

KSCAA[®]

Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

- ▶ RERA ▶ CSO & ESG ▶ Ocean Freight - GST ▶ IT ▶ IPR
- ▶ Updated Return - Income Tax ▶ Rights of a Hindu Woman

June 2022
Vol. 9, Issue 10
25/-



Since 1957

English Monthly
for Private Circulation only

- ▶ Karnataka State Chartered Accountants Association
- ▶ @karnatakacaassociation
- ▶ @kscaa_ca
- ▶ kscaa.com



34th KSCAA
ANNUAL CONFERENCE
2022



Dear Professional Friends,



I'm happy to communicate to you as the president of KSCAA and also bring to you the wishes for CA day which is celebrated on 1st of July 2022.

The world economy and Indian economy has seen sudden surge in inflation and government is considering all options to tame the inflation, first of its measure was to resort on increasing the repo rate in monetary policy. RBI has already increased the repo rate twice during the recent past and we see cost of capital moving up, which will impact the business. KSCAA successfully completed the 34th Annual Conference with same fervor, joy, happiness and grandness and it was well received. It was delightful to see members being receptive to topics of evolutionary nature. At the helm of KSCAA, I still believe there is much to improve as an organization and we are open to such feedback and improvements. Do let us know any at president@kscaa.com.

ICAI has come with amendment to its curriculum to CA training and it has severe impact on cost, timing and delivery of CA services. The first of the impact would be on studies and their ability to face the world, with in practice or in industry and consequentially, has put many of professionals into discussing if the curriculum is good or bad. What remains constant is change, and the ability of professional to adopt newer strategies with newer rules and formats. I'm also confident that it would push many of us to consolidate, form teams to tackle the shortage of human capital effectively.

News Roundup

Direct Tax

Executive developments:

- ✓ CBDT made return filing mandatory where turnover, TDS/TCS or deposit in saving bank account exceeds certain limit in clause (b) of sub-section (1) of section 139
 - If his total sales, turnover, or gross receipts, as the case may be, in the business exceeds sixty lakh rupees during the previous year : or
 - If his total gross receipts in profession exceeds ten lakh rupees during the previous year : or
 - If the aggregate of tax deducted at source and tax collected at source during the previous year, in the case of the person, is twenty-five thousand rupees or more; or
 - The deposit in one or more savings bank account of the person, in aggregate, is rupees fifty lakh or more during the previous year
- ✓ CBDT issues guidelines for compulsory selection of ITRs for Complete Scrutiny during FY 2022-23 CIRCULAR F. NO. 225/81/2022/ITA-II, DATED 11-5-2022 as amended by CIRCULAR F. NO. 225/81/2022/ITA-II, DATED 03-06-2022
- ✓ CBDT notifies Faceless Penalty (Amendment) Scheme, 2022; omits Regional Faceless Penalty Centres

Judicial developments:

- ✓ Gujarat HC: Remuneration / interest can't be taxed in hands of partners relying upon deed if same wasn't claimed by firm
- ✓ Karnataka HC : AO can't adjust refund with demand if it is subject matter of appeal and stay of demand has been obtained
- ✓ SC upholds validity of Sec. 148 notices issued after 31.03.21 under old provisions. Hon'ble SC judgement will have the following implications.
 - All Notices under unamended section 148 issued on or after 01-04-2021 deemed to be Notices under section 148A (b)
 - AO shall within 30 days from 04-05-2022, provide information and material relied upon by the Revenue to the Assessee.
 - Assessee can reply to the notice within two weeks after AO provides the information and material relied upon by the Revenue
 - AO shall thereafter pass order under section 148A(d) and after following due procedure of 148A, AO may consequentially issue notice under section 148.
 - Assessee shall have all the defences under section 149 of the Income-tax Act, 1961 and the Finance Act, 2021, so would the AO have all the rights under the law

- No relief to Revenue for Notices of AY 2014-15 or earlier years.

For Notices of AY 2015-16, AY 2016-17 and AY 2017-18, proceedings can be continued only if the amount of income chargeable to tax (represented in the form of asset) which has escaped assessment is Rs. 50 Lakhs or more.

Indirect Tax

It is good to note that Karnataka has collected a whopping 60 per cent more GST in May 2022 as compared to the same period last year. GST collections for May 2022 pan-india stands at 1.4 lakh crores.

Supreme Court has vindicated on the issue of GST applicability of Ocean Freight, affirming the Gujarat High Court Judgment. This is sigh of relief to importers. Those assesses whose case is under scrutiny/audit may consider this development and appropriately rely on the judgement of the Court.

Composition Scheme dealers are facing challenge in filing GSTR-4 due to cash ledger becoming negative and portal is requiring payment of tax again before filing of the return. A GSTN advisory states that such amount may be paid and refund be claimed subsequently claimed.

Only respite is the waiver of late fee for filing GSTR 4, which is provided till 30.06.2022.

Corporate and Allied Laws

Company Law

- Relaxation in paying Additional Fees for delay in filing Form-11 and all event-based e-forms by LLP's
 - ✦ MCA vide its General Circular No. 04 & 06/2022 dated 27.05.2022 and 31.05.2022 has relaxed payment of additional fees for filing Form 11 (Annual Return of Limited Liability Partnerships) for the Financial Year 2021-22 and all event-based forms by LLP's respectively which are due on and after 25th February 2022 and 31st May 2022, without paying additional fees up to 30th June 2022.

RBI – Master Direction – Reporting under Foreign Exchange Management Act, 1999

The Reserve Bank of India has issued Notification on 09-06-2022 to amend the Master Direction by prescribing various reports and forms under FEMA to be submitted by/through Authorised Persons/Authorised Dealer Category – I Banks/ Authorised Banks. Accurate compilations and timely submission of these reports are of critical importance as they not only act as a supervisory tool but also help in fine-tuning the policies relating to foreign exchange transactions regulated under FEMA.

DGFT - Amendments in Chapter 5 of the Handbook of Procedures 2015-20, related to Export Promotion Capital Goods Scheme to reduce 'Compliance Burden' and enhance 'Ease of doing Business' - reg.

DGFT vide Public Notice No. 13/2015-2020 dated 09-06-2022 has amended the EPCG authorizations whereby the following sentence is added at the end of existing para 5.15 of Handbook of procedures. "Time limit to file returns for the year 2022-23 is extended till 30.9.2022. Late fees of Rs. 5,000/- under this para is applicable for the returns due to be filed from the year 2022-23 onwards".

Conclusion

I recently read the psychological concept of Drama triangle, which we can beautifully apply to the change and profession. The premise is that with every change we turnout to act like a victim. One insidious 'game' commonly played in the profession – albeit unconsciously – is The Drama Triangle, which has Victim, Rescuer and Prosecutor. The escape from this drama triangle is not to be victim and to move out of it. I suggest readers to make an attempt to read this wonderful theory by Dr Eric Berne – father of transactional analysis who published Games People Play : The Psychology of Human Relationships.

Happy Reading!

Yours' faithfully,

CA. Chandan Kumar Hegde A.

President



KSCAA® NEWS BULLETIN

June 2022

Vol. 9 Issue 10

No. of Pages : 48

CONTENTS

HINDU SUCCESSION ACT

| | |
|--|---|
| UNDERSTANDING THE RIGHTS OF A HINDU WOMAN VIS-À-VIS THE PROVISIONS OF SECTION 14(1) OF THE HINDU SUCCESSION ACT 1956 | 4 |
| CA. S. Krishnan | |

DIRECT TAX

| | |
|---|---|
| DIMENSIONS OF UPDATED RETURN AS PER 139(8A) & TAX ON UPDATED RETURN AS PER 140B | 7 |
| CA. Uday Kiran N | |

INDIRECT TAX

| | |
|--|----|
| SC STRIKES DOWN IGST ON OCEAN FREIGHT | 12 |
| CA. Srikanth Acharya G B Adv. Vasanth Kumar J | |
| INDIRECT TAX UPDATES | 15 |
| CA. Raghavendra C R CA. Bhanu Murthy J S | |

RERA

| | |
|---|----|
| UNDERSTANDING THE CONCEPT OF COST INCURRED UNDER RERA | 17 |
| CA. Vinay Thyagaraj | |

FINANCIAL REPORTING

| | |
|-----------------------------------|----|
| FINANCIAL REPORTING AND ASSURANCE | 29 |
| CA. Vinayak Pai V | |

BRSR

| | |
|---|----|
| NEED FOR CHIEF SUSTAINABILITY OFFICER AND ESG COMMITTEE | 34 |
| CA. Aditya Kumar S | |

IPR

| | |
|--|----|
| INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA | |
| PATENTS – REWARD FOR INVENTIONS | 37 |
| Adv. M. G. Kodandaram | |

IT

| | |
|--|----|
| UNDERSTANDING CLOUD COMPUTING - THE BASICS | 41 |
| CA. Narasimhan Elangovan | |

HEALTH & FITNESS

| | |
|--|----|
| WOMEN HEALTH AWARENESS "HEALTHY WOMEN, HEALTHY WORLD" | 44 |
| Dr. Rohit R Ranade | |

| | |
|---------------|----|
| BRAIN TEASERS | 46 |
|---------------|----|

KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

VISION

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

MISSION

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

MOTTO: KNOWLEDGE IS STRENGTH

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

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

Disclaimer

The Karnataka State Chartered Accountants Association does not accept any responsibility for the opinions, views, statements, results published in this News Bulletin. The opinions, views, statements, results are those of the authors/contributors and do not necessarily reflect the views of the Association.



CA. S. Krishnan

UNDERSTANDING THE RIGHTS OF A HINDU WOMAN VIS-À-VIS THE PROVISIONS OF SECTION 14(1) OF THE HINDU SUCCESSION ACT 1956

Introductory Remarks

1. The professionals especially Chartered Accountants should be conversant not only with direct and indirect taxes but also allied acts like Hindu Succession Act 1956 (hereinafter referred to as HS Act). Recently the Supreme Court in the case of **Munni Devi alias Nathi Devi (Dead) through Legal Heirs and Others v. Rajendra alias Lallu Lal (Dead) through Legal Heirs and Others (Civil Appeal No.5894 of 2019)- Judgment dated 18th May 2022 reported in [2022] LiveLaw (SC) 515**, after analysing the provisions of section 14(1) of the HS Act has held that where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for the realisation of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance.

So let us start the discussion after extracting the provisions of section 14(1) of the HS Act and then analyse the facts of this case to understand why a Hindu woman's right to maintenance is considered a tangible right.

Section 14 of the HS Act

2. Section 14.

Property of a female Hindu to be her absolute property.

(1) *Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by a gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) *Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.*

Facts of the case and submissions made by the parties before the Supreme Court

3. The facts of the case were that originally one **G** was the owner of the ancestral property and that he had 3 sons. Disputes arose with regard to the ownership of the property vis-à-vis income earned by the lineal descendants of the third son of **G**. It was the contention of **D**- the appellant before the Supreme Court- who was one of the lineal descendants of the first son of **G** that he was the adopted son of the great grandson of **G** and that **H** being the other lineal descendant of one of the other families (through the 3rd son of **G**) who had no issues had left a Will bequeathing the property in his favour. This contention was resisted

by **B** – the respondent-who was the wife of one **I** (and brother of **H**) who had predeceased his father **N**. The claim on behalf of **B** was that she was in possession of the property and that “the expression “possession” contained in Section 14(1) of HS Act is required to be given the widest possible meaning to include actual as well as constructive possession, like attornment of tenants in the present case. Likewise, the expression “acquire” is also required to be given the widest possible meaning to include acquisition by possession, especially when such possession of widow already satisfied her pre-existing right of maintenance.”

It was also contended on behalf of **B** that till the death of **H** he had held HUF properties as Karta as the last surviving co-parcener in the direct line and that all the rights, title, and interests of **H** and his successor were subject to the pre-existing right of maintenance in favour of **B** and, therefore, even **H** could not have bequeathed more than whatever right, title or interest he had in the HUF properties, by executing the Will, in view of Section 30 of the Indian Succession Act, 1925. In other words, **D** could have acquired the property only as a legatee or co-parcener subject to the limited estate of **B**, whose pre-existing right of maintenance from the suit property, made her absolute owner after Section 14(1) of the HS Act. It is to be stated that as per the provisions of section 30 of the Indian Succession Act, 1925, a person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition that is capable of taking effect.

Before we delve into the decision of the Supreme Court in this case let us refer to the celebrated case of the Supreme Court in the case of **V.Tulasamma & Others v.Sesha Reddy (Dead) by LRs [1977] 3 SCC 99**

The decision of the Supreme Court in the case of **V.Tulasamma & Others (supra)**

4. The decision of the Supreme Court in the case of **V.Tulasamma & Others (supra)** is the forerunner to many a decision rendered by judicial authorities including the Supreme Court in later decisions on the interpretation of section 14 of the HS Act.

The propositions emerging in respect of incidents and characteristics of a Hindu woman’s right to maintenance have been crystallised by the Supreme Court at para.20 of this judgment as under-

“Thus, on careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman’s right to maintenance:

- (1) *that a Hindu woman’s right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property, then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;*
- (2) *though the widow’s right to maintenance is not a right to property but it is undoubtedly pre-existing right in property, i.e., it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;*
- (3) *that the right of maintenance is a matter of a moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow’s right to maintenance, the purchaser is legally bound to provide for her maintenance;*
- (4) *that the right to maintenance is undoubtedly a pre-existing right that existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;*
- (5) *that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort (I.L.R. 27 Mad. 45. (2) I.L.R. 18 Bom. 452) of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and*
- (6) *that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance.”*



“jus ad rem” means the right to possess a thing, an inchoate and imperfect right whereas “jus in rem” means a complete and full right, a real right, or a right to have a thing to the exclusion of all other men.

The decision of the Supreme Court in this case [Munni Devi alias Nathi Devi (Dead) (supra)]

5. The Supreme Court extracted in full the provisions of Section 14 of the HS Act and then observed that “From the plain reading of Section 14(1) of the HS Act along with the Explanation thereto, it emerges that in order to become a full owner and not a limited owner, of a property by virtue of Section 14(1) of the HS Act, a female Hindu, before or after the commencement of Act of 1956, must be in possession of the property, and it must have been acquired by her by inheritance or devise, or at a partition, or in lieu of maintenance, or arrears of maintenance or by a gift from any person, whether a relative or not, before, at or after her marriage or by her own skill or exertion or by purchase or by prescription, or in any other manner whatsoever or any such property must have been held by her as stridhana immediately before the commencement of the HS Act.”

