports and Returns deadline, the Income Tax Department is back in action with a push for Vivad Se Vishwas Scheme (VSVS), Faceless Assessment, and collection of outstanding demand.

Income-tax disputes consume a lot of resources both on the part of the Government as well as Taxpayers. A total of 4,83,000 Income tax cases, involving a tax effect of INR 9.33 trillion were pending. This amount is greater than the one-year revenue of the Government from direct tax. VSVS, which allows the assessee to settle direct tax disputes, is open till 31.12.2020. CBDT has come up with 2 sets of FAQs and relaxed 15 days window to make the payment without an additional amount on receipt of Form 3 under VSVS.

In line with the ongoing initiatives of the Income Tax Department for integrating with other Government agencies and bodies, Income-tax e-filing portal has completed its integration with ICAI for validation of UDIN in the case of Tax Audit Report will help in weeding out fake or incorrect reports not duly authenticated with ICAI.

Indirect Tax

Last week of December is always a fun filled one on account of Christmas and New Year Celebrations. The celebrations can be amplified by ensuring that all the GST Annual Compliances for FY 2018-2019 are completed within the due date of 31.12.2020. The New Year 2021 brings with it, new changes in the GST law and as Chartered Accountants the responsibility lies on us to help our clients be prepared for the same.

a) Online Module for GST Annual Return for FY 2019-2020 is now made available by the Department.
b) E-Invoicing system shall be made compulsory for all business houses with aggregate turnover exceeding Rs.100 Crores.
c) The much-awaited Quarterly Return Monthly Payment Scheme (QRMP) along with Invoice Furnishing Facility (IFF) shall be activated from 01.01.2021.

New changes bring with it, new opportunities and challenges. As Chartered Accountants we must make the best out of opportunities and identify solutions for new challenges. KSCAA is always present to help identify the solutions for new challenges and enable Chartered Accountants to make the best out of the new opportunities.

Corporate Law

MCA vide circular dated 09.11.2020, had extended the LLP Settlement Scheme, 2020 where the Statement of Account and Solvency for the Financial Year 2019-2020 which has been signed beyond the period of six months from the end of financial year but not later than 30.11.2020, shall not be deemed as non-compliance. This circular rectifies the anomaly arising out of the earlier Circulars.

All stakeholders may also note that the Companies Fresh Start Scheme (CFSS), LLP settlement Scheme and the extended time limit for all pending documents to be filed with the MCA and for conducting of Annual General Meeting are due by 31.12.2020.

Conclusion

In a world that is in the grip of public TRUST crisis, our profession is considered to be the most TRUSTed profession and is bestowed with sovereign responsibilities and obligations. This broad crisis of public disTRUST can be mitigated if we discharge our duties, in this compliance calendar month, with utmost Integrity, Honesty, Devotion, and Diligence.

A lovely thing about Christmas is that it's compulsory like a thunderstorm and we all go through it together. Let's buckle up and enjoy the ride. Merry Christmas and Happy New Year to all the TRUSTed Members and your family!

TRUST you will enjoy reading this month's News Bulletin!

Yours' TRUST worthy,
CA. Kumar S Jigajinni,
President

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Karnataka State Chartered Accountants Association ®

VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

MOTTO: KNOWLEDGE IS STRENGTH

KSCAA welcomes articles & views from members for publication in the news bulletin / website.

email: journal@kscaa.com | Website: www.kscaa.com

Powers Of Commissioner Of Income Tax (Appeals)

■ CA. S Krishnaswamy

- ***The CIT (A) can also make an enhancement but not on a new source.***
- ***Additional evidence or new ground can be taken before CIT (A).***
- ***The CIT (A) should make a Speaking Order and ensure that all the Grounds and Explanations taken before AO have been considered.***

The powers of the Commissioner of Income Tax (Appeals) are laid down in Section 251 of the Income Tax Act, 1961. One of the powers conferred on Commissioner of Income Tax (Appeals) is to make an enhancement, which power is not with the Tribunal, after giving a reasonable opportunity to the assessee. If such an opportunity is not given an addition cannot be sustained as held in the case of **M/s. Maharishi Dayanand Educational Society vs. Income Tax Officer (Exemption) (2020) 81 ITR (Trib) (S.N) 86 Delhi**. It was held by the Delhi ITAT in the above stated case that "CIT (A) in his Order did not mention if any Notice had been served upon the assessee for hearing of the appeal. The Appellate Order had been passed **without giving reasonable, sufficient opportunity** of being heard to the assessee. Further the contention of the assessee that in penalty proceedings the receipts shown were below the prescribed limit which required adjudication of the facts on merit. In view of this matter, his Order was set aside and the matter was restored to him with a direction to re-decide the appeal of assessee in accordance with law, by giving reasonable, sufficient opportunity of being heard to the assessee".

Bangalore ITAT in the case of **Ragunathan Venkata Rajendran vs. ACIT (2020) 81 ITR (Trib) (S.N) 71 (Bangalore)** while considering submissions made to CIT (A) during appeal proceedings, it was held that *"the entire addition of Rs.19,58,909/- made by the Assessing Officer was challenged by the assessee before the CIT(A). The CIT (A) had considered only 2 out of 7 items of expenditure listed by the Assessing Officer in the Order of assessment. **He did not consider the submissions** with regard to the remaining items of expenditure. The entire issue of disallowance had to be considered afresh by the CIT (A), after taking a holistic view of the basis of disallowances made by the Assessing Officer and the claim of assessee that the expenses were incurred for the purpose of earning interest income. Accordingly, the Order of CIT (A) was set aside and the CIT (A) was directed to decide the issue of disallowance of expenses afresh in accordance with law."*

The Commissioner of Income Tax has also the power in penalty proceedings to enhance the penalty apart from reducing or cancelling but after giving a specific opportunity to assessee.

CIT (A) powers are as wide as that of the Assessing Authority i.e his powers are coterminous with that of the Income Tax Officer:

It was held by the Allahabad High Court in the case of **M/s. S.D Traders vs CIT ITA No. 159 of 2016** judgement pronounced on 03rd of September 2019 that-

*"7. We have heard Sri A.N. Mahajan, learned standing counsel for the revenue and nobody has appeared on behalf of the respondent-assessee. The learned counsel for the Revenue submitted that under the Explanation to Section 251 of the Act, the Appellate Authority is empowered to consider and decide any matter arising out of proceedings in which the Order appealed against was passed notwithstanding the fact that such matter was not raised before him by the Appellant and therefore, even though the trading results were not subject-matter of the appeal before the Commissioner of Income Tax (Appeals), he was justified in going into the trading results and substituting it by his own findings. Shri Mahajan has relied upon a decision of Apex Court in the case of **CIT v. Nirbheram Daluram [1997] 224 ITR 610** wherein the Apex Court has held that the Appellate Assistant Commissioner is entitled to direct additions in respect of items of income not considered by the Income Tax Officer. The Apex Court has followed its earlier decision in the case of **Jute Corpn. of India Ltd. v. CIT [1991] 187 ITR 688** and has held that the power of the Appellate Assistant Commissioner is coterminous with that of the Income Tax Officer and he can do what the Income Tax Officer can do and also direct him to do what he has failed to do."*

Further, the issue is, can he entertain a ground which is not taken before the Assessing Authority or Return of Income relating to a claim for deduction or exemption?

Rule 46A throws light on production of additional evidence before the CIT (A) which states-

(1) The rule prescribes that the Appellant shall not be entitled to produce before the first Appellate Authority that may be Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals)], any evidence, whether Oral or Documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer. After making such a general statement, which is in consonance with the principle stated in the above judgment, exceptions have been carved out that in certain circumstances it would be open to the CIT (A) to admit additional evidence. Therefore, additional evidence can be produced at the First Appellate stage when conditions stipulated in Rule 46A are satisfied and a finding is recorded.

a. where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

b. where the Appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

c. where the Appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any Ground of Appeal; or

d. Where the Assessing Officer has made the Order appealed against without giving sufficient opportunity to the Appellant to adduce evidence relevant to any Ground of Appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority records in writing the reasons for its admission.

(3) The First Appellate Authority shall not take into account any evidence produced under sub-rule (1) unless the First Appellate Authority been allowed a reasonable opportunity-

a. to examine the evidence or document or to cross-examine the witness produced by the Appellant, or

b. to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the Appellant.

4) Nothing contained in this rule shall affect the power of the First Appellate Authority to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the Assessment or Penalty (whether on his own motion or on the request of the Assessing Officer under clause (a) of sub-section (1) of Section 251 or the imposition of Penalty under Section 271.

The Hon'ble Delhi High Court's judgment in the case of **CIT v. Virgin Securities and Credits P. Ltd (2011) 332 ITR 396 (Del)** wherein the Hon'ble Court held that the CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of the appeal.

The Hon'ble Delhi High Court's judgment in the case of **Chandrakant Chanu Bhai Patel 202 Taxman 262** held that if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.

The Hon'ble High Court of Delhi in the case of **Commissioner of Income Tax vs. Manish Build Well (P) Ltd. in ITA No.928/2011 dated 15.11.2011 reported as (2011) 63 DTR Judgements 369** wherein their lordships held that after admission of additional evidence, it is mandatory to follow Rule 46A(3). It was found that the Assessing Officer only objected the admissibility of additional evidence and restricted himself to comment on the merits of the evidence. Therefore, the Hon'ble Court observes that the ld. Commissioner of Income Tax (A) did not follow the mandatory procedure for consideration of additional evidence at the First Appellate stage.

ITAT Delhi in the case of **ITO Vs. Kuber Chand Sharma-ITA No. 3982/Del/2009** held that *"In our considered view, CIT(A) has admitted the additional evidence without fulfilling the categorical conditions laid down in Rule 46A, as explained by Hon'ble Delhi High Court in the case of* ***Manish Build Well Pvt. Ltd.*** *Consequently, his order on this issue is not tenable; however, the issue of merits remain. Besides, from the record it emerges that the assessee wanted to file only Government records and Revenue records about crops. In the entirety of facts and circumstances, the interest of justice will be served if the matter is set aside, restored back to the file of AO to decide the same afresh after affording the assessee sufficient opportunity of being heard."*

The Hon'ble High Court of Delhi in the case of **Commissioner of Income Tax vs. Manish Build Well (P) Ltd. in ITA No.928/2011 dated 15.11.2011 (2011) 63 DTR Judgements 369** wherein it was held that after admission of additional evidence, it is mandatory to follow Rule 46A(3) of the Rule. However, sub-rule (3) which interdict the CIT (A) from taking into account any evidence produced for

the first time before him unless the Assessing Officer has had a reasonable opportunity of examining the evidence and rebut the same, has not been complied with. There is nothing in the Order of the CIT (A) to show that the Assessing Officer was confronted with the confirmation letters received by the assessee from the customers who paid the amounts by cheques and asked for comments. Thus, the end result has been that additional evidence was admitted and accepted as genuine without the Assessing Officer furnishing his comments and without verification. Since this is an indispensable requirement, we are of the view that the Tribunal ought to have restored the matter to the CIT (A) with the direction to him to comply with sub-rule (3) of Rule 46A.

ITAT Delhi **Income Tax Officer Vs Mrs. Anvita Abbi ITA No. 3707/Del/2011** admittedly, learned CIT (A) admitted the fresh evidences but did not allow any opportunity to the Assessing Officer for examining those evidences or furnishing any evidence in rebuttal as required by sub-rule (3) of Rule 46A. Therefore, the Order of learned CIT (A) is in violation of Rule 46A. In view of the above, we set aside the Orders of authorities below and restore the matter to the file of the Assessing Officer. We direct the assessee to produce all the evidences before the Assessing Officer. The Assessing Officer is also directed to allow adequate opportunity to the assessee to produce all these evidences before him. The Assessing Officer will re-adjudicate the issue afresh after considering all the evidences as may be furnished by the assessee before him.

Enhancement:

The Hon'ble Delhi High Court had held in the case of **Gurinder Mohan Singh Nindrajog vs CIT [2012] 348 ITR 170 (Del)** that-

"19. We have considered the submissions of both the parties. There is no doubt about the fact that while framing the assessment even under Section 143(3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admissible under the provisions of the Act thereby leading to escapement of income. The Income-tax Act provides for remedial measures which can be taken under these circumstances.

While framing an assessment under Section 143(3) of the Act, any of the following situations may occur;

(a) the Assessing Officer may accept the Return of Income without making any addition or disallowance; or

(b) the assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of Order of Assessment but he under assessed such sums; or

(c) he makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income;

(d) yet, there can be another situation where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry;

(e) further another situation may arise, where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the Revenue, or

(f) where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for Computation of Income.

20. To ensure for each of such situations, an income which ought to have been taxed and remained untaxed, the Legislature has provided different remedial measures as are contained in Sections 251(1)(a), 263, 154 and 147 of the Act.

21. In the category stated in (a), obviously if an income escapes an assessment, the provisions of Section 147 of the Act can be invoked, subject to the condition stated in the proviso to the said section. In the category of cases falling in category (b), Section 251(1)(a) provides the Commissioner of Income Tax (Appeals) could enhance such an assessment qua the under assessed sum, i.e., where the Assessing Officer had dealt with the issue in the assessment and was the subject-matter of appeal. In category falling in (c) and (e), the Commissioner of Income Tax has been empowered to take an appropriate action under Section 263 of the Act In the category of cases falling under Clauses (d) and (f), appropriate action under Section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be taxed. There can be situations where an item has been dealt with in the body of the order of assessment and the assessee being aggrieved from the addition or disallowances so made, had preferred an appeal before the Commissioner of Income Tax (Appeals) against the said addition and disallowance, the said disallowance and addition being the subject matter of appeal before the Commissioner of Income Tax (Appeals) in such cases, the Commissioner of Income Tax (Appeals) has been empowered under Section 251(1)(a) of the Act to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment by under assessing the same as the same was the subject-matter of the appeal as per

the grounds of the appeal raised before him. In other words, the Commissioner of Income Tax (Appeals) has a power of enhancement in respect of such item or items of income which has been dealt with in the body of the order of the assessment, and arose for his consideration as per the grounds of appeal raised before him, being the subject-matter of appeal."

