



**KSCAA**<sup>®</sup>  
Karnataka State Chartered Accountants Association (R)

**NEWS BULLETIN**

October 2023 - Vol. 11, Issue 02 - ₹ 25/-  
English Monthly - for Private Circulation only

# KARNATAKA KARASAMADHANA SCHEME



Dear Readers,



I am delighted to connect with you again through the Presidential message column. I aim to provide you with an overview of recent developments and upcoming events that will enable you to stay closely linked with us. The month ended, September, was demanding for many of our professional colleagues, due to the busy tax audit season. The newly introduced additional reporting requirement for Charitable Institutions added to the burden. On realising the complexity involved we did a meaningful representation of the challenges associated with complicated reporting in Form 10B and 10BB, to the chairperson of CBDT. Our voices were heard, and we received prompt relief immediately in the form of an extension and a subsequent clarification through circular.

The month that concluded left us with numerous historic milestones to cherish :

## G 20

G-20, exhibited India as Champion of the Global South. This was further embellished with a major breakthrough in the unanimous adoption of the New Delhi Declaration. The big takeaway of the Summit was the launch of new connectivity networks, an ambitious economic corridor linking India to EU, through Saudi Arabia, Gulf states, Israel and Greece by Rail and Waterways. India's presidency has now shifted the centre of gravity from wealthy G7 nations to a more equitable representation of the global South.

## Asian Games

India fulfils remarkable 100+ medals dream for the first time ever in Asian Games. Women shouldered this responsibility equally to deliver the 107-medal haul. The event speaks of the grit of 28-year-old Ms. Parul Chaudhary who came from behind Japan's Ririka Hironaka at the final 40 metres to claim the yellow metal in 5000m race, while the Mukherjee girls pair from Bengal made history by defeating the World No 1 Chinese pair in table tennis, and the boys doubles pair of Chirag Shetty and Satwiksairaj Rankireddy prevailed over world ranked Korean duo to bring the gold home

## Sensex, Nifty close at new all time high

As per Market experts, the Sensex rally is due to continuous inflows by FII, DII and Indian retail investors. The resounding success of G20 also attracted global investors towards Indian market. The investor are likely to linger in the market for some more time, before they book the profits before the end of December, and re-enter at lower level in early 2024. Currently, the government is looking at further easing foreign direct investment (FDI) norms in the space sector to attract overseas players. The Secretary in the Department for Promotion of Industry and Internal Trade (DPIIT) briefed about the huge scope for Saudi Arabian companies to invest in India in different sectors such as aviation, pharma, bulk drugs, renewable energy, food processing and Agri-tech. Emerging sectors for collaboration include artificial intelligence, robotics, cyber security, automation and space. This is likely to further liberalise our foreign direct investment norms to bring in private sector and foreign investment in the space sector.

## GST collections

GST collections in the quarter crossed ₹1.60 lakh crore for the fourth time in the current fiscal despite no increase in rate of taxes. The major indicators for increased collection as compared to the last quarter include increased consumption, strict compliance and action against evaders. Continuous buoyancy in GST collection could result in easing of rates in the coming years.

## Events at KSCAA

Coming to the theme of the year, "Re-craft yourself", we started our focus in the first month with Discovery and we asked our fellow members to ask themselves this question in their profession, "What is the primary purpose for which I started this activity?". To discover oneself, one has to unlock the boundless potential that resides within. It is a journey of self-awareness, self-acceptance, and self-search. It's about understanding your passions, values, and aspirations.

When we discover our true self, we become better equipped to navigate the challenges that life throws at us. We narrow our choices, and this brings faster clarity about our purpose and direction, allowing us to start walking in the direction, we wish to. This not only benefits us individually but also contributes to the greater good of society.

I urge all of you to take time to reflect on your dreams and ambitions, your strengths and weaknesses. Seek out experiences that reflect yourself, while pushing the envelope. Find those choices, by opening every door of opportunity, but check them against your true self, during every part of that discovery process.

As a first step of Discover series, to explore new opportunities, the following programs were organised:

### 1. GST Study circle.

Each participant can identify their core skill in the areas of Research, Presentation, Drafting, and Guiding. We received an overwhelming response. To ensure individual attention and facilitate specific growth of the participants, we limited the numbers of participants on a first come first serve basis.

### 2. Court Room Series

In this program, the speaker analyzes landmark judicial decisions, and the floor is open for discussion on the probable grounds that could have been contemplated in the courtroom, which may lead to the desired outcome of the disputed matter.

### 3. Wealth Management

This program was organised to encourage members to explore the new areas of opportunity in the domain of financial consultancy and investment advisory services.

### 4. Shooting Training & Competition

The event organized by the Sports & Cultural committee was one of the unique events that every participant enjoyed. In an age of increased inactivity, this sport, shooting, can help improve mental health, concentration, hand-eye coordination, and stamina. The enthusiastic response from our members has encouraged us to organize many more such events.

## Editorial

I wish to express my gratitude for the insights offered by our former ICAI President, Padama shri. CATN Manoharan, regarding the article featured in the last month's journal. The insights are indeed worth sharing with all of you.

*"It is true that nothing can move without the mandate of the Almighty God. But at the same time, God doesn't script all pages of your life. He leaves many pages to be filled by you. In that sense, the creator allows you to co-author the journey of your life.*

*So, when you pray, pray as if everything depends on God; but when you act, act as if everything depends on you. Your efforts may fail but you should not fail to make your efforts. May God bless and guide us all."*

## Upcoming Events at KSCAA

- KSCAA's landmark program on GST, 2<sup>nd</sup> Residential Refresher Course on GST has been planned.
- A Trekking Event has been planned in the first week of November in pursuit of our continuing "Sound body in a Sound mind" focus on fitness and health of our members, while enjoying the sounds and sights of nature.

Please keep a watch on our Website and WhatsApp to actively participate in every activity of KSCAA.

Before, I sign off, let me wish everyone a happy and prosperous Navaratri. On this auspicious extended festival season, I encourage you to buy an additional new colourful clay doll to your existing collection. Let's each one of us make our tiny contribution to preserve, embrace and uphold our unique and ancient culture, craft, and tradition.

Thank you,  
Best Regards,  
**CA Sujatha G**  
President.

### 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](mailto:journal@kscaa.com) | Website: [www.kscaa.com](http://www.kscaa.com)

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### Disclaimer

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# ANALYSIS OF PROVISIONS OF SECTION 269SS OF THE INCOME -TAX ACT



CA. S Krishnan

## 1.Introductory Remarks

The Finance Act 1984 through insertion of section 269SS of the Income-tax Act (the Act) brought in prohibition against taking or accepting certain loans and deposits in cash with effect from 1<sup>st</sup> July,1984 by debarring persons from taking or accepting from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate of such loan or deposit exceeded Rs.10,000/- or more, as unaccounted cash found in the course of searches carried out by the Income-tax Department was often sought to be explained by tax payers as representing loans taken from or deposits made by various persons as also in the case of unaccounted income brought into the books of accounts in the form of such loans and deposits by producing evidences in the form of confirmatory letters from such persons in the form of their explanation. However certain exceptions were provided in respect of loan or deposit taken or accepted. The term “loan or deposit” was defined to mean loan or deposit of money.

There were amendments through the Finance Act 1985, Direct Laws (Amendment) Act 1987, Finance Acts 2014 and 2015, Finance (No.2) Act 2019 and Finance Act,2023 to bring the provisions of section 269SS of the Act in tune with encouraging other electronic modes of payment.

## 2. A few decided cases on this subject

**2.1** The Bombay High Court in the case of CIT v. Ajitnath Hi-Tech Builders (P.) Ltd. [2019] 412 ITR 316 (Bombay) held that receipt of any advance or loan by way of journal entries is in breach of section 269SS of the Act. The Bombay High Court went on to hold that journal entries constitute a recognized mode of recording of transactions and in absence of any adverse finding by authorities that journal entries were made with a view to achieve purposes outside normal business operations or there was any involvement of money, there is a reasonable cause for not complying with section 269SS and penalty under section 271D is not to be imposed. The Bombay

High Court further held that “the non-compliance with Section 269SS of the Act would certainly be a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act.”

The SLP filed against the above decision of the Bombay High Court was dismissed by the Supreme Court and the case is reported as Commissioner of Income-tax v. Adinath Builders (P.) Ltd [2019] 102 taxmann.com 57 (SC).

**2.2** The ITAT Mumbai Bench in the case of Deputy CIT v. Macrotech Developers Ltd.[2022] 143 taxmann.com 106 (Mumbai - Trib.) held that where the assessee company had carried out transactions which the Assessing Officer observed were in contravention of section 269SS, however, it was found that even though transactions of one party had been settled by other party by way of assignment of receivables/payables or for any other reason, all loan transactions had been ultimately settled for difference of amount by account payee cheques only, it could be safely concluded that there was absolutely no violation of provisions of section 269SS in any of transactions carried out by assessee.

**2.3** The ITAT Mumbai in the case of Surendra Engineering Corporation v. Joint CIT [2020] 113 taxmann.com 290 (Mumbai - Trib.) held that where assessee firm had availed loan from its partner under a bona fide belief that provisions of section 269SS were not applicable in relation to transaction between firm and partners, the assessee would be protected by provisions of section 273B of the Act and no penalty would be levied upon it under section 271D of the Act.

**2.4** The Delhi High Court in the case of CIT v. Samora Hotels (P.) Ltd. [2012] 211 Taxman 189 (Mag.)/19 taxmann.com 285 (Delhi) held that “expression 'any other person' does not exclude directors or members of company which has received or accepted loans or deposits”-

**2.5** The ITAT Mumbai Special Bench in the case of *Deepak Sales & Properties (P.) Ltd. v. Addl.CIT* [2018] 95 taxmann.com 166 (Mumbai - Trib.) (SB) held that where assessee accepted loans in cash on two occasions, however, there was no urgent business necessity for assessee on both occasions to accept loan in cash and assessee also failed to demonstrate that on both dates assessee was not having sufficient funds in its possession, the Commissioner of Income-tax (Appeals) rightly upheld levy of penalty under section 271D of the Act.

**2.6** The Rajasthan High Court in the case of *CIT v. Chandra Cement Ltd.* [2016] 74 taxmann.com 75 (Rajasthan) held that where assessee-company, engaged in setting up of cement plant, raised unsecured loan from Managing Director in cash in excess of Rs. 20,000/-, the mere fact that said amount was utilised for payment of constructional activities directly would not alter character of deposits and penalty was leviable for violation.

**2.7** The Gujarat High Court in the case of *CIT v. Maa Khodiyar Construction* [2014] 45 taxmann.com 566 (Gujarat) held that no penalty for cash loans exceeding Rs. 20,000/- from agriculturists living in remote areas when transactions were not doubted. The assessment year concerned in this case was 2006-07.

Now the second proviso to section 269SS(b) of the Act provides that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

**2.8** The facts of the case decided by ITAT Delhi Bench in *M.G. Estate (P.) Ltd. v. Addl.CIT* [2014] 44 taxmann.com 418 (Delhi - Trib.) were as follows-

The assessee had received a certain amount in cash from 'S' as share application money.

The Assessing Officer noted that money was nothing but loan or deposit as the assessee neither had statutory capacity to absorb the same as share capital, nor it got its authorised share capital increased and it allotted meagre amount of shares to 'S' and held that

the same was in the nature of loan and/or deposit, which was accepted by the assessee in contravention of the provisions of section 269SS of the Act and, accordingly, the matter was referred for imposition of penalty under section 271D of the Act.

On appeal, the assessee submitted that it had entered into land deal with agriculturists and had to make the payments immediately in cash. The Commissioner of Income-tax (Appeals) observed that from the details filed by the assessee-company, it was revealed that the amount in share application account stood at an astronomical figure of Rs. 11.80 crore whereas the authorized share capital on the said date was only Rs. 5 lakhs, out of which shares worth Rs. 1 lakh only had been allotted. That clearly showed that the assessee-company received loans and advances from various persons in the garb of share application money without holding capacity to issue shares.

On appeal by the assessee, dismissing the appeal, the Tribunal held that the Commissioner of Income-tax (Appeals) rightly confirmed and upheld the observations and findings of the Assessing Officer by passing impugned order.

### **3. Two recent orders from ITAT Chennai Benches wherein 2 extreme views have been taken**

#### **3.1 Sri Sai Balaji Gas Cylinder Private Ltd v. Asstt. CIT in ITA Nos. 3222 and 3223/Chny/2019-Asst. Year 2012-13-Date of order 9<sup>th</sup> June,2023**

During the course of assessment proceedings, the Assessing Officer noticed that the assessee-company had accepted loans from the Managing Director of the company in contravention of section 269SS of the Act. The Assessing Officer further noted that the assessee had also repaid loans in cash to the Managing Director in contravention of provisions of Section.269TT of the Act. Therefore, a reference was made to the Addl.CIT, for initiation of penalty proceedings under sections.271D and 271E of the Act. The Addl.CIT, initiated penal proceedings under sections.271D and 271E of the Act, and called upon the assessee to explain 'as to why' penalty should not be levied for contravention of provisions of Sections 269SS and 269TT of the Act.

It was contented on behalf of the assessee that it had accepted cash loans from the Managing Director of the company for urgent commitments of cash

such as payments for purchases, labour, freight, administrative expenses, and deposits to bank to reduce credit limits and honour cheques given for business. It was further contended that the fact of cash receipts and payments to the Managing Director was nothing but current account of Director in the ordinary course of business, and the same could not have been considered as loans and advances thus attracting the provisions of Sections 271D and 271E of the Act.

The Assessing Officer, not being satisfied with the reply, levied penalties under sections 271D and 271E of the Act for contravening sections 269SS and 269 TT of the Act. The first appeal preferred by the assessee before the Commissioner of Income-tax (Appeals) was unsuccessful.

In the second appeal filed by the assessee before the Tribunal, the same contentions were raised on behalf of the assessee.

The Tribunal, through a detailed order, after setting out the facts of the case and listing out the arguments raised on behalf of both sides and after observing that “there is a clear violation of provisions of Section 269SS of the Act, in accepting loans and advances in cash from its Managing Director and also there is a clear violation of provisions of Section 269TT of the Act, in repayment of loans and advances in cash to its Managing Director” confirmed the penalty levied on the assessee under sections 271D and 271E of the Act.

### **3.2.Thamira Green Farm (Private) Ltd. v.Addl.CIT in ITA No.1845/ Chny/2018- Assessment Year 2008-09-Date of order- 22<sup>nd</sup> September,2023**

In the course of assessment proceedings for the assessment year 2008-09, the Assessing Officer noticed that the assessee had received loans in cash in excess of Rs. 20,000/- otherwise than by Account payee Cheque/Bank Draft in contravention of provisions of section 269SS of the Act Therefore, a show cause notice under section 271D read with section 274 of the Act was issued calling upon the assessee to explain as to why an order imposing penalty should not be levied under section 271D of the Act. In response, it was submitted on behalf of the assessee that the appellant- company had received loans from the Director of the company, for purchase of land for the purpose of business of

the company and the said loan had been received in cash from the director for making payments directly to the seller of the land. It was further submitted that the said arrangement was made because, the appellant company did not have any bank account at that point of time and further the sellers of the land were residing in remote places and they insisted for cash payments. Thus, as there was a business exigency in making cash payments, the appellant company had taken loan from the director in cash. It was therefore submitted that there was no violation of the provisions of section 269 SS of the Act thus warranting levy of any penalty under section 271D of the Act.