The Supreme Court then applied the provisions of section 14 (1) of the HS Act to the facts obtained in this case and referred extensively to its earlier decision in the case of V.Thulasamma (supra) and other decisions and held at para.14 that “there remains no shadow of a doubt that a Hindu woman's right to maintenance was not and is not an empty formality or an illusory claim being conceded as a matter of grace and generosity. It is a tangible right against the property, which flows from the spiritual relationship between the husband and the wife. The said right was recognised and enjoined by pure Shastric Hindu Law, which existed even before the passing of the 1937 or the 1946 Acts. Those Acts merely gave statutory backing recognising the position as was existing under the Shastric Hindu Law. Where a Hindu widow is in possession of the property of her husband or of the husband's HUF, she has a right to be maintained out of the said property. She is entitled to retain the possession of that property in lieu of her right to maintenance. Section 14(1) and the Explanation thereto envisages liberal construction in favour of the females, with the object of advancing and promoting

the socio-economic ends sought to be achieved by the said legislation. As explained in V.Tulasamma (supra) case, the words “possessed by” used in Section 14(1) are of the widest possible amplitude and include the state of owning a property, even though the Hindu woman is not in actual or physical possession of the same. Of course, it is equally well settled that the possession of the widow, must be under some vestige of a claim, right or title because the section does not contemplate the possession of any rank trespasser without any right or title.”

Concluding Remarks

6. To understand the concept of a woman's right to maintenance it is apt to conclude this article by extracting para.20 from the decision of this Supreme Court in the case of Munni Devi alias Nathi Devi (Dead) (supra) which runs as under-
“Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law, long before the passing of the 1937 and the 1946 Acts. Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. The word “possessed by” and “acquired” used in Section 14(1) is of the widest amplitude and include the state of owning a property. It is by virtue of Section 14(1) of the Act of 1956, that the Hindu widow's limited interest gets automatically enlarged into an absolute right when such property is possessed by her whether acquired before or after the commencement of the 1956 Act in lieu of her right to maintenance.”

*Authors can be reached at :
ariyurkrish@gmail.com*



CA. Uday Kiran N

DIMENSIONS OF UPDATED RETURN AS PER 139(8A) & TAX ON UPDATED RETURN AS PER 140B

Introduction

The Finance Act 2022 provided an opportunity to tax payers to correct omissions or errors by filing "Updated Return" within 2 years from the end of relevant assessment year along with additional payment of tax and incidental interest. After obtaining assent on 31st March, 2022 from the Hon'ble President of India, a new sub Section (8A) under Section 139 of the Income-tax Act, 1961 ('the Act') is inserted for filing of updated return with effect from 1st April, 2022 i.e Assessment Year 2022-23. The objective of introducing this facility is to promote voluntary tax compliance and reduce litigation.

Intention of the Government

The due date under existing provisions of Sections 139(4) and 139(5) for filing of belated/revised returns ends at 3 months prior to the end of relevant assessment year. Hence, the total time limit provided after the end of a particular financial year is only 9 months, after which return of income cannot be filed.

This additional timeline for filing a belated/revised return may not be adequate when we factor in utilization of huge information and data available coupled with the "nudge approach" that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns and IT department will have logical data to arrive to correct conclusion including additional revenue. Therefore, with this objective the new Sections 139(8A) and 140B are inserted in Income Tax Act, 1961.

The challenge here is whether the conditions prescribed in the new section will help the Government to achieve the desired objective. Let us analyze the conditions of Section 139(8A) and Section 140B of Income Tax Act, 1961.

Analysis of Section 139(8A) and 140B of Income Tax Act, 1961.

- Section 139(8A) talks about the time limit within which updated return has to be filed by the assessee who have filed return of income under Section 139(1)/(4)/(5) and also for assessee who have not filed their return of income.
- Section 139(8A) also speaks about assessee who are eligible to file updated returns.
- The proviso to Section 139(8A) lists out the assessee who are not eligible for filing the updated return under Section 139(8A).
- Section 140B talks about the quantum and manner of determining the additional tax to be paid.

Let us understand these two sections with some illustrations

1. Whether the updated return is applicable to all the assessee?

Yes, as per the provisions of Section 139(8A) it starts with the word "Any Person". Hence, this section is applicable to all the assessee. However, there are some cases mentioned in the proviso where the updated return cannot be filed. If not satisfied, such assessee are not eligible for filing the updated return. The following are the exceptions;

- The updated return is a return of a loss or;
- The updated return has the effect of decreasing the total tax liability determined on the basis of return furnished u/s 139(1), (4) or (5) or ;
- The updated return results in refund or increases



Since 1957



the refund due on the basis of return furnished u/s 139(1), (4) or (5)

The main objective of the section is to allow assessee to file the return of income to declare additional income which was not declared in the earlier returns filed or no return of income is filed, the only benefit to the assessee is to voluntarily disclose the error or omission and save themselves from the future litigation.

Further conditions are that the assessee cannot file updated return if -

- a search has been initiated under Section 132 or
- books of account or other documents or any assets are requisitioned under Section 132A in the case of such person; or
- a survey has been conducted under Section 133A, other than sub-Section (2A) of that section, in the case of such person; or
- a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under Section 132 or
- Section 132A in the case of any other person belongs to such person; or
- an updated return has already been furnished by him under this sub-section for the relevant assessment year; or
- any proceeding for assessment or reassessment or recomputation or revision of income under this Act is pending or has been completed for the relevant assessment year in his case; or
- the Assessing Officer has information in respect of such person for the relevant assessment year in his possession under
 - o Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or
 - o Prohibition of Benami Property Transactions Act, 1988 or
 - o Prevention of Money-laundering Act, 2002 or
 - o Black Money (Undisclosed Foreign Income

and Assets) and Imposition of Tax Act, 2015 or

- information for the relevant assessment year has been received under an agreement referred to in Section 90 or Section 90A in respect of such person and the same has been communicated to him, prior to the date of furnishing of return under this sub-section; or
 - any prosecution proceedings under the Chapter XXII have been initiated for the relevant assessment year in respect of such person, prior to the date of furnishing of return under this sub-section; or
 - Such person/ class of person as notified by the board.
2. **What is the time limit specified to file update returns?**
The updated return can be filed within period of 24 months from the end of the relevant assessment year. For example, the updated return pertaining to FY 2021-22 can be filed latest by 31st March, 2025.
 3. **If search or survey is conducted in the relevant assessment year whether the assessee can opt for updated return under Section 139(8A)?**
No, assessee cannot file updated return under Section 139(8A) for that particular assessment year for which search or survey is conducted and also for any assessment years preceding such assessment year.
 4. **If any proceeding for assessment or reassessment or recomputation or revision of income under this Act is pending or has been completed for the relevant assessment year whether the assessee can opt for updated return under Section 139(8A)?**
No, assessee cannot opt for updated return under Section 139(8A) for that particular assessment year for which any assessment / reassessment proceeding is pending or has been completed. However, he can opt for the preceding assessment year unlike in search and survey cases, provided all other conditions and time lines are satisfied.
 5. **What is the rate of additional tax to be paid under Section 140B if return is filed under Section 139(8A) of Income tax Act, 1961?**

If an assessee opts for filing return of income under Section 139(8A) then, they are required to pay additional tax as per Section 140B which ranges from 25% to 50% in the following manner:

1. If the return of income is filed within 12 months from the end of relevant assessment year, then additional tax shall be equal to 25% of aggregate of tax and interest payable. (i.e if the return of income is filed on or before 31.03.2024 for assessment year 2022 – 23)
2. If the return of income is filed after 12 months from the end of relevant assessment year but before 24 months from the end of relevant assessment year, then additional tax shall be equal to 50% of aggregate of tax and interest payable. (i.e if the return of income is filed on or before 31.03.2025 for assessment year 2022 – 23)

Let us understand this with the help of an Illustration

Case 1

Mr. X an individual having net income from house property of Rs 9,50,000/- and income from fixed deposit of Rs. 2,40,000/- (not falling under tax audit case) couldn't file the return of income for AY 2022 – 23 by 31st July 2022. Further, he also missed the dead line for filing the belated return by 31st December, 2022.

Case 2

Mr. X an individual having net income from house property of Rs 9,50,000/- and income from fixed deposit of Rs. 2,40,000/- (not falling under tax audit case) filed the return of income for AY 2022 – 23 on 31st December, 2022 but failed to disclose the income from fixed deposit of Rs. 2,40,000/- in the return. Can Mr. X file the updated return under Section 139(8A) and disclose the income from fixed deposit of Rs. 2,40,000/-?

Considering the above two cases on hand if Mr. X can file the updated return within 12 months from the end of relevant assessment year and the tax liability under Section 140B of the Income Tax Act.

| FY 2021-22, AY 2022-23 | | Updated return is opted within 12M from the End of Relevant AY | | | |
|---|-----------------|--|-----------------------------------|--|-----------------------|
| Due date of Filing the return 31.07.2022 | | Return of Income is not furnished | Return of Income is furnished | | |
| Particulars | | Case 1 | Case 2 | | |
| | | Date of Filing 31.03.2024 | Date of Filing 31.12.2022 | Date of Filing 31.03.2024 | |
| | | Total Income Declared in 139(8A) return | Income Declared in Earlier Return | Additional Income Declared in 139(8A) return | Total Income Declared |
| Income from HP | | 9,50,000 | 9,50,000 | - | 9,50,000 |
| Income From FD Interest | | 2,40,000 | - | 2,40,000 | 2,40,000 |
| Total Income | (A) | 11,90,000 | 9,50,000 | 2,40,000 | 11,90,000 |
| Tax on above | | 1,69,500 | 1,02,500 | | 1,69,500 |
| Add:Cess @ 4% | | 6,780 | 4,100 | | 6,780 |
| Total Tax | (B) | 1,76,280 | 1,06,600 | | 1,76,280 |
| Less:TDS | | 24,000 | - | 24,000 | 24,000 |
| Less:Advance Tax | | 80,000 | 80,000 | - | 80,000 |
| Total Taxes Paid | (C) | 1,04,000 | 80,000 | | 1,04,000 |
| Balance Tax Payable | (D) = (B) - (C) | 72,280 | 26,600 | | 72,280 |
| Add: Interest u/s 234 A/B/C | (E) | 38,693 | 8,307 | | 38,693 |
| Total Tax + Interest | (F) = (D) + (E) | 1,10,973 | 34,907 | | 1,10,973 |
| Less:Self assessment tax paid on 31.12.22 in earlier return | (G) | - | 34,907 | | 34,907 |
| Net Tax Payable | (H) = (F) - (G) | 1,10,973 | | | 76,066 |
| Less: Interest paid in Earlier Return | (I) | - | | | 8,307 |
| Total Tax + Interest | (J) = (H) + (I) | 1,10,973 | | | 67,759 |
| Add:Additional tax @ 25% on | (K) = | | | | |
| Aggregate of tax + Interest | 25%*(J) | 27,743 | | | 16,940 |
| Total Tax Liability for Opting 139(8A) | (L) = (J) + (K) | 1,38,717 | | | 84,698 |

- * Interest under Section 234 A/B/C shall be calculated till the actual date of filing of return of income.
- * In a similar way, additional income-tax tax has to be made @ 50% of aggregate of tax + interest if the return is filed after 12 months but before 24 months from the end of relevant assessment year.

6. Whether updated return can be filed if the Original Return or Belated Return is not filed?

Yes, the updated return can be filed, whether or not the assessee has furnished an original return, belated return or revised return for a particular assessment year.

7. Whether Surcharge, Health and Education Cess, Fees and Interest included while calculating additional tax of 25% or 50% under Section 140B?

Yes, Surcharge, Health and Education Cess, Fees and Interest are included while calculating additional tax to be paid under Section 140B of the Income Tax Act.

8. If an assessee receives the notice for scrutiny assessment under Section 143(2) from Income Tax Department for AY 2022 – 23 then whether return of income under Section 139(8A) can be filed by the assessee?

No, as per the provisions of Section 139(8A), if any proceeding for assessment or reassessment or recomputation or revision of income under this Act is pending or has been completed for the relevant



Since 1957



assessment year then the assessee cannot opt for filing his return of income under Section 139(8A).

The following are considered as assessment pending:

- **Regular assessment under Section 143(3):** The date on which notice under Section 143(2) is issued.
- **Reassessment under Section 147:**

Case 1: If notice under Section 148A is issued and order under Section 148A(d) is passed stating that the proceedings are dropped. The updated return under Section 139(8A) cannot be filed between the date of issue of notice under Section 148A and order u/s 148A(d) is passed.

Case 2: If notice under Section 148A is issued and order u/s 148A(d) is passed stating that it is a fit case to issue notice under Section 148 of the Act. The updated return cannot be filed on or after the date of issue of notice under Section 148A of the Act.

9. If assessee files his return of income under Section 139(8A) for AY 2022 - 23 by 31st March 2024 paying the additional tax of 25% as prescribed under the relevant provisions of the Act and later on, a mistake was noted in the return of income filed under Section 139(8A), can assessee file his return of income under Section 139(8A) again to rectify a mistake which has effect of increasing the tax liability?

No, Section 139(8A) states that no updated return shall be furnished by any person for the relevant assessment year, where, an updated return has already been furnished by him under Section 139(8A). Hence, an assessee cannot opt for filing return of income again under Section 139(8A) for the same assessment year.

10. Can assessee claim the benefit of Self-Assessment tax paid under Section 140A at the time of filing Original Return under Section 139(1) while computing the revised tax payable at the time of filing the return of income under Section 139(8A) of the Income Tax Act, 1961?

Yes, the tax payer can claim the benefit of Self-Assessment tax paid under Section 140A of the Act if

it is already claimed in the original return of income filed u/s. 139(1) or belated / revised return of income u/s. 139(4) / (5) of the Act.

However, if no return of income is filed under Section 139(1)/(4)/(5) and self-assessment tax paid any time before filing the updated return under Section 139(8A) of the Act, such self-assessment tax cannot be considered for the purpose of computation of additional tax liability. But, such self-assessment tax can be claimed as credit/deduction while arriving at the tax liability.

11. Whether a person who has filed a return of income under Section 139(1) of the Act declaring losses can file an updated return under Section 139(8A) of the Act.

Yes. Provided the updated return of income is filed declaring income and not a loss.

12. Whether any situation arises for any person to file an updated return for subsequent assessment years in result of filing of updated return for current previous year.

Yes. If any

- Loss carried forward under chapter VI or
- Unabsorbed depreciation carried forward under Section 32(2) or
- MAT credit carried forward under Section 115JAA or
- AMT credit carried forward under Section 115JD

is to be reduced for any subsequent previous year as a result of updated return for current previous year, an updated return has to be filed for such subsequent previous years.