It was held in the case of **Green Valley Infracity P Ltd vs ITO (2020) 80 ITR (Trib) 388 (Delhi)** that *"the Order was passed by the CIT(A) without applying his mind and without complying with the directions of the Tribunal. He should have issued a fresh Notice u/s 251(2) to the assessee for substantiating its claim in order to prove the documentary evidence and to answer the query raised by him for the Enhancement Notice, but he did not do this which was contrary to law and facts and hence the Order was not sustainable in the eyes of law. Further, the Notice issued by the Inspector of Income tax with the approval of the CIT (A) showed the predetermined mind of the Inspector and non-application of mind of the authorities and even the Inspector of Income-tax was not competent to issue such Notice. Even otherwise, the Assessing Officer had examined all the issues with supporting evidence filed by the asssessee which was a matter of record. The CIT (A) did not bother to examine the materials which were already on record as certified by the assessee. The Order was passed by the CIT (A) in contravention of the directions of the Tribunal. Therefore, Enhancement Notice was not sustainable in the eyes of law and resultantly the enhancement made by the CIT (A) was not tenable."*

Delhi High Court in **CIT v. Union Tyres [1999] 240 ITR 556 (Delhi)** reiterated the same principle that the First Appellate Authority cannot consider new scope of income under Section 251(1) of the Act while enhancing the Assessment and the appellate proceedings has to be confined to those items of income which were the subject-matter of original assessment.

In **CIT v. Sardari Lal and Co. [2001] 251 ITR 864 (Delhi)**, the issue was whether the Appellate Authority has the power under Section 251 to discover a new source of income was referred to a Full Bench. After examining the authorities the full bench has held that:

"Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under Section 147 / 148 of the Act and Section 263 of the Act, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the First Appellate Authority...."

Speaking Order:

It was held in the case of **AP Garments P Ltd vs DCIT (2020) 80 ITR (Trib) (S.N) 42 (Kolkata)** that *"the Commissioner of Income Tax (Appeals) had preferred not to discuss any factual issues or law regarding the challenge raised by the assessee in respect of the addition made by the Assessing Officer. The Order of the Commissioner of Income Tax (Appeals) was an Exparte Order and he had passed the Order without considering the grounds of appeal raised before him. The right of appeal of the assessee is a statutory right and the appeal referred by the assessee would become meaningless, if the Commissioner of Income Tax (Appeals) did not adjudicate the ground raised by the assessee on the merits. The Commissioner of Income Tax (Appeals) had remarked that he had gone through the Assessment Order, Statement of Facts as well as the Grounds of Appeal and had seen from the Assessment Order that the Assessing Officer had added an amount of Rs.3,01,27,680/- under Section 69C. He mentioned that the assessee did not appear nor file any written submission online. Therefore, he found no reason to deviate the Assessment Order and, therefore, he confirmed it. In the Statement of Facts filed before the Commissioner of Income Tax (Appeals), the assessee had given a detailed statement of facts while challenging the action of the Assessing Officer, which he had not touched upon in his Order. He had not passed a Reasoned or Speaking Order in respect of Grounds of Appeal raised by the assessee. Since none appeared on behalf of the assessee despite Service of Notice, he should have called for the Assessment Record and thereafter, passed the Order on the merits, which he had not done. The assessee was also expected to be vigilant and should pursue its appeal earnestly and diligently by filing return submissions as well as documents, if so advised, in support of the client and be present either through its Directors or through its Representative and explain the fact and law in support of the grounds raised by it. The assessee was to be diligent while pursuing. The Order of the Commissioner of Income Tax (Appeal) was set aside and the appeal was restored to him with a direction to adjudicate the Grounds of Appeal on the merits after hearing the assessee and going through the submissions and documents and to pass a Speaking Order in accordance with law."*

Conclusion:

The assessee must show vigilance in pursuing the Grounds and position taken before the AO and also produce any critical evidence which was left out at assessment stage.

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INDIRECT TAX UPDATES

■ CA. Raghavendra C R & CA. Bhanu Murthy J S

Statutory Amendments

1. Amendments relating to Filing of Monthly / Quarterly Returns:

A. Provisions of Section 39 of CGST Act, 2017, which provides for Filing of Returns, was re-casted vide Section 97 of Finance Act(No.2),2019. The said Amendment has been Notified w.e.f. 10.11.2020 vide Notification No. 81/2020 dt. 10.11.2020.

B. Rules which are amended effective from 10.11.2020:

a. **Rule 61(6):** New sub-rule (6) has been inserted to provide for time limit for filing GSTR-3B for the months of October 2020 till March 2021.

b. Rule 61A

New Rule 61A has been inserted providing for manner of opting for furnishing Quarterly Returns, in terms of proviso to Section 39(1) [Effective from 10.11.2020]:

(i) Every registered person intending to furnish return on Quarterly basis may indicate his preference of filing the returns Quarterly within a period starting from 1st day of the Second Month of the preceding Quarter till the last day of the First Month of the Quarter for which the option is being exercised.

(ii) However, the option once exercised shall continue unless:

(a) it becomes ineligible for furnishing the return on a Quarterly basis

(b) opts for furnishing of return on a Monthly basis

(iii) A registered person shall not be eligible to opt for furnishing Quarterly return in case the last return due on the date of exercising such option has not been furnished.

(iv) A registered person, whose Aggregate Turnover exceeds 5 crore rupees during the current Financial Year, shall opt for furnishing of return on a Monthly basis, from the First Month of the Quarter succeeding the Quarter during which his Aggregate Turnover exceeds 5 crore rupees

C. Rules amended w.e.f. 01.01.2021

I. Rule 59 of CGST Rules, 2017- GSTR-1

Rule 59 of CGST Rules, 2017 which provides for form and manner of furnishing of Outward Supplies (in GSTR-1) has been amended and new set of rules has been substituted w.e.f. 01.01.2021. The summary of the amendments are as below:

a) Every registered person, who is required to furnish the details of Outward Supplies of Goods or Services or both shall furnish such details in FORM GSTR-1.

b) The registered persons who are required to furnish GSTR-3B on Quarterly basis may furnish details of Outward Supplies, for the First and Second Months of a Quarter, up to a cumulative value of Fifty Lakh rupees in each of the months, using Invoice Furnishing Facility (IFF) from 1st day of the succeeding month till 13th day of said month.

c) The details of Outward Supplies furnished using the IFF shall not be furnished in FORM GSTR-1 for the said Quarter.

i) The details of Outward Supplies were required to be furnished:

ii) Invoice –wise details of all inter and intra-state supplies.

iii) Invoice wise details of inter-state supplies with value >2.5 lakhs rupees made to unregistered person.

iv) Consolidated details of intra-state supplies made to unregistered persons.

v) Consolidated details of inter-state supplies with value >2.5 lakhs rupees made to unregistered person.

d) The details of Outward Supplies of Goods or Services or both furnished using the IFF shall include:

(a) Invoice-wise details of inter-state and intra-state supplies.

(b) Debit and Credit Notes issued during the Month

II. Rule 60 - Form and manner of opting for furnishing Quarterly Return [w.e.f 01.01.2021]:

- The details of Outward Supplies furnished by the supplier in Form GSTR-1 or using the IFF shall be made available electronically to the recipients(registered) in Part A of Form GSTR-2A / GSTR-4A / GSTR-6A.
- The details of invoices furnished by a Non-Resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal.
- Details of invoices furnished by an Input Service Distributor (ISD) in his return in Form GSTR-6 shall be made available to the recipient of credit in Part B of Form GSTR-2A.
- Similarly, details of TDS / TCS deducted / collected in GSTR-7 / 8 shall be made available to the deductee in Part C of Form GSTR-2A.
- Details of IGST paid on the Import of Goods or Goods brought in DTA from SEZ on a Bill of Entry shall be made available in Part D of Form GSTR-2A.
- An auto-drafted statement containing the details of Input Tax Credit (ITC) shall be made available to the registered person in Form GSTR-2B, for every month.

III. Rule 61: [substituted w.e.f. 01.01.2021]

i. Rule 61(1) relates to form and manner of furnishing FORM GSTR-3B return.

Class of PERSONS	Time period within which return to be furnished
All assessees who are required to file return on Monthly basis	20th day of succeeding Month
Registered persons who opt for filing returns on Quarterly basis:	
Taxpayers having Turnover of upto 5 crores and whose principle place of business in specified states	22nd day of the Month succeeding such Quarter
Taxpayers having Turnover of upto rupees 5 crores and whose principal place of business in specified states	24th day of the Month succeeding such Quarter

ii. Rule 61(2) provides that every registered person shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the Electronic Cash Ledger or Electronic Credit Ledger and include the details in the FORM GSTR-3B.

iii. In terms of the Rule 61(3) a registered person who is required to furnish Quarterly return in FORM GSTR -3B shall pay the tax due, for each of the First Two months of the Quarter, by depositing the said amount in FORM GST PMT-06, by the Twenty Fifth day of the month succeeding such month.

However, the Commissioner may, on the recommendations of the Council, by Notification, extend the due date for payment of tax in FORM GST PMT-06.

iv. In terms of sub-rule (4) the amount deposited by the registered persons under sub-rule 61(3) above, shall be debited while filing the return for the said Quarter in FORM GSTR-3B, and any claim of refund of such amount lying in the Electronic Cash Ledger, if any, out of the amount so deposited shall be permitted only after the return in FORM GSTR-3B for the said Quarter has been filed.

D. Connected Notifications

I. The class of registered persons who are Notified to furnish GSTR-3B on Quarterly basis: **[Notification No. 84/2020 – Central Tax dated 10th November, 2020- effective from 01.01.2021]**

i. The registered person having an Aggregate Turnover of up to Five crore rupees in the Preceding Financial Year, and who have opted to furnish a return (GSTR-3B) for every Quarter under new Rule 61A, subject to certain conditions may furnish return for every Quarter from January 2021.

ii. The return for the preceding month on the date of exercising option has been furnished.

iii. The option once exercised shall continue, unless they revise the option.

iv. The following class of registered person who have furnished return for the tax period October 2020 on or before November 2020, it shall be deemed that they have opted for the Quarterly or Monthly return as under:

Sl.No	Class of registered person	Deemed Option
1.	Registered persons having Aggregate Turnover upto 1.5 crore rupees, and have furnished FORM GSTR1 on Quarterly basis in the Current Financial Year	Quarterly return
2.	Registered persons having Aggregate Turnover upto 1.5 crore rupees, and have furnished FORM GSTR1 on Monthly basis in the Current Financial Year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and upto 5 crores rupees, in the Preceding Financial Year.	Quarterly return

v. The option can be changed during the period 05.12.2020 to the 31.01.2021.

II. Special procedure to remit taxes on Monthly basis by registered persons opting for filing returns Quarterly: [Notification No. 85/2020 – Central Tax dated 10th November, 2020- w.e.f 01.01.2021]

The class of persons who have opted for Quarterly filing of returns may, in First month or Second month or both months of the Quarter, follow the special procedure such that they may pay the tax due, by way of making a deposit of an amount in the Electronic Cash Ledger equivalent to:

i. 35% of the tax liability paid by debiting the Electronic Cash Ledger in the return for the Preceding Quarter where the return is furnished Quarterly; **or**

ii. The tax liability paid by debiting the Electronic Cash Ledger in the return for the last month of the immediately Preceding Quarter where the return is furnished Monthly.

However, no such deposit is required, where :

- The tax liability for the respective months is NIL
- The balance available in Electronic Cash Ledger or Credit Ledger is sufficient to pay the liability for the First month of the Quarter or cumulatively for the First and Second months.

Further, the above option shall be available, only if the registered person has furnished the return for a complete tax period preceding such month.

2. E- Invoicing :

A. Notification No. 88/2020 – Central Tax dated 10th November, 2020

- Effective from 1st January 2021, issue of E-invoice is mandatory to all taxpayers (other than SEZ unit) whose Aggregate Turnover in any of the Financial Year from 2017-18, exceeds Rs. 100 Crores.

Note: For the period between October 2020 to December 2020, only registered persons whose Aggregate Turnover exceeds 500 crores rupees are required to follow E-Invoicing. From 01.01.2021, registered persons whose turnover is more than 100 crores are required to follow E-Invoicing procedure.

B. Notification No. 89/2020 – Central Tax dated 29th November, 2020

Penalty imposable for default of non-compliance to QR code requirement, would be waived where such requirements are complied within 1st April 2021.

3. Important Decisions

a) Shirdiri Sainath Industries Vs DCST 2020-TIOL-2052-HC-AP-GST

The Petitioners entered into agreement for milling of rice on Job Work. The contention of the GST department is that apart from the amount charged for the milling, the value of by-products such as brokens, bran, husk etc., retained by the petitioner should also be included for the purpose of levy of GST.

In this regard, the Court held that going by the terms of contract, which are meticulously incorporated, one can logically conclude that, if the parties wanted to covenant that by-products shall form part of the consideration, they would have mentioned in clear terms. Therefore, absence of such mentioning is an

indicative that the by-products which are allowed to be retained by the petitioner are not the part of the consideration. Therefore, value of such by-products cannot be added to the milling charges for the purpose of levy of GST.

b) Agarwal Foundries (P.) Ltd. vs UOI [2020] 121 taxmann.com 134 (TELANGANA)

Issue: Whether the Intelligence Officers of the GST Department of the Central Government can resort to physical violence against assessee / employees of assessee, while conducting interrogation connection with proceedings initiated against the petitioners under the C.G.S.T. Act, 2017?

