



KSCAA[®]

Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

April 2024 - Vol. 11, Issue 08 - ₹ 15/-
English Monthly - for Private Circulation only



GST NOTICES & POSSIBLE SOLUTIONS



From the President

My dear KSCAA members,



Entering April not only signifies the start of a new month, but also a new beginning of year “UGADI” and a new Financial Year. This period brings about new chances, rejuvenated objectives, and the opportunity to redefine our strategies for achieving success. As auditors, it is vital to utilize this transition to set ambitious yet attainable goals and cultivate a collaborative culture within our teams and with our clients.

Setting targets for the new financial year is more than just establishing numbers; it’s about outlining a roadmap that aligns with our vision and values. Whether it’s enhancing audit quality, expanding our client base, or embracing new technologies, each target should be SMART (Specific, Measurable, Achievable, Relevant, and Time-bound). By setting clear and measurable targets, we can track our progress and stay focused on our overarching vision.

As per this year’s theme, “Recraft Yourself,” one of the methods to accomplish the goal outlined in the 5 Ds is through “Development,” as detailed in the earlier newsletter. Let us understand how important to develop the skill of collaboration.

Given the advancements in technology, the increasing complexity of amendments in laws, the skills available in the market, and client expectations, it’s imperative to cultivate a mindset of becoming knowledgeable in all domains while at the same time establishing expertise in one subject matter.

In the current landscape, I’d like to refer to the recent statistics published by ICAI, indicating that 72% of CA firms operate as individual practitioners. The key skill required is effective collaboration with other professionals, ensuring clear professional arrangements. This approach can lead to mutually beneficial outcomes for the proprietor, the collaborating firm, and most importantly, the client. I would encourage everyone to initiate open dialogue, celebrate diversity of thought, and create an environment where everyone feels valued and empowered to contribute their best.

Events at KSCAA

- On 27th March, The Director of Co-Operative Societies, invited us for an open discussion to share our perspectives on the presentation of financial

statements and reporting formats of Audit Report. The meeting was led by the Chairman of the KSCAA Co-operative Committee, and professionals from different districts attended in person to contribute their valuable insights.

- The CORAL (Corporate and Allied Laws Committee) hosted a webinar on Sunday, March 31st, on the topic “Bank Audit using Excel” aimed at equipping members with the skills to conduct their audit tasks effectively.
- CBDT has proactively notified ITR forms early this year, facilitating taxpayers in avoiding the usual last-minute rush. However, this move requires careful consideration as it does not align with the due date for filing Q4 TDS returns. The Department also conducts e-campaigns to notify about any non-reporting instances.
- On April 10th, the Direct Tax Committee organized a program focusing on Changes in ITR and Form 3CD. This event received a warm reception and appreciation from many members, serving as a significant energy boost for us.

Upcoming Events in India

We’re deep into the national election season and social media is filled with news of alliances and rifts among political parties. For a common man, daily life reflects numerous challenges like corruption, bureaucratic indifference, and violence. Many opt for the easier path of avoidance, believing that as long as issues don’t directly affect them, they should be ignored, allowing them to carry on with their routines.

We must actively contribute to upholding principles and cannot afford to be passive bystanders. We as educated professionals have a greater responsibility to act as catalysts for change and a great role in participating in elections.

It’s crucial to exercise our voting rights to support candidates committed to change, integrity, and halting the decay in our political system.

Empower Your Voice, Shape Your Future

Happy Voting

**CA. Sujatha G
President**

KSCAA[®]

NEWS BULLETIN

April 2024 | Vol. 11 - Issue 08 | No. of Pages : 32

VISION

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

MISSION

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

MOTTO: KNOWLEDGE IS STRENGTH

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

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

CONTENTS

DIRECT TAX

Income Tax Updates 4

INDIRECT TAX

Indirect Tax Updates 6

CA. Sowmya C A

GST Notices & Possible Solutions 8

CA. Akshay M Hiregange

CA. Mahadev

FINANCIAL REPORTING

Financial Reporting and Assurance 12

CA. Vinayak Pai V

AUDIT

Proposed International Standards on Sustainability Assurance (ISSA) 5000. 16

CA. Aditya Kumar S

IPR

IPR and Protection in India Initiatives by Indian Judiciary 19

Adv. M. G. Kodandaram

RERA

RERA - Registration of Real Estate Project – Key Aspects to be Considered 22

CA. Vinay Thyagaraj

GENERAL

In Pursuit of Truth 26

CA. Arun Chintopanth

ETHICS

Vidura Neeti - the rich repository of wisdom 29

CA. Allama Prabhu M S

Disclaimer

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

INCOME TAX UPDATES

A. CBDT UPDATES

- Notification No. 2/2024 provides essential guidelines for the verification of Income Tax Returns, emphasizing timely compliance and adherence to prescribed procedures. Assessee are urged to ensure prompt e-verification or ITR-V submission within the stipulated 30-day period to avoid the consequences of late filing.
- CBDT vide Notification No. 27/2024-Income Tax, dated 5 March 2024 brings alterations in Form No. 3CD including:
 - Clause 8a now includes “115BAD/115BAE” instead of “115BAD” only.
 - Clause 12 expands to include “44AD, 44ADA.”
 - Clause 18 incorporates adjustments under various sections for specific assessment years.
 - Clause 19 sees additions to accommodate new sections.
 - Clause 21 undergoes alterations regarding expenditures related to penalties and fines.

• Mismatch between third party information and ITR filed

Income-tax Department has identified certain mismatches between third party information on interest and dividend income, and ITR filed by taxpayers and informed Taxpayers through SMS and emails based on the details availed with the Department. It has advised that the taxpayers can provide response on-screen functionality of compliance portal of e-filing website to reconcile the mismatch.

(Press release dated 26.02.2024)

- CBDT has extended the due date for filing Form No.26QE which was required to be filed during the period 01.07.2022 to 28.02.2023 by extending the time up to 30.05.2023

(Circular No 4 of 2024 dated 07.03.2024)

- Government of India has exercised its powers to confer lower tax rate of 10% in respect of royalty and fees for technical services under the DTAA between India and Germany applicable from AY 2024-25 onwards.

Notification No.33 of 2024/ F.No.503/2 /1986 -FTD-I dated 19th March, 2024

B. RECENT JUDICIAL PRONOUNCEMENTS – Supreme Court

- SC meticulously analyzed the contractual relationship between Bharti Cellular Limited and its franchisees/ distributors and emphasized that the obligation to deduct TDS arises when a principal-agent relationship is established referring to Section 182 of the Contract Act. SC outlined the factors determining such a relationship and held that Section 194-H was not applicable since cellular service providers are not obligated to deduct TDS on the income/profit component received by franchisees/ distributors from third parties/customers.