The Assessing Officer, not being satisfied with the submissions made, levied penalty which was confirmed by the Commissioner of Income-tax (Appeals).

The Tribunal noted that the transaction made by the director was genuine as he had shown the same in his books of account which had been substantiated by withdrawals in his bank account. The Tribunal after listing the facts of the case opined that the explanation offered by the assessee was bonafide and genuine duly supported by proper transactions. The Tribunal also observed that “there is a bonafide reason for the assessee to make cash payments for purchase of land and also acceptance of loan in cash from the Director.”

The Tribunal then referred to the decision of the Delhi High Court in the case of CIT v. Muthoot Financiers in ITA 336/2002 and others- Judgment dated 3<sup>rd</sup> February,2015 wherein relying on precedents the High Court held that “Creditworthiness of the partners and genuineness of the transactions coupled with the relationship between the “two persons” and two different legal interpretations put forward could constitute a reasonable cause in a given case for not invoking Section 271-D and 271-E of the Act. Section 273B of the Act would come to the aid and help of the respondent-assessee. The Tribunal extended the theory that “the business of the firm was a business of the partner and the profits of the firm, were the profits of the partners” to a transaction between the director and the company and held that “in our considered view transactions inter se between company and director cannot be treated as violation of sections 269SS and 269TT of the Act”

The Tribunal thus held that levy of penalty was not warranted on the facts and circumstances of the case.

The following observations made by the Tribunal at para.12 of its order are worth noticing-

“----- Further loan transactions between director and company can always be considered as equity capital. If these transactions are considered as equity capital, then it is outside the scope of section 269SS of the Act. In the present case since there is a solitary transaction of loan from one director, it can always be considered as a share capital received from the director. Therefore, for this reason also penalty levied by the Assessing Officer cannot be sustained.”

**4. Concluding Remarks**

It is always better to bear the following basic concepts/principles in mind.

There is no – in fact there can be no- straitjacket formula for any given (ideal or otherwise) situation as factual happenings may differ and even one small difference in facts may completely alter the readymade answer situation. Basic principles taught to us indicate that before analysing a live situation

and comparing it with an assumed situation or a decided case-law, first find out as to the facts based on which earlier case was decided and what are the facts obtaining in the live situation and what was the point of law then and what is the point of law now-by point of law what is meant is whether any higher authority has decided the case other way after earlier ruling was given or a decision has been given by a jurisdictional High Court now either way or has there been any amendment subsequent to date of last decision or is there any change in assessment year meaning thereby change in law? The point also to be considered is – Any change in the thinking of the persons who matter most-the judicial authorities?

So, it is better to understand and analyse the facts in the given situation before applying case laws vis-à-vis facts obtaining in the case already decided by judicial authorities.

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## Solution to Sudoku - 37

Sept 2023

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

## SUDOKU-38

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

# INCOME TAX UPDATES

## JUDICIAL UPDATES ITAT

1. Consideration paid by assessee company for purchase of its own shares from its non-resident shareholders in accordance with scheme sanctioned by High Court as per provisions of sections 391-393 of Companies Act, 1956 was liable to tax as deemed dividend under section 2(22), and consequently, assessee was liable for payment of Dividend Distribution Tax under section 115-O. (*Cognizant Technology Solutions India (P.) Ltd. v. ACIT*) (154 taxmann.com 309 (Chennai - Trib.)).
2. Where AO noted huge reduction in percentage of gross profit of assessee between two consecutive years and computed net profit at 4 per cent of turnover and accordingly, made additions in income of assessee, since assessee provided detailed explanation behind fall in profit rate and provided quantitative details of opening stock, purchases, sales and closing stock, action of AO to estimate profit rate at 4 per cent without rejecting books of account was not in accordance with law. (*Kunan Mal Kalu Ram Jain and Co. v. ITO*) (154 taxmann.com 553).
3. Inadvertence on part of assessee to claim credit for advance tax while filing its return of income or filing revised return of income in this regard does not absolve Assessing Officer from its statutory duty as per section 219 to grant credit in regular assessment, particularly when said amount is duly reflected in Form 26AS which forms part of record of revenue. (*Damco India (P.) Ltd. v. Commissioner of Income-tax (Appeals)*) (153 taxmann.com 636 (Mumbai - Trib.)).
4. Where assessee had sufficiently demonstrated that there was no relevant material to make wide ranging allegations towards accommodation entry in form of share capital and earning fictitious profits and so called 'belief' formed by Assessing Officer towards escapement of chargeable income was without availability of relevant or tangible material and merely following opinion expressed by investigation

wing, reassessment was bad in law and hence liable to be quashed. (*Bhaijee Commodities (P.) Ltd. v. ACIT*) (154 taxmann.com 292) (Delhi - Trib.).

## High Court

1. Failure of assessee to produce certain suppliers to verify genuineness of purchases due to which commissioner (appeals) restricting the disallowance on estimation of profit at 12.5%. Also the tribunal affirming on the ground purchases not disputed but parties from whom purchases were made. (*PCIT v. Ram Builders*) (454 ITR 444)(Bombay HC)
2. Where the assessee completed civil works on sub-contracts and where addition is made on account of purchases were bogus, the tribunal upholding order of CIT(A) restricting the addition on account of bogus purchases to the extent of 12.5 % as estimated profits embedded in disputed purchases is proper. (*PCIT v. Vishwashakti Construction*) (454 ITR 448) (Bombay HC).
3. Proposed variation in income and the time granted to assessee to explain insufficient which results in violation of principle of natural justice. Therefore assessment order set aside. (*Sudaresan Suresh Kumar v. Assessment unit, Income-tax Department and Another*) (454 ITR 454) (Madras HC)
4. Where there is no statutory period of limitation, general principle is that in the absence of statutory provisions, order must be passed within reasonable time. It is power of high court under article 226 to fix reasonable period of limitation. (*Vedanta Limited v. DCIT(IT) and Another*) (454 ITR 545)(Madras HC)

## Supreme Court

1. Once amalgamation of companies is sanctioned by court amalgamation relates back to appointed date. Therefore, business loss and unabsorbed depreciation is allowed to be carried forward and set-off from the respective date. (*PCIT v. INTAS Pharmaceuticals Ltd*) [454 ITR 421].
2. Apex society purchasing milk from primary societies and others for which price is fixed by the State



Government in March of every year. The assessee is paying purchase price of milk provisionally and the final difference in rate is paid at the end of accounting year which is not paid to shareholders but only to milk suppliers for quantity of milk supplied and in terms of quality supplied. Therefore, a deductible expense as per section 37 of the Act. (*CIT(C) v. Kolhapur Zilla Sahkari Dudh Utpadak Sangh Ltd.*) (454 ITR 434).

3. Finding that income of the trust was utilized personally by Managing Trustee therefore assessee not entitled to exemption. (*Sir M. Visveswaraya Education Trust v. CIT & Another*)(454 ITR 438)

### From CBDT

1. CBDT releases the fifth annual APA report. (*press release, dated 1-9-2023*).
2. CBDT committed to speedy processing of income tax returns. (*press release, dated 5-9-2023*).
3. CBDT to undertake special campaign 3.0 for swachhata and disposal of pending matters. (*press release, dated 11-9-2023*)
4. Section 47(viiab) of the Income-tax Act, 1961 - transactions not regards transfer - transfer of capital asset - notified securities (*Amendment in notification s.o. 986(e) [no. 16/2020/f.no. 370142/22/2019-tp], dated 5-3-2020*)

5. Gross direct tax collections for the financial year 2023-24 (as on 16-9-2023) register a growth of 18.29 per cent - net direct tax collections for the financial year 2023-24 (as on 16-9-2023) have grown at over 23.51 per cent - advance tax collections for the financial year 2023-24 (as on 16-9-2023) stand at Rs. 3,55,481 crore which shows a growth of 20.73 per cent - refunds aggregating to Rs. 1,21,944 crore have been issued upto 16-9-2023. (*press release, dated 18-9-2023*)
6. CBDT extends due date for filing of form 10b/10bb and form itr-7 for assessment year 2023-24. (*circular no. 16/2023, dated 18-9-2023*)
7. Section 43D of the Income-Tax Act, 1961 - computation of business income - special provision in case of income of public financial institutions, public companies, etc. - notified non-banking financial companies. (*Notification no. 79/2023, dt. 22.09.2023*)
8. CBDT notifies changes to rule 11UA in respect of angel tax. *vide notification no. 81/2023, dt. 25.09.2023*
9. Income-Tax (twenty second amendment) rules, 2023 - amendment in form no. 6B; substitution of rules 14A and 14B; insertion of form no. 6D. (*Notification no.82/2023, dt.27.09.2023*)
10. More than 30 lakh audit reports filed till 30th September, 2023, on e-filing portal of income tax department. (*Press Release, Dated 2-10-2023*)

## Achievements

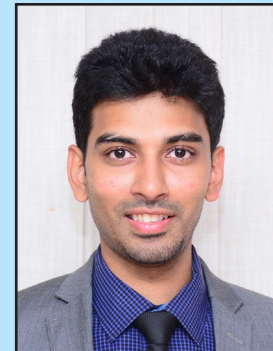
Congratulations to CA. Raveendra S Kore, CA. Pampanna and CA. Shravan Guduthur on being elected as Directors of Federation of Karnataka Chambers of Commerce & Industry (FKCCI) for the year 2023-24



CA. Raveendra S Kore



CA. Pampanna



CA. Shravan Guduthur



CA. Sowmya C A

# INDIRECT TAX UPDATES

Amidst turmoil in the gaming industry involving substantial notices, the amendments brought in vide the Finance Act, 2023, the 50th and the 51st GST Council meetings through several notifications, circulars are set to be implemented from 01 Oct 2023. A significant shift in the taxation framework is imminent for the gaming industry and casinos followed by numerous adjustments in the procedural aspects and prescribed time limits for various compliances under the GST Act and Rules. On the Legal front, the GST Appellate Tribunal has been constituted vide GOI Notification dated 14 Sep 2023. The compilation of notifications, circulars, and advisories issued during this month has been summarized for an interesting read.

## Recent Notifications:

### ♦ Govt. notifies State Benches of GST Appellate Tribunal (GSTAT)

The Govt. has notified the establishment of 31 benches for the State tribunal. The initial set of tribunals is expected to become operational between November 2023 and January 2024. Uttar Pradesh will have three benches established in Lucknow, Varanasi, Ghaziabad, Agra, and Prayagraj, taking the lead. Gujarat - Dadra and Nagar Haveli, Karnataka, and Rajasthan will each have two benches, while Maharashtra and Goa will collectively oversee three benches for appeals. In the northeastern states, a single tribunal bench is proposed in Guwahati, with circuit benches in Aizawl, Agartala, and Kohima based on the volume of appeals filed by taxpayers in the respective states.

### ♦ The IGST (Amendment) Act, 2023 Notified - Provides for amendments in taxation of Specified Actionable Claim which will take effect from 01 Oct 2023.

(Notfn No. 02/2023-IT dated 29 Sep 2023)

**Online Money Gaming is to be liable to tax as Import of Goods, to be levied and collected under Section 5(1) of the Integrated GST Act, 2017 and not under Customs Act with effect from 01 Oct 2023.** The corresponding amendment in the Customs Tariff

Act, 1975 has been made vide Notfn. 72/2023 dated 30 September 2023.

(Notfn No. 03/2023-IT dated 29 Sep 2023)

♦ **Simplified Registration Scheme for Overseas supplier of Online Money Gaming** – The Central Government has notified “ Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him” as officers empowered to grant registration in case of supply of online money gaming provided by a person located in non-taxable territory and received by a person in India with effect from 01 Oct 2023

(Notfn No. 04/2023-IT dated 29 Sep 2023)

♦ **Omission of entry S. No. 9(ii) relating to ‘Goods Transport Services’ in IGST Rate Notification No. 8/2017 IT(R) - effective 01 Oct 2023** – IGST on Ocean Freight mandated to be paid @ 5% by importer of goods is omitted in the rate notification to harmonize tax treatment in accordance with established legal principles by the Apex court.

(Notfn No. 11/2023-ITR dated 26 Sep 2023)

♦ **Amendment in entry No. 10 in IGST Exemption Notification No. 09/2017 – effective 01 Oct 2023** – removal of exemption from IGST levy for Online information and database access retrieval services (OIDAR) services provided by a person located in the non-taxable territory.

(Notfn No. 12/2023-ITR dated 26 Sep 2023)

♦ **Omission of entry in S. No. 10 relating to ‘transportation of goods in a vessel from a place outside India upto the Customs Station of clearance in India’ liable to RCM vide Notification No. 10/2017 IT(R) - effective 01 Oct 2023** – the said entry provided for payment of tax under RCM by importer of goods on Ocean freight payable on transportation of goods in a vessel from a place outside India upto the custom station of clearance in India. The entry has been omitted pursuant to corresponding omission in the tariff notification.

(Notfn No. 13/2023-ITR dated 26 Sep 2023)

◆ **Notification for specifying tax rate for new Section 102(2A) – “Specified Actionable Claim”** Entry 227 has been inserted in Sch. IV entry wherein casinos and online money gaming are sought to be taxed at 28%

(Notfn No. 11/2023–CTR dated 29 Sep 2023) & Notfn No. 14/2023–ITR dated 29 Sep 2023

◆ **CBIC notifies valuation rules of the supply of online gaming and actionable claims in casinos.**

**Rule 31B** - Valuation in case of online gaming including online money gaming will be the aggregate amount paid/payable to or deposited with the supplier in money or money’s worth, by or on behalf of the player and any unused sum or refunded by the supplier will not be reduced from the value.

**Rule 31C** – Valuation in case of Casino will be the total amount paid/payable in purchase of tokens, chips, coins, or tickets, for use in casino, or in case of no such usage of tokens, will be the amount paid/payable on behalf of the player for participating in any event, and any unused sum or refunded by the supplier will not be reduced from the value. The winnings of the player from any event, which is used for playing in a further event without withdrawing, will not be considered as the amount paid to or deposited with the supplier by or on behalf of the player.

(Notfn No. 45/2023 – CT dated 6 Sep 2023)

◆ **Amendment to Notification No. 30/2023 dated 31 Jul 2023 which mandates new reporting requirement to manufacturers of, Pan Masala and certain types of Tobacco products.** – effective implementation date for maintenance and submission of prescribed documents on the common portal is extended to 01 Jan 2024.

(Notfn No. 47/2023–CT dated 25 Sep 2023)

◆ **The CGST (Amendment) Act, 2023 Notified** - Provides for amendments in taxation of Specified Actionable Claim to take effect from 01 Oct 2023.

