

KSCAA

Karnataka State Chartered Accountants Association ®

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Chartered Accountants Association



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33rd KSCAA Annual Conference 2021



■ Risk Based Internal Audit

■ IPR in India

■ Budget - GST Insights

■ Accounting Aspects under GST

■ Appeal to HC

■ Financial Reporting & Assurance



From the President

Dear Professional Friends,

I'm excited to write this month's President Message which happens to be a busy month to CAs with financial year end.

This KSCAA's Annual conference was concluded in a grand manner, the conference saw a total participation of more than 1800 participants from across the country. This number has breached all the previous records of KSCAA and marks the confidence which the members have on this association. The attendance and response even after a sincere

attempt on complete diversion from conventional topics reposes the confidence that members are ready to new catering and contemporary thinking. Alike any other organization, the association is also stressed financially during the pandemic, even during normal periods association meagerly rises amount beyond its requirement, if not for conference the association's pockets are in deep loss. With pandemic and no revenue programs for almost a year, the losses in association are unsurprisingly skewed to make more loss. However, we see some recovery during the annual conference period.

The financial year ends in a some days for all the assesses and this year is a dynamic due to many fronts, with reduced turnover, no GST Audit or fewer tax audit the year would also throw a unique challenge to SMP practice. However, there is no dearth of skill amongst CAs and I'm confident that we would pass through these professionally challenging times without much strain.

News Roundup Direct Tax

While the nation awaits Finance Act, 2021, the CBDT has been active with a slew of announcements. It has

- ✓ Extended timelines to impose penalty [to 30.06.2021] & concluding assessments/reassessment [to 30.04.2021 / 30.09.2021], Direct Tax Vivad Se Vishwas Act (filing declarations extended to 31.03.2021 and payment without additional amount, to 30.04.2021).
- ✓ Transferred pending cases under Black Money Act to Central Circle.
- ✓ Amended Faceless Assessment and Penalty Scheme. Instructed 'potential cases' for acting under section 148 of the Act by 31.03.2021 for the A.Y 2013-14 to A.Y 2017-18 by the Assessing Officer.
- ✓ Asks NRIs facing double taxation, on account of forced stay due to COVID, to furnish information by 31.03.2021.
- ✓ Allows Assessing Officers to pass consequential order pursuant to Form 5 being issued by Designated Authorities under VSVS scheme.

The Supreme Court's ruling on the highly contentious and litigated issue of taxability of computer software has finally seen the day of light and has brought much respite and certainty.

Indirect Tax

An expectation from the Karnataka State Budget's was reintroduction of Karasamadhana Scheme – The Amnesty Scheme to settle legacy cases of erstwhile State Commercial Tax laws. Need for reintroduction was felt since many assessments were taken up after the closing date of earlier Comprehensive Karasamadhana Scheme and a few assessments are being taken up even now.

Glad to note that the State Government has reintroduced the scheme in its Budget on 08th Mar 2021. I would like to place on record the efforts of KSCAA in representing on the requirement for such scheme before the Hon'ble CM of Karnataka in the pre-budget consultation meeting. It is a win-win situation for both assessee and Government. However, fact remains that Karasamadhana Scheme creates a disparity between the assessee who had complied with the assessment orders and paid taxes and the assessee who hasn't and who is eligible to opt for the amnesty scheme. Let's wait for the fine print to see the conditions and scheme.

GST Annual Return extension finally came in the 11th hour of 28th Feb 2021, which has given a sigh of relief to many of us. However, was just wondering the number of returns that would have got filed in last 5 days to 28th Feb 2021 and if the statistics would encourage the Government to only give extension in the last moment. These actions by Government should help us bear in our mind that compliance is the requirement of law on the assessee. Many-a-times, it makes sense to mention to client well in advance on the reasons why compliance may not be possible to be taken care within time.

Corporate Law

As announced in the Union Budget 2021, the MCA has amended the definition of the Small Companies by increasing the thresholds for paid-up share capital to "not exceeding two crore rupees" and turnover to "not exceeding twenty crore rupees".

The same shall come into effect from 1st April 2021.

To promote easier incorporation of One Person Company (OPC) the following relaxations have been given for an OPC:

1. Persons incorporating OPC can be person resident outside India;
2. Requirement of person for residing in India is reduced to 120 days from 180 days
3. Restriction on conversion of OPC for 2 years from incorporation is removed.

The MCA has amended the Companies (Management and Administration) Rules, 2014 requiring every OPC and Small Company to file their annual return from FY 2020-21 in Form No. MGT-7A (Abridged Annual Return for OPCs and Small Companies).

The jittery among many professionals on recent reduction in audits has germinated the idea of opportunities other than conventionally practiced, the fear of change comes because the outcomes are unknown. Our brains are designed to find peace in working with what is known. When the chaos is unknown or when we don't know what will happen, we make up scenarios and, in turn, create worry. We are trained to find it hard to move on when something known comes to an end. The fear of failure also comes into play to create a fear of change. If we don't know how something will turn out, we may rather not try because the outcome could be bad. Trying something new becomes a risk. As read somewhere "We can't be afraid of change. You may feel very secure in the pond that you are in, but if you never venture out of it, you will never know that there is such a thing as an ocean, a sea. Holding onto something that is good for you now, may be the very reason why you don't have something better"

Happy Reading!

Yours' TRUST worthy,

CA. Kumar S Jigajinni
President



KSCAA

NEWS BULLETIN

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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.

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APPEAL TO HIGH COURT- INCOME TAX



■ CA. S Krishnaswamy

1. Appeal is available to the High Court (HC) from the orders of the Tribunal on legal issues only
2. However, a writ petition can be filed where the order of the Tribunal is patently perverse, lacks jurisdiction and violates the principles of natural justices
3. Normally, one can approach HC only after exhausting available remedies
4. Principle of resjudicata - applies by exception

1. Introduction:

The Income Tax Act, 1961 provides a third appeal forum against orders of Assessing Authority if the issue is legal in character and not just on facts. However, if the order of the Assessing Authority is patently perverse, lacks jurisdiction and violates principles of natural justice and not providing a fair hearing, a writ petition can also be filed even if mainly on facts. This is a special, urgent remedy provided in the Constitution those who are vigilant about their rights.

2. Section: 260A - Appeal to High Court:

The Section reads as follows-

“(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner

or Commissioner;

*(b) [***]*

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as

it deems fit.

(6) The High Court may determine any issue which-

- (a) has not been determined by the Appellate Tribunal; or
- (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.”

3. Appeal is available to the HC from the orders of the Tribunal on legal issues only i.e., where substantial question of law is involved:

- It was held by the Supreme Court in the cases of **Sir Chunilal vs Mehta and Sons Ltd vs Century Spinning and Manufacturing Co Ltd (1962) AIR 1962 SC 1314** that -

“A substantial question of law is one which is of general public importance or which directly and substantially affects the rights of the parties and which have not been finally settled by the Supreme Court, the Privy Council or the Federal Court or which is not free from difficulty or which calls for discussion of alternative views.”

- Supreme Court in the case of **M Janardhna Rao vs Joint CIT (2005) 273 ITR 50 (SC)** held that-

“Under Section 260A (2) (c) the appeal under Section 260A shall be (a) in the form of a memorandum of appeal and (b) precisely stating therein the substantial question of law involved. Under Section 260A (3) when the High Court is satisfied that a substantial question of law is involved in any case it shall formulate that question and under section 260A (4) the appeal is to be heard only on the question formulated under the preceding sub- section. It has to be noted that in terms of Section 260A (4) the respondent in the appeal is allowed to argue at the time of hearing of the appeal that the case does not involve a

substantial question of law as formulated. However, proviso to Section 260A(4) specifically lays down that nothing in Section 260A(4) shall be deemed to take away the power of the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, in case it is satisfied that the case involves such question. Section 260A(5) provides that the High Court to decide the question of law as formulated and to deliver the judgment thereon containing grounds on which such decision is founded.

Sub-section (6) empowers the High Court to determine any such issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal by reasons of a decision of such question of law as is referred to in sub-section (1) It is important to note that appeal to the High Court lies only when a substantial question of law is involved. It is essential for the High Court to first formulate question of law and thereafter proceed in the matter.”

- Analysis of Section 260(4) was made by the Madras High Court in the case of **CIT Vs Shriram Ownership Trust (2021) 430 ITR 356 (Mad)** and held-

“The powers of High Court to frame a substantial question of law at the time of hearing of the appeal other than the questions on which the appeal has been admitted remains under section 260A(4) and this power is subject however to two conditions, namely, (i) the court must be satisfied that the appeal involves such questions; and (ii) the court has to record reasons therefor. There is a vast difference in cases where a reference is made to the High Court by the Tribunal on an application and an appeal under section 260A of the Act by an aggrieved person. Unless and until the aggrieved person is before the Court by way of an appeal, the question of calling upon the court to frame an additional substantial question of law by invoking its power under sub section (4) of section 260A of the Act does not arise”

The general rule is that High Court will not

interfere with the concurrent findings of the lower courts. But it is not an absolute rule. Some of the well-recognised exceptions are where-

- the lower courts have ignored material evidence or acted on no evidence;
- the courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- the courts have wrongly cast the burden of proof.

4. A writ petition can be filed if the order of the Tribunal is patently perverse, lacks jurisdiction and violates the principles of natural justice:

- Supreme Court held in the case of **Dharkeswari Cotton Mills Ltd v CIT (1954) 26 ITR 775 (SC)** that-

“Violation of principle of natural justice may lead to violation of Fundamental rights of equality guaranteed by Articles 14 or 21 of the Constitution of India.”

- It was held in the case of **Abdul Kalam Vs ACIT (2021) 431 ITR 395 (Cal)** that-

“A tax payer is expected to exhaust normal remedies provided in the Act and the extraordinary jurisdiction under Article 226 of the Constitution of India is required to be sparingly used when the Court finds that the action of the State is without jurisdiction, in violation of principles of natural justice or the order passed is palpably illegal.”

- In the case of **Commissioner Of Income Tax & Ors vs Chhabil Dass Agarwal** vide Civil Appeal No.6704 of 2013 judgement pronounced on 8th of August 2013 held that-

“Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available

is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226.

.....

19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

Further reference-

State of U.P. vs. Mohammad Nooh, AIR 1958 SC 86;

Titagarh Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433;

Harbanslal Sahnia vs. Indian Oil Corpn. Ltd., (2003) 2 SCC 107;

State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499).

- In the case of **K.S. Rashid and Sons vs. Income Tax Investigation Commission, AIR 1954 SC 207; Sangram Singh vs. Election Tribunal, Kotah, AIR 1955 SC 425; Union of India vs. T.R. Varma, AIR 1957 SC 882; State of U.P. vs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras, AIR 1966 SC 1089** Courts have held that -

“though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.”