Facts: The DGGST conducted simultaneous raids or search on the business unit of the petitioner assessee and the business units & residential house of the brother of the petitioner(who is unrelated and unconnected to the business of the assessee).

Held: The Court observed that there is no provision of any law which provides that the Departmental Officials are entitled to use physical violence against persons they suspect of being guilty of tax evasion while discharging their duties under the CGST Act, 2017.

Merely because the authorities under the CGST Act, 2017 are not to be treated as police officials, they cannot claim any immunity if they indulge in acts of physical violence against persons, they suspect of being guilty of tax evasion.

Protection against torture by State actors has been recognized as part of right to life and liberty guaranteed by Article 21 of the Constitution of India. We would also point out that our country has enacted the Protection of Human Rights Act, 1993 for protection of human rights in the country.

The Court held that in the special facts and circumstances of the case, the petitioner or their employees shall be examined in the visible range of their counsel, though not in hearing range.

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Rectification of Errors: Under the GST law

■ CA. Annapurna Kabra

Normally the process of rectification will be initiated only after the Assessment Order or any other Adjudication Order or decision is passed by the Authority. If appeal is filed against the Assessment Order, then application for rectification of order against that respective Order cannot be filed. The word "assess" means to judge or decide the amount, value or importance of something. In a taxing statute it often means the computation of the Turnover of the assessee, the determination of the tax payable by him, and the procedure for collecting or recovering the tax.

The Courts have interpreted the same by looking to the Object, Scope and Importance of the Statutes. It basically includes all proceedings, starting with the Filing of the Return or Issue of Notice and ending with the determination of tax payable by the assessee. The word "assessment" in its widest connotation starting with Issuing Notice to produce Books of Accounts, Verification of Books of Accounts, Application of Provisions, Analysis of the Judgements, Obeying the Instructions Issued from the Higher Authorities, Determining, Quantifying, Judging Allowing Rebates, Credits, Deductions and Creating Demand, etc.

As per Section 2(11) of CGST Act, the **assessment** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. It is stated in Section 160 of CGST Act 2017, that no assessment or rectification shall be invalid merely by reasons of any mistake if such assessment or rectifications are in substance and effect in conformity with or according to the requirements of the Act.

Section 161 of GST Act 2017 deals with the provisions of **'Rectification of Errors apparent on the face of Record'.** It states that the prescribed Authority can rectify the errors in Order or Decision or Notice or Certificate or any other document on its own motion or when brought to its notice by any officer appointed under this act or by the affected person **within a period of three months** from the date it is passed / issued. No such rectification shall be done **after a period of six months** from the date of issue of such Decision or Order or Notice or Certificate or any other document.

The maximum time limit of six months for rectification shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

The law contemplates for rectification of mistakes and provides that any amendment which has the effect of enhancing an assessment or otherwise in accordance with law of the person concerned shall not be made unless the prescribed Authority has given notice to the person concerned of its intention to do so and has allowed the person concerned the opportunity of showing cause, in writing, against such amendment. Therefore, if rectification of Order adversely affects the person then the principles of natural justice should be followed by Proper Officer by issuing Notice for Personal Hearing.

The Rectification Order can be passed by Assessing Officer within six months from the date of Original Order except the orders that require rectification of clerical / arithmetical mistakes. The mistakes can happen due to calculation or a mistake in writing or typing or due to careless mistake or omission unintentionally made. In cases of clerical / arithmetical mistake in Orders, Rectification Order may be issued even after six months.

Records are not defined under the GST law. It can include the documents and information's as produced by the parties during the hearing of the case and were available with the departmental authority at the time of passing the Order. The Hon'ble Bombay High Court in the case of Maharashtra State, **Bombay Vs Motwane Pvt Ltd reported in [1992] 84 STC 377W** held that, "the word 'record' cannot be construed as meaning not only the Assessment Record but also the Books of Accounts, various registers maintained and the Sale Invoices which the assessee might have brought to the Sales Tax Officer at the time of assessment.

The Rectification means making or setting right or correcting what is wrong. It can also be envisaged that Rectification may not result into change in the decisions in respect of matter which is already decided in the Assessment Order or Notices or Decisions. Various Courts have held that the Rectification of on an Order does not mean obliteration of the order originally passed and its substitution by a New Order.

The power of Rectification in the Order is confined only to mistakes apparent on the face of record. The application for rectification can be made if the mistake is ex facie and it is not capable of further arguments. If the issues in order is involving legal interpretation, then it cannot be rectified under Section 161. It is held by **Hon'ble Supreme Court in Master construction Co (P) Limited Vs State of Orissa and Another 1966 AIR 1047** that an Error shall be apparent on the face of the record, that is to say, it is not an Error which depends for its discovery, on elaborate arguments on questions of fact or law. In simple terms, a decision on the debatable point of law or undisputed questions of fact is not a mistake apparent from the record.

Even in certain scenarios the Authority may not have considered the arguments as submitted by the Appellant then such missed submissions may also not be considered as mistake apparent on record like deductions not allowed, supporting documents not considered, etc. Therefore, if there are interpretation points on facts of the case or from the law perspective, then it cannot be processed through Rectification procedure.

As asserted in Section 69 of erstwhile KVAT law, if any Order has been passed which includes any mistake which is apparent from record, then the said Order can be rectified by the prescribed authority at any time within five years from the **date of an Order** passed by it. In GST law the provisions to rectify the error is within six months from the date of **issue of Order or Notice or Decision, Certificate or any other document** as the case may be. Therefore, under the GST law the time limit for Notifying the Error by the assessee to the Authority is three months and the Authority can pass the Rectification Order within six months within specified date.

If we read the provisions of both the laws, the erstwhile law has used the terminology as **rectification of mistake** and whereas in the GST law, it states as **Rectification of Error.** So, we have to understand the difference between the Error and Mistake. Whether they can be used interchangeably which may be right for certain situations, but some would deem a particular word as more appropriate than the other. In many instances, is the Rectification provision being only for arithmetical error and clerical error then the time limit of six months is not applicable for arithmetical or clerical errors? In the erstwhile law the rectification provisions can be made only for order passed by the Authorities whereas in the GST law the rectification can be made for Order or Notice or Decision or Certificate or any other documents. In simple terms, the Rectification provisions under the GST law are applicable not only to Orders but also to Notice, Certificate or any other documents. Therefore, the Rectification provisions have been broadened as compared to erstwhile law with different time restrictions depending upon the type of Errors which may create misperceptions for Rectification procedures under the GST law.

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A Walkthrough On The FCRA Updates Following The Amendment Act Of 2020

■ CA. Naveen Kumar K

Recently, **"The Foreign Contribution (Regulation) Act, 2010"** was amended and **"The Foreign Contribution (Regulation) Amendment Act, 2020 No.33 OF 2020"** saw the light of the day by its publicity in the Official Gazette on 28th September, 2020.

Even before (on account of Demonetisation) and as an aftermath of the pandemic, the NGO sector has been faltering with an unsure gait, taking twists and turns in the alleys of economic slowdown. Not being enough, and rubbing salt over the wet wounds, the Government has brought in a host of Amendments, first as FCRA Amendment Bill of 2020 and thereafter from its wholesome passage, in both the Houses of the Parliament, as the FCRA Amendment Act, 2020. The draconian provisions are here to stay unless efforts are made to thwart some of the hard-hitting provisions incorporated therein. This was an unanticipated shocker to the development entities, that are supposed to be working in tandem with the Government and such loss of faith does not auger well for the undeveloped economic pockets in the Society.

One such Amendment being the Inward Remittance of foreign contributions in the specified branch of the State Bank of India, New Delhi. The intention is to channelise the receipts from foreign contributions of all registered development organisations at one place. The intention by itself may not be harmful, so long as the Home Ministry has its intention well in place to decide and disrupt foreign contributions that are against the national security of the country. But the past is a good indicator, and that the officials rule the roost by not sparing innocent NGOs even for unintentional procedural mistakes.

Be that as it may, the Ministry of Home Affairs has come out with a Notification dated 7th October, 2020, wherein it directs that **"State Bank of India, New Delhi Main Branch, 11, Sansad Marg, New Delhi-110001 (NDMB)"** is the specified bank for the purpose of receiving foreign contributions as per sub-section (1) of Section 17 of FCRA, 2010.

After this Amendment Act of 2020 and on publication of the Notification dated 07th October, 2020 by Home Ministry, the management in the NGO sector had gone into a tail-spin unable to understand the impact it creates on each of them. The questions that were immediately being asked included-

- What happens to entities with FCRA Prior Permission?
- What happens to entities under a renewal process?
- What happens to foreign contributions that are in the pipeline?
- Whether Chief Functionaries ought to travel to open bank accounts in the specified branch?
- And many other issues which remained conspicuously absent in the Notification.

Being sensitized by the public outcry, the Ministry of Home Affairs through the Public Notice F. No. II/21022/23(35)/2019-FCRA-III, dated 13th October, 2020 explained the Procedure for Opening & Operating the designated "FCRA Bank Account". As per the said Public Notice every person / NGO / Association which has been granted Certificate of Registration under FCRA or has been granted Prior Permission shall henceforth receive all the foreign contributions only in the designated FCRA Account to be opened in SBI Bank as specified in Notification dated 7th October, 2020. The relevant particulars of the designated SBI Branch i.e., New Delhi Main Branch (NDMB) are as follows:

- Branch Code: 00691
- IFSC Code: SBIN0000691

- SWIFT: SBININBB104
- E-mail: agmforex.00691@sbi.co.in; agmcommercial.00691@sbi.co.in; sbi.00691@sbi.co.in

In order to overcome practical difficulties, Government has ceded and has extended the date of opening such accounts, by the FCRA Account Holders, to 31st March, 2021. As a consequence, all existing FCRA account holders may operate their existing accounts till they open the new account as stipulated, be it a registered association or a prior permission holder. With effect from 1st April, 2021, it is incumbent that all FCRA accounts are held and operated in the designated branch, without exception unless it is extended further by the Government.

The said extension was silent whether the organisational representatives were to visit the designated branch to open accounts as is being done in the case of normal account opening in banks. Government again came out with a Public Notice explaining this aspect in **F. No. II/21022/23(35)/2019-FCRA-III,** dated 13th October, 2020, wherein it has been clarified that to open the designated FCRA Account in NDMB the applicant entity / NGO / association need not visit the NDMB at New Delhi. Instead, they may approach either the nearest SBI Branch or any other State Bank Branch of their choice for opening the FCRA Account. Further, it has also clarified that a **"Standard Operating Procedure (SOP)"** has been worked out to facilitate opening and operating the FCRA bank account which will be uploaded in the FCRA portal.

It has also clarified that the existing FCRA accounts need not be closed but the entity / NGO / Association has the liberty to retain the existing FCRA Accounts as another FCRA Account in any branch of scheduled bank and they are supposed to link this account with the designated FCRA Bank opened at NDMB for transfer of funds from one FCRA Account to another. Unless practically required, the author opines that it is better to close all such accounts to avoid any confusion at a later date. For, the FCRA account at the designated branch will be the first recipient of foreign contributions and all other branches will receive it by way of transfer from such an account. In other words, all other accounts though designated as FCRA accounts cannot receive direct contributions even by mistake.

Whether NDMB Bank will levy any charges for such transfers made.

No. The NDMB Bank will not levy any transfer charges / fees for transferring the funds from FCRA Account (NDMB) to another FCRA Account or utilization account/s in any branch of scheduled bank.

Standard Operating Procedure (SOP) for Opening & Operating Designated FCRA Account:

The Home Ministry has come up with the Standard Operating Procedure and has uploaded the same in its portal **https://fcraonline.nic.in/home/index.aspx.**

SOP contains the below mentioned broad features:

A. Account Opening:

B. Process Flow after opening of FCRA Account for receipt of foreign contribution through SWIFT mode. (Already registered entity and prior permission entity)

C. Grievance Redressal Mechanism.

It is recommended that a detailed study be made of the SOP for opening and operating designated FCRA Account, which is contained in FCRA portal.

It is important to note that the above directions are static and does not answer dynamic situations such as, for entities that have already submitted renewal applications. What would be the situation for entities that are now going to submit renewal applications? How should it apply for entities that have already submitted applications for registration or prior permission for the first time and those that are yet to submit?

In order to answer these questions from the public, the Home Ministry has issued compliance guidelines specifying the forms that needs to be used by the entities / associations and the items that need to be complied for easy process, of registration, prior permission or renewal applications. Further, it has also specified the compliance requirements and forms that are to be used by the entities / associations which hold valid FCRA registration / prior

permission and are not in immediate need of renewal. The compliance chart may be referred to in the FCRA portal **https://fcraonline.nic.in/home/index.aspx** for a detailed understanding.

Now, the question that needs to be ascertained is whether any returns ought to be filed for the perennial FCRA receipts and if so, what is the due date?

Yes, as per Rule 17 of the FCRA Rules, 2011, every person who receives foreign contribution shall submit a signed or digitally signed copy of report in Form FC-4. The Annual Returns for every Financial Year are to be submitted within nine months (i.e., December) from the close of the financial year.

Due to COVID-19 there was an extension in submission of returns under various laws. Is there any extension in submission of Annual Returns for F.Y 2019-20 under FCRA too?

There is an extension in submission of Annual Returns in FCRA as per Public Notice No. II/21022/23(15)/2020-FCRA-III not because of COVID-19, but because of the below mentioned reasons.