Case1: Return of income filed under Section 139(1) declaring loss of Rs. 100Cr. Later realised that the loss to be declared is Rs. 60Cr. Return of income for subsequent assessment year filed utilizing the loss of Rs. 100Cr. Time limit is available to file updated return under Section 139(8A) for year 1 and year 2. Whether updated return has to be filed for both assessment years?

Yes. Since time limit is available to file year 1 and year 2, you are legally liable to file the updated return for both the years.

Case2: Time limit expires for 1st year for filing updated return under Section 139(8A). whether is liable to file updated return for year 2?

Yes. Since time limit is available to year 2, you are legally liable to file the updated return for year 2.

CBDT on 29th April, 2022 released a notification vide G.S.R. 325 (E) [NO. 48/2022/F. NO. 370142/18/2022-TPL (PART-1)] regarding Income-Tax (Eleventh Amendment) Rules, 2022 - Insertion of Rule 12AC and Form ITR - U

12AC. Updated return of income

(1) The return of income to be furnished by any person, eligible to file such return under the sub-section (8A) of Section 139, relating to the assessment year commencing on the 1st day of April, 2020 and subsequent assessment years, shall be in the Form ITR-U and be verified in the manner indicated therein.

(2) The return of income referred to in sub-rule (1) shall be furnished by a person, mentioned in column (2) of the Table below in the manner specified in column (3) thereof:

| Sl No | Person | Manner of furnishing return of Income |
|-------|--|---|
| (1) | (2) | (3) |
| 1. | Any person as defined in sub-section (31) of Section 2 the Act, whose case accounts are required to be audited under Section 44AB of the Act | Electronically under digital signature. |
| 2. | Any person as defined in sub-section (31) of Section 2 the Act, other than a person mentioned in column (2) of Sl. No. (1) above. | (A) Electronically under digital signature; (B) Transmitting the data electronically in the return under electronic verification code. |

Issue for which section remains silent:

1. If the assessee is liable to tax audit under Section 44AB of Income tax act and assessee opts for filing return of Income under Section 139(8A) whether tax audit report under Form 3CA/3CB and particulars of tax audit report under Form 3D needs to be uploaded?

Concluding thoughts:

The main objective of government to introduce Section 139(8A) was to promote voluntary tax compliance and reduce tax litigation. In my personal view if the additional tax rates are kept at such higher rates (i.e 25%/50%) over and above the normal tax rates then the effective tax rates shall be very high for return filers who are opting for 139(8A) and assesseees will not be ready to voluntarily file their return of income. Further, there is no assurance that, department shall not pick the case for scrutiny assessment if return is filed under Section 139(8A). Hence, we have to wait and see how effectively this section will be helpful for the assesseees for updating there return in the coming days.

*Author can be reached at :
uday@muvca.in*



**Solution to Sudoku - 21
May 2022**

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



CA. Srikanth Acharya G B
Adv. Vasanth Kumar J

SC STRIKES DOWN IGST ON OCEAN FREIGHT

Introduction

1. The Honourable Supreme Court cogently stated in the matter of Union of India v. Mohit Minerals Pvt. Ltd. as it struck down the levy of IGST under RCM on importers in respect of ocean freight services under CIF which are provided by foreign shipping lines to foreign suppliers in a CIF contract for the import of goods into India.
2. This decision has been passed on the ground that a CIF contract for the import of goods forms a composite supply, comprising of supply of goods and supply of services of transportation, insurance, etc., on which the Indian importer discharges IGST under Section 5(1) and 5(3). Thus, a separate levy of IGST on the service aspect of the transaction would violate the principle of composite supply under Section 8 of the Central Goods and Services Tax Act, 2017 (CGST Act).
3. Further, the Hon'ble SC had also an occasion to decide on whether the recommendations of the GST council are of binding nature on the Union and the States. It was held that the recommendations of the GST Council would only have a persuasive value.

Background

1. Notification No.8/2017-Integrated Tax (Rate) [dated 28.06.2017 ('Notification 8/2017')] vide Entry No. 9, notified IGST rate of 5% on ocean freight services provided or agreed to be provided by a person located in non-taxable territory to another person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs stations of clearance in India.
2. By virtue of the power conferred under Section 5(3) of Integrated Goods and Services Tax Act, 2017 (IGST Act), Entry no 1 of Notification No. 10/2017 – Integrated Tax (Rate) [dated 28.06.2017 ('Notification

10/2017')] notified that for the said category of service, IGST would be payable under reverse charge mechanism by the importer, located in the taxable territory, as defined in clause 2(26) of the Customs Act, 1962.

3. The constitutional validity of the Notifications, - seeking IGST under reverse charge from an Indian importer on ocean freight services between persons located in a non-taxable territory with respect to the import of goods in India on a CIF basis - was challenged before the Gujarat High Court.
4. The Gujarat High Court in **Mohit Minerals Pvt. Ltd. vs. UOI [SCA No. 726/2018]** struck down such a levy of IGST as unconstitutional and ultra vires the IGST Act. It was struck inter alia on the ground that (a) the notifications amount to extraterritorial law, (b) the reverse charge payment of IGST amounts to double taxation of the same transaction in as much as IGST is paid on import of goods, and (c) the importer is not a "recipient of service" to be made liable to tax on a reverse charge basis.
5. A batch of Special Leave Petitions (SLPs) was filed before the Supreme Court by the Department against the decision of the Gujarat High Court.

The issue before Hon'ble Supreme Court

Taxable event: Is an ocean freight transaction for import of goods a valid category of supply of services under Section 5(3) of the IGST Act?

- (a) Do imported goods procured on a CIF basis constitute an inter-state supply or is it an extra-territorial tax?
- (b) Are importers service recipients under CIF contracts?

The moot question before the Hon'ble Supreme Court was whether the GST under Reverse Charge Mechanism would be applicable on the Ocean freight, which is levied

at the time of import of goods under a CIF Contract despite the fact that Indian Importer is liable to pay IGST on the 'Composite Supply', comprising of supply of goods and supply of services of transportation, insurance, etc., in a CIF contract.

Judgement

1. On Nature of Recommendations of GST Council

The whole issue arose as to whether the recommendations made by the GST Council are binding on the Union and States? The Supreme Court stated that the role of the GST Council is a recommendatory body aiding the Government in enacting the legislation on GST and cannot be said to have binding power on the Union and States. The conclusion was arrived on the reasoning that the provisions of Article 246A do not contain force that would convert the recommendations of the GST Council into legislation. The Court stated that neither Article 279A begin with a non-obstante clause nor does Article 246A provide that the legislative power is 'subject to' Article 279A. In the absence of such a language, the argument canvassed by the Union of India that the recommendations of the GST Council are binding on the Union and States is farfetched. The Court also stated that the repugnancy provision that was contained in Article 254 which was not present in Article 246A further indicates that recommendations of the GST Council cannot be said to be binding. The Court stated that the concurrent power exercised by the legislatures under Article 246A is termed as 'simultaneous power' to differentiate it from the constitutional design on the exercise of concurrent power under Article 246, the latter being subject to the repugnancy clause under Article 254. The Court stated that it is in the context of the simultaneous legislative power conferred on Parliament and State legislatures, that the role of the GST Council has to be understood as a constitutional and recommendatory body and cannot be said that the recommendations are binding on the Union and States.

2. On the Aspects of Recipient of Supply and Others

The Court has struck down all the various submissions made by the respondent dealing with the taxable person, Section 5(1) to be the only charging provision, the prescription of the rate of 10% of CIF through the main act and not through delegated legislation and others. The Court was seized only with the aspects – Whether classification of imports as a specific category of supply of shipping service is valid under Section 5(3) read with Section 5(1) of IGST Act and Whether the recipient of the

imported goods is also a recipient of shipping services in CIF transactions under Section 5(3)?

Key findings and summary of taxability on Ocean freight in imports post judgment.

The 'recommendations' of the GST Council are a product of a collaborative dialogue involving the Union and States and are recommendatory in nature. Under Article 246A of the Constitution of India, both the Union and the States are conferred equal power to legislate on GST. Thus, regarding recommendations of the GST Council as binding would disrupt fiscal federalism.

Notification 10/2017 does not specify a taxable entity different from that which is prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge. Hence, the said Notification does not suffer from excessive delegation.

Notification 8/2017 cannot be struck down for excessive delegation when it prescribes ten percent of the CIF value as the mechanism for imposing a tax on a reverse charge basis.

Section 2(31) of the CGST Act defines 'consideration' to include payment made by the recipient or by any other person. Thus, in the case of goods imported on a CIF basis, the fact that consideration is paid by the foreign exporter to the foreign shipping line would not stand in the way of it being considered a "supply of service" under Section 7(4) of the IGST Act.

The respondents had submitted and raised the issue of composite supply and issues of double taxation which became the crux of the judgment in favour of the assesses/respondent.

The transaction between the foreign exporter and the respondents is already subject to IGST under Sections 5 of the IGST Act read with Sections 3(7) and 3(8) of the Customs Tariff Act as a supply of goods. A separate levy of IGST @ 5% on the value of 10% of total CIF amount of imported goods, that is on the component of supply of transportation service in the form of ocean freight, by designating the importer as the recipient of supply of such transportation service would amount to double taxation.

The transaction at hand involves three parties– (1) The foreign exporter, (2) The Indian importer, and (3) The shipping line. There are two legs of the transaction. On the first leg of the transaction, between the foreign exporter and the Indian importer, the Indian importer is liable to pay IGST on the transaction value of goods,

inclusive of value elements of freight and insurance, under Section 5(1) of the IGST Act read with Section 3(7) and 3(8) of the Customs Tariff Act. The second leg of the transaction involves an agreement between the foreign exporter and the shipping line (whether foreign or Indian) for providing services for the transport of goods to the destination, i.e., in the territory of India.

Section 2(30) of the CGST Act clearly provides that a transaction may have two or more taxable supplies, where one of them is a principal supply and such a supply is composite in nature.

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

The following table summarizes are above judgement:

| Sl. No. | Type of Import | Ex-orter | Im-porter | Logis-tic/ Ship-ping Line | Nature of Transaction Post SC Judgement | Applicability of GST Post SC Judgement |
|---------|----------------|------------------------|-----------------------|---------------------------|--|---|
| 1. | CIF | For- eign Entity | In- dian Entity | Foreign Entity | Treated as composite supply contract consisting of import of goods along with transportation and insurance services | GST under RCM could not be payable by the Indian Importer of the goods |
| 2. | FOB | For- eign Entity | In- dian Entity | Foreign Entity | Indian Importer avail services of Logistic from foreign shipping line and pay ocean freight to the foreign shipping line | Yes, GST under RCM would be payable by the Indian Importer of the goods, and Indian importer can avail of ITC OF tax paid under RCM |

| Sl. No. | Type of Import | Ex-orter | Im-porter | Logis-tic/ Ship-ping Line | Nature of Transaction Post SC Judgement | Applicability of GST Post SC Judgement |
|---------|----------------|------------------------|-----------------------|---------------------------|--|--|
| 3. | FOB | For- eign Entity | In- dian Entity | Indian Entity | Indian importer avails services of logistic from Indian shipping line and pays ocean freight to the Indian shipping line | GST would be charged by the Indian shipping line under forward charge and Indian importers can avail of such ITC |

Key Takeaway from Hon'ble Supreme Court Judgment

1. Definition of the recipient under Section 2(93) of the CGST Act, will have to be understood widely and not by a strict Application of commercial Principles. While the ruling goes in favour of the importers, the finding that importers may be deemed to be the 'recipient' may set a wrong precedent giving liberty to the Government to shift the onus of payment on persons other than the actual recipient of goods or services in any other similar situations.
2. Importation of goods under a CIF contract would be considered as a contract of composite supply wherein the predominant supply is a supply of goods. In other words, the service of the shipping line is not a separate service and it is a part of the aforesaid CIF contract, which would attract custom duty along- with IGST. Hence separate levy on the Indian importer for the "supply of service" by the shipping line would be in violation of Sec 8 of the CGST Act.
3. All the recommendations of the GST council made by virtue of the power of article 279A(4) are not binding on the legislature.

*Authors can be reached at :
srikanth@dnsconsulting.net*



CA. Raghavendra C R
CA. Bhanu Murthy J S

INDIRECT TAX UPDATES

Important decisions :

1. Union of India Vs. Mohit Minerals Pvt.Ltd. 2022-TIOL-49-SC-LB

Issue : The issue before the Supreme Court was whether GST could be levied on the freight component of CIF value of imports, under reverse charge mechanism on the importer as import of services. The High Court of Gujarat held that no such levy could be imposed.

Held: The Supreme Court on appeal by the Union of India, held that the said levy is not legal on the basis that such levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' in terms of Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

2. CC, CE & ST Vs Northern Operating Systems Pvt Ltd 2022-TIOL-48-SC-ST-LB

Issue : Skilled employees of the foreign holding company, are sent to the Indian Subsidiary on deputation (Secondment). The agreement between the foreign company and the Indian subsidiary provided that the said seconded employees would have to work under the control and supervision of the Indian subsidiary. The issue before the Court was whether the secondment of employees by the foreign holding company to an Indian subsidiary would attract a levy of service tax under the reverse charge mechanism.

Held : The Court held that during the relevant period of time, there is a provision of service by the foreign company to an Indian subsidiary on the basis of the finding that though the control over the performance of the seconded employees' work and the right to ask them to return, if their functioning is not as desired, is with the Indian subsidiary, the fact remains that their overseas company would remain to be their employer. The said employer uses the services of the

said employees in relation to its business and deploys them to the Indian company on secondment.

Therefore, it was held that the foreign company has supplied services of manpower supply, and hence the Indian subsidiary is liable to pay Service tax on the said services under the reverse charge mechanism.

Munjaal Manishbhai Bhatt vs UOI [2022] 138 taxmann.com 117 (Gujarat)

Issue: validity of prescription of 1/3rd deduction towards land in the entry 3(if) of Notification No. 11/2017-Central Tax (Rate) was under consideration before the High Court.

Held : The Court held that the legislature has no intention to impose a tax on land in any form and that is the reason supply of land is covered under Schedule III of the GST Act. Having said so, the Court held that the where the actual value of land is clearly ascertainable or where the value of construction for services can be ascertained from valuation rules, then mandatory deduction of 1/3rd of land is not applicable but the actual value of land has to be deducted and GST shall be assessed on the said basis.

3. Divine Chemtee Ltd Vs Pr. CC 2022-TIOL-745-HC-AP-CUS

Background and issue : The issue before the High Court was whether DRI officers could investigate and issue show cause notice on an assessee who is a SEZ unit. The petitioner contended that DRI had no jurisdiction to initiate any action against a unit situated in SEZ as the offences under the Customs Act are not yet notified to be investigated by the DRI and any offence in a SEZ unit is to be dealt with only by the Development Commissioner under the SEZ Act and hence, issuance of show cause notice is bad in law.