5. Normally, one can approach HC only after exhausting of available remedies:

- In **Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337**, Supreme Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. In Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact,

and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

- The Apex Court decision in the case of **Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, reported in 1987 (32) E.L.T.8(S.C.)**, held that it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction the High Court should not refuse to exercise its jurisdiction on the existence of alternative remedy under Article 226 of the Constitution.

6. Principle of Resjuricata- Rule of consistency:

- It was held in the case of **PCIT vs Grasim Industries Ltd (2020) 424 iTr 236 (Bom)** that-

“on the issue of the Assessing Officer’s attempt to tax the profits of the assessee’s units situated in the USA and the UK, the Department having accepted the order of the Tribunal in the earlier assessment years it was not open to it to pick a certain year for carrying the challenge further before the Assessing Officer. The Commissioner (Appeals) and the Tribunal had referred to the earlier orders in the case of the assessee and the Double Taxation Avoidance Agreement between the respective countries to conclude that such income was not taxable in the hands of the assessee in India. Court held that earlier year order of Appellate Tribunal was accepted hence precluded from raising point for later year.”

- In the case of **Man Mohan Kedia v. Income Tax Officer, Kolkata, [2015] 370 ITR 649 (Calcutta)** the Calcutta High Court held that-

"Though giving a finding that res judicata is inapplicable to tax proceedings, emphasized on the importance of maintaining consistency in tax proceedings. It was held by the High Court that in taxation cases the Revenue Department is taken as one party for all assessment years and the assessee together taken as the other party. That which is decided between the Revenue and one assessee in an assessment year, having permanent effects should not be decided otherwise or treated in any other way by the revenue with regard to any other assessee, so as to maintain consistency and fairness in government action."

- In the case of **Sunil Kumar Ganeriwal v. Deputy Commissioner of Income-tax, Circle 14(2), Mumbai, [2011] 16 taxmann. com 311 (Mum.)** the Bombay High Court relied on the rule of consistency. In this case, the Assessing Officer had accepted the transaction of shares as investment and income arising from it under the head Short Term Capital Gains in earlier and also in subsequent assessment years. In a particular year, it was held by the Assessing Officer to be under head Profits and Gains from Business owing to the frequency, scale and period of holding and held that the rule of consistency demanded that the Assessing Officer can't take a different view in selective assessment year, and ruled in favour of the assessee.
- Contrary to the above pronouncements, in **Radhasoami Satsang Vyas v. CIT, 1991 Indlaw SC 948** the Supreme Court observed that each assessment year is a separate unit. Decision in one year may not carry forward and hold for a subsequent year. The court held that in taxation matters, the rule of res judicata, as embodied in Section 11 of Civil Procedure Code, 1908 (CPC) has no

application. Each year's assessment and decision is hence final to only that financial year and hence so determines the liability of the assessee of that particular financial year or period. It is open to the authorities to consider the issues and position of the assessee in the subsequent years. The decision was affirmed by the Apex Court in the **Municipal Corporation of City of Thane v. Messrs Vidyut Metalics Limited and another, 2007 INDLAW SC 900** case.

- In the case of **CIT vs Modipon Ltd (2018) 400 ITR 1 (SC)** held that-

"8. We have considered the submissions made on behalf of the parties. Notwithstanding the acceptance by the Revenue of the practice adopted by the assessee-Modipon Ltd. in all the assessment years except for the ones under dispute as enumerated above and the absence of any challenge to the decisions of the Delhi and the Punjab & Haryana High Courts, the present challenge would still be entertainable so long as it discloses a substantial question of law or an issue impacting public interest or the same has the potential of recurrence in future. The Revenue cannot be shut out from the present proceedings merely because of its acceptance of the practice of accounting adopted by the assessee or its acceptance of the decision of the two High Courts in question. An adjudication of the question(s) arising cannot be refused merely on the above basis. We will, therefore, have to proceed to answer the merits of the challenge made by the Revenue in the present appeals."

- In the case of **Udayan Chinubhai V. Commissioner of Income Tax, Gujarat, 1967 (1) SCR 913** The Supreme Court observed-

"It is true that an assessment year under the Income Tax Act is a self contained assessment period and a decision in the assessment year does not ordinarily operate as res judicata in

respect of the matter decided in any subsequent year, for the assessing officer is not a Court and he is not precluded from arriving at a conclusion inconsistent with his conclusion in another year. It is open to the Income Tax Officer, therefore, to depart from his decision in subsequent years, since the statement is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. A decision reached in one year would be a cogent factor in the determination of a similar question in a following year, but ordinarily there is no bar against the investigation by the Income Tax Officer of the same facts on which a decision in respect of an earlier year was arrived at."

7. Writ petition is not for those who sleep over their right-writ not maintainable:

- The Madras High Court in the case of **S. Vaidhyathan vs The Government Of Tamil Nadu** vide W.A.No.2756 of 2018 and CMP No.21228 of 2018 order pronounced on 11th December 2018 analysed the time limit and delay in filing an writ application as below-

"12. Under Article 226 of the Constitution of India, there is no time limit for filing a Writ Petition. However, there should be a reasonable time to file the writ petition, for seeking seniority or promotion.

13. Though reasonable time is not prescribed in the rules framed under Article 229 of the Constitution of India, the words "reasonable time", as explained in *Veerayeeammal v. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is extracted hereunder:

"13. The word "reasonable" has in law *prima facie* meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in

which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In *P. Ramanatha Aiyar's The Law Lexicon* it is defined to mean:

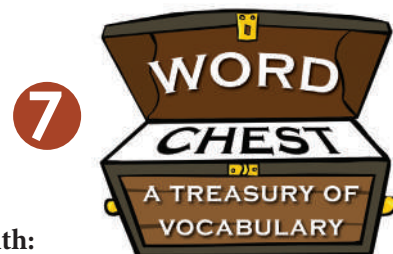
A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

8. Conclusion:

Its important to precisely place the legal proposition and link it to the facts of the case.

Cite precedents case laws if it is a mixed question of law and facts, make out your case effectively.

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Word of the Month:

Ameliorate

What is this?

to make a bad or unpleasant situation better

Use instead of: Improve, Enhance

How can I use it?

- ✓ Foreign aid is badly needed to **ameliorate** the effects of the drought.
- ✓ He wanted to **ameliorate** the present suffering.

NOTE ON GSTR 2B



■ CA. G B Srikanth Acharya

Indirect Tax

What is GSTR 2B?

GST Council, in its 39th Meeting held on March 14, 2020 recommended linking the data available in GSTN viz. linking outward supply data in Form GSTR-1 and Form GSTR-3B and Input Tax Credit (ITC) data between Form GSTR-2A and Form GSTR-3B.

The Government has issued Press Release on August 29, 2020 and introduced Form GSTR-2B which indicates ITC available to taxpayer for relevant tax period.

GSTR-2B is an auto-drafted Input Tax Credit (ITC) statement generated for every recipient (other than composition dealer), on the basis of information furnished by their suppliers, in their respective

- Form GSTR-1 (Outward Supply details) &
- Form GSTR-5 (Non-Resident Taxable Person return) &
- Form GSTR-6 filed by Input Service Distributor

It is a static statement and will be made available for each month, on the 12th day of the succeeding month i.e. for the month of August 2020 the statement will be generated on 12th September 2020.

Why GSTR 2B?

The insertion of GSTR-2B on the GSTN portal is for assisting the taxpayers in reconciling and matching the Input Tax Credit periodically.

Taxpayers can now reconcile data generated in Form GSTR-2B, with their own records and books of accounts.

By this reconciliation, taxpayers have to ensure while filing of GSTR-3B that;

- No credit is taken twice

- Credit is reversed as per law
- Tax on reverse charge basis is paid correctly
- Ineligible credit is not taken

Advantages of GSTR 2B

- GSTR-2B summary report helps to give an overview for the month to the taxpayer based on ITC available and not available statement
- A clear picture of ITC to be availed for the period
- To comply with Rule 36(4) reconciliation of ITC ledger and invoice details uploaded in GSTR-1 by the supplier
- Find out missing invoice or bill of entry available on ICEGATE and not in records
- Rule 36(4) reconciliation would not be required to be performed on year to date basis every month as the GSTR-2B report is static
- GSTR-2B data not required to be downloaded repetitively like GSTR-2A
- To identify vendors are compliant or non-compliant

Comparison between GSTR 2A and GSTR 2B

Points of Comparison	GSTR 2A	GSTR 2B
Nature of Statement	It is dynamic and changing everyday as and when suppliers file GSTR-1	Remains static or constant, as the GSTR-2B for one month cannot change based on future actions of the supplier

Points of Comparison	GSTR 2A	GSTR 2B
ITC on Import of Goods	Details not available	Information of IGST paid on imported goods and SEZ units are available from ICEGATE
ITC Reversal	ITC reversal details not contained in GSTR-2A	GSTR-2B contains the details of ITC required to be reversed only in limited specified cases
GSTR 1 / 5 filing date and period	GSTR-2A does not contain the GSTR-1 / 5 filing date and period against each supplier	GSTR-2B contains the GSTR-1 / 5 filing date and period against each supplier
Supplier wise information	GSTR-2A does not contain the supplier wise information. It provides the information invoice / document wise only	GSTR-2B contains the supplier-wise as well invoice / document wise information
Source	GSTR-1, GSTR-5, GSTR-6, GSTR-7, GSTR-8	GSTR-1, GSTR-5, GSTR-6, ICEGATE system
Auto population of data on submission of return	Data in GSTR-2A gets populated merely on submission of GSTR-1	Data in GSTR-2B gets populated after filing of GSTR-1

Points of Comparison	GSTR 2A	GSTR 2B
Periodicity	GSTR-2A is a dynamic / periodic statement which includes data on the basis of date of invoices	GSTR-2B is a monthly statement which includes data for every return which is filed during a particular period

Important FAQ

1. Whether Taxpayer needs to file GSTR-2B?

No, the Taxpayer need not file GSTR-2B as it is auto drafted form.

2. Whether data uploaded but not submitted would appear in GSTR-2B?

GSTR-2B captures data of GSTR-1, 5 & 6 filed by the suppliers and hence the data uploaded but not submitted would not appear in GSTR-2B.

3. When ITC can be availed on the invoices or debits issued by the supplier who is filing GSTR-1 on Quarterly basis?

GSTR-2B bifurcates ITC available and not available based on GSTR-1 filed by suppliers and hence it is blocking ITC on the invoice issued by supplier who are filing GSTR-1 on Quarterly basis.

4. Whether tax payer can amend GSTR-2B or not?

No, the taxpayer cannot make any change in GSTR-2B for the documents of any errors or omissions made by the supplier.

5. If the import of goods is made through courier services will it reflect in GSTR-2B?

For now, the details of ITC for goods that are imported through courier service will not be reflected in GSTR-2B. In the press release, it was mentioned that the same shall be made available shortly.