Civil Appeal No. 7257 of 2011, dated 28 February 2024

C. RECENT JUDICIAL PRONOUNCEMENTS - High Court

- Where assessee company was charging lower rate of interest on loan extended to its wholly owned subsidiary and no addition had been made on that account in any of earlier years assessments, on same facts, Assessing Officer was not justified in making addition on account of lower rate of interest charged from AE

PCIT v. Uniparts India Ltd. [2024] 160 taxmann. com 92 (Delhi)

- Where AO issued a notice and passed an order to assessee on secondary email address and not registered e-mail address, impugned notice and consequential order were liable to be quashed and set-aside

GRS Hotel (P.) Ltd. Vs UOI [2024] 160 taxmann. com 125 (Allahabad HC)

- Where during original assessment proceedings, Assessing Officer had raised query on assessee-company regarding large share premium received during year and assessee had replied to it, reopening of assessment on ground that there was vast difference in valuation adopted by assessee and performance and valuations had been made with projections that

were arbitrary figures merely to suit value of shares adopted at time of transfer to avoid taxation under section 56(2)(viib) of Act was unjustified

GRI Towers India (P.) Ltd. v. UOI [2024] 160 taxmann.com 215 (Bombay)

- AO can't pass assessment order without disposing of assessee's objection to reopening of assessment by passing a speaking order

Lucas TVS Ltd. V. ACIT, 160 taxmann.com 228 (Madras HC)

- After death of an assessee, legal representative must register on Income Tax Portal by submitting PAN of deceased assessee along with his PAN as legal representative and produce death certificate of deceased assessee together with his legal heirship certificate and only after such compliance appeal against assessment order can be numbered and heard

[2024] 160 taxmann.com 232 (Madras HC) P.S. Subramanian v. ITO

- AO can't adjust demand against refund if assessee's stay application was neither considered or disposed of, matter remanded for reconsidering stay application

Nasscom Vs DCIT, [2024] 160 taxmann.com 728 (Delhi HC)

ITAT

- Where merely because assessee preferred a claim which was not acceptable to revenue, assessee could not be visited with proceedings under section 271(1)(c), unless and until twin requirements under section 271(1)(c) were satisfied

Kamal Enterprises and New Life Hospital v. DCIT, [2024] 160 taxmann.com 39 (Hyderabad)

- Where assessee had issued preference shares to director and ex-director of its company, since section 56(2)(viib) did not carve out any exception as regards applicability of same in a case where shares were issued to directors of a company and, AO was justified in invoking provisions of section 56(2)(viib). Since preference shares do not carry any stake in ownership of company therefore, net asset value of company represented value of equity shares and not that of preference shares, NAV method could not be adopted for determining FMV of preference shares

[2024] 160 taxmann.com 256 (Raipur - Trib.) Avinash Developers (P.) Ltd v.DCIT

- Where Assessing Officer had made an addition treating loan advanced by assessee's group company to assessee as deemed dividend under section 2(22)(e), in view of fact that neither assessee nor its shareholders were shareholders as on date of advancing of loans and there were no common registered and beneficial shareholders on date of advancing of loans, Commissioner (Appeals) had rightly deleted impugned additions

[2024] 160 taxmann.com 291 (Chennai Trib.)

DCITv. Mukunda Land Developers (P.) Ltd

- Income arising from revocable transfer of assets is taxable in hands of transferor, i.e., settler of revocable trust and it is to be clubbed in total income of transferor and not in total income of transferee of assets

[2024] 160 taxmann.com 459 (Mumbai - Trib.)

Reporter Family Private Trust v. ITO

- Expenses incurred for installation of lift and other sundry expenses to make house habitable was allowable an allowable item of cost of improvement

[2024] 160 taxmann.com 509 (Delhi - Trib.), Rajiv Ghai V. ACIT

- Only condition for claiming deduction under section 80G as per existing provision is institute to which donation is made must have been registered under section 80G and once aforesaid condition is fulfilled, donor is entitled to avail deduction

[2024] 160 taxmann.com 599 (Delhi - Trib.)

Ericsson India Global Services (P.) Ltd. Vs DCIT

- Where assessee, engaged in IT services, earned rental income from a property which was not its business asset but an investment, such rental income would be chargeable to tax under head 'Income from house property'

[2024] 160 taxmann.com 689 (Ahmedabad - Trib.), Effective Teleservices (P.) Ltd. Vs PCIT



CA. Sowmya C A

INDIRECT TAX UPDATES

A conference of GST enforcement chiefs headed by Finance Minister Mrs. Nirmala Seetharaman was conducted to provide a valuable platform for both Centre and State GST enforcement authorities to share best practices and to collectively strengthen the GST administration and discuss ways of combating tax evasion. A Standard Operating Procedure has since been issued discussed later in this article. The GST Council last met at the 52nd GST Council meeting held on 7 Oct 2023, and is unlikely to convene new meetings until a new government is sworn in on account of the imposition of the model code of conduct. As per the GST Rules and Procedure, Registered person needs to ensure applicable Declarations/Undertakings required for GTA/Composition scheme/LUT respectively for availment of benefits under various schemes are submitted on the online portal before the beginning of the financial year. IEC updations on the DGFT Portal are mandatory by June 30 of every financial year irrespective of any previous updations.

On the legal front, it is proposed to address classification related issues on a “priority” basis for certain FMCG goods with multiple possible classifications creating a confusion in tax liability. This is a grey area set to be addressed by the Council to bring down litigation. The Supreme Court has transferred to itself 27 writ petitions which are pending across nine State High Courts, challenging the levy of 28% Goods and Services Tax (GST) on all forms of online real-money gaming due to possibility of different judgements being pronounced by different high courts. The Telangana HC has held that the transfer of development rights under the Joint Development Agreement (JDA) is a ‘service’ and not an outright ‘sale of land.’ Considering this ruling will have substantial implications for builders and developers and is likely to be challenged before the SC. Recent notifications/circulars issued in the past month has been presented below.

Recent Notifications :

- **Guidelines for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers-**

These guidelines should be followed in the CGST

Zones while engaging in investigation, subject to legal provisions or instructions issued on this behalf.

(Instruction No. 01/2023-24-GST (Inv.) – 30 Mar 2024)

Recent Advisories and Press Releases:

- **Finance Ministry cautions taxpayers against fake and fraudulent Summons**

Taxpayers can check the veracity of any communication from DGGI/CBIC by using the ‘VERIFY CBIC-DIN’ window on the CBIC’s website. They can also use the DIN Utility Search on online portal of Directorate of Data Management (DDM), CBIC. In case of suspicion of bogus summons, taxpayers may immediately report to DGGI/CBIC jurisdictions for verification and, for the necessary action to be undertaken against the perpetrators responsible for committing the fraudulent activities.

(Press release dated 10 February 2024)

- **Integration of E-Waybill system with New IRP Portals**

The GSTN has announced the successful integration of E-Waybill services with four new IRP portals via NIC. With this, E-Waybill services, along with E-Invoicing, available across all six IRPs enabling taxpayers to generate E-Waybills alongside E-Invoicing on all the IRP’s as per the websites provided as below:

<https://einvoice1.gst.gov.in>

<https://einvoice4.gst.gov.in>

<https://einvoice2.gst.gov.in>

<https://einvoice5.gst.gov.in>

<https://einvoice3.gst.gov.in>

<https://einvoice6.gst.gov.in>

(GSTN update dated 08 Mar 2024)

- **Advisory on GSTR-1/IFF: Introduction of New 14A and 15A tables**

As per Notification No. 26/2022 – Central Tax dated 26th December 2022 two new Table 14A and Table 15A have been introduced in GSTR-1 to capture the

amendment details of the supplies made through e-commerce operators (ECO) on which e-commerce operators are liable to collect tax under section 52 or liable to pay tax u/s 9(5) of the CGST Act, 2017. These tables have now been made live on the GST common portal and will be available in GSTR-1/ IFF from February 2024 tax period onwards. These amendment tables are relevant for those taxpayers who have reported the supplies in Table 14 or Table 15 in earlier tax periods.

(GSTN update dated 12 Mar 2024)

● **Self-Enablement For e-Invoicing**

E-invoicing is applicable to all persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds five crore rupees. For those who meet this criterion but have not been enabled e-invoicing on the portal, can self-enable for e-Invoicing by visiting the following portals.

- <https://einvoice1.gst.gov.in>
- <https://einvoice4.gst.gov.in>
- <https://einvoice2.gst.gov.in>
- <https://einvoice5.gst.gov.in>
- <https://einvoice3.gst.gov.in>
- <https://einvoice6.gst.gov.in>

(GSTN update dated 03 Apr 2024)

DGFT Circulars:

● **The RoDTEP implementation for exports of products manufactured by AA holders (except Deemed Exports) and EOU for 166 Tariff lines will come into effect from 01 Apr 2024**

Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items listed in Appendix 4RE [for exports of products manufactured by Advance Authorization holders (except Deemed Exports), EOU and SEZ units.