(Notfn No. 48/2023–CT dated 29 Sep 2023)

Pursuant to powers granted under Section 15(5) of the CGST Act, the valuation of the following:

- (i) supply of online money gaming;
- (ii) supply of online gaming, other than online money gaming; and

(iii) supply of actionable claims in casinos.

has been prescribed and accordingly, Rule 31B and 31C introduced in the CGST rules are made effective 01 Oct 2023

(Notfn No. 49/2023–CT dated 29 Sep 2023)

The amendment to Exemption Notification No. 66/2017, dated November 15, 2017, which pertains to the exemption from tax payment on advances received, is not extended to apply to the supply of Specified Actionable claims related to betting, gambling, casinos, and online money gaming.

(Notfn No. 50/2023–CT dated 29 Sep 2023)

◆ **CBIC notifies amendments in GST Rules vide GST (Third Amendment Rules), 2023**

- o Amendment to Rule 14 and Notification of Form GSTR-5A of the CGST Rules, in respect of reporting supplies and payment of taxes of OIDAR services by a person located outside India made to non-taxable online recipient and to registered persons in India and details of such supplies by a person located outside India to a person in India to be submitted on before the twentieth day of the month succeeding the calendar month or part thereof.
- o Amendment to Rule 8 and Notification of form for Registration in REG-10 in terms of Rule 64 of the CGST Rules, for obtaining registration under the simplified registration scheme for supplies of Online money gaming or OIDAR Services from a place outside India.

(Notfn No. 51/2023–CT dated 29 Sep 2023)

**Recent Advisories:**

◆ **Time Limit for reporting Invoices on the IRP portal:**

It is proposed to impose a time limit of 30 days from the Invoice date for reporting the invoices on the e-invoice IRP portal for taxpayers having Aggregate Annual Turnover (AATO) of more than Rs. 100 crores. This restriction applies to all document types for which IRP is to be generated and taxpayers to ensure that invoices are reported within the stipulated time limit. This requirement is proposed to take effect from 01 Nov 2023.

- ◆ **GST Investigation Wing has issued instructions relating to compliance procedure upon cessation of provisional attachment under Section 83(2) of the CGST Act, 2017**

Instructions were issued to prescribe procedures to be followed in compliance with Section 83 of the CGST Act, 2017 which permits provisional attachment orders, including those involving bank accounts, to protect revenue interests in suitable cases. Section 83(2) of the CGST Act stipulates that provisional attachments cease after one year from the order issuance date. Instances have arisen where registered persons under provisional attachment requested formal release communications to meet bank requirements, leading to writ petitions filed before high courts.

To address this, an interim procedure is provided wherein the Commissioner will issue communications to the relevant authority or bank, referencing the attachment order and Section 83(2) of the CGST Act, indicating the release of the property or account along with intimation to the person concerned. This procedure takes immediate effect, including for pending cases, providing a temporary solution while considering formal language changes that need to be envisaged in Form DRC-23.

(F. No. GST/INV/Provisional Attachment/ Advisory/2023-24 dt. 02 Sep 2023)

#### Customs Notifications:

- ◆ **Restriction on import of laptops, tablets, all-in-one personal computers, ultra-small computers and servers effective from 1 November 2023:** The DGFT has notified that liberal transitional arrangements have been provided for the import of laptops, tablets, all-in-one personal computers and ultra-small form factor computers, and servers falling under HSN 8471 till 31 October 2023. Accordingly, the import of laptops, tablets, all-in-one personal computers and ultra-small form factor computers, servers falling under HSN 8471 can be cleared without a license for restricted imports till 31 October 2023. With effect from 1 November 2023, a valid license for restricted imports shall be required. Restriction not applicable to Imports under Baggage Rules. The exemption is available for the import

of one such item through e-commerce portal, post or courier subject to payment of duty. Further, the exemption is also provided for 20 such items when used for R&D, Testing Benchmarking, and product development purposes.

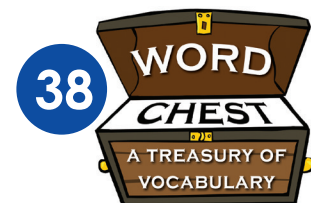
- ◆ **Implementation of Section 16(4) of IGST Act related to restriction on the export of certain goods on payment of IGST and coverage under refund mechanism:** Notification No. 27/2023-Central Tax dated 31.07.2023, has specified certain goods may be exported only under LUT. Backend functionality has been developed to restrict the filing of shipping bills with payment of tax and processing of IGST refund shipping bill-wise for the goods specified in the said notification. Even if one invoice contains an item which is restricted for export on payment of IGST under section 16(4) of the IGST Act, the shipping bill containing such items will not be allowed to be filed.

(Circular No. 24/2023-Customs dated 30 Sep 2023)

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#### **Neobank**

A technology company offering banking or bank-like services. Use of “neo” denotes that these represent a new way to provide bank-like services without necessarily being licensed banks. In practice, some neo-banks are licensed as PSPs, some as NBFIs, and others use a traditional bank or another PSP behind the scenes. Some notable fintech firms launched as neo-banks and later obtained banking licenses, bringing them into the ranks of “challenger banks.”

# DON'T MISS THE OPPORTUNITY KARASAMADHANA SCHEME 2023



CA. Annapurna Kabra

## **K**arasamadhana scheme 2023 (GO No. FD 07 CSL 2023, Bengaluru dated 18th July 2023)

- ◆ The Karasamadhana scheme 2023 was announced by the State Government in order No FD 07 CSL 2023, Bengaluru dated July 18, 2023. To those who make full payment of tax arrears on or before December 31, 2023, the scheme grants waiver of 100% of the arrears of penalty and interest subject to that application should be filed by 31st October 2023.
- ◆ After the implementation and operation of GST, the Karasamadhana scheme is introduced fifth time under commercial Taxes in last six years with different features. In simple terms the word 'Kara' means tax and 'Samadhana' means Relief. Basically, the scheme is introduced for giving relief to dealers registered under different Karnataka Commercial Taxes.
- ◆ This gives extensive relief to dealers to complete their pending assessment or withdraw their appeal already filed by getting relief of enormous interest and penalty. The application under this scheme should be filed by the dealer against each order and not year-wise.
- ◆ **Waiver of 100% of Interest and Penalty:** The scheme of waiver of Penalty and Interest as applicable under different commercial taxes i.e. The Karnataka Sales Tax Act 1957, The Karnataka Value Added Tax Act 2003, The Central Sales Tax Act 1956, The Karnataka Tax on Professions, Trades, Calling and Employments Act 1976, The Karnataka Tax on Luxuries Act 1979, The Karnataka Agriculture Income Tax Act 1957, The Karnataka Entertainment Act 1958 and The Karnataka Tax on Entry of Goods Act 1979.
- ◆ **Due date for Assessment orders:** The scheme grants waiver of 100% Interest and Penalty payable by the dealer under the above Acts relating to the Assessments/Re-Assessments/Rectifications/revision/appeal orders **already completed or to be completed on or before 31.10.2023**. The dealer can apply for the scheme available against any proceedings passed by the Assessing officer like endorsement, Assessment Order against which appeal can be preferred under the law.
- ◆ **Payment of tax dues: The Payment of arrears of tax should be made on or before 31.12.2023** and in case there are no arrears of tax and there is arrear of only penalty and interest then such penalty and interest will be waived.
- ◆ **Penalty for non- filing of Returns and VAT 240:** Under the Karnataka VAT Act, it also grants waiver of penalty of Section 72(1)(a) or 72(1)(b) and Section 74(4) and consequential Interest subject to that Returns and Form VAT 240 are filed, and the taxes are admitted and paid in full. The dealer cannot file the application against the VAT 240 which was filed and wherein tax was not correctly paid as it is not the order. But, if the order is passed against VAT 240 for claiming penalty due to delay in filing VAT 240, then the dealer can apply for kara Samadhana scheme. In case the dealer has applied for Karasamadhana scheme then the assessing Authority cannot reopen the case as it is approved by the appropriate officer.
- ◆ **No waiver of Penalty:** If the penalty is levied under section 10-A of CST Act 1956(Imposition of penalty in lieu of Prosecution) then such penalty is not eligible for waiver under this scheme. Even it is not applicable for penalty under section 73, section 75, section 76, section 77, and section 79 of the KVAT Act 2003.
- ◆ **Revision Proceedings:** Grants 100% waiver of arrears of interest and penalty excluding revision orders already concluded or revision proceedings initiated prior to the date of issuance of this Government orders and revision orders to be completed on or before 31.10.2023.
- ◆ **Withdrawal of Appeal:** If any appeal is filed to Appellate Authority or Court, then the appeal can be withdrawn before filing the application for waiver of Interest and Penalty in Annexure-I. Such appellant should file the declaration as specified in Annexure-II. Such application and declaration should be filed separately for each year.

- ◆ **Amount paid at the time of Appeal:** Any amount paid at the time of filing the appeal or other applications shall be eligible for adjustment towards arrears of tax outstanding for the assessment year for which the benefits are claimed. The dealer will not be eligible for refund of amount that may become excess because of adjustments under this scheme. The pre deposit is paid as 30% of total disputed liability which includes tax, interest and penalty while filing the appeal, but it can be whole adjusted against the tax payable under the Karasamadhana scheme. If the order is passed levying only interest and penalty by the Assessing officer and if the dealer has already paid pre-deposit of 30% then in such scenario the dealer can apply for refund of the pre-deposit amount paid.
- ◆ **Refund of Interest and Penalty already paid before introduction of Karasamadhana scheme:** In respect of cases where any appeal or other application is not filed, the dealer is not eligible for refund of any penalty or interest already paid either in full or in part under this scheme.
- ◆ **Can dealer file appeal after opting for this Scheme:** The dealer shall not file the appeal or other applications before any Appellate Authority or Court or shall not seek rectification of orders/proceedings after filing application for availing the benefits of the scheme or after availing the benefits of this scheme.
- ◆ **Cannot revise the Karasamadhana Scheme Application:** If the dealer has made incorrect declaration / payment in the Karasamadhana scheme 2023 then there is no option of revision of the application.
- ◆ **Not Eligible for this Scheme:** Where state has filed an appeal before the Karnataka Appellate Tribunal or the Central Sales Tax Appellate Authority or Where State has filed an appeal or revision or any kind of application before the High Court or Supreme Court or the Competent Authority has initiated Suo Moto Revision proceedings as on the date of this Government order or Any rectification is made to the Assessment order after 31.10.2023.
- ◆ **Website to file Application:** The website to file the application is <http://ctax.kar.nic.in> or <http://gst.kar.nic.in>

Sl. No.	Particulars	Form No
1	Applications under KST and CST	Annexure-I
2	Applications under KVAT and CST	Annexure-IA
3	Applications under KTEG Act/ KTPTC&E/KTL Act/KAIT Act	Annexure-IB
4	Applications under KET	Annexure-IC
5	Specific Penalties under KVAT Act	Annexure-ID

- ◆ **Verification and passing of order by Concerned Authority**
  - After filing the application for waiver, the concerned authority will scrutinize and compute the actual arrears of tax, interest and penalty and if any discrepancy is found then the concerned Authority shall intimate to the applicant within 15 days from the date of application.
  - After receipt of information from the concerned Authority, the applicant can pay the balance taxes within 15 days from the date of receipt of application or on or before 15th January 2024 whichever is earlier.
  - The applicant shall become ineligible to avail this scheme if any partial amount is still outstanding as arrears on the specified date.
  - The Applicant should file the application for waiver of penalty and interest and declaration for withdrawal of appeal as per Annexure II. If the applicant fails to do so, then the concerned Authority shall pass the speaking order rejecting the application.
  - On satisfaction of the eligibility of scheme of the applicant, the Assessing officer shall pass the order for waiving the balance amount of arrears of penalty and interest payable as per Annexure III separately under the Relevant Act for each Assessment year relating to the relevant tax periods.
  - The order shall be passed within thirty days from the date of making payment and will be served within ten days of passing the order. The concerned Authority shall assist the applicant for correct quantification of interest and penalty.
  - The Assessments \ re-assessments done in the case of URDs/ in respect of Pre-registration periods under KVAT Act are eligible to avail the benefits available under the Karasamadhana

scheme- 2023 subject to fulfilment of other conditions. In the absence of TIN (Taxpayer's Identification Number) as in the case with URDs. The four-digit number 2900 for URDs shall be entered. The above four-digit Number (2900) is applicable to all the URD cases and under all the Acts. However, the Act under which the application is being filed shall be specifically mentioned so as to consider the case for waiver under the relevant Act.

- o If the Assessment or Re-assessments or Rectification Orders or any other proceedings passed pursuant to remanding of the cases by First Appellate Authority or Karnataka Appellate Tribunal or Revisional Authority or High Court or Supreme Court are eligible for availing the benefits under the Scheme.
- o The option to file for the Karasamadhana scheme under the commercial taxes should be analyzed diligently by examining the intricacies of Assessment orders/Proceedings subject to conditions as specified.
- o GST Amnesty Scheme: There were also the amnesty schemes announced under the GST law for filing returns with concessional late fee, revocation of registration for certain time periods. Recently in 52<sup>nd</sup> GST council meetings 2023, the amnesty scheme was announced for filing the appeals against the demand orders in case where appeal could not be filed within the allowable time period. **The council has recommended for filing appeals by the taxpayers will be allowed against such orders up to 31<sup>st</sup> January 2024 by paying 12.5% of tax under dispute against the demand order under section 73 or 74 passed on or before the 31st day of March 2023. This will facilitate the large number of taxpayers who could not file the appeal in the past within the specified time period.**
- o The taxpayers are also expecting for the amnesty scheme similar to Karasamadhana scheme for the waiver of interest/penalty under the GST law at least for the initial years after the GST implementation.

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## Income Tax Savings Schemes

54EC	 <b>REC Capital Gains Bonds</b> 5 years, 5% Annual Interest
80C	<b>ELSS, PPF, Life Insurance</b>
80CCD	<b>National Pension Scheme</b>

## Fixed Income

Trust u/s 11(5)	<b>Trust Deposits Eligible u/s 11(5)</b> 
RBI	 <b>Reserve Bank of India Bonds</b> 7 years, Floating rate 7.15% Half-yearly Interest
FD NBFC	
	<b>Sovereign Gold Bonds</b> 8 years, 2.50% Half-yearly Interest, Maturity 'Tax-free'

## Growth Option

### Mutual Funds

Large Cap / Mid Cap / Small Cap / Flexi Cap / ELSS Funds















For further information, please contact

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# WEALTH LAB

# CLAIMING ITC IS RIGHT OR CONCESSION, WHETHER IT MATTERS?



CA. Srikanth Acharya G B  
CA. Vasanth Kumar J

**1. Introduction:-** We have completed the sixth year of the biggest indirect tax reform in India. In the last few years, we have witnessed numerous assessee under the GST receiving notices on various issues, on which the assessee have been asked to reverse ITC along with interest and penalty in the absence of a satisfactory response. This article attempts to discuss one of the main issue faced by the taxpayer.

During the recent times, hundreds of notices, show cause notices are floated by the department alleging the taxpayers to pay/reverse the ITC which is already claimed by the tax payers in GSTR-3B to the extent of the ITC not reflected in FORM GSTR-2A in terms of Section 16(2)(c) and Section 16(4) for delay in claiming ITC.