6. If the import of goods is made through the Post Office will it reflect in GSTR-2B?

For now, the details of ITC for goods that are imported through the Post Office will not be reflected in GSTR-2B. In the press release, it was mentioned that the same shall be made available shortly.

7. If the goods are imported through Non-Computerized Ports (Non-EDI ports) will it reflect in GSTR-2B?

For now, the details of ITC for goods that are imported through Non-Computerized Ports (Non-EDI Ports) will not be reflected in GSTR-2B. In the press release, it was mentioned that the same shall be made available shortly.

8. Will the reverse charge credit on import of services get reflected in GSTR-2B?

No, as it is a tax paid on a reverse charge basis and the details are to be furnished by the taxpayer while furnishing GSTR-1 and GSTR-3B.

Issues and Challenges

- Reconciliation issues continued and increased
 - o GSTR-2B vs ITC as per Books of Accounts
 - o GSTR-2A vs GSTR-2B
 - o GSTR-2A vs ITC as per Books of Accounts
 - o ITC as per GSTR-2B Vs ITC as per GSTR-3B
- GSTR 2B only showing RCM liability from RP and not showing URP
- Reconciliation of ITC as per Rule36(4)

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Congratulations



We Congratulate
CA. I S Prasad

On receiving Honorary Doctorate on
5th March, 2021 from Tumkur University by Hon'ble Governor of Karnataka - Sri. Vajubhai Vala,
Former Chairman ISRO, Chairman New Education Policy Padma Vibhushan - Sri. Kasturi Rangan
and Vice Chancellor - Sri. Siddegowda in its 14th Convocation held at Tumkur

BUDGET 2021 - GST INSIGHTS



■ CA. Madhukar N Hiregange & CA. Akshay M Hiregange

Indirect Tax

The Finance Bill, 2021 which was introduced in the Lok Sabha on 1st February 2021, awaits the presidential assent to bring into effect the various proposed changes in the budget. Tax frauds, Non-filing of GST returns, Mismatches & Lack of transparency in disclosed numbers has led to the Government taking some harsh decisions in the Union Budget 2021. Is it a case of throwing the baby with the bath water?

There have been some clarifications with respect to credit claims and applicability of interest.

In this article, we try to drill down into the various facets of amendments and provide possible consequences and suggestions.

Budget 2021 – GST changes:

1. Retrospective amendment to include 'activities by an association to its members' under the scope of supply
2. Amendment to Section 16 giving validity to Rule 36(4)
3. Removal of requirement to conduct GST Audit by a Chartered Accountant or a Cost Accountant
4. Retrospective amendment on interest payable on Net Cash Liability
5. Amendment in IGST Act for Zero rated supply
5. Time period specified to Issue Notice and pass Order
6. Section 129 and 130 are independent provisions – Delinking
7. Extension of validity for provisional attachment of property, bank account (Section 83)
8. Power to Call for Information (Section 151)
9. Bar on Disclosure of Information (Section 152)
10. Power to Issue Instructions or Directions (Section 168)

Some other changes through the Budget (not discussed in this article):

1. Delinking of proceedings under Section 73 or 74 from the proceeding under the Section 129 and 130
2. Tax replaced with increase in penalty under Section 129
3. Right to sell goods and conveyance on failure to pay penalty
4. Insertion of explanation for self-assessed tax under Section 75

Retrospective amendment to include activities by an association to its members under the scope of supply (w.e.f 1st July 2017)

Clause (aa) has been inserted to provide clarity on the meaning of the term supply under Section 7(1) of CGST Act, 2017 w.e.f. 01st July 2017- (aa) *the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment, or other valuable consideration.*

An explanation has also been included to nullify a recent Supreme Court decision, *i.e. notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, Tribunal or Authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.*

Also, Entry 7 of Schedule II which classified the following activity as supply of goods has been omitted retrospectively w.e.f. 01st July 2017.

Consequence & Suggestion:

The said retrospective amendment has been proposed to overcome the ruling of the Apex Court in the case of **State of West Bengal v. Calcutta Club Ltd.** cited **2019-TIOL-449-SC-STLB**, where the levy of Service Tax / VAT was struck down on the **Principle of Mutuality**. Even under GST, levy of GST on Clubs, Societies, Associations can be contested on the same lines. The Constitutional validity of the said entry and the validity of retrospective amendment may still have to pass the litmus test in the Courts, although, it appears that the entry has been introduced merely to overcome the decision of the Supreme Court. Till further clarity emerges, it may be advisable to comply with the law under protest.

Amendment to Section 16 giving validity to Rule 36(4)

Section 16 of the CGST Act provides eligibility and conditions for availing the Input Tax Credit. A new clause has been added under Section 16 requiring the details of the invoice that has been furnished by the supplier in the statement of outward supplies (GSTR-1) and that such details have been communicated to the recipient (GSTR-2A).

Note: Rule 36(4) of the CGST Rules, 2017 had been inserted vide Notification No.49/2019 - Central Tax dated 09.10.2019 with effect from 09.10.2019, where the credit was restricted to 105% of the inputs reflected in GSTR-2A presently.

Also, recipients and vendors will be able to communicate over the GST portal for delay in updating invoices, incorrect details, etc. (introduced in GST portal from December 2020 onwards).

Following link maybe useful - https://tutorial.gst.gov.in/downloads/news/functionalities_released_octtodec2020.pdf

Consequence & Suggestion:

Though Section 43A was inserted vide the CGST Amendment Act, 2018 it has not been notified till date and thereby not effective as on date to enable the zRule 36(4). To overcome the challenge, the above entry has been inserted in Section 16 of the CGST Act to give legal validity to the requirement of Rule 36(4). The said amendment appears to be prospective in nature and hence its validity prior to the introduction of the said condition in Section 16 would be rightly disputed.

In the erstwhile laws, it was an established principle that substantial benefit of credit should not be denied due to the default by vendors. There are also situations where credit has been allowed when the vendor did not deposit taxes: -

- *Commissioner of Trade & Taxes, Delhi, and others Vs. Arise India Limited and others* [TS-2-SC-2018-VAT]
- *Kay Kay Industries* (2013-TIOL-41-SC-CX). (2013-TIOL-41-SC-CX)
- *Bharti Telemedia Ltd. Vs. Union of India & Ors.* [Appeal Number: W.P.(C) 6293/2019]
- *Sri Ranganathar Valves Pvt Ltd Vs Assistant Commissioner (CT) (FAC) 2020-TIOL-1611-HC-MAD-VAT*
- *Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi* 2017-TIOL-2251-HC-DEL-VAT

The taxpayers with a risk appetite can dispute that default on the part of vendor, credit must not be denied. The option to avail and reverse credit under protest could also be explored, if one was risk averse or wishing to avoid litigation.

For the conservative taxpayers, it is suggested to pay and take credit based on the entries filed by vendors through GSTR 1. One could implement a vendor categorisation system [A,B,C] linked to variable payment terms wherein, tax value could be paid to non-compliant vendors after entries are reflecting in GSTR 2A.

Removal of requirement to conduct GST Audit by Chartered Accountant or Cost Accountant

Section 35 has been omitted and Section 44 of CGST Act, 2017 has been amended to furnish Annual Return (GSTR 9) along with a Self-Certified Reconciliation Statement (GSTR 9C), reconciling the value of supplies declared in the return furnished for the Financial Year, along with the audited annual Financial Statement electronically - by the taxpayer.

This amendment was considered due to increased cost of compliance, various due dates extension and lower additional tax collections than anticipated.

Consequence & Suggestion:

The burden to identify errors in classifications and tax rates, reverse charge liability, deemed supply liability, etc. would now not be performed by the GST auditor. This would lead to lower tax collection in normal course, higher costs of litigations in the future. Value added reviews under GST could be the new way forward which the larger organisations may prefer.

Retrospective amendment on interest payable on Net Cash Liability

To provide clarity to various opposing decisions in High Courts, and to put to rest clarification with respect to recently issued Notifications and Circulars, amendment has been provided in the law retrospectively.

“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement

of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the Electronic Cash Ledger”.

Consequence & Suggestion:

Strictly speaking the amendment is in relation to delay in payment of tax for the transactions for the said tax period. Where a transaction has been disclosed in a different tax period, the interest could be said to be liable on gross liability.

Conceptually, interest is only on the net liability as GST is on value addition. Various cases in erstwhile laws could be of help to substantiate interest on net liability. It can be argued payments pursuant to Sections 73 / 74 are also liable on Net liability.

Where the values are high, refund of past payments may be applied for and is possible.

Amendment in IGST Act for Zero Rated Supply

- Section 16 of the IGST Act now allows only refund in case of zero rated supplies under the unutilised ITC option only.
- Option to make zero rated supplies with payment of tax and claiming refund has been restricted to a specific class of persons / supply. (list not yet issued)
- The realisation of all exports (during refund) is now linked to time limit under FEMA which is 9 months.
- IGST Act amended to validate Rules requires the SEZ to procure for authorised operations only

Consequence & Suggestion:

1. This is against the principle of avoiding taxes to stick to exports.
2. Earlier refund on export of goods was automated, working in line with Customs portal. Refund processing for the same would now become cumbersome and is regressive, hopefully only a temporary change.

3. Capital goods ITC is not refundable (as with payment of tax option is restricted)
4. Delay in the refund receipts and increased paper work & verification
5. Expect much higher rejections and delays – possibly stating the nexus to outward supply or documents issue
6. Expect GST officer's involvement / rent seeking / retainership, which would lead to disputes and increased costs.

The change in refund processing was performed due to fake refund claims, and shortage of funds with the Government. The remedy to a solution is not to do away with the negative outcome rather to fix the infrastructure which would result in positive outcome.

Conclusion

The above deliberation throws light on some of the

changes in the GST law such as levy, credit eligibility, interest applicability, etc. The Finance Bill still awaits the Presidents assent.

The implication of removal of GST audits by professionals has cast a higher burden on the taxpayer which may lead to more litigations and interest and penalty costs in the future. Considering the recent developments in the GST portal and the rise of technology, mundane activities done by professionals like filing returns, reconciliations etc. would become obsolete. Therefore, professionals would now have to look at different avenues to provide value additive service to the clients which may be a blessing in disguise for the professional having a good knowledge of GST.

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Congratulations



We Congratulate

Bengaluru Branch of SIRC of ICAI for receiving the **First Best Branch Award** (Mega Category) in all India Level for the Year 2020.

CA. Raveendra S Kore, Chairman, Bengaluru Branch receiving the Award from **Sri(CA) Arun Singh**, Member of Parliament (Rajya Sabha) in the presence of **CA. Atul Kumar Gupta**, President ICAI at 71st Annual Function of ICAI held at Gurugram on 9th February, 2021



ACCOUNTING ASPECTS UNDER THE GST LAW

■ CA. Annapurna Kabra

Accounting is “the language of business.” Accounting is a system of maintaining records of a company’s operations and communicating that information to decision makers. Proper accounts are required to meet filing requirements and to maintain control over financial resources. The importance of maintaining the accounts should never be underestimated. The current and accurate financial information is critical for tax purposes.