- Open a mandatory "FCRA Account" in the State Bank of India, New Delhi Main Branch, 11 Sansad Marg, New Delhi – 110001;
- Upload Aadhar details of all office bearers or directors or other key functionaries by whatever name called;
- Upload affidavits of all members as prescribed in rule 9(1) (a) of the Foreign Contribution (Regulation) Rules, 2011; and
- Obtain Darpan ID from Darpan Portal of NITI Aayog of the NGO / Association.

Since, the above amended provisions are to be understood, both in letter and spirit, and has to be implemented by all the FCRA registered associations and prior permission holders, which includes prospective seekers, it may require both time and effort to comply. The Ministry has been liberal to extend the due date for submission of annual returns online, for the year 2019-20, up to **30th June 2021.**

This article attempts to mainly focus on recent updates after the FCRA Amendment Act, 2020 came into existence. It will not be surprising to have more updates in the near future based on practical difficulties that are faced by registered entities or entities seeking registration.

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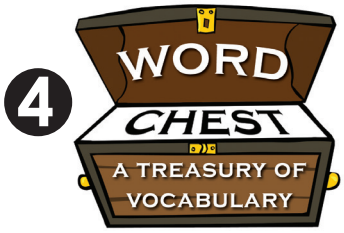
Solution to Sudoku - 3 November 2020

8	3	5	1	7	4	6	2	9
6	9	1	5	3	2	8	7	4
7	2	4	6	8	9	3	1	5
2	4	6	3	9	1	7	5	8
9	5	7	2	6	8	4	3	1
3	1	8	7	4	5	2	9	6
4	8	2	9	5	7	1	6	3
5	7	3	4	1	6	9	8	2
1	6	9	8	2	3	5	4	7



Word of the Month:

Ruminate

What is this?

To think about something thoroughly and in great detail

Use instead of: Consider, Deliberate

How can I use it?

- ✓ The question got us *ruminating* on the real value of wealth.
- ✓ He *ruminated* over the implications of their decision.

AN INSIGHT INTO COMPANIES AMENDMENT ACT, 2020

■ CS. J Sundharesan

The Companies Amendment Bill received the assent from the President of India on 30th September, 2020. The Act comes with a twin objective, where it seeks to provide vital relief by decriminalising certain Compoundable Offences along with ensuring that significant amendments in lessening various timelines as prescribed under the Companies Act, 2013.

Decriminalisation of certain trivial offences has been key benefit to stakeholders. In addition to this, the Act also substitutes the penal provisions consisting "Fine" to "Penalty". Instances are Section 56 that deals with Transfer of Shares, Section 88 pertaining to Register of Members and Section 92 which relates to Disclosures and Filing Annual Return. Further the provisions of imprisonment have been omitted in section pertaining to Debentures and Maintaining Books of Account which is elaborated further below.

The other slew of Amendments being, change in the definition of a Listed Company that gives the Private Companies a breather, as prior to this amendment it was mandated for all such Companies (including Private Companies) that had listed its Debt Securities to comply with the Listing Regulations. The Amendment excludes certain Listed Companies and Private Companies from the above provisions.

The Ministry of Corporate Affairs has also reduced the timelines in the process of Rights Issue with a duration of lesser than **Fifteen Days** thereby enabling a speedier exercise in raising capital.

Another move that is welcomed amongst the Corporate Stakeholders is the liberty to provide remuneration to Non-Executive Directors, including Independent Directors in case of Inadequacy of Profits like Executive Directors in accordance to the provisions of Schedule V. This holds significance to the role of Independent and Non - Executive Directors as it enables for a Fair Compensation to such Directors for their Contribution at Board Rooms even in the case of Inadequacy of Profits or in case of Losses as provided under the Act.

The Amendment Act has also modified the requirements of constituting the CSR Committee under Section 135 of the Act. It provides an exemption for such Companies whose CSR Liability is up to **Rupees Fifty Lakhs** from constituting a CSR Committee. This assists the Companies from doing away with the additional compliance procedures of conducting meeting and enables them to undertake such projects. Additionally, Proviso under Section 135 tweaks the mechanism for spending and utilisation of funds deployed towards CSR activities. Any excess amount spent by the Company beyond the Statutory requirements; the excess amount may be set off against the requirement to spend under this section.

The insertion of Section 129A empowers the Central Government to direct such Classes of Unlisted Companies to prepare and disclose periodical financial results in line with the compliances prescribed for Listed Companies. This amendment imposes additional burden on those Companies to be at par with the Corporate Governance Standards set for Listed Companies. However, at the same time it may be a measure for providing Stakeholders and / or Investors well equipped with financial information and corporate material disclosures at such periodical intervals.

In addition to the above, the Central Government allows certain Public Companies to List its Securities in Foreign Jurisdictions. As such, the Domestic Companies is now empowered to directly List and raise Capital from a Foreign land without Prior Listing its Securities on the Indian bourses. However, it remains to be seen the criteria laid down of such Companies eligible to avail this flexibility and the forthcoming changes in the SEBI Norms and FEMA Regulations.

Earlier sections came along with fines in case of technical lapses such as Non-Maintenance of Register of Members, Non-Maintenance of Books of Accounts, Delay in Filing

of Annual Returns of the Company including Filing of Financial Statements with the Registrar. The punishments are now varied to fulfil the objective of Ease Of Doing Business (EODB) as stated by the Ministry of Corporate Affairs. Examples would be substitution of the levy of fine between **Rupees Fifty Thousand to Five Lakhs**, with penalty of **Rupees Two Lakhs** in cases where the Annual Return certified by the Company Secretary in practice is not in conformity with the requirements of Section 92 and its rules prescribed.This amendment brings in a sea change by decriminalising the imposition of fines with levy of penalty.

The objective of the above Amendment is to introduce an in-house adjudication mechanism for non-compliances and defaults relevant to the provisions of the Act and to direct the Company and such Officers in Default by way of an Order by the Registrar of Companies (ROC). Similarly, Omission of Imprisonment for Officers in Default as in the case of Non-Compliance of any Order by the Tribunal in relation to Debentures under Section 71 in line with the above objective of Ease Of Doing Business (EODB) and decriminalisation of Offences. Section 147 of the Act, which deals with punishment for contravention of provisions for Auditors of the Company has been relaxed by doing away with imprisonment of Officers in Default in case of non-compliance in Sections 139 to 146.

Section 137 that relates to Filing of Financial Statements of the Company with the Registrar within a period of **Thirty Days** from the date of conducting its Annual General Meeting. Non-compliance in case of Filing and Disclosing Financial Statements is now liable for a penalty of **Rupees Ten Thousand** and in case of continuing failure a penalty of **Rupees One Hundred** for each day during which such failure continues, subject to a maximum of **Rupees Two Lakhs**.

The Act now exempts Banking Companies including Non-Banking Financial Companies (NBFC's) and Housing Finance Firms from filing resolutions passed on granting loans or providing a Loan with Guarantees or Security under Section 117 of the Companies Act, 2013.

In view of sustaining in-house adjudication and strengthening the corporate mechanism, the Amendment Act strikes a balance between Civil and Criminal Liabilities for cases that are Technical or Procedural in nature. In this regard, there have been amendments to 46 offences ranging from Omission of Compoundable Offences to Re-categorization of Defaults from Fine to Penalty.

The Companies Amendment Act has a myriad of changes that involves benefits to different categories / bodies of Corporate Shareholders. Changes in ease of Compliances, Corporate Governance Regulations and Re-Categorization of Offences is perceived to be well received and allows Companies, defaulting or otherwise to better comply with law.

PROVISION / SECTION UNDER COMPANIES ACT, 2013	**POST AMENDMENT**
Section 2(52): Alteration in the definition of "Listed Company", in consultation with SEBI	"Provided that such Class of Companies, which have Listed or intend to List such Class of Securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as Listed Companies.".
Section 16: Rectification of Name of Company	in sub-section (1), in clause (b), for the words "period of six months", the words "period of three months" shall be substituted; (ii) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter: Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.".

Section 23: Public Offer and Private Placement	(3)Such class of Public Companies may issue such Class of Securities for the purposes of Listing on permitted Stock Exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed. (4)The Central Government may, by Notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, Section 89, Section 90 or Section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.".
Section 62: Further Issue of Capital	in sub-section (1), in clause (a), in sub-clause (i), after the words "less than fifteen days", the words "or such lesser number of days as may be prescribed" shall be inserted.
Section 105	the words "who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees" shall be substituted;
Section 129A	The Central Government may, require such class or classes of Unlisted Companies, as may be prescribed,— (a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed; (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed."
Section 135: Corporate Social Responsibility	"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section fors uch number of succeeding financial years and in such manner, as may be prescribed." "(9) Where the amount to be spent by a company under sub-section (5)does not exceed Fifty Lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such Company.".
Section 149: Board of Directors (read with Section 197)	"Provided that if a company has no profits or its profits are inadequate, an Independent Director may receive remuneration, exclusive of any fees payable under Sub-section (5) of Section 197, in accordance with the provisions of Schedule V."
Section 197: Mangerial Remuneration	after the words "Whole-Time Director or Manager,", the words "or any other Non-Executive Director, including an Independent Director" shall be inserted.

Section 403: Fee for Filing	"Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of such document, fact or information, as may be prescribed, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of Such higher additional fee, as may be prescribed.".
Section 446B: Lesser penalties for One Person Company and Small Company	Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, Small Company, Start-up Company or Producer Company, or by any of its Officer in Default, or any other person in respect of such company, then such company, its Officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than One-Half of the penalty specified in such provisions subject to a maximum of Two Lakh rupees in case of a company and One Lakh rupees in case of an Officer who is in Default or any other person, as the case may be.
Setting up of new NCLAT Benches	Faster hearing of Appeals, Ease of Doing Business.

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KSCAA WELCOMES NEW MEMBERS - November & December 2020

S.No.	Name	Place
1	**Prafulla Gurulingayya Melinamani**	Jamkhandi
2	**Anand Teertha G**	Hiriadka
3	**Sindhi KJ**	Bangalore
4	**Shreevidya**	Bangalore
5	**P Mallikarjun**	Ballari
6	**K Nagaraja**	Ballari
7	**Ashwin Chopra**	Ballari
8	**Jitendra Trilokchand Suthar**	Ballari
9	**Srinivasa Reddy Ganapal**	Ballari
10	**Subramanya Rashmi**	Ballari
11	**CA Dheeraj A.V.**	Bangalore
12	**Pradeep Ninganagoudar Shrishailagouda**	Gangavathi
13	**Nandan Damodar Pai**	Bangalore

S.No.	Name	Place
14	**Lokesh Kumar Gandla**	Bangalore
15	**Pooja R Kulkarni**	Bagalkot
16	**Manohara Madineni**	Bangalore
17	**Jain Prakashchandra Saremalji**	Bagalkot
18	**Rejo Jacob Johnson**	Bangalore
19	**Sowmya Prashanth Kagali**	Bangalore
20	**Govind**	Bagalkot
21	**K Ravikumar**	Bangalore
22	**Radha P**	Bengaluru
23	**Vadiraj Jamakhandi**	Bengaluru
24	**Venkatraman Kamath**	Karkala
25	**Vaibhav Nagaraj Kalbhairav**	Bengaluru
26	**Srinivasa**	Bengaluru
27	**Lakkanna Rakesh**	Bengaluru

Insolvency and Bankruptcy Code and its impact due to Covid-19

■ CA. Punarvas Jayakumar

Hitherto in our country, debt default recovery has not been on par with the standards set by other countries. The legal recourse available to Creditors have more often than not, never fructified. India takes around 4.5 years on an average to complete the recovery process which is way higher than USA (1.5 years), South Africa (2 years), UK (1 year). A dire need in the Indian credit market for a robust law bore fruition in 2016, through Codification of other laws like SARFAESI (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest), RDDBFI (Recovery of Debt Due to Banks and Financial Institutions) for debt recovery by Banks and Financial Institutions), Companies Act, Presidency Towns Insolvency Act, Provincial Insolvency.

India began its journey towards pre-empting a Company from slumping down further, through a process of Corporate Resolution through the Insolvency and Bankruptcy Code, 2016.

Since the formulation of IBC, it has received widespread acclaim, but not without its share of brickbats. The Hon'ble Supreme Court Justice Ramana had opined that the earlier Governments have been practising crony capitalism, but after the enactment of the IBC Code, India is now trying to be at par with global economies in terms of Debt Recovery.

However, since change is the only constant in life, there were a slew of Amendments due to the Covid-19 pandemic - There are essentially two Amendments that have been enforced. One, by way of Notification u/s 4 of the Insolvency and Bankruptcy Code, 2016 and second, by way of Insolvency and Bankruptcy (Second Amendment)Act, 2020 passed on 23rd September 2020.

Impact of Notification u/s 4 of the Insolvency and Bankruptcy Code, 2016

The Ministry of Corporate Affairs via Notification dated 24th March 2020, has enhanced the pecuniary limit u/s 4 of IBC from Rs. 1 Lakh to Rs. 1 Crore. Now the Debtor has to commit the minimum amount of default of Rs 1 Crore then only the Creditor can initiate the Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP'). Unlike other Amendments, this Notification has not specified any date of its enforcement. This silence has raised uncertainties regarding its effectiveness as to whether it will be retrospective, prospective or retroactive in nature. However, the NCLAT Chennai Bench has recently elucidated the Notification as prospective in nature in the case of ***M/s Arrowline Organic Products Pvt Ltd. v. M/s Rockwell Industries Ltd***

Insolvency and Bankruptcy (Second Amendment) Act, 2020

(A) Objective as per the law maker

Insertion of Section 10A has been made in the light of COVID-19 pandemic. The background of such an Amendment is that the pandemic has impacted business, financial markets and the economy all over the world, including India and created uncertainty and stress for business for reasons beyond their control. A nationwide lockdown to combat the spread of COVID-19 added to disruption of normal business operations. It's also difficult to find adequate number of resolution applicants to rescue the corporate persons who may default in discharge of their Debt Obligation. Thus it was considered expedient to suspend u/s 7, 9 & 10 of the Insolvency & Bankruptcy Code 2016 to prevent the Corporate Persons who are experiencing distress on account of unprecedented situation, being pushed into Insolvency Proceedings under the said Code for some time. Similarly, the penalty section or the sanction provided u/s 66 for fraudulent trading or wrongful trading is also suspended by insertion of Section 66 (3). If these Sections are not suspended then there might be chances of premature death of a viable company.