Held: Relying on the decision of the Apex Court in the case of *M/s. Canon India Private Limited* [2021-TIOL-123-SC-CUS-LB] and taking into account that there was no notification empowering DRI officers, during the relevant period, to investigate offences under Customs Act committed in a SEZ, the



Since 1957



Court held that the show cause notice (SCN) and the consequent order passed in terms of the said SCN are without jurisdiction.

4. Pr. CC Vs Cadila Healthcare Ltd 2022-TIOL-748-HC-AHM-ST

Issue: The issue before the High Court was whether a Partner in the partnership firm can be said to be rendering services to the Partnership Firm so as to fall within the ambit of services attracting levy of service tax in terms of the Finance Act, 1994. Consequently, whether remuneration received by the partner would attract a levy of service tax?

Held: Affirming the decision of the Tribunal, the High Court held that the remuneration received by a partner by employing his skill and labour as per the partnership deed is also a profit, the profit in such circumstances can be a special share in the profit and hence cannot be made liable to service tax. The Court observed as below while coming to the above conclusions:

- A) Supreme court in the case of **Commissioner of Income Tax Vs R.M. Chidambaram Pillai - 2002-TIOL-2675-SC-IT** held that a partnership firm has no legal existence separate from the partners, under the Partnership Act.
- B) It can, therefore, be said that a partnership firm is not a separate entity from its partners. To be liable to service tax, there shall be an activity qualifying as service between two distinct entities.
- C) As the partnership firm, cannot be considered as a 'person' distinct from the partner, there cannot be a service provider-service recipient relationship between a partner and the partnership firm when a partner discharges his duties as a partner pursuant to the deed of partnership.
- D) Hence no service tax is payable on the activities performed by the respondent in the capacity of partner to the firm.
- E) Any income, salary, bonus, etc. received by a partner for discharge of obligations as per the partnership deed is nothing but a special share in the profits of the firm.

5. Bombay Market Art Silk Cooperative (Shops And Warehouse) Society Ltd Vs CCE & ST 2022-TIOL-444-CESTAT-AHM

Issue : The issue before the Tribunal, in this case, was whether the appellant is entitled to avail Cenvat credit in respect of Service for re-carpeting of the road in their industrial estate. The credit was denied on the ground that it is new construction of road under works

contract service which is excluded in the definition of Input Service under Rule 2(l) of Cenvat Credit Rules, 2004

Held: The Tribunal allowing the input tax credit, observed that there is no dispute in the fact that the road was in existence and the services presently utilised are for the purpose of repair or renovation of the existing road. Therefore, said services are for the purpose of repair and renovation of an existing industrial estate and not for originating the new construction. Relying on the decision of the Tribunal in the case of Reliance Industries Limited - 2022-TIOL-359-CESTAT-AHM it was held that the construction and works contract is used for repair and renovation of the existing factory, the same falls under the inclusion clause of the definition of Input Service.

6. Jindal Steel And Power Ltd Vs Pr. CCGST & CE, 2022-TIOL-408-CESTAT-KOL

Background and issue: The appellant was initially allotted coal mines and subsequently the Supreme Court cancelled the allotments of 203 coal mines, including one allocated. As per provisions of Section 16 of Coal Mines (Special Provisions) Act, 2015 (CMSPA), at the time of re-allocation of cancelled coal blocks to the successful bidder, prior allottees were to be compensated for the transfer of the right, title, and interest in land and mine infrastructure to the successful bidder. As the appellant was a prior allottee, they received an amount as compensation in respect of land and mine infrastructure.

In this background, service tax was demanded on the above-referred compensation received by the appellant.

Held: The Tribunal allowing the appeal observed that the cancellation was in pursuance of the order of the Supreme Court and not as a result of a contract to tolerate cancellation. Further, there was no consideration for tolerating cancellation, only compensation provided statutorily for the investment made in mines by the appellant. Further, the Tribunal observed that both the cancellation of allocation of blocks and receipt of compensation are by operation of law, which is similar to the receipt of compensation when one's land is acquired by the Government in public interest or payment to a Government employee of an amount equal to salary for unused leave at the time of his/her retirement.

*Authors can be reached at :
raghavendra@vraghuraman.in;
bhanu@vraghuraman.in*



CA. Vinay Thyagaraj

UNDERSTANDING THE CONCEPT OF COST INCURRED UNDER RERA

(PART - XIII OF RERA SERIES)

RERA is a transformational statute, that aims in achieving Transparency, accountability, responsibility, standardisation, professionalism, symmetry of information amongst the stakeholders of the industry.

Stakeholders include Government Agencies, Promoters of the business (Landowner or builders or developers), Tax Departments, Financial Institutions, Professionals, statutory bodies, professionals, end-users. The RERA Act has an inbuilt mechanism to achieve its objectives through regulation and development activities. Respective stakeholders play a vital role in their area of business/practice/work.

In the past 5 years (since the implementation of RERA), market/industry/stakeholders have accepted and strived towards achieving the real intent and objectives of RERA. However, RERA being the new statute, prone to the interpretation of the readers, professionals, stakeholders. The court's judgments may resolve those differences.

RERA opens the door to new opportunities and streams, enabling the creation of new ideas, thoughts, and services. It generates a competitive advantage for the industry players by being able to enhance the speed, quality of the delivery of the projects.

Financial management is the hallmark and mandatory compliance under the RERA Act. To achieve this, the highest importance and recognition are given to the practicing professionals. Such practicing professionals include Architect, Engineer and Chartered Accountants, with the involvement of these professionals, the promoter shall utilize the money realised from the allottees in the project.

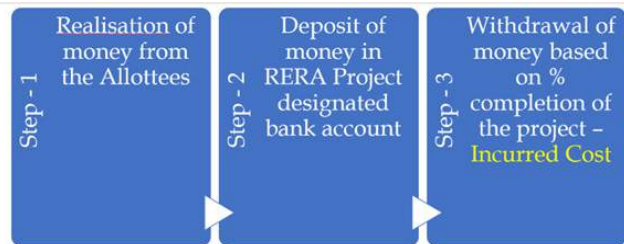
Let us understand the provisions and process mandated under RERA Act –

Section 4(2)(L)(D) - that seventy percent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered Accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

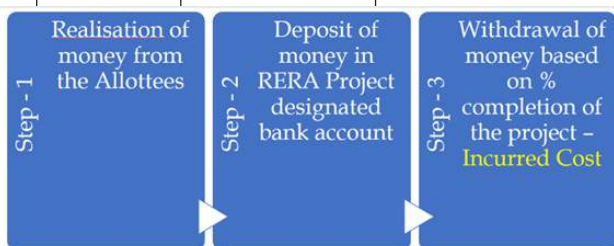
Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a Chartered Accountant in practice, and shall produce a statement of accounts duly certified and signed by such Chartered Accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.



| Sl No | Act/Rules Reference | Details | Provisions of RERA |
|-------|---------------------|-----------------------|--|
| 1 | Section 3(1) | When to Collect money | Only After Registration of Project with RERA |

RERA

| Sl No | Act/Rules Reference | Details | Provisions of RERA |
|-------|--------------------------------|--|--|
| 2 | Section 13 and K-RERA Rule 8A | How to Collect the money from the allottees | In Accordance with the agreement for Sale entered with the Allottees |
| 3 | Section 4(2)(1)(D) | Having collected the money, where to deposit | RERA project designated bank account opened in Schedule bank |
| 4 | Section 4(2)(1)(D) | How much money to be deposited into the RERA project designated bank account | (minimum) 70 % of realisation from the allottees |
| 5 | Section 4(2)(1)(D) – proviso 1 | When to withdraw money from the project designated bank account | After having completed the development work in the project |
| 6 | Section 4(2)(1)(D) – proviso 2 | How much to withdraw money | Based on proportion to the percentage of completion of project and having obtained the certificates of three |



1. Respective State RERA Authorities have notified the professional certificate formats. Promoters of the project shall obtain these certificates from the professionals from time to time, prior to withdrawal of money from the RERA Project designated bank account.
2. The notified chartered accountant's certificate format is having the following columns –

| Sl No | Details | Estimated Cost | Incurred Cost |
|-------|-----------|----------------|---------------|
| 1 | Land Cost | 1000 | 250 |

| | | | |
|---|---|------|-----|
| 2 | Construction/ Development Cost | 1500 | 350 |
| 3 | TOTAL Cost (1+2) and Total Incurred Costs | 2500 | 600 |

The estimated cost of real estate project – Section 2(v) of the RERA Act defines - Estimated cost of a real estate project means the total cost involved in developing the real estate project and includes land cost, taxes, cess, development and other charges.

- i. Incurred cost – is neither defined in RERA Act nor in Rules. in absence of a definition or method of calculating Incurred cost, it is important to the promoters and for Chartered Accountants to know the concept of Incurred Cost while issuing certificates under RERA. If so, what is incurred cost for the purpose of RERA, let us deliberate –
 1. Is cash outflow be considered as incurred cost? or
 2. Can we assume accrued / accrual costs are considered incurred Costs?
 3. If not, is any other meaning or definition to this?

we interacted with various professionals and tried searching in google and in other accounting databases – few of them are as below and in my opinion thereon against each -

| Sl No | Outcome of Search | Opinion |
|-------|--|-------------------------|
| 1 | Incurred expenses refer to fees that have been charged to a business but have not yet been paid by the company Since these charges will be paid in the future, they're also considered accrued expenses until they are paid off. Any time a business makes a purchase but has not paid for it yet is an incurred expense | Like an accrued expense |
| 2 | An incurred cost is a cost arising from the consumption of an asset or service, or from a loss that has been sustained – source - https://www.accountingtools.com/ | |

| Sl No | Outcome of Search | Opinion |
|-------|--|--------------------------------|
| 3 | Incurred cost in accrual accounting refers to the expense of the company when an asset is consumed, and the company becomes liable for and may include direct, indirect, production, operating expenses that are incurred for running the business operations of the company. It also includes all the prior period expenses, i.e., costs incurred before the company comes into existence. Incurred Costs are an expense for the company and are recorded in the debit side of the profit & loss account – source - | accrual accounting |
| 4 | All Cash out flow / money paid for the project – land and development | Means cash basis of accounting |

By revisit of objectives of RERA, provision of law and understanding the Pre-RERA and Post-RERA practices, following are the points to consider while concluding the meaning of the incurred cost for the purpose of RERA –

- Promoter allowed to withdraw money from RERA project designated bank account based on PROPORTION TO THE PERCENTAGE COMPLETION OF THE PROJECT – proviso 1 to Section 4(2)(L)(D)
- Means, the promoter shall invest, construct, develop, post that claims for the money spent – like a reimbursement - proviso 2 to Section 4(2) (L)(D)
- Further the provision of RERA mandates, utilisation of the funds for the project for which the money has been collected from the allottees - Section 4(2)(L)(D)
- So, the objective of the Act, provision of law is to ensure the money realised from the allottees to be applied/utilised for the same project. Hence all expenses, payments, advances made, be considered as application/utilisation for the purpose of the project. Hence allowed to withdraw the money from the RERA project designated bank account.

- Following are the heads of expenses, payments, advances to be considered as costs incurred –

| Sl No | Nature of Expenses / Payments | Details | Eligible to withdraw |
|-------|---|--|----------------------|
| 1 | Land Cost as defined in rules | Incurred | Yes |
| 2 | All Approval costs | Incurred | Yes |
| 3 | Non-Refundable advance / goodwill under JDA model | Incurred | Yes |
| 4 | Refundable advance / goodwill under JDA model | Paid – Shown as Asset in Balance Sheet. However, this is the cash flow for the promoter and is paid for the purpose of the project – Debatable | Yes/No |
| 5 | All expenses – direct or indirect – onsite or offsite | Incurred - Payable with respect to the project. Hence allowed to withdraw | Yes |
| 6 | Borrowing Costs | Incurred | Yes |
| 7 | Fixed Asset | Being an Asset, to the extent of depreciation be allowed – still debatable | Yes |
| 8 | Advance towards material purchases | Cash Out Flow Paid for the purchase/ procurement | Yes |
| 9 | Sales and Marketing Costs | Not related to Cost of development. It is a sales cost. | No |
| 10 | Income Tax / Taxes on profits | No | No |
| 11 | Passthrough charges | Being Passthrough charges. IF not considered as the Cost of the project | No |

RERA

| Sl No | Nature of Expenses / Payments | Details | Eligible to withdraw |
|-------|--|---|----------------------|
| 12 | Lease Charges paid | Incurred - Paid – Shown as Asset in Balance Sheet. However, this is the cash flow for the promoter and is paid for the purpose of the project. | Yes |
| 13 | Cancellation of amount if paid to the allottees | Incurred – Only 70 % of the amount (if so deposited) shall be considered as cost incurred. | Yes |
| 14 | Compensation / interest paid to the allottees for delay or breach of terms of the contract | Incurred – As the cost is incurred for the project. MahaRERA, GujRERA are specifically mentioned as incurred. | Yes |
| 15 | Advances made for rendering services – eg., professional fees | Cash Out Flow Paid for the project purposes | Yes |
| 16 | Common Expenses | Incurred E.g., Management fees, Common Accountants fees, Common administration fees – shall be Allocated | Yes |

Note –

- the input for the certificate shall be the books of accounts maintained by the promoter.
- common expenses if any shall be allocated to various projects/businesses on scientific parameters. Eg., Manager who manages 4 different projects, the salary of the manager shall allocate based on time, efforts, project size, cost etc

- any advance for materials or services paid shall be recovered or adjusted as per the terms of the contract.
- precautions to be taken in case of related or associate party transactions.

Other References on Cost Incurred - In view of the same, few RERA Authorities have given guidelines to arrive at Incurred Cost for the purpose of issuing Certificate U/s. 4(2)(L)(D) of the RERA Act. MahaRERA has issued the circular/notification in this regard. The summary is as below -

- MahaRERA has clarified the expression Incurred in its Circular 7/2017 dated 4th July 2017, Clarification on CA Certificate –
the expression “incurred” would mean amount of product or service received, creating a debit in favour of a seller or supplier and shall also include the amount of product or service received against the payment.
- RERA Bank Account Direction issued by K RERA in Jan 2020 has mentioned –
Certificate from the Chartered Accountant in practice other than the statutory auditors of the Promoter in Template Form-4, for the cost incurred and paid on construction cost and the land cost. The Chartered Accountant in practice is also required to certify the proportion of the cost incurred and paid on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the Promoter from the RERA Bank Account.