The GST Act is mandatory and specific to maintain the books of Account. The GST law requires the registered person to maintain the Accounts of production or manufacture of goods, inward and outward supply of goods or services or both, stock of goods, input tax credit availed, output tax payable and paid and such other particulars as may be prescribed. The accounts related to each place of business should be kept at each place of business.

There are various decisions in the erstwhile law in relation to maintenance of Accounts and records. In *Kapilansh Dattu Udyog Pvt Ltd Vs CCE Nagpur (2013) 31 STR 50 (CESTAT Mumbai)* where assessee maintained proper records and books of accounts, it was held that there could be no suppression of facts. The Suppression was not borne out by the records. In *CCE Surat -I Vs Shree Khedut Sahakari Khand Udyog Mandli Ltd (2013) 31 STR* where insurance policy showed the amount of service tax paid and documents were serially numbered, it was held that such document showed all necessary details and compiled under rule 4A of Service Tax Rules 1994 and Cenvat credit will be allowed. In *Sterling Hoffman Software Consultant (P)Ltd Vs CCE Vadodara (2013)* it was held that computerized accounts are acceptable under service tax law. As such where computerised accounts are kept, verification of admissibility of refund in respect of inputs services used for export should be done from such accounts. In *Suncity Art Exporters Vs CCE & ST Jaipur-II*

(2016) 53 GST 85(2015), it was held that computerised invoices downloaded through internet are eligible documents for claiming refund of service tax paid on services used for exports if they contain all relevant details establishing availment of service used in export of goods. In *Svizera labs Pvt ltd Vs Commissioner of Central Excise Belapur 2018 (363) E.L.T. 1186 (Tri. - Mumbai)* not making of entries in RG-23A Part-II will not disentitle the appellant from the Cenvat credit. The entries made in their financial record are more than sufficient compliance of taking credit. In case of *Vickers Systems International Limited Vs Commissioner of Central Excise Pune-1 2017 (346) E.L.T. 476 (Tri. - Mumbai)* wherein Inputs being old and obsolete written off in books of accounts the duty demand was not sustainable if such inputs availed in factory.

The following are illustrative list of maintenance of books like goods or services imported and exported, supplies attracting payment of tax, supplies attracting payment of tax on reverse charge, stock of goods supplies/received, monthly production accounts with quantitative details, quantitative details of goods used in the provision of each service, details of input services utilized and the services supplied, advances received, paid and adjustments made thereto, details of tax payable, tax collected and paid, input tax credit claimed, name and complete addresses of suppliers/customers/recipients, complete addresses of the premises where the goods are stored, including goods stored in transit and relevant documents like Invoices, bill of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e way bills, etc

The following are illustrative list of registers/documents to be maintained like customer purchase order/ sales order register, transport documents like delivery challan , E -way bill, lorry receipt, insurance, packing list documents register , banking

receipt vouchers register, shipping bills register, duty & tax paid challan register, stock requisitions in case of stock transfer register, returnable gate pass (RGP) register, Invoice to/from job worker register, document transferring input tax credit (ISD) register, bill of lading/ bill of entry register, purchase register, sales register, advance register, debit notes register/ credit Notes register, expenses register, fixed asset invoices register, GST payment challan register, GSTR filed status register, financial statements (Balance Sheet & P & L), letter of undertaking, license certificate, bonds, reconciliation of electronic credit and electronic cash ledger statement

In some instances, the treatment in the books of Accounts will decide the eligibility of input tax credit like for capital goods which means the goods which are capitalized in the books of Account. The registered person can issue the credit note/debit note with GST and without GST impact and it has to be segregated for the computation of GST liability under the GST law. The place of business includes a place where a taxable person maintains his books of Accounts. Therefore, if there is any administration office or any office where books of Accounts are maintained then such place will be treated as place of business for GST purpose. In some instances, the time of supply is determined based on the date on which payment is entered in his books of Accounts or entry in books of Accounts.

There are various reconciliations which has to be done on real time basis in books of Accounts like HSN wise summary with books of accounts, purchases as per books of accounts with GSTR-2A, Inward supplies with respective ledgers of inward supplies and electronic credit ledger, outward supplies with respective electronic liability ledgers and electronic cash ledgers, Service exports with remittances in bank, payment to vendors within 180 days for reversal of credit if any, refund applied and refund sanctioned, Input tax credit reversals and input tax credit availment for provisional credit (20%, 10% and 5%) etc. Therefore, regular maintenance and updatation of Accounts is mandatorily required even to comply with the GST law.

The registered person may also maintain the books of Accounts in electronic form in such manner as required. Rule 56 requires maintenance of com-

plete trail in transactions reported in the computer software. Once the system is configured, the choice of selecting place of supply, rate of tax, type of tax, reporting table in GST 1/GSTR 3B etc. is all autos driven by the system. There are certain data which are only in purchase or input tax credit register and not in GSTR 2A. The software must be configured to determine the supply as mixed or composite or to provide for tax rates to be applied accordingly for such supplies or to adjust the stock quantity in the books accordingly (for mixed supply). The software must be configured to review goods/capital goods sent on job work, or selection of vendor and rating vendor based on their compliances as utilising credits by the registered person will depend upon the vendor compliances under the GST law.

The Author believes that there should be continuous examination of books of Accounts as per GST law and reconciliation of balance in books of accounts with electronic registers maintained by the GSTN on real time basis to avoid the legal proceedings.

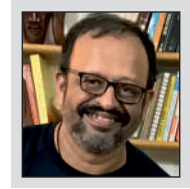
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KSCAA Welcomes New Members Feburary 2021

Sl.No.	Name	Place
1	Gurudatta D.	MYSORE
2	Devaraj Chauhan	BIDAR
3	M Nanjundeshwara	SHIMOGGA
4	Shreyas Janagouda	BELAGAVI
5	Monika Janagouda	BELGAVI
6	Naveen Poojari	BANGALORE
7	Chetan GMS	BANGALORE
8	Chandrashekar Mahadevappa	BANGALORE
9	Naresh K.	BELLARY

INTERNAL AUDIT FUNCTION AT DEWAN HOUSING FINANCE LIMITED (DHFL)

- AN ANALYSIS



■ CA. Mohan R Lavi

Introduction

Over the last few years, expectations of the society from the auditors has increased tremendously. Thanks to the corporate mishaps that occurred in entities such as IL & FS, DHFL etc., there is an expectation that the audit report should be able to red-flag material misstatements. By now, it is an established fact that the statutory auditor gives only a reasonable assurance on the Financial Statements and hence detecting material misstatements may not be on their priority list. If at all anyone has a chance to detect material misstatements, it should be the internal auditor since they are closer to the action and also spend more time on their tasks as compared to the statutory auditor. This article makes the argument that internal audit would not be able to detect material misstatements if they are ineffective - the case of the internal audit function in Dewan Housing Finance Limited (DHFL) forms the basis for this argument.

Internal Audit function @ DHFL

DHFL had an internal audit department, which provided comprehensive audit coverage of functional areas and operations of the Company to examine the adequacy of and compliance with policies, procedures, statutory and regulatory requirements. Annual audit plan is placed before the Audit Committee / Advisory Committee and adherence to the plan is reported quarterly to the Audit Committee / Advisory Committee. Compliance status of audit observations and follow up actions thereon are reported to the Audit Committee / Advisory Committee. The Audit Committee / Advisory Committee reviews and evaluates adequacy and effectiveness of your Company's Internal Control environment and monitors the implementation of audit recommendations.

Internal audit is an independent and objective assurance and consulting activity, designed to add value and improve your Company's operations. The Internal audit function continues to report to the Chief Risk Officer (CRO) of the Company as an interim arrangement during the presently ongoing Corporate Insolvency Resolution Process (CIRP). Internal audit function is accountable to the Board of Directors through the Chairman of the Audit Committee / Advisory Committee through the Administrator. Internal Audit also assists the management in identifying the operational risks for revenue leakage and opportunities for cost savings and revenue enhancements; ensures working within the regulatory and statutory framework and facilitates early detection and prevention of frauds.

DHFL Fraud

The administrator of Dewan Housing Finance Corporation Ltd (DHFL) has filed a case of fraud worth Rs 12,705 crore against the promoters. An investigation revealed the fraud in loan disbursements towards development of two Slum Rehabilitation Authority (SRA) projects. The Company used different loan accounting software pieces to hide fraudulent transactions involving lakhs of fictitious borrowers. The software helped the company to hide the transactions from the regulators and auditors and showed inflated income to the stock exchanges. The report said the Company used FoxPro software to prepare codes for camouflaging actual disbursements and collection of funds by creating 260,315 fictitious home loan accounts. Earlier, the administrator had filed before the NCLT an application in respect of disbursements of retail loans made to certain entities, referred to as the 'Bandra Book Entities', worth Rs 14,046 crore as on June end 2019 and Rs 3,348 crore being the amount considered as due and outstanding towards

notional loss to the Company. These transactions occurred during the periods 2006-2007 to 2018-19. An earlier forensic audit conducted on behalf of the lenders of DHFL found a diversion of over Rs 19,000 crore of bank loans to DHFL's related entities.

In this background, a couple of questions can be asked of the Internal auditors:

1. They may not have detected the complete fraud and the frequent diversion of funds but did they not smell something amiss considering the nature of the transactions?
2. In case they have reported something to the management, do they have evidence for the same?

It would appear that the administrator of DHFL had concluded that the internal audit function was not effective because in the Annual Report there is a comment that "However, during the CIRP period it is observed that internal audit effectiveness was lacking during the earlier period and its independence is being established now with a view to prevent the lapses identified by the transaction avoidance auditor".

The transaction avoidance auditor was appointed with a view to give a complete low-down on the transactions that could have been avoided but were executed nevertheless. On their part, the internal auditors could defend by not detecting the fraud due to the fact that the fraudulent transactions could not be seen by anyone including them. Apparently, the branch where the fraudulent loans were disbursed was also non-existing!

Usually, when there are two extreme views on a topic, the truth lies in the middle. It is possible that the internal audit department at DHFL may have come across some transactions that were not normal but they could have chosen to ignore it either because the transactions were too complex or their queries were brushed off by the Top Management / Superiors. Moving forward, internal auditors would do well to keep a few thumb-rules in mind while discharging their function:

1. Take a 360-degree view of the business and zero in on areas that could be considered risky.

2. Conduct a detailed audit of all related party transactions. This audit should take the contours of a mini forensic audit. It is a known fact that most of the material misstatements that have occurred have involved related parties in some manner or the other.
3. When in doubt, report.
4. If there is pressure from the Top Management / Superiors, document it.
5. Commence a process of Audit by Talking Around (ABTA). This would involve walking around the office and talking to not only the finance and accounts personnel but also people in other departments. The idea of ABTA is not to ask probing questions but to gain better insights into the activities of the entity. The outcome of these ABTA's could add value to the internal audit report.