- i. RoDTEP is being extended to AA holders (except Deemed Exports) & EOU units from 11.03.2024 till 30.09.2024 as per Appendix 4RE.
- ii. Extension of RoDTEP to SEZ units as per Appendix 4RE will take place on IT integration of SEZs with Customs Automated System (ICEGATE).
- iii. RoDTEP rate revisions in 25 HS Codes are also being made in Appendix 4R.

iv. RoDTEP Scheme extended earlier in September 2023 till 30.06.2024, is being further extended for exports till 30.09.2024.

(Notfn No. 70&74/2023 dated 11 Mar 2024)

● **Directives regarding submission of digitized ANFs, Appendices etc .**

In adherence to the Directorate General of Foreign Trade's commitment to facilitating exports and imports, emphasizing efficient, transparent, and accountable delivery systems a substantial number of the Aayat Niryat Forms (ANFs) and Appendices pursuant to the Foreign Trade Policy are digitized. Consequently, applications pertaining to said ANFs and Appendices must be exclusively submitted online via the DGFT Website (<https://dgft.gov.in>), eliminating the necessity for physical or soft copies of these documents. Additionally, there is no requirement to upload such documents alongside online applications. Certifications by professionals for certain forms are currently undergoing digitization efforts. Further, online deficiency letters and responses must be exclusively managed electronically. Physical paper responses to such communications should not be entertained. Any issues or feedback should be communicated via email to egtf-dgft@gov.in.

(Trade Notice: 01/2024-25 dated 02 Apr 2024)

Customs Circulars:

Disposal of Export goods brought into Customs area but neither exported nor taken back

One-time administrative arrangement to facilitate auction of uncleared export cargo entered inside Customs area up to 31.03.2023, which is neither under seizure or hold by any investigation agency, nor covered by order of any Court with a view to facilitate release of storage space and containers after auctioning the uncleared export cargo brought into Customs area for export but neither exported nor taken back to town.

(Public Notice No. 26/2023-24 dated 07 Mar 2024)

*Author can be reached at :
sowmya.whitefield@gmail.com*



CA. Akshay M Hiregange
CA. Mahadev

GST NOTICES & POSSIBLE SOLUTIONS

Introduction

In the past 3 years, there has been a spike in the number of GST notices. This is on account of completion of audit within time lines, data analytics being performed by the tax department and increase in recent slew of fake invoicing/fake ITC claim cases, and many more. Frivolous and vague notices are abundant. This is more likely to increase due to the poor quality of advance rulings, revenue collection targets and deadlines enforced by the government. and GST Tribunals still to be set up. Going to Court is not always possible or cost effective for tax payers. This is one more broken promise of trusting the taxpayer with promise of audits percentage coming down and going soft on initial years of GST being a new law.

The compliant industries need to represent on basis of promissory estoppel.

They say, 'A good doctor cures the disease, but a great doctor cures the cause'. Identifying the root-cause of non-compliance and putting in place controls and checkpoints is key to the growth and sustainability of any organisation.

In this article we deliberate on:

1. Common issues raised by Department. and possible solutions
2. Process in accepting and replying to Notices
3. Procedure when departmental contention is not valid
4. Practical Difficulties in Litigation process

Common issues raised by Dept. and possible solutions:

1. Reply on Equity held in Subsidiary

- Equity shares fall under the terminology of securities.
- Securities is specifically excluded from the definition of 'goods' and 'services' under GST
- The contention that it is a deemed supply under Schedule I also would not hold good as section 7

specifically requires there to be a 'supply of goods or services or both'.

- Upheld similarly in Yonex India Private Limited Vs Union of India [Writ Petition No. 2301 of 2023]. Circular no.196/08/2023-GST also clarified on this aspect in July 2023.

2. Appeal on variance b/w GSTR 2A/2B Vs GSTR 3B

Genuine credit – available of tax invoice, full payment to vendor, receipt of goods/services should be eligible. (section 16)

- Period up to October 2019 – not applicable, no provision of law. Otherwise also Rule 36(4) disputable without an authorizing Section in CGST Act. Albeit, Circular 183 – vendor + CA certificate (if required.) can be followed as a via media.
- October 2019 to December 2021 – Rule did not have authorizing power through the Act. Circular 193 – vendor + CA certificate (if required.) may be followed.
- **Goparaj Gopalakrishnan Pillai, Henna Medicals & Diya Agencies – Kerala HC**
- CBIC press release dated 18.10.2018 – “4...the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.”

• Suncraft Energy Pvt Ltd – Calcutta HC -

Issuance of demand notice on recipient cannot be sustained without any investigation being done at the end of the supplier

- January 2022 onwards – Section 16(2)(aa) implemented, GSTR 2B matching required.

3. **Notices based on GSTR 9 or GSTR 9C – mismatch**

- Variance in tax payable and paid could have logical reasons and need not be liable. Taxpayers to ensure final workings with linked documents are available for past and present period.
- Not all unreconciled values need to be taxable in nature. Department must clarify or type of variances and dispute taxability accordingly.
- Certain tables in GSTR 9 & 9C were optional and were not filled. Where certain data auto-populates based on system requirement, taxpayer cannot be harassed for the same.
- Disclosure methodology for various situations follow differently across India. Key is to clarify that all liabilities were paid and eligible ITC only was claimed.

4. **Grounds for ITC claimed under wrong tax head**

- Rule 92(1A) allows for adjustment of pending demand against eligible refund application.
- Section 77 although pertains to outward supply, similar logic if applied along with above Rule, there would not be a need to follow SCN process.
- Being revenue neutral and will only result in unnecessary utilization of resources of the revenue & yield nothing in return.
- As there is no unjust enrichment, a demand of this nature would affect the fundamental right to do trade, commerce, or business as per Article 19(1)(g) of the Constitution of India.
- Moreover, IGST can be utilized for all types of taxes.

5. **Reply against tax demanded under RCM from employee directors**

Department. bases the demand on CBIC's Circular No. 140/10/2020.

- Non-applicability of GST on remuneration paid to whole-time/executive directors as they are employees of the entity as provided in form DIR-12 filed with the MCA. They are not non-executive directors. Sch III clause 1 specifically considers such activity as not a supply of service.
- Non-executive directors not performing in the capacity of a 'director' would not be liable to RCM under GST

- Amrish Rameshchandra Shah Vs. UOI 2021-TIOL-583-HC-MUM-ST wherein the Hon'ble HC stayed the show cause notice demanding service tax based on ITR data.

- Alternate plea - in case of Jet airways India Ltd vs Commissioner of Service Tax, Mumbai – 2016

(44) S.T.R.465 (Tri-Mumbai), wherein the entire demand of service tax was set aside on the grounds of revenue neutrality, including the interest and penalty. The said judgement has been *affirmed by Hon'ble Supreme Court [2017(7) GSTL J35 (Supreme Court)]*.

6. **Reply against tax demanded under RCM u/S 9(4)**

- Section 9(4) was exempted vide Notification 38/2017-CT(Rate). Therefore, the omission of the said exemption, mentioned in the original notification, has been deleted by the amending Notification No. 38/2017, dated 13.10.2017 and is therefore effective from the date of original notification dated 28.6.2017.

- Hon'ble Supreme Court in the case of Vatika Township (2014-TIOL-78-SC-IT-CB) wherein it was held that any beneficial amendment to the statute may be given benefit retrospectively.

- Alternate plea – As ITC would be eligible upon RCM payment, the observations is revenue neutral. Accordingly plead to drop such point.

7. **E-way bill related notices**

- Movement must not be hampered for genuine transactions. Various case laws available to support EWB related issues. – Allahabad HC says the 'burden of proof' rests on Revenue to establish the actual intent to evade tax before imposing penalties for mere technical error of not generating an e-way bill.

- Ensure proper documentation during transshipment or delays in transportation.