(B) Analysis of the Amendment

Section 10A states regarding suspension of Sections 7, 9 & 11 that- "**any default** arising on or after 25th March 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf". There are certain discrepancies that needs to be considered-

1. Retrospective in nature

The Amendment has been notified on 5th June 2020. However, its application has been made effective retrospectively from 25th March 2020. This makes us think that what about the cases that have already been filed between 25th March and 5th June? Well

In Focus

the answer would be that the cases that have been filed in that period for the defaults committed prior to 25th March will not be suspended. However, the application filed for defaults committed after 25th March would stand suspended. This is the Literal Interpretation of the Amendment considering the objects mentioned in it.

The exemption on default being committed during prescribed period of over 6 months to 1 year commencing from 25th March 2020 is too liberal and amounts to **Perpetual Exoneration** because it cannot be recovered under IBC ever, as understood by the Literal Interpretation. Instead of excusing the Debtor forever, the provision should suspend it for certain period and after which the regular IBC provisions could be administered. A timeline could be provided in this regard such as default occurred between 25th March 2020 and 31st December 2020 (or 24th March 2021) will be temporarily excused. However, they have to make the payment by 25th March 2021. Subsequently CIRP can be initiated against them if they didn't pay till 25th March 2021. This benefit of suspension must not be provided for defaults arising out of transaction (agreements) entered after 25th March 2020 or renewed after 25th March 2020 except automatic renewals just like the provisions made under Singapore's COVID-19 (Temporary Measures) Act, 2020.

This provision should come with a stipulation that the defaulter must show or produce evidence that an unexpected intervening event happened, as a consequence of COVID-19, which had made the payment impossible till the time the payment has not been made before 25th March 2021. The purpose of this Clause is that the payment should be made as early as possible when the Debtor has resumed the business and is capable enough to make payment before 25th March 2021. This provision is required to prevent it from misuse from the defaulters who are capable enough to make the payment and are trying to enjoy the benefit without being affected by the pandemic

2. Encouragement of wilful defaults

Section 10A talks about **"any defaults"** which implies that even the defaults committed deliberately or without the reason of default being COVID-19 pandemic are also covered within the ambit of Section 10A. Thus, no action can be taken against them as well.

3. Ambiguity

The proviso to Section 10A is a bit ambiguous. The ambiguity is that it is open to two interpretations. It says that no application shall ever be filed for defaults that have occurred between 25th March 2020 and the next six months to one year as may be prescribed. Creditors can never initiate Insolvency Proceedings. In a discussion with CNBC TV, Abizer Diwanji, head of Financial Services at EY India, remarked that "The impact of this will be that promoters who somehow managed to keep their account standard would default now and hence be exempted from IBC for life." In a nutshell now there will be enhanced number of wilful defaulters. Practically this seems duplicitous. The persons who have defaulted in crores are exempted forever from proceedings under Sections 7, 9 & 10.

Section 3 (12) defines default as non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the Debtor or the Corporate Debtor, as the case may be. Further, in the case of **Balkrishna Savalram Pujari & ors. v. Shree Dhyaneshwar Maharajsansthan** & ors. , it was observed that 'default' constitutes a continuing wrong which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. It implies that once the default continues after the expiry of suspension period, it will still qualify as default and thus CIRP can be initiated. Now if the CIRP can be initiated then what does "no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period" would mean?

4. Categorization of Default committed in part.

There are certain agreements where work and payment goes together simultaneously. For instance, Construction Contracts where payment has to be made in installments in every stage of work. In this case suppose some default has been made during the suspension period and followed by another default which is made after the expiry of the suspension period. Afterwards, what will be the scenario? Whether the combined effect of both the default will be calculated or just the default committed at a later stage would be considered for initiation of CIRP.

5. Object of protection to MSMEs remains unfulfilled

The object of Amendment Act is the protection of MSMEs which per se is not being fulfilled. The Operational Creditors such as Suppliers of Goods

or Services to the Company falls into the category of MSMEs, nonetheless they will be unable to initiate CIRP u/s 9. Institution of Civil Proceedings would be the only option available after the doors being closed under IBC.

6. Suspension of Section 10 is an impediment to legal protection under IBC

The legal protection that a Corporate Debtor can get under Section 10 via voluntary bankruptcy is also suspended. Now the Debtor who is unable to undertake his business any further and needs an exit, cannot do so under IBC. Besides IBC, the Creditor can opt out for an exit option available under SARFAESI. However, there will be no benefits of moratorium as provided under IBC. It is bound to have certain inadvertent consequences.

7. Silence on several key aspects

There are several key issues that are left untouched by the Ordinance which requires attention. To be precise they are -

(a) Personal Guarantors

The Ordinance has suspended initiation of CIRP for Corporate Debtors. However, CIRP can still be initiated against their Personal Guarantors because the Ordinance is completely silent about it. Further, it is not the case that only Corporate Debtors are affected by the COVID-19 pandemic. Personal Guarantors are also affected by the pandemic. The Ordinance is silent regarding their relaxation implying that the CIRP can still be initiated against them. This group also requires attention and assistance in carrying out their businesses.

(b) Defaults due to Unachieved Targets

Agreements that specifies timeline for completing targets may have affected due to nationwide lockdown and as a consequence of which defaults might occur. Although this issue explicitly does not fall under the domain of IBC, nonetheless they are implicitly covered as defaults arising out of nationwide lockdown due to COVID-19 pandemic. Besides IBC, the affected party in dispute may at an early stage directly approach the Court for extending the time period of the agreement.

(c) Cases where CIRP has been initiated.

The cases where application for initiation of CIRP has been previously admitted before 24th March 2020 are a concern. As a consequence of nationwide lockdown almost all the businesses has been affected. At the time of maintaining survival of their existing businesses how can they provide an efficient resolution bids. Subsequently, the distressed companies will fall into liquidation proceedings. Again, the assets will not be liquidated at suitable rates. This is because the market value of assets are low due to the pandemic. This is a vicious cycle that requires consideration.

These are the grey areas of the Amendment Act that requires attention. The Literal Interpretation sounds precarious. Judicial Interpretation is the need of the hour to clarify by elucidation of the Act. Going forward, it should be made more feasible and viable as compared to present one.

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Amazon - Future - Reliance Deal - A Case Study

■ CA. Chandrasekaran Ramadurai

Executive Summary:

The recent discussions on the Amazon-Reliance-Future acquisition highlights the rights, limits and the modalities of exercising Shareholder rights. This has also thrown open specific issues on the supremacy of:

- the provisions of the Companies Act 2013 which govern the Company Administration with regard to decisions taken by the Shareholders either through the Board or at the General Meetings or
- The Dispute Resolution Mechanism as contemplated under **Section 442 of the Companies Act, 2013 or**
- the Provisions of the Arbitration & Conciliation Act, 1996 as amended or
- the Share Purchase Agreement entered into between the Promoters and an Investor shall overtake the provisions of the Companies Act 2013 with regard to **Chapter XV - Compromises, Arrangements and Amalgamations** that calls for approval by Shareholders at specially convened General Meetings
- Can Minority Shareholders hold the majority decisions that are difficult to implement through a parallel Share Purchase Agreement with the Promoter?

Introduction:

The write up intends to analyse the relative merits of having options available to Companies in ensuring Investor Protection through restrictions on Share Transfer, Entry of New Shareholders, Alternative Methods of raising Capital, Enforcement of Commercial Contracts and Dispute Resolution Mechanism. This also makes an attempt to understand the conflicts if any which exists among the above options and if so which of the options shall have supremacy or overriding effect on the other.

Brief facts of the subject under discussion

1. Amazon had entered into a Share Subscription Agreement(SSA) with Future Coupons Limited and a Share Purchase Agreement(SPA) with the promoters of Future Retail in October 2019.
2. To quote news reports on the subject[1]-
   a. The Financial details of the transaction were not disclosed.
   b. As part of the investment, Amazon was going to get the rights to acquire Biyani's promoter group stake in 'Future Retail' at a future date.
   c. "As part of the agreement, Amazon has been granted a call option. This call option allows Amazon to acquire all or part of the Promoters' shareholding in Future Retail Ltd, and is exercisable between the 3rd to 10th years, in certain circumstances, subject to applicable law,"
   d. The promoters had also agreed to certain share transfer restrictions on their shares in the 'Future Retail' for the same tenure, including restrictions to not transfer shares to specified persons, a right of first offer in favour of Amazon, it added.
   e. The transaction is subject to regulatory approvals, the company said.
3. Future Coupons Limited is the holding company of Future Group of companies
4. By this Share Purchase Agreement(SPA), Amazon has restricted the investment option in 'Future Retail' by many prospective investors including Reliance, Walmart, Alibaba and a host of around

[1] https://www.livemint.com/companies/news/amazon-to-acquire-49-stake-in-kishore-biyani-s-future-coupons-1566494841416.html

15 Global and local players from buying into Future's retail assets[2]

5. 'Future Retail' that runs 293 Big Bazaar stores (data as on 30thJune 2019) is a subsidiary of Future Coupons Limited.

6. In August 2020, Biyani's Future Group entered into an agreement with 'Reliance Retail', a subsidiary of the umbrella Reliance Industries Limited (RIL) group, to sell its retail, wholesale, logistics and warehousing to the latter[3].

7. As a part of the deal, 'Future Retail' would sell its supermarket chain Big Bazaar, premium food supply unit "Food hall" and fashion and clothes super-mart "Brand Factory's" retail as well as wholesale units to 'Reliance Retail'[4]

8. The deal was valued at INR 24,713 crore, subject to adjustments as set-out in the composite scheme of arrangement. This acquisition was subject to SEBI, CCI, NCLT, Shareholders, Creditors and other requisite approvals.

9. While the 'Future - Reliance' deal was going through procedural aspects, Amazon filed a restraint application through **Emergency Arbitration** at Singapore. The points submitted by Amazon were[5]:

   a. Last year, Biyani's Future Retail had signed another deal with global e-commerce giant Amazon through which Amazon had acquired 49 per cent stake in Future Coupons, the promoter firm of Future Retail in a deal worth nearly Rs 2,000 crore.

   b. While Future Retail would be able to place its products on Amazon's online market place, the two had also agreed that the Future Retail's products would also be a part of Amazon's new plan, which intended to deliver products in select cities within two hours of a customer ordering them.

   c. 'Future Retail's' has more than 1,500 stores pan India.

   d. The deal had also given Amazon a 'call' option, which enabled it to exercise the option of acquiring all or part of Future Coupon's promoter, 'Future Retail's' shareholding in the company, within 3-10 years of the agreement.

   e. After Future's agreement with Reliance, Amazon said the deal was a violation of a Non-Compete clause and a Right-of-First-Refusal pact it had signed with the Future Group. The deal also required Future Group to inform Amazon before entering into any sale agreement with third parties.

   f. On its part, the Future Group said that it had not sold any stake in the company, and was merely selling its assets and had therefore not violated any terms of the contract.

10. On 25th October 2020, Emergency Arbitrator VK Rajah issued an Emergency Arbitration Order (EA Order) in favour of Amazon. The Order restrains Future Group entities from proceeding with the share seal deal or any such agreement with Reliance and other restricted parties mentioned in the Non-Compete clause signed between Amazon and Future Coupons.

Now the following questions arise:

1) Will the Share Purchase Agreement (SPA) provide the voting rights under the Companies Act 2013 even before the parties have fulfilled the Investment Obligations?

2) Does the Articles of Association of a Company allow a Contracting Party even before he has invested in the company's shares the right of pre-emption under Section 62 of the Companies Act 2013?

3) By signing a Share Subscription Agreement (SSA) which allows Amazon to invest in the shares of

[2] https://economictimes.indiatimes.com/industry/services/retail/amazon-future-coupons-deal-named-15-cos-as-untouchables/articleshow/79052969.cms?from=mdr

[3] https://indianexpress.com/article/explained/explained-tussle-between-future-group-amazonwhat-happens-next-6913824/

[4] https://www.barandbench.com/dealstreet/sam-khaitan-cam-trilegal-wadia-ghandy-act-on-reliance-acquisition-of-future-group

[5] https://indianexpress.com/article/explained/explained-tussle-between-future-group-amazonwhat-happens-next-6913824/

Future Coupons Limited and through a Share Purchase Agreement (SPA) a call option to buy out the promoters' shares in 'Future Retail' in the future ranging from 3 to 10 years stop Future Coupons or its promoters from exercising their present rights as Shareholders in 'Future Retail' to transfer their shares and vote on resolutions concerning Amalgamation and Mergers under Chapter XV- Sections 230 to 240 of the Companies Act 2013?

4) Will Arbitration and Conciliation Act ,1996 as amended have overriding powers above the contractual rights of the parties under the

   a. Indian Contract Act,1872 -

   b. the provisions of Companies Act under

      i. Section 62 (1) (a) & (b)- Pre-emptive Rights

      ii. Section 42 - Private Placement

      iii. Section 62(1) (c) - Preferential Allotment

5) Will the filing of the Share Subscription Agreement (SSA) between Amazon & Future Coupons and the Share Purchase Agreement (SPA) with the promoters of 'Future Retail' with the Stock exchanges give rise to conclusive rights to the "acquirer" or is it only a disclosure requirement under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011?