Opinion on Incurred Cost –

On the understanding of the objective of the Act, Provision of law, authority clarifications and real estate practices, we believe that the **incurred cost is a combination of Paid (advances) + Expenses Payable + Cost of Asset + Non Refundable Deposits** in relation to the project.

The concept of Incurred Cost may be a combination of Cash and Accrual transactions, the promoters shall consider, prepare the statements, reconcile the books for the purpose of RERA and professionals collect and retain this information or statements as part of working papers while issuing Chartered Accountant Certificates.

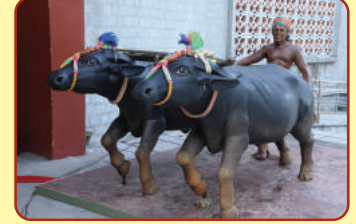
*Authors can be reached at :
vinay@vnnv.ca*



Since 1957



34th KSCAA ANNUAL CONFERENCE 2022





Since 1957



34th KSCAA ANNUAL CONFERENCE 2022





Since 1957



34th KSCAA ANNUAL CONFERENCE 2022





34th KSCAA ANNUAL CONFERENCE 2022





34th KSCAA ANNUAL CONFERENCE 2022





34th KSCAA ANNUAL CONFERENCE 2022





34th KSCAA ANNUAL CONFERENCE 2022





34th KSCAA ANNUAL CONFERENCE 2022





CA. Vinayak Pai V

FINANCIAL REPORTING AND ASSURANCE

1. KEY UPDATES

For April and May 2022

| | |
|--------------------|--|
| <p>AS Ind AS</p> | <ul style="list-style-type: none"> • ICAI Exposure Draft - Accounting Standard (AS) 108, Segment Reporting <ul style="list-style-type: none"> ○ The Exposure Draft (ED) of Revised AS 108 takes extant AS 17 as the base. The ASB is of the view that bringing the 'MIS-based Operating Segment' approach under Ind AS framework (Ind AS 108) would be onerous to be applied by entities to whom AS apply. ○ There are no major differences proposed in comparison with AS 17. Certain changes have been proposed to align the provisions with other revised AS, (e.g. revised AS 1, Presentation of Financial Statements, and revised AS 8, Accounting Policies, Changes in Accounting Estimates and Errors). ○ The ED requires the disclosure of the nature and amount of material items of segment revenue and segment expense in accordance with revised AS 1. ○ The comment period for the ED [No. ED/AS108/2022/20 issued on 29th April 2022] ended on 28th May 2022. ○ Link to the ED: https://resource.cdn.icai.org/70247asb56162.pdf |
| <p>Assurance</p> | <ul style="list-style-type: none"> • ICAI Implementation Guide on Reporting Under Rule 11 (e) and Rule 11 (f) of the Companies (Audit and Auditors) Rules, 2014. <ul style="list-style-type: none"> ○ The Implementation Guide (IG) provides guidance to auditors on Rule 11(e) [reporting on lending or receiving funds through pass-through entities marked for ultimate beneficiary] and Rule 11(f) [reporting on the payment/declaration of dividend]. ○ The IG provides detailed guidance on these rules including various audit procedures to be performed. ○ Link to the IG released on 26th April 2022: https://resource.cdn.icai.org/70151aasb56099.pdf • ICAI Announcements: <ul style="list-style-type: none"> ○ Guidance Note on the Companies (Auditor's Report) Order, 2020 <ul style="list-style-type: none"> ▪ The ICAI, in an announcement dated 2nd April 2022, has stated that in light of amendments to Schedule III, a comprehensive revision of the Guidance Note on CARO, 2020 is being initiated by the AASB. In the interregnum, members have been directed to read CARO 2020 in conjunction with the corresponding amendments made in Schedule III for presentation and disclosure requirements and to perform audit procedures accordingly. ▪ An annexure to the announcement summarizes the interplay of some of the clauses in CARO 2020 and the consequential amendments to Schedule III. ▪ Link to the announcement: https://resource.cdn.icai.org/69895aasb020422.pdf |

- o **Peer Review Mandate- Roll Out - Revised**
 - ICAI announcement dated 11th April 2022.
 - The Peer Review Mandate (Revised), operative from April 1, 2022, has been made in four stages.
 - At each phase, before undertaking a statutory audit the concerned Practice Unit should possess Peer Review Certificate.
 - For example, for the Practice Units, from April 1, 2023, there is a pre-requisite of having a Peer Review Certificate for undertaking a Statutory Audit of unlisted public companies having paid-up capital of not less than rupees five hundred crores or having an annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year or ii) From April 1, 2024, Practice Units rendering attestation services and having 4 or more partners should have a Peer Review Certificate before undertaking any statutory audit.
 - Link to the announcement: <https://www.icai.org/post/peer-review-mandate-roll-out-revised>
- o **The effective date of applicability of Standard on Assurance Engagements (SAE) 3410, “Assurance Engagements on Greenhouse Gas Statements”**
 - The ICAI on 2nd May 2022, announced the effective date for application of SAE 3410 as follows:
 - The voluntary basis for assurance reports covering periods ending on 31st March 2023.
 - The mandatory basis for assurance reports covering periods ending on or after 31st March 2024.
 - SAE 3410 (issued February 2021), deals with assurance engagements to report on an entity's Greenhouse Gas (GHG) statement. The objective of an engagement under SAE 3410 is to obtain either limited or reasonable assurance, as applicable, about whether the GHG statement is free from material misstatement, whether due to fraud or error.
 - Link to the ‘applicability date’ announcement: <https://www.icai.org/post/srsb-sae-ggs>
 - Link to SAE 3410 - <https://resource.cdn.icai.org/62857srsb50843.pdf>
- **IFAC Implementation Tool – ISA 540, Auditing Accounting Estimates and Related Disclosures**
 - o On 5th April 2022, the International Federation of Accountants (IFAC) released an Implementation Tool to help auditors implement ISA 540, Auditing Accounting Estimates and Related Disclosures.
 - o The tool contains ‘What’, ‘Why’, and ‘How’ suggestions.
 - o Link to the Implementation Tool: <https://www.ifac.org/system/files/publications/files/IFAC-Implementation-Tool-Auditing-Accounting-Estimates-ISA-540.pdf>
- **IAASB – ISA 600 (Revised), Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)**
 - o The International Auditing and Assurance Standards Board (IAASB) issued a revised version of ISA 600 on 7th April 2022 that addresses special considerations that apply to audits of group financial statements (group audits).
 - o The revised standard strengthens the auditor's responsibilities related to:
 - Professional skepticism,
 - Planning and performing a group audit,
 - Two-way communications between the group auditor and component auditors, and
 - Documentation.
 - o ISA 600 (Revised) is effective for audits of group financial statements for periods beginning on or after 15th December 2023.
 - o Link to the revised standard : <https://www.iaasb.org/publications/international-standard-auditing-600-revised-special-considerations-audits-group-financial-statements>

| | |
|--------------------------|--|
| <p>MCA SEBI</p> | <ul style="list-style-type: none"> • SEBI - Clarification on applicability of Reg.23(4) read with Reg.23(3)(e) of the SEBI (LODR) Regulations, 2015 in relation to Related Party Transactions <ul style="list-style-type: none"> o Circular No. SEBI/HO/CFD/CMD1/CIR/P2022/47 dated 8th April 2022. o “...It has been decided to specify that the shareholder’s approval of omnibus RPTs approved in an AGM shall be valid up to the date of the next AGM for a period not exceeding 15 months. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed 1 year.” o Link to the circular: https://www.sebi.gov.in/legal/circulars/apr-2022/clarification-on-applicability-of-regulation-23-4-read-with-regulation-23-3-e-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-in-relation-to-related-party-transactio-_57807.html |
| <p>RBI</p> | <ul style="list-style-type: none"> • RBI Notifications: <ul style="list-style-type: none"> o Disclosures in Financial Statements – Notes to Accounts of NBFCs <ul style="list-style-type: none"> ▪ Circular No. RBI/2022-23/26 DOR.ACC.REC.No.20/21.04.018/2022-23 dated 19th April 2022. ▪ Additional Disclosure Requirements in accordance with SBR (Scale Based Regulation) Framework. ▪ The Circular applies to all NBFCs. The annexure to the circular specifies: formats for disclosures (common templates) for all categories of NBFCs (i.e., Investment and Credit Companies, Housing Finance Companies, Core Investment Companies, etc.); and that the guidelines shall be effective for annual financial statements for Y.E. 31st March 2023, and onwards. ▪ Link to the circular: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12292&Mode=0 o RBI (Financial Statements – Presentation and Disclosures) Directions, 2021 – Reporting of Reverse Repos with RBI on the Bank’s Balance Sheet. <ul style="list-style-type: none"> ▪ Circular No. RBI/2022-23/55 DOR.ACC.REC.No.37/21.04.018/2022-23 dated 19th May 2022. ▪ The circular applies to all commercial banks and requires the following: <ul style="list-style-type: none"> (a) all types of reverse repos with RBI including those under LAF shall be presented under sub-item (ii) ‘In Other Accounts’ of item (II) ‘Balances with Reserve Bank of India’ under Schedule 6 ‘Cash and balances with Reserve Bank of India,’ (b) Reverse repos with banks and other institutions having original tenors up to and inclusive of 14 days shall be classified under item (ii) ‘Money at call and short notice’ under Schedule 7 ‘Balances with banks and money at call and short notice, and (c) Reverse repos with banks and other institutions having original tenors more than 14 days shall be classified under Schedule 9 – ‘Advances’ under the following heads: <ul style="list-style-type: none"> A.(ii) ‘Cash credits, overdrafts and loans repayable on demand’ B.(i) ‘Secured by tangible assets C.(I). (iii) Banks (iv) ‘Others’ (as the case may be). ▪ Link to the Circular: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI55415D185D2D5E4E06A30BEDC748C9E783.PDF |

| | |
|---|--|
| IFRS | <ul style="list-style-type: none"> • IFRS Interpretations Committee Publication <ul style="list-style-type: none"> ◦ <i>Compilation of Agenda Decisions – Volume 6.</i> • IASB Project Summary <ul style="list-style-type: none"> ◦ <i>Pension Benefits that Depend on Asset Returns.</i> • IASB Publication <ul style="list-style-type: none"> ◦ <i>Investor Update (Issue 26).</i> • Agenda Decision (IFRIC) being considered by IASB: <ul style="list-style-type: none"> ◦ Principal vs. Agent: Software Reseller (IFRS 15, Revenue From Contracts With Customers). |
| USGAAP Assurance | <ul style="list-style-type: none"> • FASB Proposed Accounting Standards Update <ul style="list-style-type: none"> ◦ <i>Reference Rate Reform (Topic 848) and Derivatives and Hedging (Topic 815)</i> <ul style="list-style-type: none"> ▪ Deferral of the sunset date of Topic 848 and amendments to the definition of the secured overnight financing rate (SOFR) overnight index swap rate. • PCAOB Request for Comments <ul style="list-style-type: none"> ◦ <i>Post-Implementation Review- Interim Analysis of Estimates and Specialists Audit Requirements.</i> |
| IFRS Sustainability Disclosure Standards | <ul style="list-style-type: none"> • IFRS Foundation’s plans for the future role, governance, and development of the Integrated Reporting Framework were articulated on 25th May 2022. • Key points: <ul style="list-style-type: none"> ◦ The Integrated Reporting Framework is set to become part of IFRS Foundation’s Materials. ◦ The Integrated Reporting Framework will initially be positioned as a voluntary resource for preparers. ◦ It may be noted that the IR Framework issued by the IIRC (now VRF that is set to consolidate with the IFRS Foundation) aims to provide insights about the resources and relationships used and affected by an organization (collectively referred to as ‘the capitals’). It also seeks to explain how the organization interacts with the external environment and the capitals (‘financial, manufactured, intellectual, human, social and relationship, and natural capital) to create, preserve or erode value over the short, medium, and long term. |

2. EXTRACTS

Extracts from the “**State Finance Audit Report of the Comptroller and Auditor General of India for the year ended March 2021 – Government of Karnataka Report No. 1 of the year 2022**” is provided herein below.

Observation relating to disclosure

Compliance with Accounting Standards

The Government Accounting Standards Advisory Board (GASAB) set up in the office of the C&AG with the support of the GoI is entrusted with the responsibility of formulating and proposing accounting and financial reporting

standards for Government departments and organisations. On the advice of the C&AG of India, the President of India has so far notified three Indian Government Accounting Standard (IGAS).

The details of IGAS and compliance with these by GoK for the year 2020-21 are discussed in Table 4.11.

Table 4.11: Compliance with Accounting Standards.

| Sl. No. | Accounting Standards | Essence of IGAS | Status | Impact of deficiency |
|---------|--|--|-----------------|--|
| 1. | IGAS-1 Guarantees given by the Government-Disclosure requirement | The standard is set out to disclose the norms in respect of Guarantees given by the Government in their respective financial statements along with the maximum amount of guarantees given during the year, addition, deletions (other than Invoked during the year), outstanding at the beginning and end of the year and Guarantee commission or fee. | Complied | Guarantees disclosure has complied with the standard. |
| 2. | IGAS- 2 Accounting and Classification of Grants-in-Aid | It states that grants-in-aid should be classified under revenue expenditure under the accounts of the grantor and revenue receipts in the accountants of the grantee even if it involves the creation of assets, except in cases specifically authorized by the President on the advice of the Comptroller and Auditor General of India. | Not Complied | The Grants-in-Aid given to institutions amounting to ₹ 100 crores was classified under capital heads instead of revenue heads. This resulted in non-compliance which led to the overstatement of revenue surplus and capital expenditure. |
| 3. | IGAS -3 Loans and Advances made by Government | This Standard relates to recognition, measurement, valuation, and reporting in respect of loans and advances made by the Government in its Financial Statements to ensure complete, accurate, and uniform accounting practices. | Partly Complied | The State government complied with the format prescribed by the Standard. However, the information in this regard is incomplete, since the details of all the outstanding principal and interest in respect of loans and advances have not been provided to the Pr.AG (A&E). |

*Author can be reached at :
vinayakpaiv@hotmail.com*



CA. Aditya Kumar S.