**2. Important Legal Compliance for claiming ITC:-** There are two important conditions which needs to be fulfilled by tax payer for claiming ITC.

(a) Section 16(2)(c) – Payment of tax by the supplier to the Government, which is collected from recipient and

(b) Section 16(4) – Claiming of ITC by recipient within the prescribed period of time.

**3. Questions arise for consideration**

(a) Whether payment of tax by supplier to the Government is within the control of the recipient or not?

(b) Whether bonafide recipient can be penalized for the fault of supplier?

(c) Whether fixing time limit for claiming ITC is reasonable, where there is no time limit fixed for output tax liability?

**4. Grounds for denying ITC:-** One of the strong reason for denying ITC is courts have held that, claiming ITC is not a “Right” but “Concession”. Important decisions are Jayam & Co Vs Asst. Commr & Anr

[C.A No. 8070 of 2016, Dt: 05.06.2016-SC]; State of Gujarat Vs Raliance Industries Limited [C.A No.13047 of 2017, Dt:22309.2017 – SC] where it was held that, “it is a trite of law that whenever concession is given by statute or notification etc., the conditions thereof to be strictly complied with in order to avail such concession”.

However, in both the cases the condition which was discussed by Hon’ble SC was totally different from that of condition prescribed U/s. 16(2)(c) & 16(4) of the Act. Therefore, the principles laid down by Hon’ble SC in those cases should not be made applicable under GST Law.

**How to defend cases?**

**5. Whether conditions prescribed are enforceable under Law:-** It is an accepted rule that, “impossibility excuses the law and Inability excuses the non-observance of the law – Lex Non-Cogit Ad Impossibilia (the law shall not expect the performance of the impossible”. Hon’ble SC in Narmada Bachao Andolan & Ors. Vs State of Madhya Pradesh & Ors. AIR 2011 SC 1989: 2011 (7) SCC 639 held that, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part and has no control over it, the law will in general excuse him. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse.

Hon’ble Bombay High Court in Emperor v. Ganpat Laxman Kalgutkar, AIR 1938 Bom 427 ruled that, if in the interpretation of an enactment, the Court finds that the duty imposed is either impossible of performance and beyond the normal capacity of a reasonable or prudent man, or when performance in the strictest language of the enactment is either



*idle or impossible, then the enactment must be understood as dispensing with the strict performance of that duty.*

#### 6. Claiming ITC is a Right and not Concession

Hon'ble Delhi High Court in **HDFC Bank Ltd Vs Jagdish Lal Sharma – 2023 (75) GSTL 52** upholds that the legal right to collect taxes vests with the service provider to collect / recover the amount of service tax from the recipient even in the absence of condition for collection of such tax in the contract. The legislative intent of the court is quite clear that the indirect tax is to ultimately borne by the recipient of the service, though it is the service provider who statutorily liable to pay the said tax to the exchequer.

Thus, if collection of tax by supplier is a right given by statute, it is an obligation on the part of the supplier to discharge tax to the Government and simultaneously it is also a right for recipient to claim input tax credit.

#### 7. Denial of ITC U/s. 16(2)(c) contradicts provision of Section 76(1):-

As per section 76(1) of the Act, supplier who has collected tax is obliged to discharge irrespective whether supply is taxable nor not. The said provision reads as “Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. Whereas any amount required to be paid under Sec76(1) if not paid to the government then the department is likely to serve notice to the person liable to pay such tax i.e., defaulted supplier and not the genuine recipient.

If law also impose condition on supplier to discharge tax and if not initiates proceedings for collection of such tax from supplier, collection of such tax in the hands of recipient in the form of ITC restriction [Sec 16(2)(c)] on account of supplier's default, amounts to UNJUST ENRICHMENT and CONTRADICTS each other.

Article 300-A of the Indian Constitution provides that no person shall be deprived of his property save by authority of law.

#### 8. Law should be “Just” “fair” and “reasonable”:-

Condition prescribed U/s 16(2)(c) & 16(4) have the authority to deny ITC. However, such deprivation should not be unjust, unfair and unreasonable. Penalising a person without his fault is not a “Rule of Law”. Hon'ble SC in **KT Plantation Pvt Ltd Vs State of Karnataka – AIR 2011 SC 3430**; **M/s. Delhi Airtech Services Pvt Ltd Vs State of UP – AIR 2012 SC 573**; held that “the legislation providing deprivation of property under Article 300-A must be just fair and reasonable as understood in terms of Articles 14, 19(1)(g).

#### 9. Press release and recent judgements:

a) During initial days of GST implementation, Dept. itself has clarified that GSTR-2A was not made mandatory (from July 2017 to Sept 2019) However, sub-rule (4) was inserted to Rule 36 of CGST Rules, 2017 w.e.f. 9th October 2019 wherein availment of ITC on the basis of GSTR-2A made mandatory. It is worth important to mention here that this provision was inserted with prospective effect and not retrospective effect.

b) Press release dt:18/10/2018 was issued clarifying that GSTR-2A was only a facilitator and it does not impact the ability of the tax payer to avail ITC on self- assessment basis inconsonance with the provisions of sec 16 of the GST Act.

c) Also, the recent judgements lead to discombobulate because some judgements favor the tax payers and some do not. Some of the recent High court judgements that favored the tax payers are Hon'ble High court of Kerala at Ernakulum in the case of **Heena medicals Bus stand Road Vs State tax officer SGST Dept** and by the High court judgement given by judiciary at Calcutta- in the case of **Suncraft energy private ltd** and another Vs the Assistant Commissioner, State tax Ballygunge charge and others where the court upheld the following points:

- (i) On examination of the evidence if the assessing officer is satisfied that the claim is bonafide and genuine then the taxpayer should be allowed to claim ITC;

- (ii) Merely on the ground that in FORM -2A the said tax is not reflected not to be a sufficient ground to deny the assessee from claiming the ITC;
  - (iii) In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be proceeded against a defaulting selling dealer to recover such tax and not denying the ITC of purchasing dealer;
  - (iv) It was also held that GSTR-2A is only a facilitator and it does not impact the ability of the taxpayer to avail ITC on self- assessment basis inconsonance with the provisions of the Sec 16 of the GST Act as clarified in the press-release issued by the Central Board on Indirect Taxes and Customs (CBIC) dated 18.10.2018 and the same was upheld by the Honorable Supreme court in Bharti Airtel Ltd;
  - (v) It was also clarified that in case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from the buyer shall be an option available with the revenue authorities to address exceptional situations such as missing dealer, closure of business by the seller or supplier not having adequate assets etc. as clarified by the press release issued by the CBIC dated 04.05.2018; and
  - (vi) Making purchasing dealer liable to bear the consequences of denying the ITC for the default of selling dealer is the violation of Article 14 of the Constitution.
- d) Recently Hon'ble SC in **The State of Karnataka Versus Ecom Gill Coffee Trading Private Limited Civil Appeal No. 230 of 2023**, for the purpose of "Burden of Proof" under KVAT Law for claiming ITC, held that, mere submission of invoice copies and bank payment not sufficient for claiming ITC, unless physical movement of goods is provided by producing freight payment and physical receipt of goods. Though the decision was rendered on different context, however it has bearing under GST Law, as far as complying the "Burden of Proof".

## 10. Action against the default suppliers

- a) Though the Courts have repeatedly held that, it is the 'rule of law' that no innocent should be punished. Following are some of the important decisions which supports the view;
  - (i) Madras High Court in the case of M/s. D. Y. Beathel Enterprises v. the State Tax Officer quashed the order demanding for fresh adjudication.
  - (ii) Firstly, the Court asked that if the supplier had not paid the tax then whether the department initiated any investigation or inquiry against the supplier.
  - (iii) Secondly, if the supplier had not paid the tax then has the department initiated any recovery proceedings against the supplier.
  - (iv) The Court said that since there was no examination and no recovery proceedings initiated against the supplier, hence the order demanding entire tax liability from the buyer is in contravention of the principle of natural justice.
  - (v) In Bharti Telemedia Ltd. Vs. Union Of India & Ors. the Delhi High Court while issuing the notices to the Centre ruled that Input Tax credit cannot be denied to the recipient for default on part of the supplier.
  - (vi) Madras High Court in the case of M/s. Shri Ranganathar Valves Private Limited v. Assistant Commissioner (CT), (FAC), Velandipalayam Assessment Circle, Coimbatore has held that ITC restriction in the hands of buyer, on the ground of tax collected but remaining unpaid to the Government by the seller "cannot be sustained" and "requires re-consideration" while disposing the writ in respect of restriction of the amount of ITC claimed.

**11. No provision under GST to refund ITC reversal, if such tax is collected subsequently from supplier:-** Another interesting point to be noted here is, provision for collection of tax from supplier as well as reversal of ITC in the hands of recipient for the same transaction. However, there is no express provision to refund the reversed ITC to the recipient, if such tax is subsequently collected from supplier.

## 12. Additional Grounds

- (i) Inward supplies are duly accounted for in books of accounts, all payments paid / received towards purchase of goods or receipt of services respectively have also been duly accounted.
- (ii) Actual receipt of goods or service and use in the course or furtherance of business.
- (iii) Inward supplies are effected when supplier is very registered dealer.
- (iv) All reasonable steps were taken to ensure that suppliers of goods are not fictitious by verifying their registration details on the GSTN portal
- (v) Registration certificate of supplier was valid at the time of purchase and we did not have the wherewithal to verify whether registration by the vendor has been obtained by falsification of documents.
- (iv) Denying ITC to a buyer of goods or services for default of the supplier of goods or services would tantamount to shifting the incidence of tax from the supplier to the buyer which is unconstitutional and against the scheme of the CGST Act/GGST Act.
- (vii) Section 16(2)(c) amounts to double taxation once at the time of purchase of the goods by paying GST to the supplier and second on disallowance of the ITC. The objective of the CGST Act/GGST Act is to charge tax only on 'value additions' and to avoid a cascading effect of taxes.
- (viii) Denying ITC to a buyer of goods and services would tantamount to treating both the 'guilty purchasers' and the 'innocent purchasers' at par whereas they constitute two different classes. This is violative of Article 14 of the Constitution in as much as it treats both the 'innocent purchasers' and the 'guilty purchasers' alike.
- (ix) Therefore, it punishes both the perpetrator of the fraud and the victim and treat both of them on an equal footing which is totally in contradiction with the mandate contained under Article 14 of the constitution, which provides that the equals are to be treated equally
- (x) Each and every registered taxable person is an agent of the Government to collect tax, deposit

the same to the appropriate Government treasury and buyer of goods or services is liable to pay tax to its seller at the time of purchase. Hon'ble Supreme Court in the case of State of Punjab and others vs. Atul Fasteners Ltd. (2007) 4 SCC 471 wherein the apex court held that the selling-registered dealer who had collected tax from the purchasing-registered dealer acts as an agent for the Government.

- (xii) The absence of any finding about its mala fide intention, connivance or wrongful association with the suppliers, no liability can be imposed on it on the principle of vicarious liability.

### Conclusion:-

Authors are of the view that Irrespective whether it is right or concession denial ITC impacts financial position of the tax payer. Therefore, provisions need to be re-considered in as much as they are supportive to the industry for smooth running of business.

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## KSCAA REPRESENTATIONS

Representation regarding delayed availability of Income Tax Forms 10B/10BB and Complications/Issues in Filling Particulars in Such Forms.

For full text of above representations,  
please visit : [www.kscaa.com](http://www.kscaa.com)

# FINANCIAL REPORTING AND ASSURANCE



CA. Vinayak Pai V

## KEY UPDATES

### A. AS|Ind AS

#### 1. EAC Opinion – Accounting treatment of subsequent expenditure [Ind AS 16]

The October, 2023 edition of the ICAI Journal has carried an Expert Advisory Committee (EAC) *Opinion – Accounting Treatment of Subsequent Expenditure as per Ind AS 16, Property, Plant and Equipment*.

**Background** – A PSU, engaged in mining, production and marketing of raw coal required for power, cement, and other sectors, sought the EAC’s opinion on **whether its accounting treatment for replacement activities and restoration of selected structural, civil and other support system aimed at improving operational efficiency and reduction in maintenance/breakdown hours after the useful life of its washery is as per the provisions of Ind AS 16 (i.e. the said expenses to be charged as expenses in the Statement of P&L when incurred).**

A summary of **key takeaways** from the opinion:

- The recognition principle as laid down in Ind AS 16 is equally applicable to the costs incurred subsequently to add to, replace part of, or service an item of PPE. Thus, **any expenditure that meets the recognition criteria should be capitalised** as part of the cost of PPE and if it does not, it should be recognised in the statement of P&L.
- **If the expenditure incurred is material, since it will lead to future economic benefits in terms of improvement in operations and capacity of the washery plant and the cost incurred can be reliably measured, the recognition criteria of Ind AS 16 are met; and hence, the Company should capitalise such expenditure** as cost of the washery plant.
- About the basis of determination of useful life, an estimation of life should be made considering various factors as mentioned in Ind AS 16, including, technical evaluation, experience, defect liability period, etc. Further, such useful life should

be reviewed regularly.

**Link to the Opinion –**

<https://resource.cdn.icai.org/76348cajournal-oct2023-22.pdf>

### B. ASSURANCE

#### 2. ICAI Guidance Note on Tax Audit (2023 R)

On 4th September, 2023, the Institute of Chartered Accountants of India (ICAI) issued an updated version of the *Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 (Revised 2023)*. The publication has been revised keeping in view the amendments made upto Finance Act, 2023 and Tax Audit forms applicable as on date (Form No. 3CA/3CB/3CD).

**Link to the Guidance Note -**

<https://resource.cdn.icai.org/75812dtc61332.pdf>

#### 3. ICAI Technical Guide on Audit of NBFCs (2023 R)

On 6th September, 2023, the ICAI issued a **revised edition** of the *Technical Guide on Audit of Non-Banking Financial Companies*. The Guide deals with various aspects of audit of NBFCs such as introduction of NBFCs, points for consideration in audits, financial reporting framework, auditing framework, areas of audit concern, operations of NBFCs, governance etc.

**Link to the Technical Guide –**

<https://resource.cdn.icai.org/75871aasb060923.pdf>

#### 4. CBDT Circular – Extension of timeline for filing Audit Report in Form 10B/10BB for P.Y. 2022-23

The Central Board of Direct Taxes (CBDT) vide Circular No. 16/2023 dated 18th September, 2023 has extended the timeline for filing of Form 10B/10BB for P.Y. 2022-23. Accordingly, **the due date of furnishing Audit Report** in the case of a fund/trust/institution/any university/other educational institution/any hospital or other medical institution in **Form 10B/10BB for P.Y. 2022-23** which is 30th September, 2023 **has been extended to 31st October, 2023.**

**Link to the Circular -**

[https://incometaxindia.gov.in/communications/circular/circular\\_no\\_16\\_2023.pdf](https://incometaxindia.gov.in/communications/circular/circular_no_16_2023.pdf)

## 5. CBDT Notification – Inventory Valuation Report

On 27th September, 2023, the CBDT issued notification No. 82/2023 [F.No.370142/29/2023-TPL]/GSR 697 (E): Income-tax (Twenty Second Amendment) Rules, 2023. Salient aspects of the Notification, *inter-alia*, include:

- The **report of audit of the accounts of an assessee** which is required to be furnished under clause (i) of sub-section (2A) of section 142 **shall be in Form No. 6B**,
- The **report of inventory valuation** of an assessee which is required to be furnished under clause (ii) of sub-section (2A) of section 142 **shall be in Form No. 6D**;
- **Extant Rule 14B has been substituted [14B. Guidelines for the purposes of determining expenses for audit or inventory valuation]**.