6) Does the action by Future Retail to enter into a Scheme of Reconstruction under the provisions of Chapter XV (Sections 230 to 240) of the Companies Act, 2013 transferring the Assets, Brand and Liabilities with a Non-Compete clause not to indulge in retail business for a period of 15 years, to subsidiaries of Reliance Industries, a breach of contract between the Promoters of Future Retail and Amazon entered in October 2019?[6]

We will briefly consider the above questions with reference to the provisions under

1) The Indian Contract Act, 1872

2) The Companies Act, 2013

3) The Provisions of SEBI(SAST) Regulations, 2011

4) The Arbitration & Conciliation Act, 1996 as amended

SEBI (SAST) Regulations 2011

Under SEBI (SAST) Regulations, 2011, the following points are pertinent:

1) Under Section 2(1)(a), Amazon is an acquirer -**'acquirer'** means any person who, directly or indirectly, acquires or **agrees to acquire** whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company"

2) Under Section 2(1)(b)-**'acquisition'** means, directly or indirectly, acquiring or **agreeing to acquire shares or voting rights in**, or control over, a target company; since there is a Share Subscription Agreement (SSA) between Amazon & Future Coupons

3) Under Section 2(1)(p) - **'offer period'** means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to Shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be;

   Here the date of signing of Share Subscription Agreement (SSA) is available – October 2019 but the date of receipt of payment of Consideration from Amazon is not available as it has not exercised its Call option to subscribe to the shares in Future Coupons or its subsidiaries.

4) Under Section 2(1)(s) -**'promoter'** has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group

   a. Under Section 2(1)(oo) of SEBI(ICDR) Regulations, 2018 - "promoter" shall include a person:

[6] *https://reorg.com/asia-future-group/#:~:text=The%20composite%20scheme%20of%20arrangement,with%20subsidiaries%20of%20Reliance%20Industries.*

i. who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in Section 92 of the Companies Act, 2013; or

ii. who has control over the affairs of the issuer, directly or indirectly whether as a Shareholder, Director or Otherwise; or

iii. in accordance with whose advice, directions or instructions the Board of Directors of the issuer is accustomed to act:

b. In this context we can safely conclude that Mr Biyani of the Future group represents the promoter under SEBI (ICDR) & SEBI (SAST) Regulations.

5) Issuer under section 2(1)(aa) of SEBI (ICDR) Regulations - (aa) "issuer" means a company or a body corporate authorized to issue specified securities under the relevant laws and whose specified securities are being issued and / or offered for sale in accordance with these regulations- Here the company with which the Share Subscription Agreement (SSA) has been signed is the company that will issue the securities – Here **Future Coupons Pvt Ltd** is a private limited company whose ability to issue shares is restricted under the provisions of the Companies Act 2013- Section 2(68) of the Companies Act 2013. Hence Future Coupons is not an ISSUER

6) Under Section 2(1)(z) -**"target company"** means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange-**Here Future Coupons Pvt Limited is a private limited company whose shares are Not listed on any stock exchange. Hence Future Coupons Private Limited could not be the Target Company.**

7) The Share Purchase Agreement (SPA) is not between Amazon and the promoters of Future Retail Limited- **CHAPTER - V DISCLOSURES OF SHAREHOLDING AND CONTROL of SEBI (SAST) Regulations,** govern the disclosures to be made with respect to the aggregate of shares held by the acquirer or the promoter together with persons acting in concert - Regulation 28(1). We understand that post signing the Share Subscription Agreement (SSA) / Share Purchase Agreement (SPA), Future group had made the Exchange filings giving details of the proposed investment by Amazon (SSA to buy into 49% in Future Coupons with a First Right of refusal to acquire the promoter group's shares in Future Retail Limited). Thus the SSA is with Future Coupons but a call option to buy out the promoters' shares in Future Retail Limited. This brings to the following conclusions:

a. Though the SSA is between Future Coupons Pvt Limited a private company to which SEBI Regulations do not apply, there is a call option given to Amazon to buy into the promoters' shares in Future Retail Limited (a Right of First Refusal) to be exercised over an offer period of 3 to 10 years.

b. Thus Amazon becomes the "acquirer" in Future Retail Limited.

c. Amazon has an option to buy the shares of Future Retail over an offer period of 3 to 10 years and

d. This makes Future Retail the Target Company

e. Hence under Regulation 28(1) Future Retail has made Exchange filing in October 2019.

To be continued in next issue.....

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Financial Reporting And Assurance - Referencer

■ **CA. Vinayak Pai V**

This month's feature covers ***Key Monthly Updates*** in the Accounting and Auditing space, a ***Ready Referencer*** in the format of Q&A on ***Accounting for Investments in Associates*** under Ind AS and extracts from published Financial Statements related to ***Code on Social Security, 2020***.

1 UPDATES: Monthly Roundup[1]

AS	• ICAI **Exposure Draft** ○ **AS 21** – *The Effects of Changes in Foreign Exchange Differences.*
	• ICAI **Guidance Notes** ○ *Guidance Note on Applicability of* ***AS 25*** *and* ***Measurement of Income Tax Expense*** *for* ***Interim Financial Reporting.*** ○ *Guidance Note on* ***Accounting for Share-based Payments.***
Assurance	• IAASB Non-authoritative **Support Material** ○ **Technology FAQs** - *The Use of Automated Tools and Techniques when Identifying and Assessing Risks of Material Misstatement in accordance with ISA 315.*
Company Law / SEBI	• **SEBI** *Report on* ***Disclosures*** *Pertaining to* ***Analyst Meets, Investor Meets and Conference Calls.***
RBI	• Notifications ○ **Opening of Current Accounts** by Banks – Need for Discipline. ○ **Co-lending** by Banks and NBFCs **to Priority Sector**. ○ Maintenance of **Escrow Account** with a Scheduled Commercial Bank.
IFRS	• IFRS Foundation's **Educational Material** ○ *The Effects of* ***Climate-related Matters*** *on Financial Statements* prepared applying IFRS Standards. • IASB **Exposure Draft**[ED/2020/4] ○ ***Lease Liability in a Sale and Leaseback*** – Proposed Amendment to **IFRS 16**, *Leases*. • IASB **Discussion Paper**[DP/2020/2] ○ *Business Combinations Under Common Control.*
US GAAP	• FASB **Accounting Standards Update** (ASU) ○ ASU No. 2020-11, ***Financial Services – Insurance*** [Topic 944]. • PCAOB **Audit Committee Resource** - *New PCAOB Requirements regarding Auditing Estimates and Use of Specialists.* • SEC: Changes to Regulation S-K ○ Amendments to ***Management's Discussion and Analysis (MD&A)***, *Selected Financial Data and Supplementary Financial Information.*

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

2 **READY REFERENCER:** Accounting for Investments in Associates under Ind AS

2.1 What are Associate entities under Ind AS?

Under Indian Accounting Standards (Ind AS), an **Associate** is '*an entity over which the investor has significant influence*'. **Significant influence** is '*the **power to participate** in the financial and operating policy decisions of the investee but is not control or joint control of those policies.*' These terms are defined in Paragraph 3 of Ind AS 28.

2.2 Which Accounting Standards are in scope when an Entity has an Investment in an Associate?

In addition to complying with the requirements of *Schedule III to the Companies Act*, the following standards need to be complied with in the Accounting for an Investment in an Associate Company:

a) ***Specific Standards***

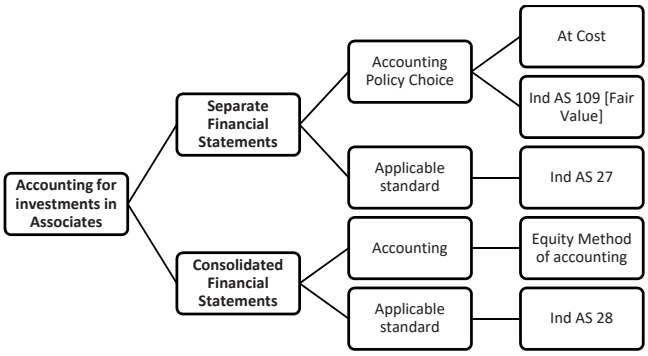
1. **Ind AS 27**, *Separate Financial Statements,*
2. **Ind AS 28**, *Investments in Associates and Joint Ventures*,
3. **Ind AS 112**, *Disclosure of Interest in Other Entities.*

b) *Some of the **Generic Standards***

1. **Ind AS 1**, *Presentation of Financial Statements, and*
2. **Ind AS 7**, *Statement of Cash Flows.*

2.3 When and how should Ind AS 27 and Ind AS 28 be applied?

With respect to Associates, Ind AS 27 governs accounting and disclosures in the **Separate Financial Statements** of an entity (investor) while Ind AS 28 provides accounting guidance for the preparation of **Consolidated Financial Statements** (which requires the Equity Method of accounting to be applied).



Separate Financial Statements

In the preparation of Separate Financial Statements, an investor accounts for Investment in an Associate either at cost or in accordance with Ind AS 109, *Financial Instruments*. An entity is required to apply the same accounting for each category of investments (Associates) as per Paragraph 10 of Ind AS 28.

It may be noted that if the associates are accounted in accordance with the *Financial Instruments* standard, then the related equity investment is required to be fair valued. Fair value changes would hit the Statement of Profit and Loss, unless the entity makes an irrevocable election to measure fair value changes in Other Comprehensive Income. Such an election can only be made for Investments in Equity Instruments that are not held for trading; generally, Equity Investments in Associate Companies would meet the criteria.

Consolidated Financial Statements

In preparing Consolidated Financial Statements, an Investor accounts for Investment in an Associate applying the Equity Method of accounting [Ind AS 28.16]. The mechanics of the Equity Method of accounting are as follows:

- Balance Sheet
  - The Investment in Associate is **initially measured at cost** and subsequently adjusted for the **post-acquisition change** in the Investor's **share of the Associate's Net Assets**.

- Dividends / distributions received from the Associate reduces the carrying amount of the Investment in Balance Sheet.

- The Investment is subject to impairment testing.

- Statement of Profit and Loss

  - The Investor's Statement of Profit and Loss will include its **share of the Associate's Profit or Loss** and the Investor's Other Comprehensive Income (OCI) includes its **share of the Associate's OCI**(OCI changes include those arising from the Revaluation of Property, Plant and Equipment, Forex Translation differences, etc.)

- An entity needs to take into consideration **Ind AS 28.26 to 28.39** that provides **Procedural Guidelines** in applying the Equity Method of accounting.

2.4 Can the Equity Method of accounting be applied to Associates in the Separate Financial Statements of Investor?

As elaborated in the preceding section, the Equity Method of accounting cannot be applied to an investment in Associate in the Separate Financial Statements of the Investor. This is the position under Ind AS unlike the IFRS framework where the same is permitted. Ind AS has made a carve-out here considering the fact that the **Equity Method** is not a measurement basis like cost and fair value but **is a manner of consolidation** and therefore would lead to inconsistent accounting conceptually, if permitted.

2.5 What are the broad contours of significant influences that drives classification of an Investment as an Associate?

Significant influence is '*the power to participate in the financial and operating policy decisions of the investee but is not control or joint control of those policies.*'

Where an entity holds (directly or indirectly through its group structure) **20% or more** of the voting power in the investee, there is a **presumption about the existence of significant influence**, unless it can be clearly demonstrated that it is not the case. On the other hand, if an entity holds (directly or indirectly) less than 20% of the voting power of the investee, there is a presumption that significant influence does not prevail, unless such influence can be clearly demonstrated.

Ind AS 28 states that the existence of **significant influence is usually evidenced** in following ways: representation on the board / governing body; participation in policy making processes including participation in decisions about dividends / other distributions; material transactions between the investor and investee; interchange of managerial personnel; or provision of essential technical information.

In assessing whether significant influence exists or not, the investor company also needs to consider the existence and effects of **potential voting rights** that are currently exercisable / convertible (held by it as well as by other entities). It may be noted that Share Warrants, Share Call Options, Convertible Debt Instruments and the like that have the potential to provide additional voting power or reduce a third party's voting power over financial and operating policies are examples of instruments that have potential voting rights.

2.6 What is the Day 1 accounting for an Investment in an Associate under the Equity Method of accounting?

Day 1 accounting of an Associate under the Equity Method of accounting starts from the date on which it becomes an associate (Investor obtains significant influence). At the date of acquisition of the Investment, **difference**, if any, between the **cost of the Investment** and **entity's share of Net Fair Value of the investee's identifiable net assets** is accounted as **Goodwill i**n the carrying amount

of the Investment (such Goodwill being subsumed within the Investment and not recorded as a separate 'Goodwill' asset in the Consolidated Balance Sheet). And, in case there is an excess of the entity's share of Net Fair Value of investee's identifiable net assets over the cost of the Investment, then such difference is recognised directly in equity as **Capital Reserve** at the date of acquiring the Investment.

2.7 When should the Equity Method of accounting be discontinued?

The Equity Method of accounting is discontinued from the date when the Investment ceases to be an Associate which is when there is loss of significant influence. It may be noted that an entity loses significant influence over its Associate when it **loses the power to participate** in the investee's financial and operating policy decisions. Such loss **can occur with or without a change** in Absolute or Relative **ownership levels**.

3 DISCLOSURE ALERT: Extracts from Published Financial Statements - Code on Social Security, 2020

Extracts from Notes to Financial Statements of two Listed Company for the Quarter ended 30th September, 2020 related to Code on Social Security, 2020 is provided herein below.