NEED FOR CHIEF SUSTAINABILITY OFFICER AND ESG COMMITTEE

Background: Business Responsibility and Sustainability Reporting ('BRSR') is gaining importance every day and all the more for the listed companies since the reporting is mandatory as per SEBI regulations. Companies are in various phases of adoption of BRSR reporting where some of them are in the initial stages of evaluation and there are some who have adopted BRSR voluntarily earlier and are now in the stage of maturity in terms of quality of reporting. BRSR reporting would require detailed analysis of the business processes and realigning wherever required to meet the objectives of the reporting. Since this would be part of the investor's pack, there would be obvious references to financial reporting and other sections of the annual report as well and hence care needs to be taken when drafting and presenting the BRSR report. The crucial question is why would there be a need to have an office accountable for the reporting? Is it time to have Chief Sustainability Officer add another 'C' to the C-suite which includes the CEO, CIO, CFO, etc.,

Chief Sustainability Officer ('CSO'): Indian companies have now realised that BRSR is more than compliance and it is a way to do business. The whole concept of Environmental, Social, and Governance ('ESG') aspects is being embedded in the decision-making process. Crucial decisions of the companies ensuring ESG aspects are given utmost importance since it is the question of business being sustainable over a long period of time. Some the Indian companies had departments or teams to take care of Environment, Health, and Safety ('EHS') function, the experience of which is now being leveraged for ESG-related functions adding more skill sets and objectives to the role. The role of CSO is now more than legal compliance but has to contribute to the business decisions and is expected to lead the organisation from the front. The applicability of standards of reporting like GRI or later by ISSB or SSB of ICAI would further increase the scope of work of the CSO. Hence, the need

for one position to ensure that the entity delivers on the ESG front for the goals that are set.

Whom should the Chief Sustainability Officer ('CSO') report to?: *'The future of the Chief Sustainability Officer'* publication by Deloitte indicated that 32% of the CSO reported to the CEO, 13% to the Head of Communications / Marketing, 9% to HR, 9% to Head of Strategy and 37% to others. In my personal view, there is no one fitting solution for all the entities. It depends on their business model, governance structure, geographical spread, and other factors as to how the CSO needs to be positioned in the key management team. The fact remains that CSO needs support from the operations, finance, legal, and other teams to ensure that their objectives of ESG are met and they can benchmark their performance with the rest of the industry or peers. Over a period of time, we may have a situation wherein the CSO could be a function that interweaves all other functions and reports to the Board or to ESG Committee set up by the Board. ESG Committee or Steering committee would have to monitor the ESG initiatives of the organization and ensure respective personnel is made accountable for their action.

In brief, CSO is expected to play the role of :

- a. Laying a plan of action to meet the entity's ESG goals.
- b. Participate in the decision making process
- c. Being a catalyst to integrate sustainability into business decisions
- d. Reporting to management on sustainability KPI
- e. Engage with internal and external stakeholders;
- f. Bringing in awareness on sustainability aspect;
- g. Ensuring compliance with sustainability reporting

Inter-relationship of Sustainable Reporting decisions with other committees (ESG Governance: Board and Management Roles & Responsibilities (harvard.edu) Committee which has oversight of environmental sustainability or CSR matters – 53% Nomination & Governance Committee, 13% Public Policy Committee, 11% Sustainability Committee, 3% Audit Committee,).

- a. **Board of Directors** – The Board of Directors is finally responsible for implementing BRSR initiatives and therefore, the CSO needs to support the Board in key decisions on strategy, setting up targets (balancing profits, planet, and people aspects), managing six forms of capital (financial, manufactured, intellectual, human, social & relationship and natural). Further, CSO also has to report on an ongoing basis any hurdles in implementation and alternate courses of action to be taken.
- b. **Audit Committee** – ESG is part of the overall corporate governance aspects which the audit committee is expected to oversee and advise the management accordingly. Considering that the audit committee members are independent directors and the audit committee chairman is expected to have knowledge of financial reporting, the implications of ESG on accounting and corporate governance would be scrutinised critically by them for which CSO needs to provide the essential input information.
- c. **Risk Management Committee** – Non-compliance of ESG is not only a compliance risk, but a business risk is something now accepted by the entities. The Risk Management strategies of the entity should integrate ESG aspects as well to get a holistic view of the risk mitigating factors implemented by the entity. It is important for entities to relook at their Enterprise Risk Management practices and integrate ESG in their assessment of the internal and external environment, assessment of risk, and other activities.
- d. **Nominations Committee** – Do we have the right team to do the right job? Ensuring that the entity has the right skill sets to execute its ESG objectives is important. Appointing senior managerial staff and adequately staffing them with the right human resources is important. The nominations committee would ensure that the appointment of key positions in ESG is done based on their work experience and skill sets.

- e. **Compensation / Remuneration Committee** – Taking forward from the previous point on having the right set of people, well it is through paying fairly to the skill sets that the executives bring in. Creating a work environment that is not only encouraging for staff to take up the work but the ability to continue to reinforce the goals and meet the challenges in the future is a challenging task. HR also has a major role to play.

There has to be a concerted effort by all the committees to support the ESG objectives since everybody has a role to play in it.

ESG Committee: Would it be a good idea to have an ESG Committee (though the Boards takes up the responsibility of ESG otherwise) to ensure that the efforts of all other committees are managed at a single point. The ESG Committee should be reporting to the Board by monitoring the ESG activities and it should have a team of managers reporting to them. These are the new roles that are evolving over a period of time and there would be more clarity in their scope and objectives. Some of the other questions on the constitution of the ESG Committee would be:

- Should it have independent directors or not? Should it have members beyond the top layer of the management?
- Should it have subject matter experts?
- Division of work on the approval of sustainability policies and executing them.
- Coordination with other committee members and the Board.
- What should be the periodicity of the meeting – quarterly, semi-annually, or as deemed necessary?

Ideally, some of the duties and responsibilities of the ESG Committee would be:

- a. Create ESG Vision
- b. Recommend the Board on the company's overall ESG Strategy,
- c. Monitor the company's policies and procedures
- d. Measure the success with KPI
- e. Compliance with reporting standards
- f. Taking action on any discrepancy arising out of review or audit



Since 1957



ESG Committee should be a cross-functional management committee that would assist the top management in establishing the goals, developing and encouraging initiatives to achieve those goals, and measuring performance among other factors.

Examples (Focus 15 Sustainability Committees: Structure and Practices (ifc.org))

General Electric Co.

GE is a diversified technology and financial services company. Its Sustainability Steering Committee is chaired by the vice president of environment, health, and safety, and composed of senior managers from across the company with deep subject matter expertise. The committee meets regularly to review stakeholder feedback and emerging trends and to assess sustainability performance and reporting. Its activities are discussed with GE's four board committees (Audit Committee, Technology, and Industrial Risk Committee, Governance and Public Affairs Committee, and Management Development and Compensation Committee) and by executive management.

AkzoNobel

The Executive Committee of AkzoNobel, a paints and coatings company with strong global brands, has established a Sustainability Council to advise about sustainability developments. The council monitors the integration of sustainability into management processes and oversees the company's sustainability targets and overall sustainability performance. The council is chaired by the CEO and includes members of the Executive Committee, managing directors from within its businesses, and corporate directors of strategy, human resources, sustainability, integrated supply chain/research, development and innovation, procurement, and communications. Progress regarding sustainability objectives, development, target-setting, and implementation is reviewed quarterly by the executive committee, semi-annually by the supervisory board, and is verified annually by PricewaterhouseCoopers Accountants N.V. The Audit Committee takes an active role in assessing the quality and reliability of sustainability performance reporting.

Tata Group:

Governance - TATA Sustainability Group Sustainability is central to corporate competitiveness. There is a growing body of evidence that sustainability presents a significant opportunity to drive long-term value for society as a whole and needs to be incorporated into corporate strategy. Stakeholders know that if an issue is not on the Board's

agenda, it's unlikely to be at the heart of an organization's strategy. As environmental, societal, and governance challenges increase, stakeholders across the spectrum, be it investors, regulators, or civil society organizations, all are demanding group-level responsibility for sustainability issues.

Our Approach

In alignment with one of the commitments of the Tata Sustainability Policy, the Tata Sustainability Group actively engages with companies on ensuring adequate governance of sustainability. While most Tata companies have some form of board oversight on sustainability issues, seven companies have dedicated Sustainability Committees of the Board, mandated to address the risks and opportunities arising from sustainability issues.

Conclusion:

The Corporates are also looking to have the best of their governance structure in place and place ESG as an important aspect of the business. There are examples of companies having ESG Steering Committee and ESG Action Committee, to ensure that there are clear-cut responsibilities and accountability as well.

The role of the CSO and the role they play in the governance of an organisation cannot be underplayed. It is important for organisations to revisit the existing organisational structure, roles, and responsibilities and take steps forward to make the business more resilient, not only by carving out ESG as a separate function, but also by ensuring it is integrated with all other roles. Going forward where there would be a requirement of integrated reporting and attestation etc., it would be advisable for organisations to prepare for the future.

We, as members having knowledge of ESG, can help organisations reimagine their business model and design ESG monitoring structure that is not only sustainable but also scalable, flexible, and commensurate to the business envisioned for tomorrow. Our role has been enhanced to ensure that the entity is ESG and future ready. It is important to have the right balance of people and resources from various backgrounds to lead and execute ESG initiatives. We as members have various opportunities in governance and reporting aspects of ESG which needs to be harnessed to the potential.

**Author can be reached at :
aditya@rgnprice.com**



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

INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA

PATENTS – REWARD FOR INVENTIONS

(PART - XXII OF IPR SERIES)

Intellectual Property (IP) means the product of the mind or the intellect. We come across various forms of IP such as new movies, songs, electronic devices, medicines, etc for use in our day-to-day life. All goods or services we use are an outcome of the Inventor's ingenuity, knowledge, and skill, apart from labour and capital, which falls under IP. In the present dynamic and competitive business environments, IP is one of the key elements needed to maintain a competitive edge in the market. Such intangible property expressed in tangible expressions /goods may be the key to the difference between the success and failure of an enterprise. This is truer in respect of an MSME which works generally on a thin profit margin. In the present part 'Patent as a strong IP' for safeguarding the commercial interests of the Inventor is deliberated.

Patent as a Strong IP

As narrated earlier, the IPRs are a part of the strategic business tool for any business organization to enhance industrial competitiveness. MSMEs with limited resources and manpower can sustain only through continuous development and growth-oriented innovations in the products and processes they are dealing with. A patent right is an important asset because it ensures the protection of the inventions, subject to meeting certain criteria prescribed under the Patent law. Armed with such a patent, the entity can aim for a monopoly in the market for a certain period to obtain returns to match the investments made in the creation of the product. As a powerful business tool, Patent rights can be exploited for gaining exclusivity over others, used to develop a strong market position, and earn additional revenues through licensing.

'Patent', in simple terms, means a set of rights granted by the government to an inventor or their assignee for a limited period. A Patent is a statutory right provided to the patentee

for a set length of time in return for full disclosure of his invention and the exclusion of others from **creating, using, selling, or importing** the patented product or method for those purposes without his approval. The definition of a Patent as per the World Intellectual Property Organization (WIPO) reads as follows: "A *patent is an exclusive right granted for an invention, which is a **product or a process** that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application*". In India patent rights are awarded as per The Patents Act, 1970 as amended by The Patents (Amendment) Act, 2005 (hereinafter Patent Act for brevity). Let us understand some of the features of the Patent law so that the inventors can apply and seek such rights to protect their valuable inventions and products/ processes.

Eligibility conditions

Inventions are essential to improve our lives and yet the inventors, for their efforts, go unnoticed as someone else may reap the benefits. Inventions could be of any type including technological, software, scientific, hardware or mechanical, electrical, etc. It is to be noted that years of research and efforts by the inventor go into every such invention. The Intellectual Property System recognises the original and novel intellectual effort of researchers and rewards them through the grant of Patent rights and allowing its inventor or the group who owns it, to have control over the use of the invention.

Patents are said to be one of the complex types of Intellectual Property since they protect inventions. Not all innovations are "inventions" within the definition of the Patents Act. The term "invention" is defined under Section 2(1) (j) of the Patents Act as "a new product or process involving an inventive step and capable of industrial application." The



aspects of Novelty, Utility, and Non-obviousness (NUN) have been specifically included in the definition of the term “invention”.

If an invention fits into all the following conditions and if it is a patentable subject matter, applications for a patent claim could be made.

- i) the product or the process must be a new- Concept of Novelty,
- ii) It should be suitable for industrial use – Concept of Utility,
- iii) It must be non-obvious or contain an imaginative step- Concept of Non-obviousness, and
- iv) It should not be subject to the Patents Act 1970's sections 3 and 4 - concept of Patentable subject matter.

The patent rights are essentially territorial in nature (valid within India), but the criteria of novelty and non-obviousness are to be considered and compared with prior arts on a worldwide basis.

The lighting of Fused Tube Lights?

By being patented, the invention shall be new do not mean it should be created involving high costs and monumental efforts. Even a well-thought-out simple solution to overcome a problem /situation could also lead to getting a patent right in return for full disclosure. Timely effort to fill the gap/ requirements of the society may result in obtaining a new product. Therefore, we should know which are the types of inventions that can aspire for Patent protection. One should be sensitive enough to recognise and identify such efforts and proceed to seek Patent protection, as the efforts of Mr. Narsimha Chary in the following narration indicate.

Mr. Chary, hailing from Navipet town of Nizamabad district, spent most of his time in objects that were made up of plastics, silicon, and lithium. During his earlier age, as a student at government school, he would spend hours sitting in his father's furniture workshop or his uncle's tape recorder shop, tinkering around with various materials, and conducting multiple scientific experiments. When in Class VII, for a curious Chary, life changed on a visit to a local village a gram panchayat near Navipet, where he came across a mountain heap of failed tube lights strewn around in the local dump yard. His thoughts were immediately focused on the possible ways to reuse the fused tube lights, in other words, to give life back to dead tube lights. He made his own inventive efforts for a possible solution to reuse these wasted tube lights. The quest for a possible solution was started in the year 2000 and it took him seven long years of hard and dedicated work, to come out with a novel solution that has been now recognised as a Patent. He invented an integrated

circuit that could re-glow a failed tube light without using either a choke or a starter. The use of discarded tube lights with the invented technology of Chary brought light back to thousands of villages without involving much cost.