- Reference material - Handbook on EWB under GST – ICAI April 2020 edition.

8. **Supplier not filed GSTR 3B**

- ITC being restricted due to vendor not filing his GSTR 3B linked to Section 16(2)(c).

- Recently, said provision was held constitutionally

valid. Rule 37A was introduced to reverse ITC based on vendors not filing GSTR 3B.

- Section 75(12) indicates that dept. must first investigate supplier before approaching recipient.
- High Court rulings in Favour - D.Y.Beathel Enterprises (Madras HC), Arise India (Delhi HC-VAT). Against – ECOM Gill Coffee Trading (Supreme Court-VAT)

9. RCM liability as per 2B and 3B

- RCM liability demand is being fixed based on vendor filing alone, based on GSTR 2B reflection. Ideally, such expense must also reflect in books of accounts to confirm liability.
- Vendor filing errors not considered – shown as RCM “Y” instead of “N”, or updated incorrect GSTIN.
- Communication with taxpayers on a proactive basis and ensuring amendment is suggested to avoid such enquiries.

10. ITC restriction based on 2B data

- ITC on recipient is being questioned based on supplier’s top 5 goods/services updated in the GST portal. Sometimes disallowed based on vendor name itself. (for example: insurance, restaurant services, passenger transport, etc.)
- Recipient to maintain clarity in nature of expenses in the ITC register and distinguish from those blocked under section 17(5) of CGST Act.
- All taxpayers may verify their goods/services and ensure it is clearly mentioned as per activity performed to avoid issues for their customers.

Other general disputed areas:

1. RCM demand on GTO services - Specifically exempt vide NN 12/2017-CT(R). Important document – consignment note.
2. General penalty for 9/9C late filing – Late fee u/s 47(2) not being disputed, although penalty u/s 125 being considered incorrectly. Waiver can be requested based on Sec.126.
3. Disallowing credits on employee related expenses – Other than specifically ineligible ITC u/s17(5) other eligible credits being disputed incorrectly such as accommodation, travel expenses, etc..

4. Considering the target-based as service provided by the recipient - Must first satisfy ‘supply’ definition. Schedule II of CGST Act is not applicable as supply cannot be established. Discounts in any form, must not be construed as an income liable to GST.
5. Denial of ITC availed where such places are not added as additional place of business - Procedural lapse cannot create such liability. Various ST regime cases can be cited as basis under GST.
6. Section 16(4) timeline - SC accepts to look at challenge to Section 16(4) disallowing ITC for belated return-filing.
7. Payment of Interest - Interest calculations are being performed without considering credit balances available as per rule 88B.
8. Pre-deposit using Credit – Clarity now available that the pre-deposit under section 107 can be paid out of electronic credit ledger balance. Also pre-deposit amount is linked to tax value only and need not consider interest and penalty.
9. RCM on payment to the Government services – Whether the service provider is falling under ‘CG/SG/LA’ must first be verified. Various exemptions available under NN 12/2017-CT(R) must first be verified. Other grounds of dispute – whether there is a supply, i.e. can quid pro quo be established.

Note - Providing supporting case laws, legal maxims, reference to Constitution and intention of law would work in the favour while replying to notices.

Process in accepting and replying to Notices

1. How to manage roving enquiries?
 - Reply immediately that the notice is vague and is not clear.
 - Request for clarity and detailed requirement.
 - Disclose that you are ready to share information as requested once clarity is provided.
2. Time limit to respond + Reasonable extension
 - Time limit to revert to a notice must be adhered to.
 - Where not possible, ask for a reasonable extension to reply.
 - Ensure all such correspondences through online response and/or registered post acknowledgement due (RPAD/ speed post). [Do not visit the dept.]

3. Follow-up - Where information is provided although department is silent on further steps. Initial correspondence been kept open, without closing the issue. There could be many reasons for their silence such as transfer of officer, work pressure in handling cases, loss of documents by dept. or cases kept pending in call book.

Procedure when departmental contention is not valid

1. Information which is already available within the department can be informed as available with them and need not be provided.
2. Obtain expert written opinion. Disclose clearly but respectfully that departmental contention is not acceptable by giving reference to GST provisions, case laws, etc.
3. Departmental usage of AAR/AAAR decisions, Circulars which not in line with the law can be disputed as not being applicable to the assessee to render inconsequential.
4. Validity of notice must be verified, and where it is not from the appropriate authority or is time barred, contention of the department can be said to be invalid.

Practical Difficulties in Litigation process

1. Inherent limitation to get relief is that tribunal is yet to be formed under GST. Taxpayer left in the doldrums due to mismanagement and lack of implementation.
2. Payments under coercion – Taxpayer is suggested to mention that he would pay under protest by mentioning officers name and his designation. If succeeded could mention again and claim with interest. This may help protect the assessee.
3. Handling dept. hassling & when bribes are asked for – Document minutes of discussion and send a letter to the officer requesting to follow the rule of law. Escalation to higher levels (Commissioner) if there is no change in the approach. Can also approach Anti-corruption bureau, raise issue on Public Grievance portal to obtain relief.
4. Option to approach High Court – Not always a solution considering alternative remedies and costs.

Some common terminologies that can be considered in replies:

- Specifically deny the allegations and substantiate your claim
- Notice issued does not contain DIN and thereby the notice is not valid. (disputable)
- Non-speaking order - Jay Jay Mills (India) Pvt Ltd Vs State Tax Officer 2020 (41) GSTL 304(Mad), wherein it was held that the statutory authority is bound to consider the claim made and pass a reasoned order.
- Where pre-consultation is mandated as per CBIC master circular and not followed, this can be highlighted. Reliance can be placed on Gujarat High Court Decision in case of L and T Hydrocarbon Engineering Ltd (TS-146-HC-2022 (GUJ)-EXC)

Note - A review by professional in the indirect tax area, including erstwhile laws (service tax, excise, etc.) who can highlight non-compliances, weak internal controls and issues addressed by taxpayers before departmental visits is helpful.

Conclusion

There have been many instances where the judiciary is not pleased with the notices issued by department and have chastised the dept officers. Law favors the vigilant.

The various issues highlighted above display that the department officials are unclear of tax laws, and some take it to the level of harassing genuine taxpayers. GST audits by dept. could lead to demand of taxes along with a hefty interest and penalty.

Taxpayers unclear of erstwhile laws and jurisprudence may approach experts for their services to avoid high value SCNs and amounts being blocked through pre-deposits for years to come.

Implementing a proactive internal audit by GST experts would help understand various non-compliances, how to deal with past issues and implement checks and balances to avoid future non-compliances. Regular training further helps avoid negligent tax errors.

Authors can be reached at :
 mahadev@hnaindia.com
 akshay@hnaindia.com

FINANCIAL REPORTING AND ASSURANCE



CA. Vinayak Pai V

KEY UPDATES

A. AS | Ind AS

1. EAC Opinion – Presentation of standby, stoppage and allied costs incurred during force majeure in the project in the P&L

The April, 2024 edition of the ICAI Journal has carried an Expert Advisory Committee (EAC) **Opinion – Presentation of standby, stoppage and allied costs incurred during force majeure in the project in the Statement of Profit and Loss.**

Background – The querist, a Company in the business of exploration and production (E&P) of oil and gas, stated that in 2021, *force majeure* was declared by the operator in one of its Project due to security situations in the vicinity of the site. As a result, the *in-situ* development activities in the Project remained suspended during F.Y.2022. Because of the *force majeure* situation, expenditures were incurred in respect of the Project, namely, stoppage costs (demobilisation, termination/cancellation fees and one-off settlement) and standby and support costs (storage and asset preservation). The issues raised before the EAC were: a) considering the frequent occurrences of *force majeure* in E&P industry generally and in the Company's projects particularly, the stoppage and standby expenditure incurred during the *force majeure* period in Project A has been correctly shown by the Company in the Note on 'Other Expenses' as a separate line item distinct from other items of 'Other Expenses'; or the said expenditure were required to be presented as 'Exceptional items' as a separate line item on the face of the P&L; and b) the borrowing costs associated with the qualifying assets of the Project have been correctly charged off by the Company to the P&L as finance costs due to suspension of development activities in the Project; or the said borrowing costs are required to be presented as exceptional items on the face of the P&L.