Often, it is said that the only constant is change. In the present age of Artificial Intelligence (AI) and Machine Learning (ML), Internal auditors would also need to change the manner in which they approach Internal audits.

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Solution to Sudoku - 6 February 2021

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

STRENGTHENING THE GOVERNANCE PRACTICES BASED ON 'RISK BASED INTERNAL AUDIT' APPROACH

■ CA. Ramarao R

Introduction

Managing risks is the practice of creating value by knowing what can be achieved or lost by intervention or inaction, foreseen or unexpected incidents, expected or unplanned outcomes. Questions may be posed by those who know what they do not know.

Over the last few years, the prerequisite of a good Corporate Governance practice is 'to manage risks'. Organizations need to identify the business risks that they face and to design a plan to manage them. While the primary responsibility for identifying and managing risks belongs to the management, one of the key roles of internal audit is to provide assurance that those risks have been properly managed. The first step in a risk-based audit approach is to plot the audit risk universe, the basis on which the audit plan is derived. In a risk-based approach, the internal auditor assesses the risks to the organization and advises on the efficacy of measures to mitigate those risks, while simultaneously providing insights into potential risks.

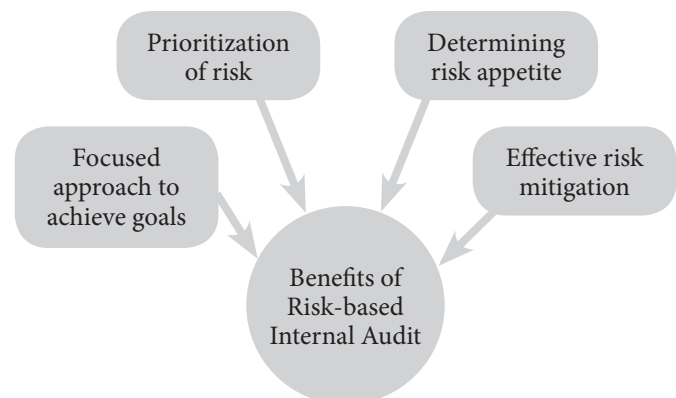
A procedure that links the internal auditing to the organization's overall risk management framework can be defined as Risk Based Internal Auditing (RBIA). In order to provide assurance to the board that the risk management processes are effectively managed in relation to the risk appetite, internal auditor can use RBIA.

Is the organization ready?

We have accepted now that a process makes the outcome predictable, even more than a control does. The process of risk management – as opposed to risk management itself – sustains outcomes. Such a process is Enterprise Risk Management (ERM). The framework, though, for the process could be varied.

If the risk management framework is not very strong or non-existent, the organization is unprepared for RBIA. More importantly, one can derive that the organisation's system of internal control is poor. Internal auditors in such an organisation should promote good risk management practice to improve the system of internal control. Where RBIA is new to an organisation, the internal auditor will have to promote the concept to the management and gain their support, particularly since it may mean a change for the management in the way that they start to think about.

Benefits of Risk-based approaches in Internal Audit



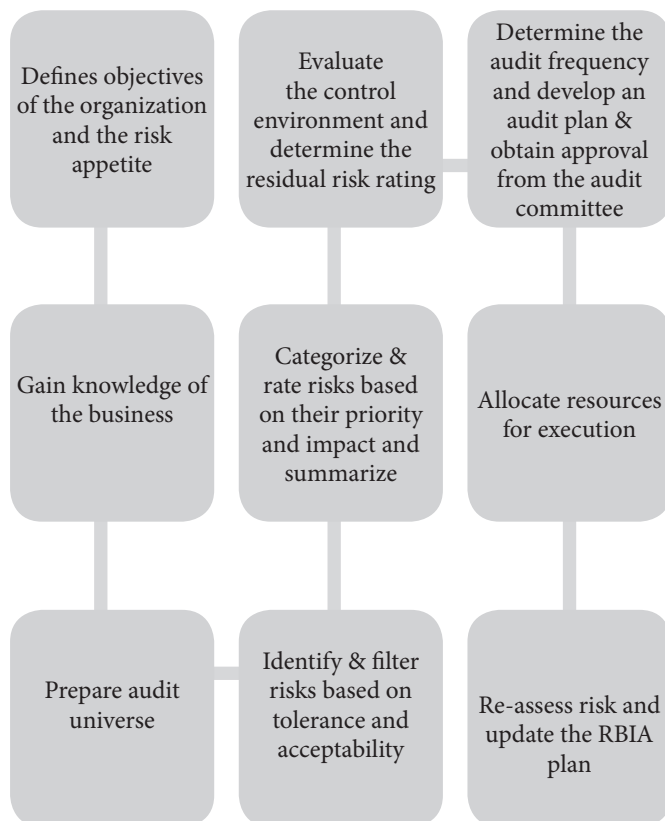
Risk-based Internal Audit Planning

Planning is a key element for execution of RBIA – as for any activity! And the internal auditor should identify the audit schedule at the start of the year with a vision for the next three years for the Risk Based Internal Audit (RBIA). The scope should

clearly define the areas to be reviewed each year and executed accordingly after the plan is approved by the Audit Committee or Board of Directors. The plan should be reviewed on an annual basis on the actual achievement with the planned activity and adapted to changing organizational plans and expectations. Any deviations should be highlighted along with reasons in the report. The audit plan should consider the following:

- Major Risks;
- Objectives of the Organisation;
- Risk Appetite;
- Inputs from Key Managerial Person/s;
- Business Environment.

Process of risk-based internal audit



Tips for successful implementation of RBIA

For a successful implementation of RBIA, the internal auditor should:

- a. **Gain knowledge of the Industry:** This will help the internal auditor to assess competition and the comparative standing of the Organisation. Selection of appropriate comparable is essential as it could lead to pouring efforts in the wrong direction.
- b. **Understand Business Process:** RBIA varies greatly compared to the conventional internal audit in terms of reach and implementation. Understanding the business process will aid in defining and assessing risks as well as prioritising them. Evaluating transactions on a sample basis may not produce meaningful outcomes. Auditors should spend the first few days learning about the business process and the data to be captured for each and every step, to determine the risk parameters.
- c. **Experience based judgment:** RBIA team should comprise of experienced and fresh participants. The team's experienced members will assist in making choices based on their prior experience, while the fresh members infuse the healthy scepticism for conventional methods, using lateral thinking and technology.
- d. **80/20 Rule** – This maxim should be practised while doing any task since it is an effective method of operating. If the auditor is knowledgeable, 80% of the risk can be identified while verifying 20% of the transactions. The risk can be assessed and measured once the critical task is identified. The organization's risk appetite or criticality of the risk would determine the next steps.
- e. **Use Technology** – Data analytics, particularly when dealing with terabytes of information, can assist in the analysis of all transactions, as well as a detailed evaluation of the results. In display / read only mode, the internal auditor performing RBIA can request access to the frontend as well as the backend data of the different software applications being used by the client. The internal auditor can validate the controls and tests on

the transactions performed by the users. This would help to detect any possible validations that are absent in the system while processing the transactions.

Conclusion

Stakeholders' perceptions of the internal audit role have increased rapidly as the regulatory and Corporate Governance framework has significantly changed. While the conventional internal audit focuses on providing assurance on the controls in place in the course of the routine audit, RBIA provides assurance on the effectiveness of risk management along with the assurance on the controls. In the era where resources always present

constraints, the risk-based approach to internal audit ensures that the focus is on high(er) risk areas, mitigation measures are adequate and within the risk appetite determined by management.


Source credits

<https://global.theiia.org/standards-guidance/topics/documents/201501guidetorbias.pdf>

https://icmai.in/upload/IAASB/GNRBIA_21_07_2020.pdf

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In Focus



ಶ್ರೀ ತ್ಯಾಗರಾಜ ಕೋ-ಆಪರೇಟಿವ್ ಬ್ಯಾಂಕ್ ಲಿ.,
ನಂ.5, 9 ನೇ ಅಡ್ಡರಸ್ತೆ, ಎನ್ ಆರ್ ಕಾಲೋನಿ, ಬೆಂಗಳೂರು-560 019.
ದೂರವಾಣಿ: 22958155/56/57, ಫ್ಯಾಕ್ಸ್: 22958152

" ಪ್ರಕಟಣೆ "

ಬ್ಯಾಂಕಿನ 2021-22ನೇ ಸಾಲಿಗೆ ಆಡಳಿತ ಕಛೇರಿ ಮತ್ತು 12 ಶಾಖೆಗಳ (CONCURRENT AUDIT) ಸಮವರ್ತಿ ಲೆಕ್ಕಪರಿಶೋಧನಾ ಕಾರ್ಯವನ್ನು(ಬ್ಯಾಂಕಿನ ಲೆಕ್ಕಪರಿಶೋಧನಾ ಕೈಪಿಡಿಗನುಗುಣವಾಗಿ) ಕೈಗೊಳ್ಳಲು ಬ್ಯಾಂಕಿನ ಉಪನಿಯಮ ಸಂಖ್ಯೆ 100 ರಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ಸಹಕಾರದಲ್ಲಿ ಉನ್ನತ ಡಿಪ್ಲೊಮಾ ಪಡೆದ ಮತ್ತು ಸಹಕಾರ ಸಂಘಗಳ ಲೆಕ್ಕಪರಿಶೋಧನೆಯಲ್ಲಿ ಕನಿಷ್ಠ ಮೂರು ವರ್ಷ ಅನುಭವವುಳ್ಳ ಅಧಿಕಾರಿ ಅಥವಾ ಸಹಕಾರ ಸಂಘಗಳ ಲೆಕ್ಕಪರಿಶೋಧನೆಯಲ್ಲಿ ಕನಿಷ್ಠ ಮೂರು ವರ್ಷ ಅನುಭವವುಳ್ಳ ಚಾರ್ಟೆಡ್ ಅಕೌಂಟೆಂಟ್ ಅಥವಾ ಬ್ಯಾಂಕಿನ ಪರಿವೀಕ್ಷಣೆಯಲ್ಲಿ ಅನುಭವ ಪಡೆದ ರಿಸರ್ವ್ ಬ್ಯಾಂಕಿನ/ಯಾವುದೇ ವಾಣಿಜ್ಯ ಬ್ಯಾಂಕಿನ ನಿವೃತ್ತ ಅಧಿಕಾರಿಯನ್ನು ನೇಮಿಸಿಕೊಳ್ಳಲು ಅರ್ಜಿಯನ್ನು ಕರೆಯಲಾಗಿದೆ.