Link to the Notification -

<https://incometaxindia.gov.in/communications/notification/notification-82-2023.pdf>

## C. NFRA

### 6. Order u/s 132(4) – SRS Limited

On 26th September, 2023, the National Financial Reporting Authority (NFRA) issued an order (No. 30/2023) u/s 132(4) of the Companies Act finding the Engagement Quality Control Reviewer (ECQR) of the statutory audit firm that audited SRS Limited for F.Y. 2018 guilty of professional and other misconduct.

**The EQC Reviewer was imposed a monetary penalty of ₹ 1 lakh and debarred for 1 year.**

As per the Order, the EQC reviewer, *inter alia*, failed to meet the relevant requirements of Standards on Auditing and Standard on Quality Control in several significant respects; was found to be negligent in several areas of audit and failed to apply professional skills and due diligence sufficiently and adequately to critically evaluate the work of the Engagement Partner and the Engagement Team; and was not experienced enough to undertake the quality review and failed to assess the working papers related to important audit issues namely, evaluation of going concern basis, suspected fraud, setting of materiality, etc.

Link to the Order -

<https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2023/09/20230926471885312.pdf>

## D. RBI

### 7. Master Direction – Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2023

On 12th September, 2023, the RBI issued a revised regulatory framework on classification and valuation of investment portfolio by Commercial Banks. The **revised framework updates the regulatory guidelines with global standards and best practices while introducing a symmetric treatment of fair value gains and losses, a clearly identifiable trading book under Held for Trading (HFT), removing the 90-day ceiling on holding period under HFT, removal of ceilings on Held to Maturity and more detailed disclosures on the investment portfolio.**

The revised framework contains the chapters: General Guidelines, Categorization of Investments, Initial Recognition, Subsequent Measurement, Reclassification between Categories, Sale of Investments from HTM, Fair Value of Investments and Operational Guidelines.

The revised framework, **Reserve Bank of India (Classification, Valuation and Operation of Investment Portfolio of Commercial Banks) Directions, 2023** is applicable from **1st April, 2024**, to all **Commercial Banks excluding RRBs**.

Link to the Notification -

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12534&Mode=0>

## E. IFRS

### 8. Proposed Annual Improvements to IFRS Accounting Standards

On 12th September, 2023, the International Accounting Standards Board (IASB) published **proposed narrow-scope amendments to IFRS Accounting Standards** and accompanying guidance. The proposed amendments included in the Exposure Draft (ED), **Annual Improvements to IFRS Accounting Standards—Volume II** relate to:

- **IFRS 1, First-time Adoption of International Financial Reporting Standards - Hedge accounting by a first-time adopter**
- **IFRS 7, Financial Instruments: Disclosures - Gain or loss on derecognition**
- **Guidance on implementing IFRS 7- Introduction; disclosure of deferred difference between fair value and transaction price; and credit risk disclosures**

- **IFRS 9, *Financial Instruments* - Derecognition of lease liabilities and transaction price**
- **IFRS 10, *Consolidated Financial Statements* - Determination of a 'de facto agent'**
- **IAS 7, *Statement of Cash Flows* - cost method**

The ED is open for comments until 11th December, 2023.

Link to the ED -

<https://www.ifrs.org/content/dam/ifrs/project/annual-improvements-volume-11/ed-iasb-2023-4-annual-improvements.pdf>

### 9. IFRS for SMEs – Amendment related to Pillar Two Model Rules

On 29th September, 2023, the IASB issued **amendments** to the **IFRS for SMEs Accounting Standard** based on the May 2023 amendments to **IAS 12, Income Taxes**.

The amendments to **Section 29, *Income Tax*** of the **IFRS for SMEs** accounting literature: **provide a temporary relief from accounting for deferred taxes** arising from the implementation of the Pillar Two model rules; and clarify that the Standard requires companies that apply the Standard to **disclose information** that enables users of their financial statements to evaluate the nature and financial effect of income tax consequences of the **Pillar Two legislation**.

Companies that prepare financial statements under the IFRS for SMEs framework are required to provide the disclosures set out in the amendments for annual reporting periods beginning on or after 1st January, 2023.

Link to the Announcement -

<https://www.ifrs.org/news-and-events/news/2023/09/iasb-amends-the-ifrs-for-smes-accounting-standard-itr/>

## F. SUSTAINABILITY REPORTING

### 10. Recommendations of Task Force on Nature-related Financial Disclosures (TNFD)

The Task Force on Nature-related Financial Disclosures (TNFD) published its recommendations in September, 2023 during the New York Climate Week 2023. The publications titled **Recommendations of the Taskforce on Nature-related Financial Disclosures** can help companies communicate nature-related risks and opportunities to investors and other stakeholders. The publication includes a **set of general requirements for nature-related disclosures** and a **set of recommended disclosures structured around four pillars**, namely:

- **Governance** – Disclose the organisation’s governance of nature-related dependencies, impacts, risks and opportunities.
- **Strategy** – Disclose the effects of nature-related dependencies, impacts, risks and opportunities on the organisation’s business model, strategy and financial planning where such information is material.
- **Risk and impact management** – Describe the processes used by the organisation to identify, assess, prioritise and monitor nature-related dependencies, impacts, risks and opportunities.
- **Metrics and Targets** – Disclose the metrics and targets used to assess and manage material nature-related dependencies, impacts, risks and opportunities.

There are **14 recommended disclosures**. It may be noted that the TNFD supports the delivery of a **global baseline of sustainability-related financial disclosures under the International Sustainability Standards Board (ISSB)**. There is a high-level of consistency within the finalised TNFD recommendations and the ISSB Standards, which both incorporate the architecture of the Taskforce on Climate-related Financial Disclosures (TCFD) recommendations.

Link to the Publication -

<https://tnfd.global/tnfd-publications/>

## G. USGAAP|ASSURANCE

### 11. PCAOB’s new Standard: The Auditor’s Use of Confirmation

The US Public Company Accounting Oversight Board (PCAOB) vide Release No. 2023-008 **replaced its auditing standard, AS 2310, The Confirmation Process with a new standard AS 2310, *The Auditor’s Use of Confirmation***.

**Key provisions** in the new standard include: a new requirement regarding confirming cash and cash equivalents held by third parties or otherwise obtaining relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source; states that the use of negative confirmation requests alone does not provide sufficient appropriate audit evidence; emphasizes the auditor’s responsibility to maintain control over the confirmation process and provides that the auditor is responsible for selecting the items to be confirmed, sending confirmation requests, and receiving confirmation responses; and identifies situations in which alternative procedures should be performed by the auditor.

AS 2310 (Revised) takes effect for audits of financial statements for fiscal years ending on or after 15<sup>th</sup> June, 2025.

**H. OTHER USEFUL PUBLICATIONS**

**12. IFAC – The State of Play Beyond the G20: Sustainability Disclosure and Assurance in 20 More Jurisdictions, 2019-2021 Trends and Analysis.** [20th September, 2023] [<https://www.ifac.org/knowledge-gateway/contributing-global-economy/publications/state-play-beyond-g20>]

**13. IESBA – 2023 Handbook of the International Code of Ethics for Professional Accountants (including International Independence Standards)** [21st September, 2023] [<https://www.ethicsboard.org/news-events/2023-09/now-available-iesba-handbook-2023-edition>]

**14. UK Endorsement Board (UKEB) – A Study in Connectivity: Analysis of 2022 UK Company Annual Reports.** [September, 2023] [<https://assets-eu-01.kc-usercontent.com/99102f2b-dbd8-0186-f681-303b06237bb2/b5629ba2-200d-4255-b857-c71f86c9a5f1/A%20Study%20in%20Connectivity%20Analysis%20of%202022%20UK%20Company%20Annual%20Reports.pdf>]

**I. SELECT GLOBAL REGULATORY ACTIONS**

**15. US SEC – Company charged with \$14.5 million penalty for accounting improprieties**

On 6th September, 2023, the US Securities and Exchange Commission (SEC) announced that a global engineering company listed in the US will pay \$14.5 million to settle charges stemming from the company’s improper accounting on two large-scale, fixed-price construction projects. Five former and current officers and employees also agreed to settle related charges for causing the violations.

The SEC’s order found that the company, bid on the two projects relying on overly optimistic cost and timing estimates and subsequently experienced cost overruns that worsened over time. It then failed to sufficiently maintain internal controls to account for the projects in accordance with the percentage of completion accounting method under USGAAP. As per the Order, the Company failed to include all anticipated costs that were known or should have been known in each project’s respective forecasts—thereby delaying loss recognition on each. It also improperly incorporated revenue from unapproved change orders in the forecasts of one of the projects,

including change orders that had not yet been submitted to, or had already been rejected by, the customer. [Press Release No. 2023-170]

**16. Extracts from a PCAOB Inspection Report**

The following is an extract from a PCAOB Inspection Report [Release No. 104-2023-114] of an audit firm:

With respect to Revenue, for which the firm identified a fraud risk: To test certain revenue, the firm selected a sample of items for testing. The following deficiencies were identified:

- The sample size the firm used was too small to provide sufficient appropriate audit evidence because the firm did not consider the relevant factors in determining the sample size, including tolerable misstatement for the population, the allowable risk of incorrect acceptance, and the characteristics of the population.
- The firm drew its sample from a source that was not necessarily representative of the revenue recorded during the year.
- The firm did not perform procedures to test the accuracy of certain data it used to test an adjustment to revenue, beyond agreeing the data to the issuer’s internal systems.

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**YAKTOON**

For these corporate filing OTP issue, more than "One-time" passwords, what we really need is "On-time" passwords

**By CA. Vinayak Pai**

# CIRCULAR ECONOMY



CA. Aditya Kumar S

**Background:** Being friendly towards environment, is more than requirement of Environmental Social and Governance ('ESG') norms or principle. It is not just for the sake of compliance; it is being mindful of what we are doing to the environment and how we are ensuring that it is protected from getting deteriorated further. This includes being mindful of where we get the raw materials, the processing, waste management, supply chain related issues and how are we ensuring that the damage done is undone or repaired in one manner or another.

We have the inherent thought that we don't consider anything as 'waste'; until it comes to a point that cannot be used any further. We find utility in anything and everything. We have a huge unorganized market for the same, where anything can be sold. And there is this 'jugaad' to figure out how best we can do with the available resources.

How do we bring in this inherent thought of not wasting anything into our business and make it more sustainable, environment friendly, cost effective is something interesting to see.

**Why are we talking about economy here?** At every stage of business, one needs material in one form or another, whether it is a raw material, a by-product, waste out of the process, packaging material, etc., And when we look at the whole value chain of the product from the point of using the natural resource to produce, move them from source to destination, packing them for the transportation, and to the end customer; there are opportunities to see whether the material could be reused or recycled or could have been better used. The focus in circular economy is on how the material is used or reused or recycled to ensure that there is minimum impact on the environment.

For example: Consider the use of plastic packets to store

and distribute milk. Ultimately, the customer consumes milk and throws the plastic in garbage. Plastic cannot be recycled and this adds to polluting our environment by way of either burning them and pollute air or put them in a landfill which may harm the soil. But we also need to see how the dairy would have to pack milk to enable it to be transported over long distances and preserve its quality till it is consumed. Circular economy is where we need to find a solution as to how to deal with this situation to ensure that we don't use plastic, but we have an alternative product for it. Or how do we ensure that the plastic is collected in an organized manner and is recycled to something more useful like the 'Milk Bag Project 2019' recycles to make it bags<sup>1</sup> or how plastic bottles are recycled to make shoes etc.,<sup>2</sup>.

**Circular economy means** an economic system based on the reuse and regeneration of materials or products, especially as a means of continuing production in a sustainable or environmentally friendly way. It is a system where we try and recycle everything that is possible could be done to ensure that it does not end up as a waste or garbage or discard, etc., which could harm the environment.

**How do we manage waste?** Normally, the waste is disposed off unless recycled and used in the production process. The disposal could be after processing considering the pollution control norms etc., or if not harmful it would be disposed off without any major efforts. It also depends on the industry and the company as to how they give importance to it and manage waste. For example, the municipal rules also requires citizens and business to categorize waste as dry, wet, recyclable or otherwise and collect the same accordingly. The municipalities would historically used garbage to landfill or burn it. Considering the environmental issues, say

1. <https://www.thebetterindia.com/291809/mumbai-friends-recycle-lakhs-of-used-plastic-packets-milk-bag-project-video/> (last seen on 17 Sep 2023).

2. <https://neemans.com/pages/contact-us-neemans> (last seen on 17 Sep 2023)



State like Karnataka has brought in Integrated Solid Waste Management Policy and other measures, where we as citizens and business house are also stakeholders. The CAG has also done the audit of Urban Local Bodies and have started commented on the waste management practices<sup>3</sup>. We as a society need to ensure and bring in a comprehensive solution to the waste management practices and how do we ensure that we recycle the waste to our advantage. Converting waste to energy is another lucrative project that is now on rise. For example, Karnataka State Power Corporation Limited ('KPCL') setting up Waste to Energy Plant (WTE)<sup>4</sup>, Delhi Metro to use power from WTE plant of Ghazipur, Goa setting up trash-fired power plant<sup>5</sup>, etc., There is a concerted effort to see how we can use waste in our advantage, generating power is one of them. Hence, managing waste is a serious topic of governance and the local governments are taking it seriously. But there are ways to curb the generation of waste which needs to be promoted and adopted.

### Corporate Examples around the world on waste generation and management:

1. Pfandsystem in Germany: When anybody buys water or any drinks from supermarket, few cents are added to the price. Once the customer returns the bottle, they are given a voucher which can be used to buy from the store. Many of these stores have automated machines which accepts the bottles or cans and prints an voucher which are exchangeable for goods;
2. IKEA has a take-back program through which it allows customers to return their furniture by giving it back to the company for recycling.
3. Apple – The Company has started using recycled golf for the first time, double the use of recycled tungsten, rare earth elements and cobalt. In 2021, recycled materials accounted for nearly 20% of their materials in their products. Similarly, 50% of the aluminium were recycled and some other products 100% were recycled. Apple has also reduced the amount of plastics in packaging by 75% since 2015; in 2021 the plastic contributed only to 4%<sup>6</sup>.