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

- Although in general, force majeure conditions are not frequent and therefore, the consequent costs arising due to such conditions may meet the test

of 'frequency or incidence' for presentation as 'exceptional items', however, considering the specific facts and circumstances of the Querist Company, having global presence in oil and gas sector and its past experience, the test of 'frequency or incidence' does not appear to be met. Therefore, stoppage and standby expenditure incurred during *force majeure* (although may meet the test of 'materiality'), should not be presented as exceptional items in the Statement of P&L.

- The nature of finance costs does not change due to suspension of construction activities because of *force majeure* and therefore, its nature cannot be considered as 'exceptional'. Considering the requirements of Schedule III to the Companies Act, 2013 and Ind AS, the borrowing cost in the extant case should be presented as a part of 'Finance costs' and not as an exceptional item in the Statement of P&L.

Link to the Opinion –

<https://resource.cdn.icai.org/79720cajournal-apr2024-32.pdf>

B. ASSURANCE

2. ICAI Announcement – Revised applicability of Peer Review Mandate (Phase II and III)

On 16th March, 2024, the Institute of Chartered Accountants of India (ICAI) announced that the **applicability of the Peer Review Mandate for Practice Units (PUs) covered under Phase II and III** is extended to **1st July, 2024** and **1st January, 2025**, respectively (dates from which Peer Review is mandatory).

Phase II covers PUs which propose to undertake Statutory Audit of unlisted public companies having paid-up capital of not less than ₹500 crores or having annual turnover of not less than ₹1,000 crores or having, in aggregate, outstanding loans, debentures and deposits of not less than ₹500 crores as on the 31st March of immediately preceding financial year: For these PUs, there is a pre-requisite of having Peer Review Certificate (PRC); OR

PU rendering attestation services and having 5 or more partners: For these Units, there is a pre-requisite of having PRC before accepting any statutory audit.

Phase III covers PUs which propose to undertake the Statutory Audit of entities which have raised funds from public/ banks/financial institutions of over ₹50 Crores rupees during the period under review or of any body corporate including trusts which are covered under public interest entities: For these Units, there is a pre-requisite of having PRC; OR PUs rendering attestation services and having 4 or more partners: For these Units, there is a pre-requisite of having PRC before accepting any statutory audit.

Link to the Announcement -

<https://resource.cdn.icai.org/79567prb63546.pdf>

3. CBDT Notification – Income-tax (Fourth Amendment) Rules, 2024

On 5th March, 2024, the Central Board of Direct Taxes (CBDT) vide Notification No. G.S.R.155(E) notified the *Income-tax (Fourth Amendment) Rules, 2024* that amends extant Form No. 3CD.

Link to the Notification -

<https://incometaxindia.gov.in/communications/notification/notification-27-2024.pdf>

C. IFRS

4. IASB Exposure Draft – Proposed Amendments to IFRS 3 and IAS 36

On 14th March, 2024, the International Accounting Standards Board (IASB) issued an Exposure Draft (ED) - *Business Combinations – Disclosures, Goodwill and Impairment, Proposed Amendments to IFRS 3 and IAS 36*.

Earlier, the IASB did a post-implementation review (PIR) of IFRS 3 (standard that contains requirements for how an entity accounts for business combinations) to assess whether the effects of applying IFRS 3 were as intended. The IASB started a *Business Combinations-Disclosures, Goodwill and Impairment* project to respond to some areas of focus identified in the PIR.

The current ED proposals to amend IFRS 3 are intended to improve the information companies disclose about the performance of business combinations. The ED requires companies to report the objectives and related performance targets of their most important acquisitions, including whether these are met in subsequent years. Companies would also be required to provide information about the expected synergies for all

material acquisitions. However, companies would not be required to disclose information that could compromise their acquisition objectives. The proposed amendments to IAS 36 are intended to improve the application of the impairment test of cash-generating units containing goodwill.

The ED is open for comments till 15th July, 2024.

Link to the ED -

<https://www.ifrs.org/content/dam/ifrs/project/goodwill-and-impairment/exposure-draft-2024/iasb-ed-2024-1-bcdgi.pdf>

5. IASB Exposure Draft – IFRS for SMEs supplementary amendments

On 28th March, 2024, the IASB issued an Exposure Draft (ED) that contains an addendum to the ED of the third edition of *the IFRS for SMEs Accounting Standard*.

The proposals in the ED update the *IFRS for SMEs Accounting Standard* and reflect improvements made to the full IFRS Accounting Standards. Such improvements relate to *Lack of Exchangeability* between two currencies and disclosure requirements for *Supplier Finance Arrangements*.

The ED is open for comments till 31st July, 2024.

Link to the ED -

<https://www.ifrs.org/news-and-events/news/2024/03/iasb-consults-on-supplementary-proposals-to-update-the-ifrs-for-smes-accounting-standard/>

D. SUSTAINABILITY REPORTING

6. SEC – Rules to enhance and standardise climate-related disclosures

On 6th March, 2024, the US Securities and Exchange Commission (SEC), (release No. 2024-31), adopted the rules, *The Enhancement and Standardization of Climate-related Disclosures for Investors* to enhance and standardize climate-related disclosures by public companies and in public offerings that are in response to investors' demand for more consistent, comparable, and reliable information about the **financial effects of climate-related risks** on a registrant's operations and **how it manages those risks**. The rules, *inter-alia*, require SEC registrant's to disclose:

- Climate-related risks that have had or are reasonably **likely to have a material impact** on the registrant's **business strategy, results of operations, or financial condition**.



- The actual and potential material impacts of any identified climate-related risks on the registrant’s **strategy, business model, and outlook.**
- If, as part of its strategy, a registrant has undertaken activities to mitigate or adapt to a material climate-related risk, a **quantitative and qualitative description of material expenditures incurred and material impacts on financial estimates and assumptions** that directly result from such mitigation or adaptation activities.
- **Specified disclosures** regarding a registrant’s activities, if any, to mitigate or adapt to a material climate-related risk including the use, if any, of transition plans, scenario analysis, or internal carbon prices.
- For large accelerated filers and accelerated filers that are not otherwise exempted, information about **material Scope 1 emissions and/or Scope 2 emissions.**
- The capitalized costs, expenditures expensed, charges, and losses incurred due to severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures, and sea level rise, subject to applicable one percent and *de minimis* disclosure thresholds, disclosed in a note to the financial statements.

Link to the Rules -
<https://www.sec.gov/news/press-release/2024-31>

7. GRI – Three new Guidance documents released

On 27th March, 2024, the Global Reporting Initiative (GRI) published **three new guidance documents**, namely, *Double Materiality - The Guiding Principle for Sustainability Reporting; Due Diligence - Can managing adverse impacts be sustained?;* and *CSRD - Implications for Companies outside the EU.*

Each of the publication emphasises the pertinence of the topic and the significant role played by the globally adopted GRI Standards in helping address them: 1) **Double Materiality:** The interconnectedness of a company’s impacts on society and the environment with its financial performance; 2) **Due Diligence:** How a business prevents, mitigates and accounts for its impacts. Due diligence is integrated into the GRI Standards, with reporting requirements that are aligned with authoritative intergovernmental instruments; and 3) **Corporate Sustainability Reporting Directive (CSRD):** The benefits for policymakers in harmonizing

their sustainability disclosure regulations with the EU. The GRI Standards are closely aligned with the new European Sustainability Reporting Standards (ESRS).