ಆಸಕ್ತಿಯುಳ್ಳ ವ್ಯಕ್ತಿ/ಸಂಸ್ಥೆಗಳು ತಮ್ಮ ಪೂರ್ಣ ಸ್ವ-ವಿವರ ಮತ್ತು ಇಚ್ಛಿಸುವ ಸಂಭಾವನೆಯನ್ನು ತಿಳಿಸಿ, ಪ್ರಕಟಣೆ ಹೊರಡಿಸಿದ ದಿನಾಂಕದಿಂದ 15 ದಿವಸಗಳೊಳಗೆ ಆಡಳಿತ ಕಛೇರಿಗೆ ಮುಚ್ಚಿದ ಲಕೋಟೆಯಲ್ಲಿ ಲಿಖಿತ ಕೋರಿಕೆ ಸಲ್ಲಿಸಬೇಕೆಂದು ತಿಳಿಸಲಾಗಿದೆ. ಹೆಚ್ಚಿನ ಮಾಹಿತಿಗಾಗಿ ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ಬ್ಯಾಂಕಿನ ವ್ಯವಹಾರದ ವೇಳೆಯಲ್ಲಿ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಹಣಾಧಿಕಾರಿಯವರನ್ನು ಸಂಪರ್ಕಿಸಬಹುದು.

ಸ್ಥಳ: ಬೆಂಗಳೂರು
ದಿನಾಂಕ: 02-03-2021

ಸಹಿ/-
ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಹಣಾಧಿಕಾರಿ.

FINANCIAL REPORTING AND ASSURANCE - REFERENCER



■ CA Vinayak Pai V

This month's feature covers Key Monthly Updates in the Accounting and Auditing space and a Back to Basics section on Significant Accounting Policies (AS 1)

1. UPDATES: Monthly Roundup¹

Financial Reporting

AS/Ind AS	<ul style="list-style-type: none"> ICAI Guidance Notes (GN) <ul style="list-style-type: none"> GN on Accounting by E-Commerce Entities GN on Accrual Basis of Accounting
	<ul style="list-style-type: none"> Exposure Drafts of Amendments to Ind AS's: <ul style="list-style-type: none"> Onerous Contracts (Ind AS 37) Proceeds before Intended Use (Ind AS 16) Reference to the Conceptual Framework (Amendments to Ind AS 103) Subsidiary as a first-time adopter (Ind AS 101) Fees in the '10%' test for Derecognition of Financial Liabilities (Ind AS 109) Taxation in Fair Value Measurements (Ind AS 41)
	<ul style="list-style-type: none"> ICAI Educational Material <ul style="list-style-type: none"> Ind AS 105, Non-current Assets Held for Sale and Discontinued Operations
Assurance	<ul style="list-style-type: none"> ICAI Exposure Draft – Standard for Audit of Smaller and Less Complex Entities
	<ul style="list-style-type: none"> ICAI Technical Guide on Valuation (Revised 2021)
	<ul style="list-style-type: none"> ICAI Background Material on Business Responsibility and Sustainability Reporting
	<ul style="list-style-type: none"> ICAI Educational Material for following ICAI Valuation Standards: <ul style="list-style-type: none"> 103 – Valuation Approaches and Methods 301 – Business Valuation
Company Law/SEBI	<ul style="list-style-type: none"> Amendment to definition of 'Small Company' [MCA Notification G.S.R.92(E) dated 1st February, 2021]
	<ul style="list-style-type: none"> Companies (Specification of Definition Details) Second Amendment Rules, 2021: Rule inserted - Specified classes of Companies not to be considered as Listed Companies [MCA Notification G.S.R.123 (E) dated 19th February, 2021]
	<ul style="list-style-type: none"> ICAI Publication - FAQs on SEBI (LODR) Regulations, 2015

RBI	<ul style="list-style-type: none"> • Notifications <ul style="list-style-type: none"> ○ Risk-Based Internal Audit (RBIA) Framework for all deposit taking NBFCs and specified non-deposit taking NBFCs and UCBs ○ UCBs - Loans and advances to directors, their relatives and firms / concerns in which they are interested ○ SLR holdings in HTM Category
IFRS	<ul style="list-style-type: none"> • Exposure Draft: Covid-19 related Rent Concessions beyond 30th June 2021 • Amendments to IFRS Standards: <ul style="list-style-type: none"> ○ Disclosure of Accounting Policies – Amendments to IAS 1, <i>Presentation of Financial Statements</i> and IFRS Practice Statement 2, <i>Making Materiality Judgements</i> ○ Definition of Accounting Estimates – Amendments to IAS 8, <i>Accounting Policies, Changes in Accounting Estimates and Errors</i>
USGAAP	<ul style="list-style-type: none"> • PCAOB Publication – 2020 Conversations with Audit Committee Chairs

¹Updates for the month of February 2021.

2. BACK TO BASICS: Disclosure of Significant Accounting Policies

2.1 Setting the context

The section ‘**Significant Accounting Policies**’ is at the forefront in the *Notes* section of General Purpose Financial Statements. The disclosure of significant accounting policies is a **critical compliance area** for preparers as well as auditors of Corporates as well as Non-Corporate Entities (*that are subject to attest function of members of ICAI*).

In this section an overview of the related requirements of Accounting Standards is provided.

2.2 Accounting Standard governing disclosure of Significant Accounting Policies

The standard governing the same is AS 1, **Disclosure of Accounting Policies** applicable to Companies that are not mandatorily required to prepare their Financial Statements under the Ind AS Framework (on account of their relative size measured in terms of Net worth) and in the audits of Non-Corporate Entities.

2.3 About Accounting Policies

Relevant extracts from the Accounting Standard:

‘The **accounting policies** refer to the **specific**

accounting principles and the **methods of applying those principles** adopted by the enterprise in the preparation and presentation of Financial Statements’. [AS 1.11]

‘The choice of the appropriate accounting principles and the methods of applying those principles in the specific circumstances of each enterprise calls for considerable judgement by the management of the enterprise’. [AS 1.12]

2.4 What needs to be complied with?

The standard requires the following to be complied with:

1. All significant accounting policies adopted in the preparation and presentation of Financial Statements **should be disclosed**. [AS 1.24]
2. The disclosure of the significant accounting policies as such **should form part of the Financial Statements**. [AS 1.25]
3. The significant accounting policies should **normally be disclosed in one place**. [AS 1.25] It would be helpful to the reader of Financial Statements if they are all disclosed as such in one place instead of being scattered over several Statements, Schedules and Notes. [AS 1.20]

Further, it may be noted that the standard cautions that ***'Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the items in the accounts.'*** [AS 1.23]

2.5 How to assess 'Significance' in the context of 'Significant Accounting Policies'?

There is no definition of the term 'Significant' in the AS literature (*except in connection with Associates where 'Significant' influence is defined*).

If one were to look at a dictionary meaning of the word 'Significant', it typically reads as – '*important or large enough to have an effect or be noticed*' and '*sufficiently great or importance to be worthy of attention*'.

The above takes us back to the terminologies used in the AS Framework, primary of which, are the terms **relevant** and **material**. This, coupled with the discussion to follow herein below on the principles underlying the disclosure, provides the setting for assessing what is '*significant*' in the context of '*significant accounting policies*' in individual situations.

2.6 What are the principles that underpin disclosure of significant accounting policies?

An analysis of Financial Statements (although not the only deciding point), is a precursor to investment, lending and credit decisions as well as for their ongoing monitoring. Financial statements are the final outcome of an accounting process and even when they comply fully with requirements of Accounting Standards, **they can be appreciated only when read in the context of the accounting policies that were applied in its underlying preparation**. This is on account of factors that include:

- When an **Accounting Standard permits a choice in accounting**: the choice opted by the reporting entity should be apparent from a reading of the Financial Statements,
- When an **Accounting Standard permits a choice of the basis of measuring** an item in the Financial Statement: the basis opted by the reporting entity is relevant for the users

in order to make a meaningful interpretation of the numbers in the financials,

- The **Methodology adopted in application of an Accounting Standard** is relevant for a proper analysis of the Financial Statements by users,
- Financial Statements are prepared amid uncertainty (before transactions are fully consummated; with some in a state of uncertainty that has been reduced to an acceptable level while others may not have reached such a stage at the reporting date) with the application of **management judgement and estimates**. When these are significant to the application of accounting policies, they need appropriate disclosure.

One approach to understand the principle that underpins the disclosure of significant accounting policies is to look at the perspectives of '*what the standard requires to be done?*' and '*for what purpose it should be done?*'. Let's have a look at both these perspectives that could provide one approach to assessing what are 'significant policies' that is a sub-set of 'all accounting policies' adopted in the preparation and presentation of Financial Statements by an individual reporting entity.

2.6.1 What the standard requires to be done?

As detailed earlier, the standard requires that *all significant accounting policies adopted in the preparation and presentation of Financial Statements should be disclosed*.

2.6.2 'For what purpose it should be done?'

The customers of Financial Statements are its users. The Accounting Standards Framework and AS 1 require users of Financial Statements to be provided with information that is inter alia '**relevant**', '**reliable**' and '**comparable**' in meeting their information needs.

As discussed earlier, Financial Statements aid investment, lending and credit. For instance, ratio analysis plays a key part in financial analysis. The figures reported in audited Financial Statements

form the base for such analysis. However, in such analysis, the reported numbers need to be analyzed in context. One such context is the basis on how such numbers were prepared. Here, the accounting policy adopted would be considered and the figures suitably adjusted to make the analysis meaningful and comparable. **Assessment of credit worthiness, credit rating assessment, investment analysis et al requires such adjustment to reported figures.** Therefore, recasting of Financial Statements for analysis purposes is an imperative to render such analysis meaningful and comparable.

Further, one aspect of flavor of the quality of accounting of an entity is also obtained by users of Financial Statements by a perusal of the significant accounting policies.

At this point, let's also take a peek at what AS 1, *Disclosure of Accounting Policies* states:

- *The view presented in the Financial Statements of an enterprise of its state of affairs and of the Profit or Loss can be significantly affected by the accounting policies followed in the preparation and presentation of the Financial Statements. The accounting policies followed vary from enterprise to enterprise. **Disclosure of significant accounting policies followed is necessary if the view presented is to be properly appreciated.** [AS 1.2]*
- *The purpose of this Standard is to promote better understanding of Financial Statements by establishing through an Accounting Standard the disclosure of significant accounting policies and the manner in which accounting policies are disclosed in the Financial Statements. **Such disclosure would also facilitate a more meaningful comparison between Financial Statements of different enterprises.** [AS 1.8]*

Extracts from AS1: '..... the major considerations governing the selection and application of accounting policies are: -(c) **Materiality** Financial Statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the Financial Statements.' [AS

1.17]

Theoretically, an accounting policy that is in line with the requirements of the Accounting Standards framework **is required to be place for: all** Balance Sheet items; revenue streams; cost structure; P&L items; transactions; events; and conditions **that an entity is exposed to. Most of these** (depending upon factors including complexity) ideally **should make it to the accounting manual** of an entity. **From out of which**, only those that are **significant** (approach to which has been discussed in the preceding section) **need to be disclosed** in the notes to the General Purpose Financial Statements.