1. *The Indian Parliament has approved the Code on Social Security, 2020 which would **impact the contributions** by the company towards **Provident Fund and Gratuity**. The effective date from which the changes are applicable is yet to be Notified and the rules for quantifying the financial impact are yet to be framed. In view of this, **impact** if any, of the change **will be assessed and accounted in period of Notification of the relevant provisions.***

2. *The Indian Parliament has approved the Code on Social Security, 2020 which would **impact the Contributions** by the Company towards **Provident Fund and Gratuity**. The effective date from which the changes are applicable is yet to be Notified and the rules for quantifying the financial impact are yet to be framed. Based on an initial assessment by the Company and its Indian subsidiaries, the additional impact on **Provident Fund** contributions by the Company and its Indian subsidiaries **is not expected to be material**, whereas, the likely additional **impact on Gratuity** liability / contributions by the Company and its Indian subsidiaries **could be material**. The Company and its Indian subsidiaries **will complete their evaluation** and will **give appropriate impact** in the Financial Statements **in the period** in which, the **Code becomes effective** and the related rules to determine the financial impact are published.*

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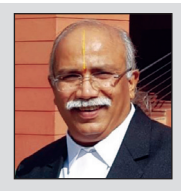
Intellectual Property Rights and Protection in India



Selection of a Mark (Part-IV of IPR series)

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

Create a List of Candidate Mark

In the previous parts of the series, we have discussed the types of Trademarks and the cautions to be exercised while selecting a Trademark. In this article we will understand the process of registration of such selected mark. A person may acquire rights in a Trademark either by its use in the course of trade in relation to certain Goods and / or Services or by registration under the Trade Marks Act, 1999. Before applying for registration, we need to observe and exercise certain precautions as already deliberated. The ways and means to conduct the search for the valid Trademark, determination of the Class of the products together with application procedure to be followed for grant are explained in this part.

The Key steps involved in the selection of a Trademark includes-

a) Developing a List of Candidate Marks, and jurisdiction where you plan to use the mark. It is advisable to have a set of (preferably **four**) Trademarks in the list so that it will ease the search and application procedures.

b) Performing searches to determine whether any other person is using the mark and any person is using it as a Domain Name and / or Address.

c) Considering how the mark will be perceived by the consumers.

Trademark Classification

After selection of candidates and before making an application for a mark, it is of utmost importance to identify the Class / Classes in which one requires to own, use and seek protection. According to Rule 20 of the Trade Marks Rules, 2017, the International Classification of Goods and Services (NICE Classification) are being mandatorily prescribed and adopted in India. The Indian Act uses the 9th edition of the NICE International Classification System. Under the Classification System all the Goods and Services are divided into 45 Classes out of which 34 Classes are used in grouping the Goods and the rest 11 in Services. This Classification Code is used by the applicant or by a Trade Mark Agent / Attorney appointed for this purpose, in order to arrange documents for Trademark Application and Trademark Search. Such an application should be made in the relevant Classes of current Goods / Services as well as in Classes where it is intended to be used. If the Classification is more than one Class, then the fee payable also varies in proportion. Some examples of Classes of Goods and Services are reiterated for ease of reference:

"Class 12 - Vehicles; apparatus for locomotion by land, air or water;

Class 15 - Musical instruments;

Class 35 - Advertising; business management; business administration; office functions;

Class 38 - Telecommunications;

Class 41 - Education; providing of training; entertainment; sporting and cultural activities;

Class 45 - Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals;"

The detailed list could be accessed at the following link: https://ipindiaonline.gov.in/tmrpublicsearch/classfication_goods_service.htm

Comprehensive Trademark Search

Trademark searching is a crucial element in identifying and finalizing the selection of a mark. This aspect, if overlooked will end up in unnecessary delay or litigation and related damages to the Enterprise. The Trademark searching if done in a proper manner before making an application will help in identification of potential risks and liabilities that exist when choosing to use such name in connection with Goods or Services. If it is free from such risks, it will result in obtaining the rights in an expeditious manner. It is strongly recommended that one must seek advice and guidance from a Trademark professional to determine whether the subject mark is truly available in the areas of interest of the applicant. For this purpose, it is advised to take the guidance of a Patent Agent or Attorney so that all initial hurdles are overcome before making an application.

The details of such agents could be accessed at http://www.ipindia.nic.in/trade-mark-agents.htm and http://www.ipindia.nic.in/Facilitators-TMR.htm.

As an initial attempt, one may search the various databases that many countries have made available Online for public use. Depending upon the needs, one may wish to conduct a full and detailed search, which covers the Trademark Registers, References, Industry Databases, and Business Name Registries. This type of search will give you the most comprehensive range of information to base your Trademark selection. A search for identical or nearly identical names at the India's Trademark registry office databases have been made available, which could be accessed at https://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx. The following web resources also could be explored for conduct of search: https://www.uspto.gov/trademarks-application-process/search-trademark-database, https://www3.wipo.int/branddb/en/.

The issues needed to be borne in mind while conducting a Trademark search are:

(i) Such search should cover all the similar and deceptively similar Trademarks registered or applied with registry, which may pose a threat to the registration of the given mark;

(ii) It should cover International Trademark Databases, as an International Trademark Application could be a potential threat for the selected Mark;

(iii) It should include all published, registered, expired and abandoned Trademarks in recognised database and all the recently published Trademark Journals. The strategies or the skills required for such search are to be learnt on case to case basis, while performing the search. Some of the strategies could be like General Name Search; Social Media Search; Search for Unregistered Websites on Website Providers; Various Brand Names; Company Databases; Domain Name Search; Phonetic Similarities; Irregular Plural ; Variations in Prefixes and Suffixes; Corrupted Orthography; Search strings constructed considering Abbreviations, Punctuations and Unconventional Spellings; Searches of Non-Word Marks; Search based on Competing Goods & Services; Search based on Existing Common Law Marks etc.,.

Trademark registry and functions

The Trade Marks Registry administers the Trade Marks Act, 1999 and the rules relating to registration of Trademarks. The authorities also play an active role in providing necessary resources and information to enable IP holders, to have better protection of Trademark and to prevent fraudulent use of the mark. The Registry also functions as an office of origin in respect of applications made by Indian Entrepreneurs for International Registration of their Trademarks and as an office of the Designated Contracting Party in respect of International Registrations under the Madrid Protocol. The Head Office of the Trade Marks Registry is at Mumbai with branches located at Ahmedabad, Chennai, Delhi and Kolkata.

The Controller General of Patents, Designs and Trade Marks heads the Trade Marks Registry Offices and functions as the Registrar of TRADE MARKS. All the functions of the Trade Marks Registry are performed through an automated Trade Marks System. As the filings for IP rights have considerably increased, the IP Offices are also getting revamped in terms of capacity building as more Examiners have been recruited, trained and are functioning in an efficient manner.

Application to the Registry

Any person, claiming to be the proprietor of a Trademark used or proposed to be used, may apply in writing in the prescribed manner for registration. The application should contain the Trademark, the Goods / Services, Name and Address of the Applicant and Agent (if any) with Power of Attorney, the period of use of the mark etc.,. Some of the other important details required to be furnished are :

1) Nature of the application: The applicant must choose either of the following categories-

   a. Standard Trademark,

   b. Collective Mark,

   c. Certification Mark,

   d. Series Marks.

2) Whether application filed as (Please choose and specify) in case of Startup / Small Enterprise, requisite Certificate should be provided. And FEE paid details. (See First Schedule for Appropriate Fee)

3) Class of Goods or Services: Description of Goods and Services.

Under Section 3 of the Trade Marks Act, 1999, the Central Government appoints the Controller General of Patents, Designs and Trade Marks, as the Registrar of Trade Marks for the purposes of the Act. The application can be submitted personally at the Office Counter or can be sent by post. These can also be filed Online through the e-filing gateway

available at the official website of the Trademarks registry. The application for registration of Trademarks are received in the Head Office or in a Branch Office of the Registry within whose territorial limits the Principal place of the business of the applicant are situated. As could be seen from the fee structure prescribed, the applicants are encouraged to file application Online as there is rebate of 10% on the Fee. In case of manual filing, the digitization and formality checking of the application is done at the respective Offices and this may be avoided by filing Online.

Application Form and Fees

Rules 10 and 11 of the Trade Marks Rules, 2017 govern the Fees and Forms for the purpose of Trademark Application, Prosecution and Registration in India. The relevant forms are to be accompanied by the prescribed fees and the requisite documents, as mentioned in the Trade Marks Act and the First Schedule of the Trade Marks Rules, 2017. The official fees currently applicable are as follows:

Particulars	Fee for Physical Filing(in Rs)	Fee for E-Filing (in Rs)	Form to be Used
Application for registration of a Trademark / Collective Marks / Certification Mark / Series of Trademark for specification of Goods or Services included in one or more than one classes.			FORM TM-A
Where the applicant is an Individual / Startup / Small Enterprise*	5,000	4,500	
In all other cases*	10,000	9,000	

**(Note: Fee is for each class and for each mark)*

There are different forms and fees for other registration related activities. The prescribed forms and fees could be accessed on the following web address: http://www.ipindia.nic.in/form-and-fees-tm.htm. Normally a Single Class Trademark application is filed for registering one's product mark under any Specified Class of Goods / Services. At certain instances there are chances of variety of products bear the same Brand Name. In such instances, a Multi-Class Trademark application could be filed for the purpose of getting one's Trademark / Service Mark registered under two or more specified classes of products / services. The Indian Trademarks law allows both these categories of Trademark applications.

The Trademark application for getting registration under any specific class is usually termed as the ordinary Trademark Application, and is filed using the Form TM-A, along with the fee prescribed in the Trade Marks Rules of 2002, which is at present INR 10,000/-. However, for MSMEs and Start-ups, there is 50% exemption offered to encourage such entities to go for registration. The single Trademark application seeking registration under two or more / multiple Classes are referred to as the Multi-Class Trademark Application. Here, it should be noted that the Government Fee indicated above are for filing a Trademark Application are per Class. This means that if an applicant wants to register his Trademark / Service Mark under more than one Class of Goods / Services the same could be done by filing a single application indicating details of all Classifications and Descriptions and Appropriate Fee. The Section 18 of the Trademark Act, 1999 states that any Application made for registration of the Trademark in India should be made to the Registrar. In case of Trademark Class 99 registration, the Trademark can be done with a Single Application by paying the prescribed Government Fees for every Class. Class 99 Trademark application is prevalent among proprietors filing Trademark under the Madrid system. Mostly Trademark attorney recommends filing a Single Application For every Trademark because the benefits of Single Class Trademark Application outweigh the amount of money and time saved while submitting a Multi-Class Trademark Application.

Advantages of Registration

The registration of a mark constitutes nationwide constructive notice to others that the Trademark is owned by the party. It enables the Owner / Enterprise to bring an infringement suit whereas the owner of an Unregistered Trademark has the remedy of passing off alone. In all the legal proceedings relating to a registered Trademark, the registration of the Trademark shall be prima facie evidence of the validity thereof. The Trademark registration not only gives a right to the proprietor to the exclusive use of the registered mark but it also makes such use obligatory by such owner. The grace period granted in Trademark laws that provide for a use obligation varies between three to five years.

Processing at the Registry

The Applications received at the Registry are examined to find out as to whether the relevant mark is capable of distinguishing applicant's products, whether it is prohibited for registration under any law for the time being in force, whether the registration of the relevant mark is likely to cause confusion or deception because of earlier identical or similar marks existing on records. The Examination of all applications are done centrally in the Head Office of the Registry at Mumbai. The Registrar on consideration of the application and any evidence of use or distinctiveness decides whether the application should be accepted for registration or not, and if accepted, publishes the same in the Trade Marks Journal, an Official Gazette Registry, generally hosted on weekly basis in the official website. Such a journal could be accessed at ***http://www.ipindia.nic.in/journal-tm.htm***. If no opposition is received within the prescribed time, the Trade Mark is granted to the applicant.

Once a Trademark reaches the examination stage, objections may be raised on two grounds: Absolute and Relative. Under Section 11 of the Trade Marks Act, 1999, a Trademark application is examined on relative grounds. A Trademark may be refused registration if it is-

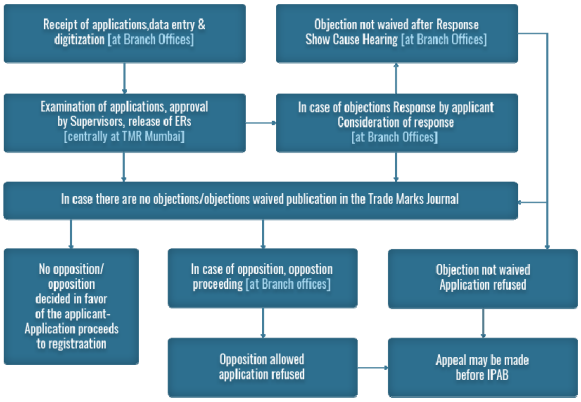
(i) Similar or Identical to an earlier Trademark for the same or similar Goods or Services; or

(ii) Similar or Identical to an earlier Trademark in respect of different Goods or Services. Besides relative grounds, a Trademark Application may be refused on absolute grounds for refusal, as detailed in the part 3 of this series.

Grant of Registration

Any person can file an opposition within four months from the date of publication. In such cases the opposition proceedings are conducted at respective Office of the Trade Marks Registry. Under the proceedings, a copy of the Notice of Opposition is served to the applicant who is required to file a counter-statement within two months, failing which the applications are treated as abandoned. The copy of the counter-statement is served to the opponent, who leads evidence in support of his case by way of an affidavit, then the applicant leads evidence. On completion of evidence, the matters are heard and the case decided by the Officer. The Registrar's said decision are appealable to the Intellectual Property Appellate Board (IPAB).