Link to the Guidance Documents -
<https://www.globalreporting.org/news/news-center/shaping-the-future-of-sustainability-policy/>

E. USGAAP

8. FASB Accounting Standards Update – Accounting for Profits Interest Awards

On 21st March, 2024, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2024-01, *Compensation – Stock Compensation (Topic 718), Scope Application of Profits Interest and Similar Awards.*

It may be noted that certain companies provide employees with profits interest and similar awards to align compensation with the company’s operating performance and provide those holders with the opportunity to participate in future profits and/or equity appreciation of the company. At present there is diversity in practice in accounting for these awards (as share-based payment arrangements or like cash bonus or profit-sharing arrangements). The ASU addresses this by providing an illustrative example intended to demonstrate how entities that account for profits interest and similar awards would determine whether a profits interest award should be accounted for in accordance with Topic 718 of USGAAP.

The ASU is effective for annual periods beginning after 15th December, 2024.

F. SELECT GLOBAL ENFORCEMENT ACTIONS/INSPECTION REPORTS

Enforcement Actions

9. PCAOB – Audit Firm penalized for failure to perform procedures to evaluate the basis of accounting for a business combination

On 5th March, 2024, the US Public Company Accounting Oversight Board (PCAOB) issued an Order censuring and revoking an Audit Firm’s registration and imposed a civil money penalty of \$65,000 on the Audit Firm and its CPA sole owner (Respondents) for violations of PCAOB rules and auditing standards in connection with the Firm’s Audit of the financial statements of Tingo for 2021. As per the Order, the Respondents failed to perform procedures to evaluate the basis of accounting for a business combination. In 2021, Company A merged with Company B. The public filings disclose

that it **accounted for the transaction as an acquisition, as opposed to a reverse acquisition**, identifying itself as the acquiring company and the other company (Tingo Mobile) as the acquired company. Under this basis of accounting, Tingo reported \$3.6 billion of goodwill. Four months after the release of the Respondents’ Audit report, Tingo restated its 2021 financial statements to reflect a reverse acquisition, resulting in removal of the \$3.6 billion of goodwill from the company’s previously reported total assets of \$6.5 billion, a 56% reduction in assets. The Respondents failed to evaluate the basis of accounting for the merger and failed to resolve several red flags indicating that the transaction should have been accounted for as a reverse acquisition. [Release No. 105-2024-011]

10. UK FRC – Financial sanction of £2.25 million imposed against an Audit Firm

On 4th March, 2024, the UK Financial Reporting Council (FRC) issued a Final Settlement Decision Notice imposing a financial sanction of £2.25 mn against an Audit Firm and £75,000 on the audit engagement partner (EP) in respect of their statutory audit of M&C Saatchi plc (a global marketing services business) for F.Y.2018. The FRC investigation was launched following M&C Saatchi’s discovery of accounting errors, announced in 2019, which ultimately led to a restatement of the F.Y.2018 profit in the F.Y.2019 annual accounts. The Audit Firm and the EP admitted breaches of relevant requirements in the following areas: a **failure to audit with sufficient professional scepticism the release of WIP credits** (a type of client payment on account), which increased revenue by £1.2 mn; **failures to properly audit journal entries across a number of subsidiary companies**, including a lack of any journals-testing at all for two subsidiaries, and a failure to identify potentially high-risk journals for testing across a number of entities; and a **failure to document the auditors’ reasoning**, or complete their enquires with management, in relation to the retention of rebates under a contract which, on its face, appeared to require such rebates to be passed back to a client. The FRC concluded that the level of professional scepticism was insufficient.

Extracts from US PCAOB Inspection Reports of Audit Firms

11. Inspection report of an Audit Firm Headquartered in Missouri

Deficiency identified - The PCAOBs review identified a deficiency in the financial statement audit related to **Journal Entries**, for which the Audit Firm identified a

fraud risk. The Audit Firm identified characteristics of potentially fraudulent entries or adjustments for testing but did not determine whether any journal entries met those characteristics and instead limited its testing to haphazardly selected journal entries.

G. SELECT PUBLICATIONS

- 12. The Institute of Chartered Accountants of India (ICAI) - *Educational Material on Ind AS 12, Income Taxes*. [13th March, 2024] [<https://resource.cdn.icai.org/79517asb63505.pdf>]
- 13. International Ethics Standards Board for Accountants (IESBA) – *Summary of Prohibitions in the IESBA Code Applicable to Audits of Public Interest Entities*. [18th March, 2024] [<https://www.ethicsboard.org/publications/summary-prohibitions-applicable-audits-public-interest-entities>]
- 14. International Federation of Accountants (IFAC) – *Implementing IPSAS: A Guide for Trainers*. [26th March, 2024] [<https://www.ifac.org/news-events/2024-03/ifac-publishes-updated-guide-trainers-support-ipsas-implementation>]

H. WHAT THEY SAID...

The benefits from investors having access to disclosure required by laws and rules are numerous.

First, disclosure promotes more efficient markets. It promotes better price discovery. Providing more information results in prices that more accurately reflect a company’s prospects.

Second, such prices provide valuable signals, helping capital flow to its most productive use, and thus promoting capital formation.

Third, disclosure promotes trust in markets and the companies that are raising money from the public. Investors are more likely to entrust their capital to a stranger if they are in receipt of consistent, comparable, and reliable disclosure. As U.S. Supreme Court Justice Louis Brandeis said in 1913, “Sunlight is said to be the best of disinfectants.”

A mandatory disclosure-based regime helps protect investors. It reduces information asymmetries and helps them make more informed investment decisions. It also helps issuers access the markets. In fact, decades of economic literature support the value of securities disclosure.

US SEC Chair, **Gary Gensler**. [22nd March, 2024].

Authors can be reached at :
vinayakpaiv@hotmail.com

PROPOSED INTERNATIONAL STANDARDS ON SUSTAINABILITY ASSURANCE (ISSA) 5000



CA. Aditya kumar S.

Background: The International Standard on Sustainability Assurance ('ISSA') is framed to deal with assurance engagements on sustainability information. This Standard applies to all assurance engagements but not those relating to providing conclusion on a greenhouse ("GHG") statement for which ISAE 3410 applies. This Standard needs to be applied when there is assurance given on sustainability matters including climate, labor practices, biodiversity, topics covered under sustainable standards i.e., governance, metrics and key performance indicators etc.,

Unlike other assurance related standards which cover a particular topic say Using the work of an expert or internal auditor or Materiality or External Confirmations etc., ISSA 5000 covers a range of topics and by itself touches on different activities which otherwise would have been covered by other Standards.

The following articles attempts to summarize the Standard :

1. In case of audit of financial statements, any information provided in the annual report or annual pack is considered as 'other information' and auditors are expected to use SA 720 'The Auditor's Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements'. This Standard requires auditors to read the 'Other Information' and conclude whether they are consistent with the audited financial statements and take appropriate steps wherever there is inconsistency. Similarly, Sustainability information may be presented with the entity's audited financial statements as part of the annual report or separately and in this case audited financial statements would be considered as 'Other Information'. This ISSA requires similar audit procedures to be followed like SA 720 and ensure that there is no material inconsistency between sustainability related information and financial statements.
2. The Standard also covers the requirements if the engagement is a limited assurance or reasonable assurance engagements by prefixing 'L' or 'R' respectively to the paragraphs which apply. If both

L and R are used, it means the specific paragraph is applicable in both type of engagements.