It is important to map all the line items in the Financial Statements to the corresponding accounting policies and if significant, then they need to find a place in the 'significant accounting policies' section of the notes to Financial Statements.

2.7 Are there any recent revisions to AS 1 ?

None, as of date. It may be noted that an **Exposure Draft** was issued by our Institute for a revised version of AS 1, *Presentation of Financial Statements*, with a comment period of January 2019. Watch this space!

2.8 Relevant Useful Material [Freely downloadable resources]

- **Chapter 1** of ICAI Publication –**Study on Compliance of Financial Reporting Requirements** (Vol 3) : <https://resource.cdn.icai.org/49152frrb32877.pdf>
- **Framework** for the Preparation and Presentation of Financial Statements: https://resource.cdn.icai.org/7601acc_bodies_framework_ppfs.pdf

Chapter 1 of ICAI Publication- Accounting Standards (AS): **Disclosures Checklist** (Revised February 2020): <https://resource.cdn.icai.org/58286asb47542as.pdf>

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INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA

Designs - Infringement and Protection (Part-VII of IPR series)

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

Utility of Designs in Business

In the 'IPRs and protection in India' series, with specific focus on strengthening of MSME's, the Overview of IPR's and the importance of trademark as an ever lasting IP were deliberated upon in the earlier parts of the news bulletin. In respect of the Industrial Designs as an IP on articles manufactured or produced in an industry, the eligibility criteria, the method of registration have been narrated in the previous part. Such Registered Industrial Designs need to be protected from being copied or pirated by others so that the IP could be commercially exploited by the owner or his / her permitted entities only. As the 'Industrial Design' of an article produces long lasting impression in the minds of the consumers and attracts them to buy the same, it is one of the important factors in marketing of the article, and therefore the same needs to be protected from being imitated by others. In this article, the implications of infringement of the registered design, along with the legal protection regime available for protection from illegal violations are deliberated.

The use of Designs on articles manufactured in an industry helps the enterprise, especially MSME's in many ways. The creation of unique designs will open up new market niche which helps the proprietor to differentiate their products from those of the competitors. The attractive designs combined with distinctive trademarks enhances the distinctiveness of a company's brand that strengthen the brands, which also brings more laurels and goodwill to the entity. By resorting to smaller modifications, the goods could be made more suitable for people of different age, cultures or social groups, etc. This type of consumer specific market targeting will result

in higher valuation as well as improved sales of the product, (generally termed as 'Customization' of the article) depending on the taste of the user group. For effective entry and integration with international trade, registration of a novel designs is a common practice as it lends a hand to keep their product superior and ahead of others.

Benefits of Registering a Design

The benefits derivable by registering and owning the design rights are of multifold. First among them is the customer, who buys the article and in turn recommends their group, can be a positive development to enhance the sales of such article in the market. Further registration of such design adds commercial value to the product and prevent all others from producing, importing, selling / copying the said article. Added to this, the registered design could be permitted by the owner for conditional application and usage on similar articles (license) to other entities, for a consideration. This can be advantageously employed as a marketing strategy so as to meet the demands of the market. This also helps in aggregating revenue in the form of license fee and royalty to the owner.

Generally, to protect one's own design, these entities face a crucial threat of design infringement and therefore proper remedial action for fair protection of the same from infringements is recommended. The designs are also like any other asset of the entity that could be sold or disposed off to others for a sum. The Section 30 of the Design Act, 2000 read with Rules 32, 33, 34 and 35 of the Design Rules, 2001, recognizes the contracts relating to assignment of designs and provides procedure for the recordal thereof. The

Act contains provisions for transfer of the rights through assignment, agreement, transmission with terms and conditions in writing. However, certain restrictive conditions, not being the subject matter of protection relating to registration of design, should not be included in the terms and conditions of the contract / agreement etc. An application in Form-10, with prescribed fees in respect of one design, and appropriate fees for each additional design, for registration of the transfer documents is required to be made by the beneficiary to the Controller within six months from the date of execution of the instruments. An original/notarized copy of the instrument is required to be enclosed along with the application for seeking such registrations.

Design Registration always advantageous

Added to the above, the registration of design rights is available at a much lower cost and the process followed for grant, unlike patents are simple and swift which helps the companies to protect designs on a wide variety of products and it is a strategic move for the industries in fast-moving sectors like the fashion, textiles, FMCGs. As already informed, any person can register for a certain design which is original and new, and claim to be the proprietor of that design as long as they satisfy the eligibility conditions mandated in the Act. The essential eligibility conditions, in brief, for consideration of designs as an IP are:

- (i) such new design should not have been disclosed to the public prior to application;
- (ii) it should be distinguishable significantly from the known designs in the public domain;
- (iii) it should not comprise or contain scandalous or obscene matter and contrary to public order or morality;
- (iv) it should be applied to article & should be appealing to the eye.

As per Section 11 of the Design Act when a design is registered, the registered proprietor shall, subject to the provisions of this Act, have copyright in the design during the **first ten years** from the date of registration. If, before the

expiration of the original period, application for extension could be made to the Controller in the prescribed manner, on payment of the prescribed fee and the Controller shall extend the period for a **second period of five more years**. This implies that an owner, registered the design under this Act will have exclusive IP rights for a maximum of 15 years.

Designs and other IP Rights

In respect of certain designs, the same could also qualify for registration both under the Copyright Act. For example, an original artistic work registered as a design and the same subject matter cannot enjoy acoterminous protection under the Copyright Act. However, if a design qualifies for registration under the Design Act but has not been so registered then the exclusive right will subsist under the Copyright Act. If such a design is of an article which is commercially produced, the copyright over the design under the Copyright Act will cease to exist when the article to which the design has been applied has been reproduced more than fifty times by an industrial process. In other words, the essence of the law of designs provides protection to aesthetic features of goods that enhance the visual appeal and consequent marketability of such commercially produced goods. Designs are not registered in the abstract but are registered as features which are applied to an article in a way that the article will retain its functional character even without the application of the design.

In the case of **Ampro Food Products v. Ashoka Biscuit Works** (reported in AIR 1973 AP 17), the dispute that whether embossing a mark on the article is a trade mark or design arose. In this case both the appellants and the respondents were engaged in the manufacture of biscuits. The appellant's biscuit had AF embossed on them while the respondents had AB embossed on them. The appellants alleged that the respondents have copied their design and thus they have committed infringement of the design. The respondents contended that the act cannot be an act of piracy since they have already applied for the registration of the mark as a trademark. In this case the dispute is whether the embossing on the biscuits

was a design or a trademark and if a trademark is included within the ambit of the definition of the Design Act. The Design Act specifically states that a trademark does not fall within the scope of the definition of design. Embossing on a biscuit is an integral part of the biscuit and hence it is a design and not a trademark. The court held that a design is necessarily a part of the product but a trademark is not. This is because a trademark need not necessarily be present on the product but a design has to be an inherent part of it. In the present case, the respondents had filed for the registration of their design as a trademark. This was not possible as per the statute. However, that did not give them the right to commit the act of piracy and thus the court held that the respondents could not legally use AB on their biscuits.

Piracy of Registered Designs

The application of a design or its imitation to any article belonging to the class of articles in which the design has been registered, for the purpose of sale or importation of such articles, without the written consent of the registered proprietor amounts to piracy of the Design. On registration the proprietor of the design gets exclusive rights to apply the design to the article in that class in which it is registered. During the existence of copyright over any design, other persons are prohibited from using the design except or with the permission of the proprietor.

An action for infringement of design can only be initiated after the registration of the design. Unlike other IP enactments, the (Indian) Design Act, 2000 provides provisions for civil remedies only. Besides injunction, monetary compensation is recoverable by the proprietor of the design either as contract debt or damages. The legal rights can help a registered person in two distinct ways:

- (1) *Protection*: they can stop someone else benefiting from creator's hard work by copying or using such product without permission; and,
- (2) *Exploitation*: they can generate revenue from registered designs by allowing others enter into licensing agreements for such designs.

As per the Act the following activities are considered to be infringement:

- (i) to apply for the purpose of sale the design or any fraudulent imitation of it to any article in any class of articles in which the design is registered;
- (ii) to import for sale any article to which the design or fraudulent or obvious imitation of it, has been applied;
- (iii) to publish or to expose for sale knowing that the design or any fraudulent or obvious imitation of it has been applied to it (Section 22 of the Act).

It must be noted that the indication of the number of the registered designs on the article to which such designs have been applied are compulsory (except on textiles). This is always advantageous to the registered proprietors, as otherwise they would not be entitled to claim damages from any infringer, unless establishes that the registered person took all proper steps to ensure the marking of the article. It is important to show that the infringement took place after the infringing person who was guilty thereof, knew or had received notice of the existence of the copyright in the design.

The infringement of a design could be better understood by referring to the Delhi High Court judgement in the case of '**Polymer Papers Ltd. v. Gurmit Singh & Others**' (2002 (25) PTC 327 (Del)). In this case, the plaintiff was a company engaged in the production of filter papers for various automobiles. The defendant was a manager in the company who was responsible for creating designs for the manufacture of the filter papers. The plaintiffs contended that the defendant left the job and sold off the Industrial Drawings to the other defendants there by infringing on their Copyright. The issue is whether the plaintiff company had the exclusive right to reproduce or depict the Industrial Drawings, manufacturing processes, names of suppliers of certain parts and the other trade secrets and whether all these constituted a 'design' under the Design Act, 2000.

As per the Section 2(d) of the Design Act, a design means "*only the features of shape, configuration,*

pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or Chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device". Copyright is defined in Section 2(c) as under "the exclusive right to apply a design to any article in any class in which the design is registered". In the present case, the Industrial Drawings, list of suppliers and clients, manufacturing processes were for the purpose of the manufacture of filter which came within the ambit of design by virtue of it being of a particular shape and configuration formed by an industrial process. The Delhi High Court thus held that Industrial Drawings and designs in which the Copyright was claimed clearly fell within the definition of design under Section 2(d) of the Design Act, 2000. However, since the design was not registered, the plaintiff could not claim copyright over it.