4. The Tata Group sets an example in India for example Indian Hotels Company (Taj, Vivanta) has replaced plastic water bottles with glass bottles, toiletries made out of wood or recyclable items; Jaguar providing carpets in the car made out of ocean plastics and landfill, Tata Consumer Products using lesser plastic and innovative packaging to reduce waste, etc.,?<sup>7</sup>

### Challenges faced by business:

1. *Changing the consumer habit:* The consumer of the product expects that the contents and packing in a particular manner and may not necessarily accept something which is new. For example, a traveler prefers to drink mineral water provided the bottle is sealed and packed in a certain manner rather than drinking from a bottle or a jug of water, which in the mind of the traveler could be contaminated. Businesses would have to bring in education to the customer or make it more appealing like for example bringing sealed glass bottles or labelling with requisite certification that the water source in the filter is fit for consumption.
2. *Recycling or refurbishment was never the plan in business:* Well, one would say that would have been the last think in business to worry. But not now, business has to deal with this alongside planning their business as to how to make it more sustainable.
3. *Cost of collection of products and related logistics:* India is a huge country and it takes a mammoth exercise to ensure that the products which can be recycled is collected back and transported to a location where it can be further recycled and used in production activities; unless there is an ingenious manner of collection and decentralized processing.
4. *Technology to recycle:* Will the business be willing to put in money for recycling and what would be return out of the same, beyond supporting the environmental and social cause. All business don't think alike and not work alike. There has to be consensus at the larger level to accept, adapt and align to circular economy concept.

3. <https://www.downtoearth.org.in/news/waste/cag-report-shows-how-karnataka-s-solid-waste-management-is-in-disarray-62638> (last seen on 17 Sep 2023)

4. [https://www.business-standard.com/article/current-affairs/kpcl-to-set-up-waste-to-energy-plant-at-rs-260-crore-in-bengaluru-120100901511\\_1.html](https://www.business-standard.com/article/current-affairs/kpcl-to-set-up-waste-to-energy-plant-at-rs-260-crore-in-bengaluru-120100901511_1.html) (last seen on 17 Sep 2023)

5. <https://www.downtoearth.org.in/news/waste/trash-fired-power-plants-wasted-in-india-63984> (last seen on 17 Sep 2023)

6. <https://techcrunch.com/2022/04/19/apple-increased-the-use-of-recycled-materials-in-its-products-to-nearly-20-in-2021/#:~:text=Apple%20has%20unveiled%20a%20series,and%20cobalt%2C%20the%20company%20said.> (last seen 17 Sep 2023)

5. **Regulations:** The regulations of the local government and the concept of circular economy needs to be aligned; and there has to be no ambiguity on compliance related issues to the business. Even in the European Union<sup>8</sup> there are issues where there seems to be alignment or agreement on practices; which again the business has to work with local governments to resolve it.
6. **Investment or. Funding:** Business may have to fund for that additional step to ensure that the waste management is more robust, logistics is realigned, and other activities are also modified accordingly. Where the Government is giving incentive to such projects, it would be a added boost to the business else it may be an additional cost that they may have bear.

Businesses could have other challenges also, but where there is a need to realign our activities to the global vision; some of these challenges could be an opportunity for the business to reinvent itself. Innovativeness is the key word. How do we reorient towards the fact that ‘let’s minimize waste’. It would be through constant education, bringing in awareness, investing in new supply chain, taking along the value chain partners along with us. Together it’s possible.

**Circular Economy in India:**<sup>9</sup> Let’s get little more into the topic and analyze what type of waste are we discussing. Typically (as per IBEF), there are four different kinds of waste that are:

- Wasted Resources – arising out of ineffective recycling of items;
- Wasted Capacities – Underutilization of assets;
- Wasted Lifecycles – Products that prematurely end due to planned obsolescence;
- Wasted Embedded Values – components or parts not retrieved from discarded items.

Each of these types of wastages require specific strategy to be dealt with including acceptance by the consumers, government initiatives, reengineering the product lifecycle, and a fresh look at how and why we do certain activities and see whether those can be changed.

**Role of Accountants in Circular Economy:** As the business model changes, the accounting which reflects the business also undergoes similar changes. From the sustainability reporting perspective, apart from the local requirements on reporting, we now have international standards of sustainability reporting and other framework.

Other accounting / consulting requirements emerging could be for example :<sup>10</sup>

- a) Changes in the revenue model of instead of just sales, it could be sales and buyback of products,
- b) Product-as-a-esservice (PaaS)
- c) Accounting of carbon emissions and incentives arising out of lower carbon footprint
- d) Review of contracts to determine contingent assets and contingent liabilities;
- e) Identifying onerous contracts and constructive obligations
- f) Valuation of tangible and intangible assets especially on their useful life, residuary value, decommissioning liabilities.
- g) Cost Reduction strategies
- h) Waste Management strategies
- i) Exploring recycling opportunities

Similarly, the role of auditors or consultants would enhance, including reviewing the value chain process and identifying deficiencies, risk assessment, waste reduction, compliance requirements, ensuring quality of internal information systems used for decision making, etc.

**Conclusion:** It’s a wonderful opportunity for business and consultants to look at the circular economy as a concept to enhance the value of business looking at the long term opportunities it provides. Where the world is striving to move towards a better environment each of our contribution could help me making moving that one step towards the goal.

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7. [https://www.tatasustainability.com/pdfs/Resources/Tata\\_Solutions\\_to\\_Plastic\\_Pollution.pdf](https://www.tatasustainability.com/pdfs/Resources/Tata_Solutions_to_Plastic_Pollution.pdf) (last seen on 18 Sep 2023).

8. <https://www.technopolis-group.com/wp-content/uploads/2020/02/Regulatory-barriers-for-the-circular-economy.pdf> (Last seen on 18 Sep 2023).

9. <https://www.ibef.org/blogs/circular-economy-for-sustainable-development-in-india> (last seen on 17 Sep 2023)

10. <https://www.nba.nl/siteassets/themes/thema-duurzaamheid/financial-accounting-in-the-circular-economy---cca-overview-paper--january-2022.pdf>

# IPR AND PROTECTION IN INDIA TRIPS AGREEMENT - IMPACT ON TRADEMARKS AND TRADITIONAL KNOWLEDGE



Adv. M. G. Kodandaram

## (PART - XXXVIII OF IPR SERIES)

### International Trademark Protection in TRIPS

As deliberated in the earlier part, the TRIPS establishes minimum standards for the protection of various IPs, which includes trademarks. As stated earlier the trademark in a business environment, aims to encourage fair competition, enhance consumer confidence, and facilitate global trade. The Importance of Trademark Protection in encouraging Brand Recognition could be identified in the following contexts.

- ◆ Promoting Consumer Confidence: Trademarks serve as a crucial tool for consumers to identify the origin and quality of products and services. Strong trademark protection builds consumer trust, as customers can associate specific trademarks with reliable and consistent product standards, encouraging repeat purchases.
- ◆ Encouraging Innovation and Investment: Trademark protection incentivizes businesses to invest in building and maintaining strong brands. The exclusivity granted by trademarks allows companies to differentiate their products in the market, encouraging innovation and creativity in product development.
- ◆ Facilitating International Trade: International trademark protection plays a vital role in facilitating cross-border trade. Recognizable trademarks provide valuable information to consumers in foreign markets, enabling them to make informed choices and enhancing market access for businesses.
- ◆ Brand Recognition and Trust: Trademarks serve as valuable indicators of product and service origin. A strong trademark nurtures brand recognition instils trust in consumers, and helps businesses distinguish their goods and services from competitors. This differentiation is critical for companies operating in global markets.

- ◆ Consumer Protection: Trademark protection ensures that consumers can make informed choices when purchasing products and services. By preventing counterfeit and imitation goods, trademarks safeguard consumers from substandard or potentially harmful products.

- ◆ Encouraging Investment and Market Entry: A robust trademark regime attracts foreign investment and encourages companies to enter new markets. Companies are more likely to invest in countries with strong trademark protection, as it offers assurances that their brand value and reputation will be safeguarded.

However, there are many challenges exist in International Trademark Protection and some of them are as follows:

- ◆ Enforcement and Piracy: Enforcing trademark rights across borders can be challenging, particularly in the face of global counterfeiting and piracy. Counterfeit products can harm brand reputation and deceive consumers, leading to financial losses for legitimate businesses.
- ◆ Trademark Trolling: In some cases, entities may engage in trademark trolling, registering trademarks with the intent to exploit or block competitors rather than use them genuinely. This practice can stifle competition and create unnecessary barriers for new market entrants. Some entities engage in trademark trolling or brand squatting, registering trademarks without the intention of legitimate use. This practice can hinder genuine businesses from expanding and harm consumers' ability to distinguish genuine products.
- ◆ Cultural Sensitivity: Global trademark protection must also consider cultural sensitivities to avoid inadvertently causing offense or infringement on cultural symbols and practices.

- ◆ Enforcement and Cross-Border Issues: Enforcing trademark rights across borders can be challenging, especially with the rise of online commerce and global supply chains. Different legal systems and varying degrees of enforcement can create complexities in protecting trademarks internationally.
- ◆ Balancing Trademark Rights and Freedom of Expression: In some instances, trademark protection may conflict with freedom of expression and fair use rights. Balancing the need for brand protection with the public's right to use trademarks for critical commentary or comparative advertising remains a sensitive issue.

The following TRIPS Provisions help in overcoming the above shortcomings of trademark protection during global trade.

- ◆ Minimum Standards for Trademark Protection: TRIPS sets forth minimum standards for trademark protection, including the definition of a trademark, the rights conferred by registration, and the procedures for trademark registration and enforcement.
- ◆ National Treatment and Most-Favored-Nation Treatment: TRIPS ensures that foreign trademark owners are granted the same level of protection as domestic owners in member countries, promoting equal treatment and a level playing field for international businesses.
- ◆ Well-Known Marks: TRIPS recognizes the importance of well-known marks and obliges member countries to protect trademarks that are considered well-known in their territory, even if they are not registered.
- ◆ National Treatment: TRIPS mandates that member countries must provide the same level of trademark protection to foreign applicants as they do to their domestic applicants. This principle promotes fairness and non-discrimination in the global marketplace.
- ◆ Well-Known Trademarks: TRIPS recognizes the importance of protecting well-known trademarks even if they are not registered in a specific country. This provision prevents unauthorized use of famous marks and helps preserve brand reputation internationally.
- ◆ Non-Discriminatory Registration Procedures: TRIPS requires member countries to establish

transparent and non-discriminatory procedures for the registration and protection of trademarks. This ensures a level playing field for businesses seeking trademark protection.

TRIPS incorporates flexibilities to address specific concerns of member countries and to strike a balance between trademark protection and public interests:

- ◆ Defensive Trademarks: TRIPS allows member countries to adopt defensive trademark registrations to prevent others from registering marks that could create confusion with their existing marks.
- ◆ Exhaustion of Rights: TRIPS permits member countries to adopt national policies on exhaustion of rights, determining whether trademark rights are exhausted once a product is lawfully sold in a particular market. This provision addresses parallel importation issues.
- ◆ Parallel Imports: TRIPS permits member countries to allow parallel imports, allowing genuine trademarked goods to be imported and sold without the trademark owner's consent, under certain conditions.
- ◆ Geographical Indications: TRIPS acknowledges the importance of protecting geographical indications, which identify products originating from a specific region, provided they meet the required criteria.
- ◆ Defensive Trademark Registrations: Member countries may allow for defensive trademark registrations, which can protect well-known marks from brand squatting and prevent potential infringement issues.
- ◆ Geographic Indications: TRIPS includes provisions for the protection of geographical indications, enabling countries to preserve the unique identity and quality of products tied to specific regions.

International trademark protection, as established by TRIPS, plays a crucial role in fostering brand recognition, promoting consumer confidence, and facilitating fair trade. While challenges such as counterfeiting and trademark trolling persist, TRIPS provides a framework to address these issues and ensures a level playing field for businesses engaged in global trade.

There are similar approaches agreed upon in respect IP protection in respect of Industrial designs and geographical indications.

## International Traditional Knowledge Protection in TRIPS

While TRIPS primarily focuses on the protection of intellectual property rights such as patents, copyrights, and trademarks, it also recognizes the importance of protecting Traditional Knowledge (TK) of indigenous and local communities. Traditional Knowledge encompasses the wealth of knowledge, innovations, practices, and cultural expressions passed down through generations within indigenous and local communities. It relates to various aspects, such as agriculture, medicine, art, spirituality, and ecological wisdom. Traditional Knowledge is a living repository of cultural heritage that reflects the identity, values, and history of indigenous and local communities. Protecting TK is crucial for preserving the rich diversity of cultures worldwide.

Traditional Knowledge often includes sustainable resource management practices that have sustained ecosystems and biodiversity for centuries. This knowledge is valuable for addressing contemporary environmental challenges and promoting sustainable development. While TRIPS primarily focuses on modern forms of intellectual property, it recognizes the importance of Traditional Knowledge and includes provisions that aim to protect it:

- ◆ Disclosure of Origin: TRIPS encourages the disclosure of the origin of biological resources and Traditional Knowledge associated with them in patent applications. This provision helps identify the source of TK and facilitates negotiations for benefit-sharing.
- ◆ Protection against Unfair Commercial Use: TRIPS acknowledges the need to prevent the unfair commercial use of Traditional Knowledge. Countries may adopt measures to safeguard TK from misappropriation or exploitation.
- ◆ Customary Laws and Community Protocols: Member countries may recognize the role of customary laws and community protocols in protecting Traditional Knowledge. This approach respects the collective rights and customary practices of indigenous and local communities.
- ◆ Prior Informed Consent (PIC) and Benefit-Sharing Agreements: TRIPS encourages member countries to establish mechanisms for prior informed consent and benefit-sharing agreements when using Traditional Knowledge for commercial purposes. This helps ensure fair and equitable collaboration between

different knowledge systems.

- ◆ Database of Traditional Knowledge: TRIPS permits member countries to establish databases of Traditional Knowledge to document and protect TK, supporting efforts to preserve and promote this valuable heritage.

International Traditional Knowledge protection, as acknowledged within TRIPS, is crucial for preserving cultural heritage, fostering sustainable resource management, and promoting equitable collaboration between indigenous and local communities and the broader society. While challenges and complexities exist, TRIPS provides a platform to address issues related to Traditional Knowledge protection, emphasizing the need for prior informed consent and equitable benefit-sharing. By embracing the principles of international Traditional Knowledge protection, TRIPS can play a pivotal role in ensuring the preservation and respectful use of this invaluable legacy for generations to come.

One of the critical aspects of TRIPS is the provision for border enforcement, which aims to combat the unauthorized import and export of counterfeit and pirated goods that infringe on IPRs. The border enforcement mechanism and other measures as per TRIPS agreement will be deliberated in the coming article.