Through his consistent efforts, Mr. Narsimha has brightened the world by bringing dead tube lights back to life. The patent granted, brought more wealth to him too as due recognition was granted to him. Chary's formula also protected the environment as the residual mercury, often discarded with the failed tube light as the mercury vapour can contaminate the soil, water, and the air, got fully used, exhausting all the residual mercury in the light until it is safe to discard them. Moreover, Chary claims that the light emitted is totally white and not blue in colour, which is safer for our health. *“Government is spending thousands of crores on electricity every year and yet our country has not achieved 100 percent electrification. My goal is to be of service when it comes to providing cost-effective power to people. As part of this, I took up projects in collaboration with the Nizamabad Municipal Corporation, as well as the District Panchayat Office, to electrify discarded tube lights and set them up for lighting streets across 1,000 villages. The government was able to save around Rs 12.5 lakh due, at the end of it,”* says Narsimha in an interview. *“In India, there are a lot of people living below the poverty line. My experiments are focussed on addressing their concerns. The cost of replacing their tube light with a brand new one is costly. My focus has always been to reduce that cost,”* he tells The Better India. For more details refer <https://www.thebetterindia.com/216061/telangana-engineer-dead-tube-lights-narsimha-chary-formula-electriification-india-nor41/>

Such efforts by many go unrewarded as the persons pursuing such interests are not aware of the availability of Patent protection as a reward for their efforts. This is more so in the MSME sector and rural environment. Therefore, persons / entities should keep a track of all such inventive efforts and seek Patent protection, so that they could be exploited for getting higher profits for the person/ enterprise. Many similar stories have been narrated in the earlier part of this series that could be referred to. One of them is the effort of P M Murugesan, a school dropout from a village in Tamil Nadu, to build a patented machine to turn Banana waste into a rope that could be used in the manufacture of eco-friendly bags, baskets, etc., and running a profitable enterprise.

Novelty in Patents

Novelty is an important element in determining the Patentability of an invention. The law requires that the invention must be novel, distinct and unique in nature and must not have been disclosed publicly, before the date of filing for a patent, subject to certain conditions



and exclusions. An improvement in the technology that is already existing cannot be patented in India. The term "new invention" is defined under *Section 2(l) of the Patents Act* as "any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with complete specification, i.e., the subject matter has not fallen in the public domain or that it does not form part of the state of the art". According to the Indian Patent Act, an 'inventive step' (Sec 2(ja)) means a feature of an invention that involves technical advance as compared to the existing knowledge or has economic significance, or both, and that makes the invention not obvious to a person skilled in the art. In simple words, the novelty requirement basically requires that an invention should never have been published in the public domain (no prior art) i.e., It must be new with no identical or similar prior arts.

Inventions under Patent Act

An Invention is a new product or process that solves a technical problem and is different from a discovery, which is something that already existed, but had not been found. Any invention, which has an "inventive" step can be Patented. This inventive step or feature must be something that is not obvious to someone skilled in the industry and must be "novel". If the invention was known or used by any other person or used or sold by the applicant to any person in India and/or outside India, then the applicant would not be entitled to the grant of a patent. A new invention means any invention or technology which has not been predicted or anticipated by publication in any document or used in the country or anywhere in the world before the date of filing of the patent application with complete specifications. This means that before the filing of the complete patent application the contents of the application must not have been disclosed by the inventor to anybody or should not be known to anyone in the country or anywhere in the world. It is important to note that the public use or publication of the invention will affect the validity of an application. It is advisable to file a Patent application and then follow it up with publication if required. Do not publish papers pertaining to the invention in progress, until the provisional application is filed. Any earlier patent, a document published in any country, disclosing the invention, or disclosure or use by the inventor will prevent the granting of a Patent in India. It is reiterated that novelty is one of the important conditions for obtaining a patent. Participating in science competitions or invention exhibitions may be a great way to find out about your invention's appeal. However, making your invention available to the public and press before you apply for a patent may interfere with the novelty condition of patentability in some countries. However, the Patents Act

provides for an exception to this as a relief. The Patent law states that after the publication of the patent information in an exhibition or a magazine, the patentee can file an application within 12 months from the date of such publication or exhibition. Therefore, a grace period of one year is provided to the applicant to file for the application. If in case, the application has not been filed within that time, then the Patent application cannot be considered for the grant. The industry involved in the creation of a new product to meet their requirements should note this failing which they may lose their opportunity to obtain Patent rights on their products and process.

Before inventors apply for a patent, they are strongly encouraged to search the technical fields of their inventions to make sure that no one else has already applied for a patent in respect of the same invention. It is not easy to conduct a thorough patent search and therefore it is advisable to seek the help of a professional at this stage. A patent agent / attorney can help with this work.

Utility

Industrial Applicability (Utility), meaning that the invention can be made or used in any kind of industry, or must have a practical use is an essential condition to be satisfied to be considered for grant of Patent. If the invention is for a product, it cannot be just an idea or a theory, but someone must be able to make that product. If the invention is for a process, then it must be possible to carry out that process. Industrial application as defined under the Patents Act means that the invention must be capable of bringing value to the industry. Industrial applicability is defined under Section 2(ac) of the Patents Act as "the invention is capable of being made or used in an industry". It should be capable of being practically applied to the industry, to be patentable. This essentially means that the invention cannot exist in the abstract. It must be capable of being applied in any industry (practical utility) in order to be patentable.

Anything found existing out in nature cannot be patented. Any person qualified in the field of the invention must be able to use it to make a benefit out of it. The use should be legal in nature, and it will disqualify the eligibility if it's invented for illegal or immoral purposes.

Patentable subject matter:

The foremost consideration is to determine whether the invention relates to a patentable subject matter. Sections 3 and 4 of the Patents Act list out non-patentable subject matter. As long as the invention does not fall under any provision of Sections 3 or 4, it means it has patentable subject matter (subject to the satisfaction of the other criteria).

An invention may meet the criteria for novelty, creativity, and utility, yet it may not be eligible for a patent if it is



Since 1957



mandated as such in the Indian patent Act. As per section 3 of the Indian Patent Act, the following are not inventions within the meaning of this Act and therefore are not patentable in India:

- 1) a frivolous innovation or one that asserts anything that is manifestly opposed to well-established natural rules or trivial.
- 2) an innovation whose primary or planned use or commercial exploitation may be in violation of public order or morals or may cause substantial harm to human, animal, or plant life, health, or the environment.
- 3) the discovery of a scientific concept, the development of an abstract theory, or the discovery of any living or non-living substance in nature.
- 4) An invention whose primary goal or intended use is contrary to law or morality or is injurious to public health.
- 5) Discovery of a new form of a known substance, without enhancement of the known efficacy of that substance.
- 6) Discovery of any new property or new use for a known substance or of the mere use of a known process, machine, or apparatus, unless such known process results in a new product or employs at least one new reactant.
- 7) A method of agriculture or horticulture.
- 8) Inventions relating to atomic energy.
- 9) Any process for the medicinal, surgical, curative, prophylactic, or any other type of treatment of people or animals, or other creatures.
- 10) Plants and animals in whole or any part thereof other than microorganisms.
- 11) A mathematical or business method or a computer programme;
- 12) A literary, dramatic, musical, or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions, which would essentially be a copyrightable material instead.
- 13) a mere scheme or rule or method of performing mental act or method of playing a game.
- 14) a presentation of information
- 15) topography of integrated circuits
- 16) An invention that in effect is traditional knowledge or is based on the properties of traditional knowledge.

All Intellectual proper rights, including Patent rights, are territorial in nature i.e., the patent or other IPRs granted in India is valid only in India. Patent protection is a territorial right and is enforceable within Indian territory. There is no such thing as a worldwide patent. To have protection in other countries, inventors are required to file patent applications separately in other countries too.

A patent application can be submitted by the real and original inventor or his assignee, alone or in collaboration with others. A legal representative of a deceased individual, on the other hand, can file a patent application. The law gives the right to all types of parties or entities or organizations to protect their inventions by way of patent applications. In fact, the law also considers a situation where the applicant could be a different entity/individual and the inventor could be a different entity/individual. However, the Indian law allows the applicant to file a matching application in convention nations or under the PCT (details of this procedure will be discussed in the coming part) for the same invention within or before the twelve-month period after the filing date in India. In each nation where the applicant seeks protection for his innovation, a patent should be sought.

*Author can be reached at :
mgkodandaram@gmail.com*

T Sriram, Mehta & Tadimalla Chartered Accountants

Vacancies for Qualified CAs and Articles

Address :

#4, 02, 15th Cross,
South End Circle, Jayanagar 2nd Block,
Bengaluru - 560 011,
Karnataka, India

Email : partners@tsmt.in



CA Narasimhan Elangovan

UNDERSTANDING CLOUD COMPUTING - THE BASICS

(PART - III OF IT SERIES)

Introduction

In my last article, we understood the different ITGCs, their objectives and typical areas of review for each of the ITGCs. This time around, it is time to explore a technology, which has largely been adopted by enterprises and is omni present and has made work from anywhere a reality. Not only is this technology scalable, but also cost efficient and helping in quick deployments. Yes. You are right. We are speaking of Cloud Computing.

While the world is slowly transitioning into the Cloud, as auditors it is time, we understand this technology better and delve deeper into its audit relevance.

What is Cloud Computing?

Let us say, you invested into a CPU which has storage capacity of 5 Tera Bytes (that can store close to million photos or 600 HD movies) and 128 GB RAM (enough to edit 8K resolution videos) so that all your friends could access this storage space for a nominal fee at high speeds. To ensure the data is safe and secure, you promise them to take periodical backups, have a Disaster Recovery Server or a fail-over node, ensure the infrastructure is 99.9% available and they can safely access via the Internet using their secure login credentials. Well, you have just set up a Cloud!

While that sounds easier than it is, Cloud Computing is the use of “computing resources” as a service through networks, like internet. It is the use of various services, such as software development platforms, servers, storage, and software, over the different networks, often referred to as the “cloud.” It is a combination of hardware and software computing resources which are delivered over the Internet. The location of physical server and devices is normally not known to end user. Customers of cloud computing use “what they need on internet” and “pay

only for what they use”.

Examples include Gmail, Dropbox, Amazon Web Services, Microsoft Azure, Zoom, Netflix etc.

What makes this unique is its ability to assigns resources to the multiple clients, who connects them over the network and different consumers who share the same pool of resources but still isolated and segregated from each other. One could imagine this as a large condominium owned and managed by third party and yet having your dedicated apartment. The other biggest advantage of the Cloud is that it is pocket friendly. Instead of investing heavily on Infrastructure and software, it simply follows a “rental” model, where one gets the services against a periodical subscription. Not to forget it would be quite like a metered connection which we have at home, the more you use, the more you got to pay!

Difference between Traditional Computing and Cloud Computing

| Cloud Computing | Traditional Computing |
|--|---|
| Delivery of different services such as data and programs through internet on different servers. | Delivery of different services on local server at your premises |
| It takes place on third-party servers that is hosted by third-party hosting companies. | It takes place on physical hard drives and website servers. |
| It is ability to access data anywhere at any time by | User can access data only on system in which data is stored. |
| It is more cost effective as compared to tradition computing as operation and maintenance of server is shared among several parties that in turn reduce cost of public services. | It is less cost effective as compared to cloud computing because one must buy expensive equipment’s to operate and maintain server. |



| Cloud Computing | Traditional Computing |
|---|--|
| It is more user-friendly as compared to traditional computing because user can have access to data anytime anywhere using internet. | It is less user-friendly as compared to cloud computing because data cannot be accessed anywhere and if user must access data in another system, then he need to save it in external storage medium. |
| It requires fast, reliable, and stable internet connection to access information anywhere at any time. | It does not require any internet connection to access data or information. |
| It provides more storage space and servers as well as more computing power so that applications and software run must faster and effectively. | It provides less storage as compared to cloud computing. |
| It also provides scalability and elasticity i.e., one can increase or decrease storage capacity, server resources, etc., according to business needs. | It does not provide any scalability and elasticity. |
| Cloud service is served by provider's support team. | It requires own team to maintain and monitor system that will need a lot of time and efforts. |
| Software is offered as an on-demand service (SaaS) that can be accessed through subscription service. | Software is purchased individually for every user and requires to be updated periodically. |

Deployment Models

The Cloud could be deployed in multiple models depending on organization needs and requirements. The most popular being a Public Cloud, where it is open for everybody and can be accessed based on the logical separation built in. An example could be that your Gmail and mine could be hosted in the same server, but both of us have a logical separation driven by login credentials, password, OTP etc.

On the other extreme is a Private Cloud, which is hosted exclusively for an organization's need and which could be managed by the Cloud Service Provider (CSP). While this might be more expensive than Public Clouds, the advantage being advanced Security, customizations and exclusivity which could benefit highly regulated sectors such as Banking Financial Services or Insurance (BFSI).

Other deployment models include Hybrid, which is a combination of Public and Private, Community Cloud, for unique requirements of a community.

Service Models – How is Cloud delivered?

While the Cloud model enables the end users to access the shared pool of resources such as computer, network, storage, database, and application on- demand, it can be delivered / serviced in multiple models.

One could relate this with obtaining a property on rent. You could obtain the bare shell (building with just walls and pillars) and build it to suite your requirements. You could instead obtain a fully constructed building and only build the interiors to meet your business needs. Alternatively, you could merely choose to go into a plug and play office, where everything including interiors are taken care, and you merely enjoy the possession by paying the rent per desk / seat.

In a Cloud context, the first model is referred to as an Infrastructure as a Service (IaaS), where it is a typical hardware level service provided by the CSP. Typically, the CSP provides processing power, memory, storage, and networks for cloud users. In simple words, the computing is changes “physical infrastructure” to “virtual infrastructure” which is accessed via Internet.

Examples of IaaS Amazon Web Services (AWS), Google Compute Engine, OpenStack, and Eucalyptus.

The second model is Platform as a Service (PaaS), where in addition to the infrastructure, certain utilities, say for programming or for development, are provided as a Service. This normally includes operating system, programming language execution environment, database, and web server which is provided by the CSP. The customer is merely providing using these services and developing products or solutions on it. The biggest advantage is for developers where they can develop and run their software solutions on a cloud platform without the cost and complexity of acquiring hardware /software.

Examples include Google AppEngine, Windows Azure Compute etc.

The third model and the most popular one is a Software as a Service (SaaS), which is mostly a plug and play solution. This model provides the ability to the end users to access an application over the Internet that is hosted

and managed by the CSP. The biggest benefit of this model is that end users are exempted from managing or controlling an application the development platform, and the underlying infrastructure.

Examples include Gmail / G-Suite, Zoho Books, Zoom App etc.

One could diagrammatically present the entire set up as under:

| On-Prem | IaaS | PaaS | SaaS |
|----------------|--|--|--|
| Data | Customer is accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Applications | Customer is accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Runtime | Customer is accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Middleware | Customer is accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| O/S | Customer is accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Virtualization | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Servers | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Storage | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |
| Networking | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable | CSP is responsible, customer still accountable |

Legend: Cloud (blue arrow), Customer is accountable (orange square), CSP is responsible, customer still accountable (blue square)

Fig 1 – Accountability in Cloud Model

Concluding Thoughts

As stated in the beginning, all of us have started using the Cloud with or without realizing how it works. While this have evolved significantly over the years, the fundamentals of Cloud remain the same. Now that we are clear on how Cloud operates, we will in the next discussion understand the Risks involved in Cloud, the Security challenges, Cloud Frameworks, and areas of focus for Auditors and many more aspects.