The flow chart indicates the processing of applications for registration of Trademarks by the registry:



The registration procedure in India is based on the 'First to File' system. The registration of a Trademark in India used to take about 2 to 3 years earlier, but now the same gets granted within one year of the application. When an application for registration of Trademark has been accepted and either the application has not been opposed and the time for Notice of Opposition has expired or the application has been opposed and the opposition has been decided in favour of the applicant, the Registrar shall register the said Trademark. On the registration of a Trademark, the Registrar shall issue to the applicant a Certificate of the Registration thereof, sealed with the seal of the Trademarks Registry.

Legal rights conferred by Registration of a Trademark

The Section 31 allows registration to be treated as prima facie evidence of validity. A registered Trademark confers a bundle of exclusive rights upon the registered owner under Section 28 of the Trade Marks Act. The said Section also confers certain benefits on registration, including the following:

- **Right to exclusive use:** Registration of a Trademark shall, if valid, grant the registered owner the exclusive right to use the Trademark in relation to the Goods or Services in respect of which the Trademark is registered.
- **Right to seek statutory remedy against infringement:** The registered owner of a Trademark can seek legal remedy in case of infringement of the Trademark in the manner provided by the Trade Marks Act, 1999. The owner may obtain an injunction and, at its option, either damages or an account of profits by instituting a suit against the alleged infringer.

In the upcoming article the infringements and protection under Trademark law will be narrated, which helps the owner to protect the IP property from being used without authorization. [……..to be continued]

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Homeopathy for Lifestyle Disorders

■ Dr. Shreepad Hegde

"Your lifestyle - how you live, eat, emote, and think - determines your health. To prevent disease, you may have to change how you live." Brian Carter

What are Lifestyle Disorders ?

The lifestyle that most of you lead might be really 'cool' and help you fill up your bank balance well, but this lifestyle in itself is a disorder. Unhealthy dietary habits, irregular sleep cycles and overdependence on technology has resulted in lifestyle diseases seeing an upward spike. Lifestyle diseases characterize those diseases whose occurrence is primarily based on the daily habits of people and are a result of an inappropriate relationship of people with their environment. The main factors contributing to lifestyle diseases include bad food habits, physical inactivity, wrong body posture, and disturbed biological clock.

From another perspective, a lack of regular exercises and the easy availability of resources has made life a tricky prospect, which has become concerning and vulnerable to problems, which are known as lifestyle disorders. According to a survey conducted by the Associated Chamber of Commerce and Industry (ASSOC-HAM), 68% of working women in the age bracket of 21-52 years were found to be afflicted with lifestyle ailments such as obesity, depression, chronic backache, diabetes and hypertension.

Not restricted to adults alone, lifestyle diseases have started hitting younger generations as well. The western lifestyle, characterized by convenience food, TV and PCs, is taking its toll on youngsters as well as adults, and is producing increased numbers of overweight, passive youngsters with lifestyle diseases. The shift in purchasing power and the coming in of technology has changed the way our life functions now. Less physical activity, more availability of resources and no time to spare, we have become preys to some extremely uncommon diseases our ancestors had never even heard about back in the 60s and 70s.

Some of the most common type of lifestyle diseases are the following:

1. **Obesity:** We are all familiar with the word and yet tend to ignore it. To see whether you've reached this stage, check your Body Mass Index (BMI). If it is higher than 25, then you are in the obese category.
2. **Type II Diabetes:** obesity is one of the primary causes of Type II Diabetes. Type II Diabetes is the non-insulin form which develops in adults due to poor eating habits and bad lifestyle choices.
3. **Arteriosclerosis:** Arteriosclerosis occurs when the arterial blood vessel walls thicken and lose elasticity. This usually causes blood circulation disorders, chest pain, and heart attacks.
4. **Heart Diseases:** Any irregularity or abnormality which affects the heart muscle and blood vessel walls can be referred to as a heart disease. Smoking, diabetes and high cholesterol contribute to the development of heart diseases in the body.
5. **High Blood Pressure:** Some very common reasons for high blood pressure are stress, obesity, genetic factors and unhealthy eating habits. When the reading in the blood pressure machine is 140/90 or higher, your blood pressure is high.
6. **Swimmer's Ear:** When you use headphones constantly and are exposed to loud music more than you should be, the ultimate result of this is Swimmer's Ear. Swimmer's Ear causes inflammation, irritation or infection in the ear canal or the outer ear.
7. **Computer Vision Syndrome :** Continuous using of eyes while watching TV, computer and

Cellphone, without blinking which gives rise to dry eyes and vision disturbances.

8. **Stroke:** When the blood vessel carrying blood to the brain has a blockage leading to an oxygen deficiency for the area of the brain it carried blood to, the result of this is called stroke.

9. **Chronic Obstructive Pulmonary Disease (COPD):** COPD is caused by the permanent obstruction of the airways.

10. **Cirrhosis:** Cirrhosis can be defined as a group of liver disorders. Liver can be severely affected by heavy alcohol consumption and chronic hepatitis. This has become a common lifestyle disease as many people consume alcohol on a daily basis to deal with stress.

11. **Nephritis:** There are many causes of nephritis, one of them being an allergic reaction to a medication or antibiotic. Other than this, it can also be caused due to bacterial infections, which may enter through street foods not prepared in hygienic conditions.

12. **Cancer:** Due to the stressful lifestyle that we lead now, our body's immunity has decreased. This means that the white blood cells lose their power to fight the viruses that enter our body. Because of this, there may be an irregular cell growth, which can be concluded as cancer.

Homoeopathy is a complete healing system of medicine based on therapeutic law of nature i.e "Similia similibus curenter" was introduced in 1796 by the German physician Samuel Hahnemann. He claimed that a large dose of quinine, which had been widely used for the successful treatment of malaria, produced in him effects similar to the symptoms of malaria patients. He thus concluded that all diseases were best treated by drugs that produced in healthy person effects similar to the symptoms of those diseases. Which has capacity to cause, has capable to cure. Homoeopathic medicine helps to improve the body vital principle, enhances the resistance power, encourages the immune system to work efficiently against the disease morbific agents.

Homeopathy is holistic health science, while treating the patient we consider as a whole, physical, mental, emotional, spiritual understanding, like, dislike, desire and aversions, cold and hot, various modalities. After studying all these in detail, decide the constitutional medicine, because individually each person is different. Even though twins born from one cell, they grow separately with different nature and constitution, i.e., understanding of homoeopathic principle. Each patient has one or more causative and exciting factor for their disease.

For lifestyle disorder, stress is the main cause, understanding the cause and expression of the patient as a whole, we treat. Though 25-30 people working in one office with the same workload, each one will have different tolerance level to manage the stress. Every patient has their own family history, personal history, past history, medicine history, social history and financial history, adds to their stress. Considering all such matters in detail homoeopathic constitutional medicine is prescribed. It helps to generate the healing process, modus operandi to make suffering humanity to healthy. ***Homoeopathy does not treat the disease, it treats the patient as a whole.***

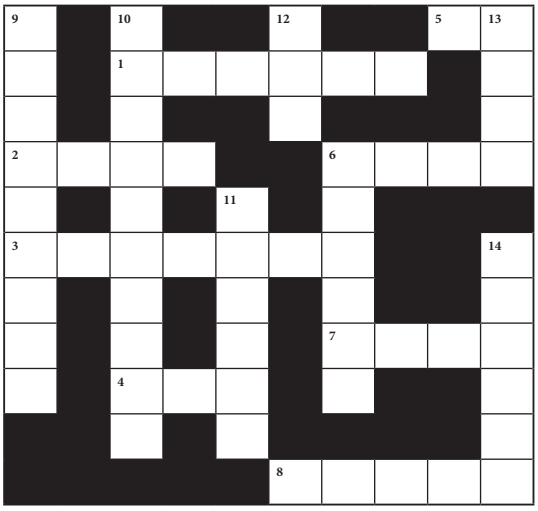
A healthy lifestyle must be adopted to combat these diseases with a proper balanced diet, physical activity and by giving due respect to biological clock. To decrease the ailments caused by occupational postures, one should avoid long sitting hours and should take frequent breaks for stretching or for other works involving physical movements. An ergonomic chair should be designed based on the human contour to fit the right sitting posture so that the uneven pressure on joints and muscles may be minimized. In this revolutionized era we cannot stop doing the developmental work, but we can certainly reduce our ailments by incorporating these simple and effective measures to our lives.

"Prevention is better than cure."

"Take care of your body. It's the only place you have to live."

The Author is Director - Tatva Homeopathic Research Centre, Bangalore and can be reached at : drsreepad@gmail.com

CROSSWORD 4



ACROSS	
1	An…... is a contract which conveys its owner, the holder, the right, but not the obligation, to buy or sell an underlying asset or instrument (6)
2	A claim or legal right against assets that are typically used as collateral to satisfy a debt (4)
3	The term is used to describe new tech that seeks to improve and automate the delivery and use of financial services (7)
4	An integral part of member's continuous learning required to maintain the highest standards of excellence in their professional activities by inculcating wide range of Knowledge, skills and abilities (Abbreviation) (3)
5	These tools access and analyze data sets and present analytical findings in reports, dashboards, charts etc to provide users with detailed intelligence about the state of the business (Abbreviation) (2)
6	Indicator of company's profitability, also called as operating profit (Abbreviation)(4)
7	A model which is a corner stone in portfolio management developed by William Sharpe (Abbreviation)(4)
8	The ……. and objectives for every audit are determined through discussion with the department's management and a department specific risk assessment (5)

DOWN	
9	An auditor issues this report when there is either a limitation of scope in the auditor's work, or when there is a disagreement with management regarding application, acceptability or adequacy of accounting policies (9)
10	Clause 49 issued by SEBI relates to Corporate ……... of listed companies in India (10)
11	Ind AS 103, Business Combinations, prescribes the recognition and measurement principles for business combinations relating to this (6)
12	The Securities and Exchange Board of India introduced this process in 2006 to prevent listed companies in India from developing an excessive dependence on foreign capital (Abbreviation) (3)
13	This tax is levied when there is an inter-state transfer of goods and services (Abbreviation) (4)
6	The principles set out in this code establishes the standard of behaviour expected of a professional accountant (6)"
14	An auditor needs to ensure that the …... is representative of the population, to avoid bias (6)

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

sudoku-4

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							6	
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			3			2	7	6
	6		4					
		3		9			5	7
				6				
		1	8		7	9		

Answers to "Cross Word 3" (November 2020)

Across

1. Impairment, 2. Error, 3. Material, 4. CAR, 5. Cloud, 6. ESOP, 7. OPEX

Down

1. Internal, 3. Macro, 8. Peer, 9. DLT, 10. ROE, 11. Notional, 12. Ratio, 13. SOX

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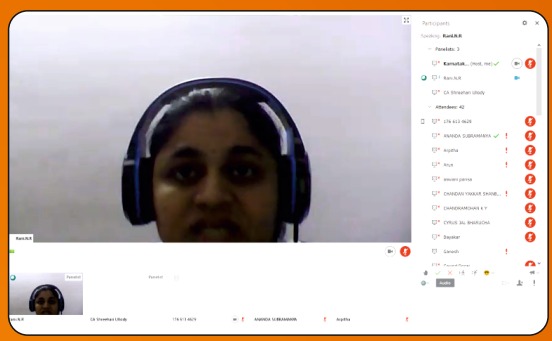
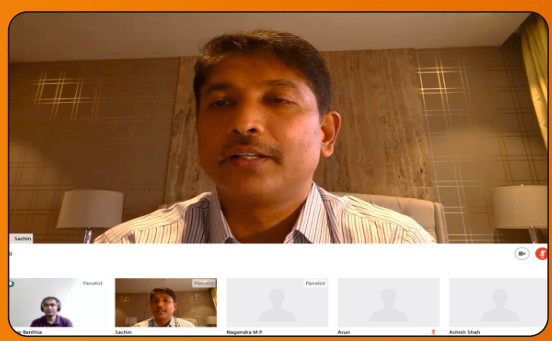
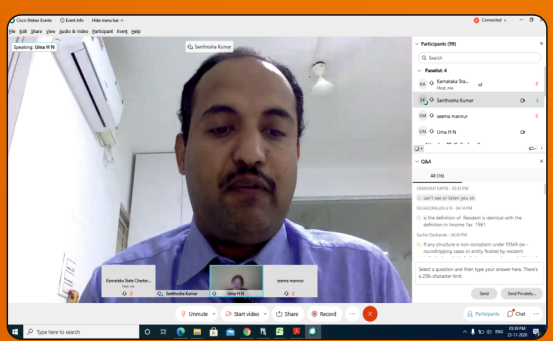
Photo Gallery

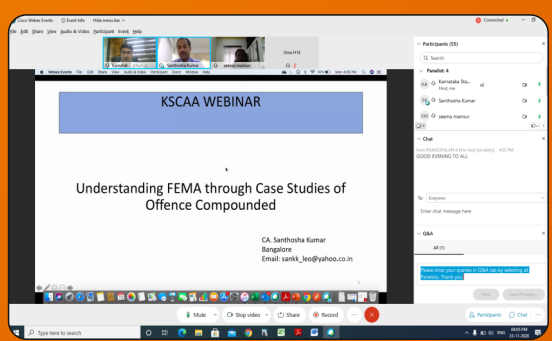
9 Days Landmark Program On "Transfer Pricing Master Class For Beginners" By CA. Tata Krishna, CA. Rani N R, CA. Ganesh K, CA. B P Sachin Kumar held between 10th November, 2020 To 14th November, 2020





Webinar on Understanding FEMA through Case Studies of Offences Compounded by CA Santosha Kumar held on 23rd November, 2020





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