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## Obituary

*KSCAA deeply mourns the sad demise of  
our beloved members*



**CA. Shamji L Patel**  
on 5.10.2023



**CA. Sanjeevkumar S  
Hadimani**  
on 27.09.2023

**We convey our condolences and prayerful  
support to their bereaved families.**

# RERA – POST COMPLETION OF THE REAL ESTATE PROJECTS - PROVISIONS INCLUDED



CA. Vinay Thyagaraj

*Adequate housing is not merely a desired goal; it is a basic human right of all human beings. This has been affirmed by the Universal Declaration of Human Rights in 1948, which recognizes the right to adequate housing as an integral component of the human right to an adequate standard of living.*

The real estate sector plays an important role in fulfilling the need and demand for housing and infrastructure in the country. Real estate Industry contributes the 2nd highest GDP to the country next to agriculture. Largest and highest contributor towards taxes, fees etc., collected by state, central government directly and indirectly. It employs a large number of skilled, unskilled resources. While this sector has grown significantly in recent decades, it has been largely unregulated (before, during and post completion of the projects), with absence of professionalism, accountability, standardisation and lack of adequate, speedy consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

The results and outcome from the efforts made by various stakeholders resulted in the enactment of The Real Estate (Regulation and Development) Act 2016 popularly known as RERA Act. The RERA Act extends to the whole of India including J & K. The RERA Act 2016 is a central enactment; however, powers are given to the state government to frame the rules and regulate the Real Estate Industry. Most of the states and UT's have enacted, Established and appointed the RERA Authorities. As per the Latest data of Ministry of Housing and Urban Affairs, a total of 1,12,472 Real Estate Projects are registered under RERA across India.

In the earlier articles, I have included and explained the various provisions of RERA and Real Estate Practices, From Inception of the Project to completion of the Project (Prior registration, various definitions under RERA, Carpet Area, Quarterly filing, annual audit, modification of plan, transfer of rights, defect liability, financial management, functions and duties of promoters, rights and duties of allottees, completion of the project etc)

**Prior to RERA, there was neither a direction nor a regulator to monitor the obligations of the promoters of the project and duties of the allottees in the project once the works in the project is completed.**

In this article, I would like to explain the provisions included in **RERA** with respect to **post completion of the Project.**

1. Once the promoter obtains the RERA registration, he shall report and submit the Quarterly progress report along with the professional certificates of Engineer, Architect and a Chartered Accountant in practice – Section 4(2)(L)(D) of the RERA Act 2016 read with Rule 15 of the Karnataka RERA Rules 2017
2. Promoter shall also submit the Report on Annual Audit of the Accounts of the project in accordance with proviso 3 to Section 4(2)(L)(D) of the RERA Act 2016 in a form and manner as notified by the RERA Authorities. Accordingly, Karnataka RERA has notified form 7. It is mandatory for all the promoters of the Real Estate projects to submit form 7 with in the due date as prescribed.
3. Once the development work in the project is completed, the promoter shall submit the application along with necessary documents (Completion Certificate, NOCs from Various agency's, professional certificates, Affidavits etc) to the RERA Authorities. Karnataka RERA has enabled an online module to submit these documents.

Sl No	Reference of Provision under RERA	Provision	Provision
1	Section 2(w)	Complete the external development works in the project.	includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;
2	Section 2(zf)	Obtain the - occupancy certificate	means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;
3	Section 2(q)	Obtain the "completion certificate"	means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;
4	Section 11(4)(b)	obtain the completion certificate or the occupancy certificate	be responsible to <b>obtain the completion certificate or the occupancy certificate, or both</b> , as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;
5	Section 11(4)(c)	Functions and duties of the promoter	be responsible to <b>obtain the lease certificate</b> , where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees
6	Section 11(4)(d)	maintaining the essential services	Promoter is responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. <b>Note :-</b> Safety and Security, Water and sanitation, Electricity and waste management. While maintaining the project, the promoter shall comply with all applicable laws. Further promoters are permitted to collect the charges for those maintenance and furnish the receipts and payments, expenses statement to the allottees.
7	Section 11(4)(e)	enable the formation of an association or society	Promoter shall enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. <b>Note :- promoter shall invite the allottees / owners of the units to form the association. In case of large projects, multiple associations may be formed and a federation of associations may be formed. Promoter shall share the copy of the draft bye-laws with the allottees before it is registered. As we understand that, the association by-laws drafted and registered by the promoters are practically not achieved once the allottees /owners' takeover the project from the promoters.</b>
8	Section 11(4)(f)	conveyance deed of the apartment, plot or building	1. execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee 2. along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

Sl No	Reference of Provision under RERA	Provision	Provision
9	Section 11(4)(g)	Promoter shall pay all outgoing until he transfers the physical possession of the real estate project to the allottee or the associations of allottees	<ol style="list-style-type: none"> <li>1. pay all outgoing until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoing (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):</li> <li>2. Provided that where any promoter fails to pay all or any of the outgoing collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoing and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person)</li> </ol> <p><b>Note :- those payments include corpus / deposits collected from the allottees for maintenance or otherwise.</b></p>
10	Section 14(3)	Responsible for structural defect – 5 years from the date of handing over possession	<p>In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of <b>five years by the allottee from the date of handing over possession</b>, it shall be the duty of the promoter to rectify such defects without further charge, <b>within thirty days</b>, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.</p> <p><b>Note :- Prior to RERA, the defect liability would be for 1 or 2 years. There was no standard practice adopted. However, post RERA it has become 5 years and it is mandatory in nature. Hence, it is recommended that the promoters follow / improve the handover process in order to avoid the disputes at a later stage. In recent days the promoters are setting aside % of the cost towards defect liability.</b></p>
11	Section 16(3)	Transfer of insurance (tile and building) to the Association of Allottees	<p>The insurance (title and building) On formation of the association of the allottees, all documents relating to the insurance specified be handed over to the association of the allottees.</p> <p><b>Note :- it is important to transfer the insurance to the association name immediately after the association is registered. Irrespective of whether a handover is made or not.</b></p>
12	Section 17(2)	Handover of the Physical possession of the unit to the allottees.	<p>After obtaining the occupancy certificate and handing over physical possession to the allottees), it shall be the responsibility of the promoter to hand- over the <b>necessary documents and plans, including common areas</b>, to the association of the allottees or the competent authority, as the case may be, as per the local laws:</p> <p><b>Note :- it is important for the allottees / owners / association to collect all drawings, application made, fees or charges remitted to various agency's, Warranty cards of equipment or machineries, copies of invoice of equipment or machineries, copies of approved plans, NOC's etc</b></p>



Sl No	Reference of Provision under RERA	Provision	Provision
13	Section 17(2)	Handover facilities and amenities in the project	Promoter shall make a list of amenities and facilities as promised in the agreement of sale, marketing collaterals or any other documents and handover the same to the association of the allottees.
14	Section 19(7)	Interest on Delay payment of installements	The allottee shall be liable to pay interest, for any delay in payment towards any amount or charges to be paid in accordance with the Agreement of Sale entered.
15	Section 19(9)	Participate in formation of association	Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same. <i>Note – it is mandatory now for the allottees to participate in the association formation. Many promoters are writing mails and also filing a complaint in RERA that allottees are not forming the association and taking over the possession of the project</i>
16	Section 19(10)	Take physical possession of the apartment, plot or building	Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a <b>period of two months of the occupancy certificate</b> issued for the said apartment, plot or building, as the case may be.
17	Section 19(11)	participate towards registration of the conveyance deed	Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as per the agreement entered and as per the provisions of the RERA Act 2016

The Real Estate (Regulation and Development) Act 2016 has in built provisions to protect the interest of the allottees and promoters. The compliance of all the provisions will lead to harmonious transition from promoter to the allottees.

Recently held Central Advisory Council (CAC) on 9<sup>th</sup> May 2023, the CAC proposed recommendations to the Central Government on all matters concerning

implementation of RERA and also various RERA chairman's have shared their practices and procedures in monitoring the completion of the project and documents to be submitted.

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CA. Rajat Rashmi

# POWER OF SILENCE

In a world where we practise open communication, baring the chest with a good chat, opening up, clarifying articulately, being vocal: Silence powerful? Are you kidding me? Silence is often forced: To maintain peace or status quo. It often appears to put the power in the hands of the petulant agitator, the person who will fight tooth and nail to get their way! Did you ever think of silence as a powerful tool? Not introverted silence but introspective silence.

We struggle with the daily decibels of our city life. On an ordinary day, what is the decibel level of sound we are exposed to? Research shows that average background noise for an urban dweller is 60 decibels, “enough to raise the blood pressure and increase the heart rate: causing stress, loss of concentration and loss of sleep.” That sounds like something to put on statutory warning!

Forget the outside noise. Have you ever heard the noise inside? Just slow down and listen... There is constant chatter in the mind. Study says, human minds think anywhere between 43 to 48 thoughts a minute, amounting to 50 to 70,000 thoughts a day. That is a lot! You do realise that our thoughts shape us. If that is true, then each one of those 50 to 70,000 thoughts have the potential to make or break us. Good news is that on a good day we are at least 50,000 times more likely to succeed. Bad news is that on a bad day, we are probably 50,000 times likely to not succeed. Cal Newport’s book, *Deep Work* talks about, gaining unprecedented success through pointed concentration, for a couple of weeks. It is a tried and tested technique. Because 50,000 is a lot of thought. If we made each one of them count, we could transform ourselves every single day.

Faced with the inside and outside noise, our minds exhaust, trying to make sense of the two competing chatters. While there are umpteen chatters outside, some

influence us actively, some passively and some we filter out; the inner chatter has complete control over us and drives our attitude and behaviour. In the middle of all this, we try our best to get a clear vision of our objectives, dreams, aspirations and purpose. But how often have you felt that your purpose is elusive? Even though it should be the primary focus, it fails to get the attention it needs? It's because of the chatter which holds all of our attention.

What are the chances that in a loud noisy railway station you would hear any of the announcements on the loudspeaker? Chances are that you may even miss your train or end up in the wrong one. That is how we travel through life. We keep missing the right train.

To hear the real messages then, we need a quiet place where we can hear our heart even. Where all sounds begin to make sense. And that place is not far from us, it is right within.

Equipped with this information we can say that silence is not just keeping quiet and not speaking, it is also silencing the mind. It is also silencing the body. A lot of people attain it only in shavasana / Deep sleep! Forget deep sleep, we are talking about active silence. Is there a thing like that? There is indeed. There are many methods in yoga to silence the mind.

Before silencing it is important to put perspective to the thoughts. The book *The Diamond Cutter* by Geshe Michael Roach and Lama Christie McNally has really influenced me. This is a very powerful book. One of the things I learned from the book is the technique of silent time. Silent time is a time when we think of certain things as advised by the authors. He says that not all the time when monks are sitting silently are they silent for real. Often they are putting things in perspective. I like this process.

For example, how can we ensure that silence is achieved when at work? As we try our best to focus, our minds wander uncontrolled:

Will the team do all it takes?

Will the clients pay on time?

Will I be able to complete all the work within the deadline?

Will I be late again?

Will anyone notice me?

Will I make a fool of myself?

Will I ever get things right?

Will my children do well in school?

Will this colour or style work for me?

Am I too thin / fat?

Will I get enough business?

What will happen to me when I get old?

What will happen to the market?

What will AI do to my job?

What will I do for the weekend?

Why is my friend not calling me?

You get the idea. Our mind is a devil's workshop, with extended stay facility provided to the devil as she works on us.

These thoughts do not leave us, they flow at their whim and we tire ourselves in the effort to overcome or ignore them. We are quite unbelievable in our ability to overcome adversities. Even the adversities we introduce to ourselves. That is exactly what the chatters do. They make us miserable. We complain we have a lot on our plate. Of course we do, we have been picking things on our plates even as we are stuffed with the food we started out with.

Silence can empty the plate. It can clear the mind for productive thinking.

Do you suffer from forgetfulness? Then you are certainly a candidate to practise silence. It's one thing you can't ignore.

What can you do? Easier said than done. Oops I have not ordered vegetables. What will I do! Just kidding. I realised long back that I am no good at ordering vegetables and so did my husband, so he took over that task. I don't worry about things that I can't do. But there sure are things I can do.

What could happen if you chose silence.

1. Freedom
2. More time
3. Better work quality
4. Better relationships
5. More money
6. More friends
7. More health

And did I say more wisdom, peace, happiness and family time? And let's not forget better work quality.

I know this because I have been consistently practising it over the past 6 months, and have discovered a person in me I never knew. Pragmatic, methodical, ambitious but calm and collected. Unlike the anxious and careless person I used to be.

Silence is powerful, there is no doubt about it and silence is easy if you know how.

Silence is also almost impossible. Because it creates a void which our minds are desperate to fill. How would you react to a place which is absolutely quiet? Test this on yourself. Let me tell you how I would react some time ago... I would start talking to myself. But now I guess I seek those moments of absolute silence, because that calmness raises my awareness level.

Silence is a bothersome place to be in. You can't see or hear from silence. Because we keep it locked and jailed, pelting out a thousand words a minute, to keep up with the social vision of a liberated individual with a million opinions and open to share them at the drop of a hat. Shhhh... Just hold those words, let them be, and feel the power within.

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# Ethics from Epics - 2



## Selfless Oath, Pointless Loyalty

CA. Allama Prabhu M S

### Part - 2

**I**nvincible Bhishma had no blissful life. Unrelieved gloom resulting from unmitigated self-inflicted miseries (though unintentional) had become his life and enduring suffering resulting out of such calamities was his lifestyle.

For Bhishma, event after event, year after year, incident after incident, new-fangled miseries unfolded in multiple forms.

Did he use his judgment, action or inaction, to complicate things? But, it has to be noted that consciously he did not do anything that can be categorised as *Adharma*.

It may not be an exaggeration if I say that many of his acts became the genesis and ambit of the destruction of 18 akshouhini of Army (app. 40 Lakhs soldiers + Horses & Elephants), at Kurukshetra war, in just 18 days!

But, chain of error-packed events, by many persons, at various times, in varied locations adds up to this massive calamity. We cannot pin point or pick a single incident as the ONLY cause.

#### Boon or Curse?

The boon given by his father ultimately turned out to be a curse to him.

In one of his plays, Master Hirranaiah (ನಟ ರತ್ನಾಕರ ಮಾಸ್ತರ್ ಹಿರಣ್ಣಯ್ಯ) had said:

“ಭೀಷ್ಮನಿಗೆ ಇಚ್ಛಾಮರಣದ ವರ ಇತ್ತೇ ವಿನವ ಇಚ್ಛೆಯಂತೆ ಬದುಕುವ ವರವಿರಲಿಲ್ಲ.”

“He had the boon to choose his time of death, but not the way of his living”

The last one of the cursed *Ashtavasus* brothers, not only led a cursed life but also died an anguished

death, after witnessing the extinction of 18 akshouhini of Army, suffering for several weeks, and attained Moksha at the onset of Uttarayana Punyakala.

Now, in the 21<sup>st</sup> Century, do we have the right to judge whether it was right or wrong?

The moot point is what is right and what is wrong.

I recall one of my favourite poem from Dr.D.V.Gundappa's(DVG) Mankutimmana Kagga:

ಜೀವಮುಣಗಳ ಲೆಕ್ಕದಾದಿಯರಿಯದ ನಾವು |  
ಆವುದನು ಸರಿಯೆನುವ? ತಪ್ಪಾವುದೆನುವ?||  
ಒವೂ ಬಿಡು ಕಡುಕಷ್ಟ ನೀತಿ ನಿರ್ಣಯದ ಹೊರೆ |  
ದೈವವದ ಹೊರಲಿ ಬಿಡು ಮಂಕುತಿಮ್ಮ ||

“Being ignorant of the account of the obligations of our life,  
can we judge what is right and what is wrong?  
Let us leave this difficult task to the Almighty,  
who alone is competent, to adjudge the Morality.”