*Authors can be reached at :
narasimhan@ken-co.in*

Best Tool to Analyse Tally data and prepare Audit Working papers

AN OPPORTUNITY BE A TECHNO CHARTERED ACCOUNTANT.

As a Statutory Auditor What if

- Time to prepare financial statements is not 1-3 days but 1-3 minutes.
- Time to do Conduct Statutory Audit is not one month but one tenth of it.
- Not a random picking of Ledgers for Audit scrutiny but 100% review of Accounting Transactions.
- You can send corrections to be done in tally even before the start of the Audit.
- Building Audit Working papers be Automated.
- You can define Audit rules for each of the clients and build yourself to the existing schema.

Above statements are not a fancy wishful statements, it can be True

All these services offered at Rs.200/- to Rs.125/- price per company per annum

REGISTER & EXPLORE

tallyonwheels.com
support@tallyonwheels.com
 +91 8088803561

IT



Dr. Rohit R Ranade

WOMEN HEALTH AWARENESS

“HEALTHY WOMEN, HEALTHY WORLD”

Women's health is an example of population health, where health is defined by the World Health Organization as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

Why is women's health so important?

Women represent the cornerstone of a family's overall health, ensuring they have access to quality care also can lead to improved health for children and families.

While both men and women contract various conditions, some health issues affect women differently and more commonly. Women bear exclusive health concerns, such as breast cancer, cervical cancer, menopause, and pregnancy. Women suffer higher heart attack deaths compared to men. Depression and anxiety exhibit more frequently among female patients. Urinary tract conditions present more often in females, and sexually transmitted diseases can cause more harm to women.

Women's health is influenced not just by their biology but also by conditions such as poverty, employment, and family responsibilities. Women have long been disadvantaged in many respects such as social and economic power which restricts their access to the necessities of life including health care, and the greater the level of disadvantage, such as in developing countries, the greater the adverse impact on health.

At each stage of a woman's life, there are important preventative health care steps to follow in order to provide early detection of medical problems

Gynecological health

- Bleeding and discharge are a normal part of the menstrual cycle.
- However, added symptoms during menstruation may indicate health issues, such as heavy and

irregular menstrual bleeding, bleeding between menstruations, excessive abnormal discharge from the vagina, and frequent urinating.

- An abnormal menstrual cycle pattern indicates the condition of Abnormal uterine bleeding. the management is based on the cause of abnormal uterine bleeding.
- PCOS is a hormone, metabolic and reproductive disorder, whose exact etiology is not known. It can lead to menstrual abnormality, metabolic disease, and infertility.
- Vaginal issues could also indicate serious problems such as sexually transmitted diseases (STDs) or reproductive tract cancer.
- While care providers might treat mild infections easily, if left unchecked, they can lead to conditions such as infertility or kidney failure.

Gynecological cancer

- Breast cancer is cancer originating from breast tissue. The chance of getting or dying from breast cancer increases with age. Many women who develop breast cancer have no family history of the disease. The best strategy for reducing the risk of death caused by breast cancer is early detection and prompt treatment. Three tests are commonly used to screen for breast cancer: Clinical Breast Exam, Breast Self-Exam, and Mammogram (Recommended annually for all women above the age of 45 yrs or earlier if a family history of breast cancer is present)
- Cervical cancer is cancer arising from the cervix (neck of the uterus). It is important as too many deaths occur from cervical cancer and it is 100% preventable with vaccination, screening, and early detection. The screening test includes a

pap smear and HPV DNA testing. The treatment varies with the stage of the disease. For early invasive cancer, surgery is the treatment of choice. In more advanced cases, radiation combined with chemotherapy is the current standard of care. In patients with disseminated disease, chemotherapy or radiation provides symptom palliation

- Ovarian cancer: ovarian cancer starts in the fallopian tubes. it can affect any age group, mainly extremes of age group. It presents with extremely vague symptoms, the condition is very complex. The best strategy for reducing the risk of death caused by ovarian cancer is early detection and prompt treatment.
- Endometrial cancer is cancer that affects the inner lining of the uterus. It usually presents as postmenopausal bleeding. Treatment option includes surgery, radiation, and chemotherapy based on the stage of presentation.

Heart Disease

- Although the public considers heart disease a common issue among men, the condition affects males and females nearly equally. Conditions like high blood pressure, high cholesterol, or smoking; are factors that contribute to heart disease.

Pregnancy Issues

- Pre-existing conditions can worsen during pregnancy, threatening the health of a mother and her child. Asthma, diabetes, and depression can harm the mother and child during pregnancy if not managed properly.
- Fortunately, obstetricians can manage and treat common and rare health issues that emerge during pregnancies.

Depression and Anxiety

- Natural hormonal fluctuations can lead to depression or anxiety.
- Premenstrual syndrome (PMS) occurs commonly among women, while premenstrual dysmorphic disorder (PMDD) presents similar, but greatly intensified, symptoms.
- Mothers acquire a form of depression called the

“baby blues,” after delivery. But perinatal depression causes similar – but much stronger – concerns, emotional shifts, sadness, and tiredness.

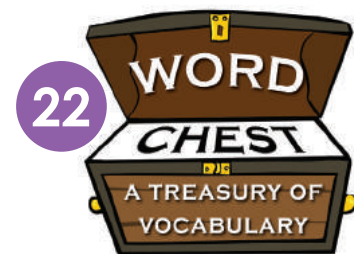
- Perimenopause, the shift into menopause, can also cause depression.
- Care providers can provide relief with a prescription or therapeutic treatments.

How do we improve Women’s health?

To improve women's health, issues related to reproductive health, maternal deaths, malnutrition, and non-communicable diseases need to be addressed through quality and affordable health services under universal health coverage.

A holistic, comprehensive, and life-course approach beyond reproductive health is needed to achieve better health for women – starting from pregnancy and maintained throughout the newborn, childhood, adolescence, and aging period. Women must be empowered to take care of their health.

*The Author is a Consultant Gynecological Oncologist and Robotic Surgeon at Narayana Health City, Bengaluru & can be reached at :
ranade.rohit@gmail.com
www.drrohitranadegyneconcolgist.com*



Finance Tech Term of the Month:

Litecoin

What is this?

Litecoin (LTC) is a cryptocurrency created from a fork in the Bitcoin blockchain in 2011. It was initially designed to address the developer's concerns that Bitcoin was becoming too centrally controlled, and to make it more difficult for largescale mining firms to gain the upper hand in mining.

It shares similar features with Bitcoin but has a different algorithm. The cryptocurrency's goal is to become a medium for daily transactions. *Litecoin* has a faster transaction processing time compared to Bitcoin.

KEYWORD

10

Instructions

- A. From the given clues, find the words in connection with it.
- B. In each word so derived, the letter highlighted in colored box should be noted.
- C. Such letters derived from each word helps in forming the final Key-Word

1. Occurrences that deviate from the predictions of economic or financial models that undermine those models' core assumptions (7)

L

2. A risk management strategy that mixes a wide variety of investments within a portfolio (15)

O

3. In a financial planning sense, this term refers to a time-saving accounting method that consolidates an individual's financial data from various institutions (11)

T

4. An reduces the amount of income that is subject to income tax (9)

M

5. A financial institution that holds customers' securities for safekeeping to prevent them from being stolen or lost (9)

N

6. The right of a government to take ownership of estate assets or unclaimed property. It most commonly occurs when an individual dies with no will and no heirs (7)

S

sudoku-22

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

GUESS THE KEY WORD

In economic terms, can refer to a stage in the business cycle where activity is bottoming, or where prices are bottoming, before a rise.

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

Answers to "Key Word 9" (May 2022)

- 1. Productivity, 2. Fungibility, 3. Grant, 4. Insurtech,
- 5. Undervalued, 6. Writ

Key Word : Listed

Credits: CA. Archana Sridhar

ADVERTISE WITH US

Get reach to over **3500+** members all over Karnataka

The News Bulletin will also reach various Government Departments & Ministries

Soft copy of News Bulletin sent through email to **13000+** Chartered Accountants in India

We solicit to advertise your brand in our monthly News Bulletin. The advertisement tariff is as below:

ADVERTISEMENT TARIFF

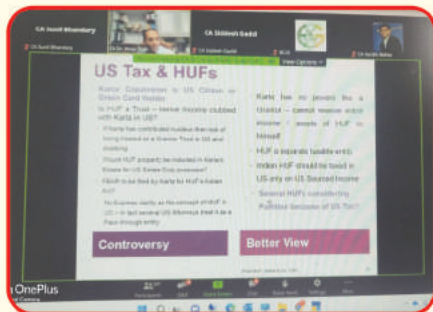
| Full Page Colour | Inside Black & White |
|--------------------------------|-------------------------|
| Outside Back Cover ₹ 25,000/-* | Full page ₹ 12,000/-* |
| Inside Back Cover ₹ 20,000/-* | Half page ₹ 6,000/-* |
| Inside Colour ₹ 16,000/-* | Quarter page ₹ 4,000/-* |

* Plus 5% GST

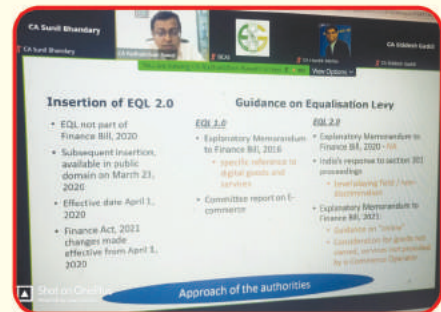
For More Enquiries Contact
+91 9535 715 015 or write to us at Info@kscaa.com

Photo Gallery

Snapshots of webinar on 'Direct Tax Home Refresher Course - 3' held by KSCAA jointly with Bombay Chartered Accountants' Society, Association of Chartered Accountants, Chennai, Chartered Accountants Association, Ahmedabad, Chartered Accountants Association of Jalandhar, The Chartered Accountants Study Circle, Chennai, Hyderabad Chartered Accountants' Society and Lucknow Chartered Accountants' Society



Session on the topic 'Is Equalisation Levy a temporary legislation? Case studies on the issues faced by the industry' conducted by CA Radhakishan Rawal (Mumbai) on 31st May 2022

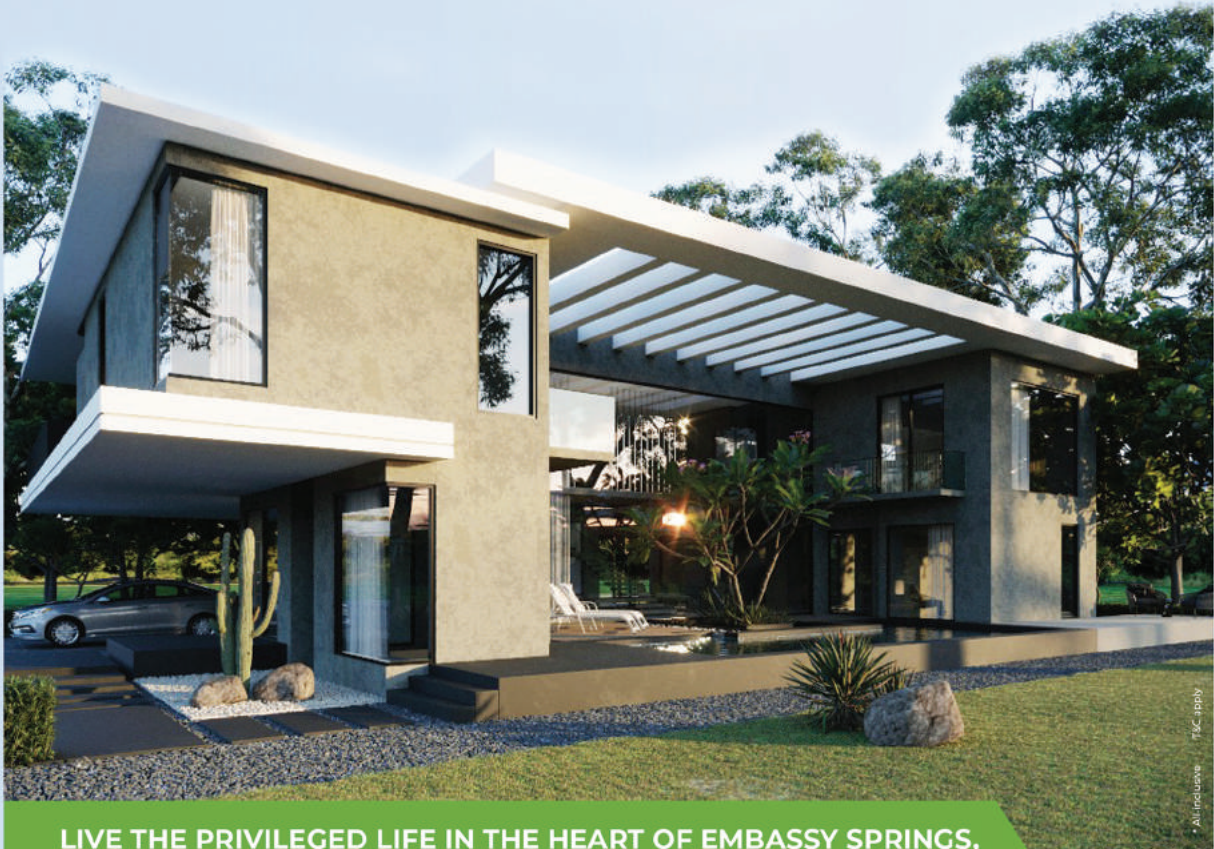


Session on the topic 'Nitty Gritties of Succession Planning including through Private Trust & tax issues of Private Trust' conducted by CA Dr. Anup Shah (Mumbai) on 31st May 2022



YOUR IMAGINATION. OUR EXPERTISE. ONE DREAM HOME.

LIMITED-EDITION TOWN-CENTRE VILLA PLOTS & ESTATE PLOTS.
 READY FOR REGISTRATION | PLOTS 2,249 SQ. FT. ONWARDS | STARTING AT 1.71 CR*



LIVE THE PRIVILEGED LIFE IN THE HEART OF EMBASSY SPRINGS,
 BENGALURU'S BIGGEST AND BEST PLANNED CITY.



288 acres of township



Lifetime maintenance support



Design and construction services



Hassle-free plan approvals



100+ Amenities



North Bengaluru's largest private club



SCAN TO KNOW MORE



88800 50000

embassysprings.com | sales@embassysprings.com

4Kms before Airport Toll Plaza



RERA No. EK/PRM/KA/RERA/1250/303/PR/191206/000633
 For further details, visit www.rera.karnataka.gov.in