3. In circumstances where the ISSA is unable to be followed for any specific reasons; then there must be a documentation on as to why the ISSA could not have been complied and what other alternative procedures were being followed to achieve the objective of the engagement.
4. Acceptance of the Assurance Engagement or Continuation with Assurance Engagement and Preconditions for accepting engagement:
 - a. Ensuring compliance with ethical requirements including Independence;
 - b. Ensuring having appropriate competence and capabilities to conduct the engagement;
 - c. Reporting responsibilities are well understood;
 - d. Not to accept an engagement if there are limitations on scope which could lead to providing a disclaimer conclusion unless required by law or regulation;
 - e. Compliance with the Firm's policies and procedures for acceptance of engagements;
 - f. Compliance with International Standard on Quality Management (like how in India we have SQC 1).
5. Quality Management:
 - a. Firm Level – Ensuring compliance with Code of Ethics and other regulations. The members shall take appropriate action where the Firm faces ethical challenges especially on Independence aspects and take steps to either mitigate the risk or withdraw from the engagement if the risks of non-compliance with Code of Ethics cannot be mitigated appropriately. If there is any breach of Code of Ethics by the team members, the engagement partner or leader shall take appropriate action as required by the Firm's Quality Control framework and applicable legal and regulatory framework.

- b. Engagement Level – Involvement in the engagement, ensuring having appropriate basis and documentation for judgements or conclusions arrived, designing procedures, review of the work of other members of the team, etc., other aspects included as part of Engagement Level include ensuring training and skills are available within the team to execute engagements. The Engagement Leader also needs to ensure that there is adequate delegation of work within the team including direction, supervision and review of the work and documentation.
6. Using the work of an External Expert: The external expert could be a team member or working for the auditor since sustainability related subjects may require subject matter experts. The competency of the subject matter expert including their capability, experience, academic certification etc., also needs to be evaluated including ensuring that the objectives are not going to be compromised.
 7. Using the work of another Practitioner: Similar to using the work of another auditor, the Standard requires to evaluate the independence, competence, capability, compliance with ethical requirements and adequacy of the other Practitioner's work in the engagement and conclude accordingly. Communication is also essential to ensure that the other Practitioner's is aware of the ultimate use of their work and have their confirmation on independence, ethics and other professional requirements relevant to the engagement and further make arrangements for the additional documentation of the work done by them.
 8. Using the work of Internal Auditor: The Role of an Internal Auditor is also evolving and with sustainability being one of the major priorities many entities are taking the services of Internal Auditor for identifying and mitigating risks, advising them on sustainable business practices, validation of the data required for reporting, and advising them on governance structure. While giving an assurance on the sustainability related information, the independence of the internal auditor within an organization, competency, audit methodology, compliance with standards of internal auditing also needs to be evaluated.
 9. Fraud and Non-Compliance with Law or Regulation: Frauds are not new to sustainability reporting. There could be frauds in terms of material misstatements deliberately to mislead the stakeholders. One has to consider the fraud risk and risk of non-compliances and design appropriate procedures including evaluating 'tone at the top', seriousness in which ethics and compliance are considered and red flags raised by internal auditors.
 10. Communication with Those Charged with Management and Governance: Practitioner is expected to report to the management significant events or transactions, any restrictions imposed, disagreement with management assertions including those relating to deficiencies in internal control and suspected non-compliances.
 11. Documentation: The Documentation should be prepared in a manner that it showcases how an audit was done and an experienced practitioner, who have no previous connection with the assurance engagement, would be able to understand how the audit was performed including nature and timing of procedures, evidence collected, significant events, conclusions reached, professional judgements, team members who performed the audit and quality review process.
 12. Terms of Engagement: Akin to an engagement letter, the practitioner shall also have an engagement letter which would include the terms of the engagement, the objective, scope of work, framework to be used, audit to be done in accordance with ISSA 5000, enlisting the responsibilities of the management and the practitioner, form and content of the report etc., Where the terms of engagement have changed such terms would have to be revisited and a fresh engagement needs to be entered into.
 13. Evidence: The evidence collected for the purpose of the engagement should be sufficient appropriate to enable the practitioner to draw a conclusion. The practitioner should evaluate the completeness, accuracy, amongst other factors for ensuring that it meets the requirements to form an opinion and further with regard to the work performed by an expert, the practitioner has to evaluate their experience, competency, skill set and objectivity of their engagement.
 14. Planning: The engagement should be planned to include determining the nature, timing, extent of procedures to be carried out, discussions and briefing to the team and determining materiality of the disclosures. Qualitative materiality considerations could be a challenge considering its impact not only on the financials or on the company but to environment and society at large and some of which

could also be technical since these are beyond numerical or may not be possible to express in terms of numbers or monetary term.

15. Risk Procedures: The risk assessment according to the need of the engagement that is whether it is limited assurance or reasonable assurance. The Risk Assessment includes the sustainability related matters, possibilities of material misstatement, framework of reporting given by law or used by the industry, practitioner's understanding of the business & legal and regulatory framework and the components of internal control system including control environment, risk assessment, information & communication, control activities (IT and other than IT) and having adequate documentation to that effect. Similar to review of internal controls, the practitioner also has to review the internal control through process walkthrough, test of design of the controls and it's operating effectiveness using appropriate sampling methodology.
16. Written Representations: Practitioner to obtain written representations from those charged with governance on reasonableness of assumptions and forward looking statements made, significant deficiencies in internal control, disclosure on fraud, events occurring after the subsequent to the date of sustainability information etc., which needs to be evaluated by the practitioner.
17. Other Information: As indicated earlier, the practitioner would have to inform the management and ensure that the 'other information' is made available on a timely manner. Other Information here would include any other reports including financial statements other than sustainability related report. This needs to be read to ensure there is consistency in the reports and if there are any contradictions, the management needs to take suitable action to amend the same. If these are not corrected, the Standards requires the practitioner to consider its implications in the audit report and take action as possible under law or regulation including withdrawal.
18. Report: The Audit Report is very similar to the audit report that audit report having paragraphs viz., Opinion (including modifications viz., Qualification, Adverse or Disclaimer), Emphasis of Matter, Other Matter, findings related to particular aspects of engagement and recommendations and any other additional information.

Conclusion: ISA 5000 is a Standard of about 200 pages covering 192 paragraphs and 521 paragraphs as an appendix and other illustrative format of reporting etc., The above literature is an attempt to give a high level understanding of how the sustainability standards are structured. A reading of ISA 5000 indicates that the Standard contains in essence the whole gamut of standards of auditing used for the purposes of audit of general purpose or special purpose financial statements. Unlike Standards of Auditing wherein the topics are spread over different Standard, in this case it is all covered under a single clause. Once this Standard is made applicable by International Auditing and Assurance Standards Board, we can expect similar Standard to be made applicable in India. Sustainability information being an emerging area there would be opportunities for Chartered Accountants who would like to pursue this as a career. And for the companies, providing Sustainability related information may not be mandatory for all for now, but years to come there will be efforts to ensure all the entities would get covered; the extant of reporting could differ though.

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

SUDOKU - 44

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

INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA INITIATIVES BY INDIAN JUDICIARY (PART - XLIV OF IPR SERIES)



Adv. M G Kodandaram

Initiatives by Indian Judiciary

The Indian judiciary has demonstrated remarkable competence in handling National / international cases related to IPR due to significant legal reforms and proactive measures aligned with international agreements such as the Berne Convention and TRIPS. The judiciary has been proactive in protecting IPR and has extended general principles to cover international cases also. The Courts have expanded the concept of cause of action in IPR cases and have shown flexibility in jurisdiction, deviating from traditional concepts. The concept of trans-border reputation was introduced in cases like the **Apple Computer case**, where the court acknowledged the global reputation of a trademark, even if not used domestically but recognized through various sources.

In the case of *Apple Computer Inc. v. Apple Leasing & Industries* [1991 (18) ICLR Delhi 63], wherein the dispute was around the usage of “Apple Computer Education” by an Indian entity, Delhi High Court acknowledged the foreign claimant’s established reputation in the mark Apple concerning computers, placing significant emphasis on the reputation achieved through extensive advertisement and publicity efforts. The court’s ruling reflected the evolving environment of global commerce and information dissemination. Noting that in contemporary circumstances characterized by free-flowing information through various mediums like newspapers, magazines, video, television, and the internet, the court held that the physical presence in a jurisdiction is not a prerequisite to seek protection against improper use of a name or mark. The court emphasized that the key consideration in passing-off cases is the likelihood of confusion and resulting harm to the claimant, as well as the necessity to safeguard the public from deception, whether intentional or unintentional.