Will right remain always right, even after many millennia?

Swami Tejomayananda writes in his book *Right Thinking*:

“True strength is to follow the path of dharma.  
There may be many oppositions, obstacles,  
difficulties and moments of testing.  
Only a man who is strong,  
will be able to pass through those trials.”

When the second game of dice was proposed to Yudhishtira, though he knew that he would be made a victim,unwillingly he accepted it.

I reproduce below the exact words from Smt.Kamala Subramaniam's *Mahabharata*:

“Yudhishtira was a fatalist.

He said:

*‘The Creator has ordained the actions of every man.*

*Whether he meets with good fortune or bad, is all in the hands of Fate.*

*We are helpless. We cannot decide what we are to do.*

*It has already been decided. Know only one thing now.*

*I will have to play that hated game once again.*

*Knowing well that it is going to rob me of all that I have, I must go and play again’ ”*

ತನ ಏನು ತೃಣಮಪಿ ನ ಚಲತಿ

*Without him, even a blade of grass shall not move*

Then, what was ‘Disrobement of Draupadi’?

Was it the Will of the almighty?

**Divine Command and Orders :**

If events are preordained then what is our role & responsibility?

Just to fit in the bigger plan, and perform as ordained & directed, without applying our sense of deliberation whether it is Virtuous or Vicious.

Whatever the way we perform, one can always say that it was the dictate and the mandate of the Almighty.

Destiny is dominant. We don't even have any jurisdiction over it.

What we can control is too little and our powers to control is too insignificant.

If we fully accept this line of thinking, even the immodest acts of Dushyasana are justified!

All criminal activities perpetrated by hardcore malefactors gets justified!

As a result, even unreasonable actions with undesirable consequences are rationalized.

In this regard, an excellent explanation is found in DVGs, Manukuthimmana kagga:

ಪುರುಷಂ ಸ್ವತಂತ್ರನೋ? ದೈವವಿಧಿ ಪರವಶನೋ? |  
ಎರಡುಮನಿತಿನಿತುಳ್ಳ ತೋಳಿನಂತಿಹನೋ? ||  
ತಿರುಗುವುದು ಮಡಿಸುವುದು ತೋಳ್ ಮೈಯುಕಟ್ಟಿನಲಿ |  
ನರನಂತು ಮಿತಶಕ್ತ - ಮಂಕುತಿಮ್ಮ || ೫೩೩ ||

*Is man free (to do what he wants) or is he under the control of destiny?*

*Does he have any elbow space to move his arms around?*

*Arms turn and bend, within the ambit of his shoulders, his strength(scope) is so limited.*

The above poem explains the role of providence and the scope of free will actions.

A vivid and detailed explanation is given by Sri **Nani A Palkhivala**, one of the extraordinary legendary Supreme Court Lawyer and most illustrious multi-faceted genius has authored many books covering his personal experiences and views on our Faith, Culture & Heritage.

In his book “**We, the Nation. The lost Decades**” (Chapter: *Are we Masters of our fate*), on preordained destiny and free will of an individual, he describes:

“As Malcolm Muggeridge says in his autobiography:

*‘In all the larger shaping of a life, there is a plan already, into which one has no choice but to fit’*

He continues:

*“On the subject of destiny, let me state what I believe as briefly as possible.*

*First, I believe that the basic pattern of an individual's or nation's life is predetermined.*

*Secondly, very few individuals have the gift of clairvoyance to foresee what is predetermined.*

*Thirdly, guidance is some time vouchsafed to receptive human beings by means for which there is no scientific explanation.*

*Fourthly, I do believe in the existence of free will but that again is within preordained parameters.*

*To my mind, the simplest analogy to the case we are talking about is that of a dog on a long leash-the dog has the freedom to move about as far as the leash permits but not beyond.”*

Amazing analysis with an apt analogy!  
We have the following in our Upanishad:

काममया एवायं पुरुष इति  
सा यथाकामो भवति तत्क्रतुर भवति  
यात्क्रतुर भवति तत कर्म कुरुते  
यत कर्म कुरुते तद अभिसम पद्यते

- Brihadaranyaka Upanishad IV.4.5

*A person is filled with desires;  
As is his desire, so is his will;  
As is his will, so is his deed;  
As is his deed, he attains so.*

(Translation taken from *The Principal Upanisads*,  
by Sri S Radhakrishnan)

Also, popularly translated as:

*You are what your deep, driving desire is.  
As your desire is, so is your will.  
As your will is, so is your deed.  
As your deed is, so is your destiny.*

Whatever may be the effect of past deeds or whatever maybe one's psychological attitude, humans have been blessed with tremendous willpower, analytical intellect, reasoning & conscience, impelling most of them to make choices based on values, overcoming substantial negativity of the previous birth, if any, and being under the safeguards of divine providence. One will fall prey to the "Vidhi", only when the magnitude of the "Prarabdha" is so enormous, warranting punishment in the present birth; accepted. But what did Bhishma do wrong in comparison to his seven older siblings, who attained Moksha soon after birth?

What one perceives to be correct at the present may turn out to be incorrect in the future. Despite knowing that the conduct is IMMORAL, choosing the wrong option and carrying it out is an abuse of FREE-WILL. But why did the fate offer that choice in the first place? Vidhi remains Unpredictable, Mystic and Mysterious ! Again, the matter revolves around FREE-WILL & DESTINY.

(Erratum in P-1, Princess: princesses)

(Next issue: *Wisdom springs from the bed of arrows*)

### "Wise opines . . ."



The enlightening and thought provoking article of CA Allama Prabhu titled "Selfless Oath, Pointless Loyalty" revolves around 'Free Will and Destiny'.

It is true that nothing can move without the mandate of the Almighty God. But at the same time, God doesn't script all pages of your life.

He leaves many pages to be filled by you.

In that sense, the creator allows you to co-author the journey of your life. There are certain pages that have an adverse impact on you due to karma (destiny) which you must undergo. That is how setbacks, failures, and crisis situations should be faced and accepted.

But if you are devoted, determined and work hard with dedication, *God would go to the extent of even erasing the adversity and instead allow you to script positivity.*

This is where your mind can overcome or nullify destiny with the blessing of God.

So, *when you pray, pray as if everything depends on God; but when you act, act as if everything depends on you.* Your efforts may fail but you should not fail to make your efforts.

May God bless and guide us all.

- **Padmashri CA T. N. Manoharan**

That is an awesome inference by Padmashri CA T N Manoharan !!

Such insights can only be gained by a true philosopher...a person who is purely an embodiment of philosophy!

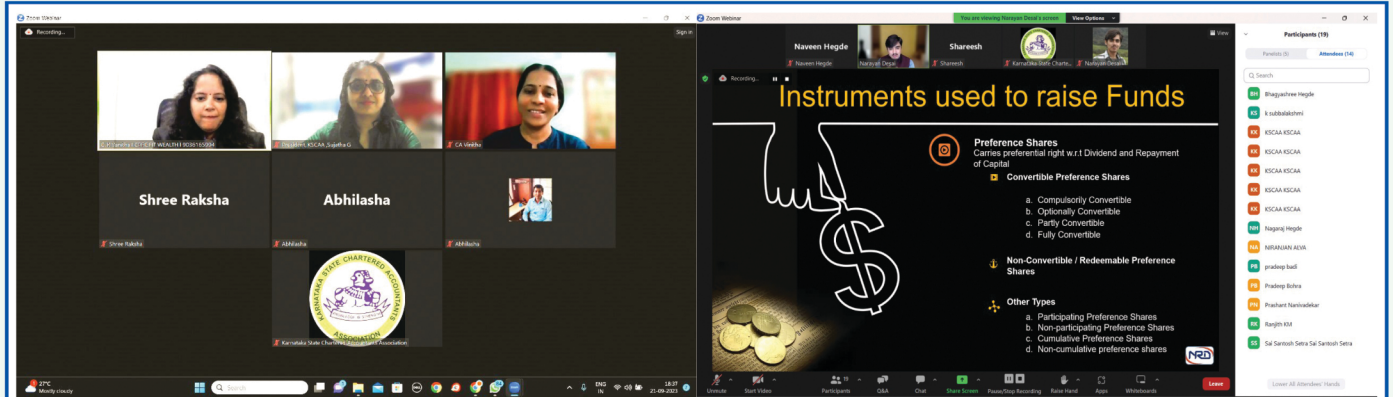
I read the sentence:

"When you pray, pray as if everything depends on God; but when you act, act as if everything depends on you" several times. I am grateful to him for such a great perspective, for his time and efforts, and for his gracious sharing of wise insights.

*Author can be reached at:  
prabhu\_allama@yahoo.com*

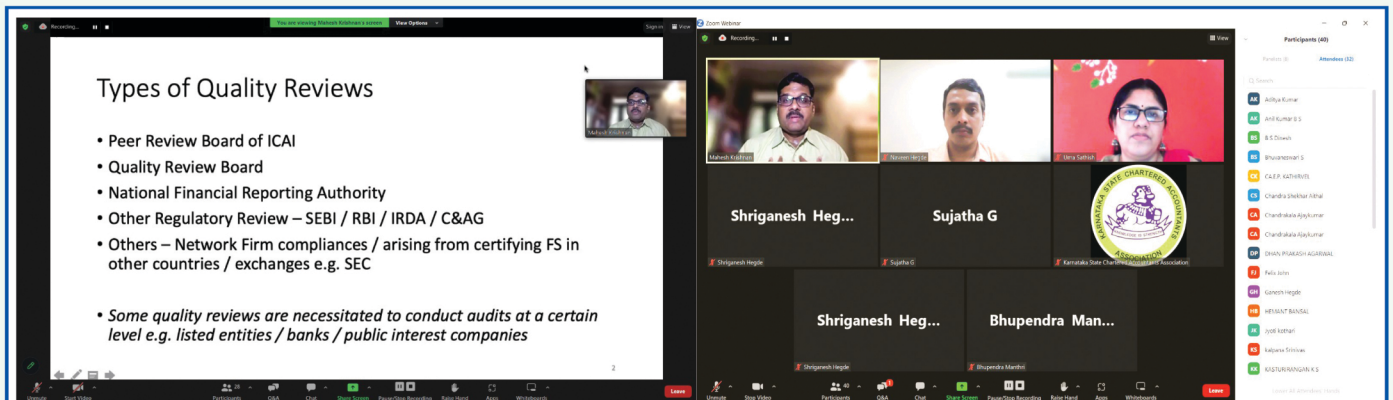


# Photo Gallery

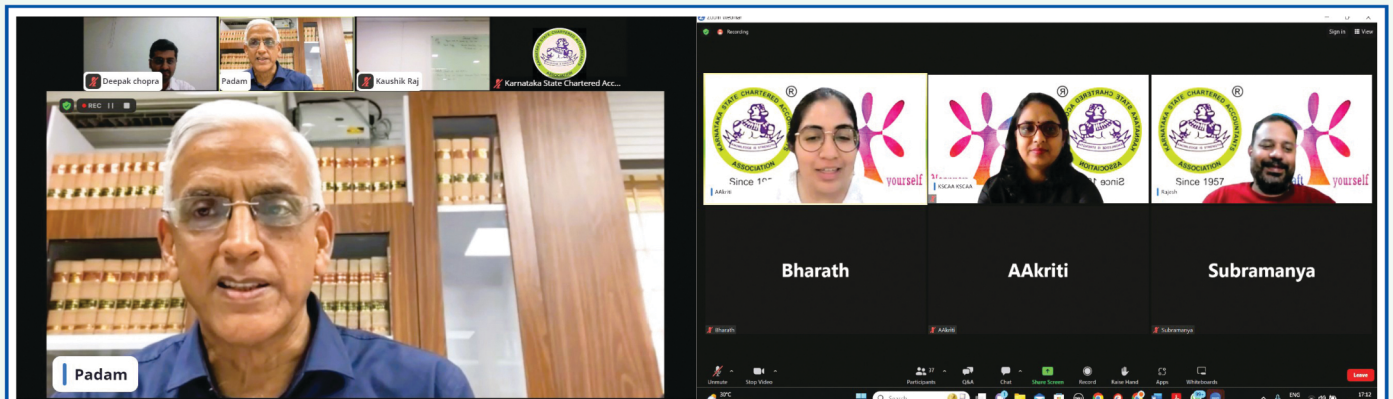


Webinar on Wealth Management as Professional Practice Organized by the Women Empowerment Committee of KSCAA on 21<sup>st</sup> September 2023.

Webinar on Equity Linked Funding Instruments and Special Terms in Funding agreements | Organized by the Corporate and Allied Laws Committee of KSCAA on 4<sup>th</sup> October 2023.



Webinar on Common Errors in preparation of Financial statements and Audit Reports | Organized by the Corporate and Allied Laws Committee of KSCAA on 22<sup>nd</sup> September 2023.



Webinar on Recent Judicial pronouncements by the Hon'ble Supreme Court under the Income Tax Act 1961 | Organized by the Direct Tax Committee of KSCAA on 5<sup>th</sup> October 2023.

Court Room Series-Webinar on Navigating Section 16(4): Unraveling a Checkered Legal Landscape | Organized by the Indirect Tax Committee of KSCAA on 6<sup>th</sup> October 2023.



Shooting Training and Competition | Organized by the Sports and Cultural Committee of KSCAA on 7<sup>th</sup> October 2023.

## Upcoming Events



**KARNATAKA STATE  
 CHARTERED ACCOUNTANTS ASSOCIATION** <sup>(M)</sup>

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### Succession Planning -Let's all successfully pass the baton!

**Webinar**  
 by 'Women Empowerment Committee'



**Speaker:**  
**CA. PANKAJ SHAH**  
 Chairman, Indore ICAI (2019-20),  
 FCA,CS,BBA,LLB(Hons),DISA,IP,RV

**Key Takeaways:**

- How to Perceive Joint Ownership
- Family Conflict Resolution
- Enabling to take on Additional Responsibilities While Securing Future Generations

**Date : 20 October 2023, Friday**  
**Time : 6:00 p.m to 7:30 p.m**

**Fees : ₹100+GST**

"Every Light has its shadow,  
 and every shadow hath a  
 succeeding morning."  
 –Nicolaus Copernicus

CA. Sujatha G, President, KSCAA

CA. Abhilasha Chaturvedi - Chairperson

CA. Sunil Bhandary, Secretary, KSCAA

CA. Padmaja Sunkad - Convenor

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For enquiry contact: **+91 9620898670**



**KARNATAKA STATE  
 CHARTERED ACCOUNTANTS ASSOCIATION** <sup>(M)</sup>

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**Direct Tax Committee**



**Speaker:**  
**CA. Vijay Iyer**

### Steering through the Recent trends on Transfer Pricing



**Date : 17 October 2023, Tuesday**  
**Time : 4.30 pm to 6.00 pm**

**Fees : KSCAA Members - Free**  
**Non Members - ₹100+GST**

  
**zoom**

CA. Sujatha G, President, KSCAA

CA. Sunil Bhandary, Secretary, KSCAA

CA. Deepak Chopra - Chairman

CA. Vigesh Kanda - Convenor

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