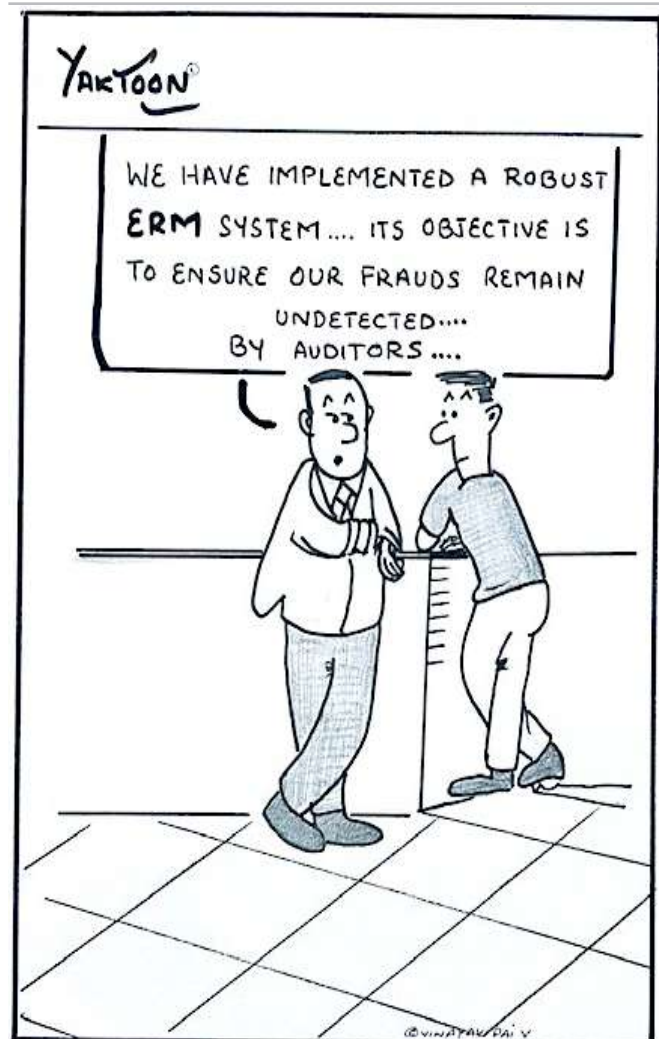
Penal measures for protection of a design

A registered owner of copyright in designs acquires exclusive right on the article in the registered class and he / she can institute a suit for injunction as well as recovery of damages against any person engaged in piracy of such registered design. The legal proceedings can be instituted from the date of registration and till the expiry of copyright. The Section 22 of the Act, deals with any obvious or fraudulent imitation of a design which is already registered, without the consent of its proprietor is unlawful and also prohibits the import of any material which closely resembles a registered design. These provisions further provide that in case of a civil suit is brought against any piracy of a design, then the compensation shall not exceed Rs. 50,000 for the infringement of one registered design. The compensation is statutorily fixed so that it serves a good ground for an interim injunction even before the trial commencement. To prevent the piracy, the general civil remedies available include Interim or permanent injunction, payment of damages

or compensation, delivery of infringing articles, etc. A person can seek an interlocutory injunction under CPC Order 39 Rules 1 and 2 and this legal provision has the same application in respect of all IPs when it comes to granting of an interlocutory injunction. However, it is essential for the petitioner to make out a *prima facie* case and show that the balance of convenience rests in his favour.

In the upcoming part we shall deliberate the essence of Traditional Knowledge as a source of Indian ethos and abuse of the same as IP. The Indian ancestral knowledge could be preserved and commercialised, which could pave way for a well organised usage of the ancient knowledge to benefit the society and enhance the business and trade nationally and internationally.

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HEALTHY LIFE STYLE AND CANCER



■ **Dr. Saurabha Kumar**, MBBS, MD (Radiation Oncology)

Lifestyle and Cancer

The word Cancer brings fear among the people who are diagnosed with it. With current treatment modalities there has been great improvement in the survival of cancer patients. There is always a pursuit for ways in which one can avoid developing cancer. There is a constant question as to why someone developed cancer and it is always intriguing to know that there is no definite answer in majority of the circumstances. It is proven that positive lifestyle can prevent development of cancer. In this review, we attempt to answer this question by analyzing the **potential risk factors of cancer** and explore our options for modulating these risk factors.

has been seen that taking lot of fiber in diet has a protective effect on the large intestines. People on high fiber diet also have low incidences of stomach cancer. Pancreatic cancer and Breast are seen in people with obesity who take a lot of junk food with very high sugars and sugary carbonated drinks.



There is a strong evidence that intake of red meat could lead to large intestine cancer. These assumptions are based on epidemiological studies done in the western population. Eating large amount of highly salted food such as salt preserved fish is associated with cancer of the stomach. The salty fish can increase the chances of H Pylori infection in the stomach which in turn leads to cancer on the long run. In a study in China, it was proven that people consuming diets high on fruits and vegetables with good micronutrients and vitamin C reduces the incidence of stomach cancer. In a similar study in Japan, it was shown that there is an inverse relation between stomach cancer and green tea consumption. This was attributed to the high amount of antioxidants produced by green tea consumption.

Various International Cancer Associations have classified processed meat as carcinogenic to humans. Chemicals used to preserve red meat such as nitrates and nitrites produce nitroso compounds that are the reason to develop cancer of the gut.



Diet

Few dietary habits have a direct implication in causing cancer in comparison to other carcinogenic (having the potential to cause cancer) agents. There has been a lot of debate on increased sugars as in junk food causing cancer. Recent studies have been proven that increased dietary sugar like refined sugar can lead to cancer of the Intestines. On other side it

Body Weight

Obesity has directly and indirectly been associated with a lot of cancers. It is an established risk factor for esophageal cancers, endometrial cancer and breast cancer. It is very important to maintain an ideal Body Mass Index (BMI) of 18.5-25. Rising levels of obesity have been noticed all over the world. The obesity epidemic arises due to an altered balance between dietary intake and physical activity. Reduced physical activity levels are associated with increased risks for breast and colon cancers. Several rural-urban comparison studies demonstrate lower levels of physical activity in urban areas (E.g. Peru, South Africa and India). As a general goal one must include at least 30 minutes of physical activity in daily routine accounting up to 150 minutes of moderate aerobic activity in a week.



Tobacco Use

Tobacco exposure in all its forms (smoking, including second-hand smoke and smokeless, chewing) is directly related to cancer. Tobacco smoking and lung cancer are directly related, however, strong association exists with cancers of stomach, liver and upper aero-digestive tract. Tobacco is one of the first agents that was directly linked to any cancer. It's seen that Tobacco causes a number of health-related issues and the impact starts from the moment one smokes the first time and quitting has a positive effect on the system that is seen in the blood work up.

Alcohol

Causal association of alcohol with cancers of upper aero-digestive tract, liver, colon- rectum and breast is inter-related with other causes such as with hepatitis B / C and aflatoxin and smoking. A sharp increase in per capita consumption of alcohol has been seen in countries like China and India since 1980. If the drinking patterns continue to rise in these populations, the projected annual increase in the incidence of cancer would be 3.6%.

To conclude, positive changes in these lifestyle factors can reduce a good proportion of the natural cancer burden. They are all remarkably consistent in pointing to the potential benefits of reducing tobacco use, improving diet, increasing physical activity, maintaining a healthy body weight, keeping alcohol consumption at low to moderate levels and getting screened regularly for cancer.

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KSCAA REPRESENTATION:

1. Representation seeking Reinstatement of Audit Provisions under GST Laws dated 5th March, 2021 to the Hon'ble Chairperson, GST Council, Smt. Nirmala Sitharaman.
2. Representation highlighting Concerns of Chartered Accountants dated 28th Januray, 2021 to Hon'ble Minister of Finance & Minister of Corporate Affairs, Smt. Nirmala Sitharaman.

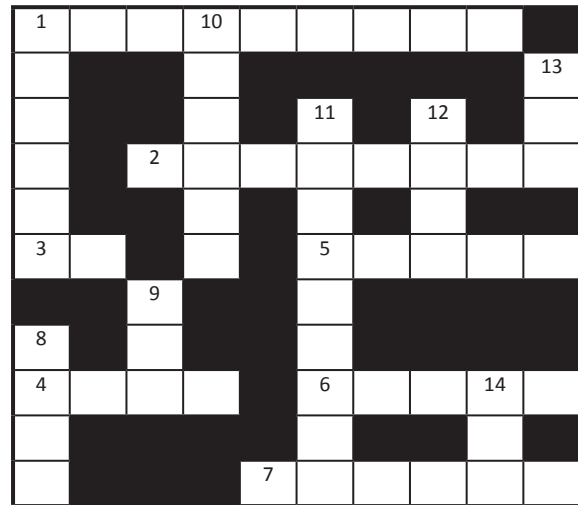
*For full text of above representation,
please visit: www.kscaa.com*

CROSSWORD

7

DOWN

1. These benefits are additions to compensation that companies give their employees (6)
8. A financial is a document containing a person's current money situation and long-term monetary goals, as well as strategies to achieve those goals (4)
9. A technology that allows anyone today to configure computer software, or a "robot" to emulate and integrate the actions of a human interacting within digital systems to execute a business process (3) (abbreviation)
10. differences are those differences between accounting income and taxable income which can be reversed in one or more subsequent periods (6)
11. This is an extra fee, charge, or tax that is added on to the cost of a good or service, beyond the initially quoted price (9)
12. This method assumes that the oldest products in a company's inventory have been sold first (4) (abbreviation)
13. A record of goods received from suppliers, and the record is shown as a proof that ordered products had been received (3) (abbreviation)
14. The council encourages and monitors the observance of international standards and specifications by exporters (3) (abbreviation)



ACROSS

1. A financial transaction and a type of debtor finance in which a business sells its accounts receivable (i.e., invoices) to a third party at a discount (9)
2. This occurs when a company issues new shares that result in a decrease in existing stockholders' ownership percentage of that company (8)
3. A measure of a company's total value, often used as a more comprehensive alternative to equity market capitalization (2) (abbreviation)
4. A detailed questionnaire prepared by Reserve Bank of India (RBI) (which an auditor has to answer) has been in use since 1992-93 (4) (abbreviation)
5. This type of funding relates to the use of small amounts of capital from a large number of individuals to finance a new business venture (5)
6. The supplementary benefits added in the primary life insurance policy purchased by the insured (5)
7. These operations are conducted by the Income Tax Department, when they suspect an individual or business to have hoarded illegal money (6)

Answers will be published in next month's News Bulletin.
Clue 8 (Across) was missed in February 2021 Cross Word - 6.
Apologies for the same

Answers to "Cross Word 6" (February 2021)

Across

1. Blockchain, 2. NFRA, 3. Remote,
4. Prospectus, 5. Deed, 10. RERA

Down

1. Bankruptcy, 6. COA, 7. MBO, 8. VAT, 9. SAC,
10. Reserve, 11. CRR, 12. Trade, 13. Assess

Credits: CA. Archana Sridhar

sudoku - 7

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

33rd Virtual Annual Conference Photos.....



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