Highlighting the fundamental reasons behind the protection of trademarks and goodwill, the court underscored the efforts and investments made by businesses to build a strong brand identity that resonates

with consumers. It emphasized that the purpose of advertising, publicity, and reputation-building is to create an impact on consumers, ensuring that the brand name or mark recalls the source of goods or services in the consumer’s mind. The court affirmed that it would be unjust to allow unauthorized or dishonest use of a well-established name or a deceptively similar mark to undermine the efforts and investments made by businesses in establishing their brand reputation.

India has made significant legislative amendments to align with international obligations under the TRIPS agreement. The Patents Act, 1970 underwent revisions to accommodate TRIPS provisions, including the allowance of mail-box applications and the transition to a product patent regime. Amendments in 2005 addressed controversies regarding product patents for food and pharmaceuticals. Apart from patents, India introduced the Trademarks Act, 1999, to protect well-known international marks. The Protection of Plant Varieties and Farmers’ Rights Act, 2001, was enacted to support the seed industry. Additional legislations like the Geographical Indications of Goods Act, 1999, and the Semi-conductor Integrated Circuit Layout Design Act were also introduced to comply with international standards. India has encouraged its administrative machinery for IPR enforcement, including setting up special cells and conducting training programs for law enforcement agencies to combat counterfeiting effectively.

In recent years, the High Court of Delhi has emerged as a prominent arena for resolving IPR disputes in India. The Delhi High Court plays a pivotal role in handling IPR cases, with over 75% of total IPR cases filed there. The establishment of the Intellectual Property Division (IPD) coupled with the Delhi High Court Intellectual Property Rights Division Rules, 2022, has solidified its stature as a leading venue for handling complex IP matters.

Establishment of Intellectual Property Division

The genesis of the IPD can be traced back to the Tribunals Reforms (Rationalisation and Conditions of



Service) Ordinance, 2021, which eventually led to the abolishment of the Intellectual Property Appellate Board (IPAB). This move marked a significant

shift in India's IP landscape, with all pending matters before the IPAB being transferred to the respective high courts. Upon receiving nearly 3,000 IP cases from the IPAB, the High Court of Delhi took proactive measures to streamline IP adjudication. A committee, appointed by the Chief Justice, extensively studied global best practices and recommended the creation of a specialized IP division within the High Court. This division would exclusively handle a spectrum of IP matters, including infringement suits, appeals against IP office decisions, revocation actions, and rectification applications.

The formal establishment of the IPD was announced on July 7, 2021. Subsequently, the Delhi High Court Intellectual Property Rights Division Rules, 2022, were notified after stakeholder consultations. These rules delineate the procedures and timelines for various IP actions, ensuring a structured approach to IP litigation. The IPD not only benefits from specialist judges but also adopts progressive procedural mechanisms. Furthermore, the IPD Rules incorporate modern practices like electronic service, videoconferencing for evidence, and the creation of confidentiality clubs. They also introduce innovative concepts like 'hot tubbing' to streamline expert testimony. Additionally, judges are empowered to engage subject matter experts and appoint law researchers to assist in techno-legal aspects, further augmenting the IPD's expertise.

Objectives of the IPD are (i) Adjudicate fresh and pending infringement suits. (ii) Hear appeals against decisions of patent, trademark, and copyright offices. (iii) Handle revocation/cancellation actions. (iv) Process applications for rectification of patents/trademark registers.

Impact and Progress

The integration of IP cases into commercial courts since 2015 introduced strict timelines and procedures to expedite litigation and reduce backlog. Changes in working rules allowed electronic service, videoconferencing for evidence recording, and the establishment of confidentiality clubs for exchanging sensitive information. The IPD Rules empower the court to engage subject matter experts, appoint law researchers, and facilitate mediation for resolving disputes.

The establishment of the IPD has yielded commendable results within a relatively short span. A notable improvement is the active participation of Indian IP offices, ensuring thorough representation and balanced adjudication. The IPD benches have consistently delivered judicious orders, contributing significantly to the evolution of Indian IP jurisprudence. The IPD's jurisdiction encompasses various levels, including original, infringement, appellate, revisional, and extraordinary writ jurisdiction over IP matters. This comprehensive approach enhances access to justice and facilitates efficient resolution of diverse IP disputes. These initiatives indicate the judiciary's commitment to promote innovation, protect IP rights, and ensure timely and effective redressal for stakeholders in the ever-evolving landscape of IP law.

Innovative Step in Patent Law Clarified

The case of Biomoneta Research Pvt Ltd. v Controller General of Patents Designs [C.A.(COMM.IPD-PAT) 297/2022], before the Delhi High Court marks a significant milestone in patent law, particularly in the realm of **inventive step** analysis.

Biomoneta appealed against the rejection of their 2017 patent application for an 'Air Decontamination Assembly' by the Controller. The rejection was based on the Indian Patents Act, 1970, citing a lack of inventive step and referencing prior art documents. Biomoneta defended its invention, highlighting its unique features such as the utilization of low voltage electric fields and conducting plates with 3D material. They emphasized the effectiveness of their technology against pathogens like COVID-19, along with benefits like filter-less operation and reduced power consumption.

The Court examined the cited prior art documents and acknowledged similarities between Biomoneta's invention and existing technologies, such as the use of conducting plates and electric fields. However, the Court recognized Biomoneta's innovative combination of these elements with low voltage electric fields and 3D material-coated plates as demonstrating an inventive step. This combination led to significant advancements like filter-free operation, reduced power consumption, and efficient pathogen elimination, distinguishing it from prior art and justifying patentability.

The Court also referenced European Patent Office (EPO) guidelines on combining features in patent claims. These guidelines stress the assessment of inventions as a whole, considering whether the combination

of features results in a new and improved outcome. Biomoneta’s device, addressing multiple drawbacks of existing technologies, was deemed to go beyond a mere combination of known features and involve an inventive step. The Court also considered the grant of a corresponding US patent as corroborative evidence of the invention’s novelty and inventiveness.

This decision sets a precedent for a holistic and comprehensive approach to inventive step analysis in patent adjudication, particularly in complex technological domains. It emphasises the importance of evaluating inventions based on their overall impact and unique contributions, thereby promoting innovation and technological advancement in patent law.

Prior Art –in Shogun Organics Ltd

The case Shogun Organics Ltd v. Gaur Hari Guchhait [2019 SCC OnLine Del 9653] revolves around patent infringement and prior use of patented technology in the context of insecticides. Shogun Organics Ltd., a company specializing in mosquito repellents, obtained a patent in 2009 for a unique six-step synthesis process for producing D-trans Allethrin. Manaksia Ltd., a competitor, filed a post-grant opposition in 2013, which was reviewed by the Intellectual Property Appellate Board (IPAB) and resulted in the reinstatement of Shogun Organics’ patent.

However, Shogun Organics later discovered that Manaksia Ltd. had been utilizing their patented technology. Consequently, they filed an infringement suit seeking a permanent injunction and requesting the court to restrain Manaksia from using the patented process. The key argument presented by Shogun was that the use of the patented technology amounted to infringement. On the other hand, Manaksia contended that the patented technology was invalid, asserting that it had been disclosed earlier in 1997 through an application under the Insecticides Act, 1968, and thus was in the public domain. The issues raised are (i) Whether registration under the Insecticides Act constitutes prior publication or disclosure to government authorities. (ii) Whether Manaksia Ltd. had infringed upon the patented process of Shogun Organics.

Court’s Decision

(i) Court held that disclosure to government departments or authorities does not amount to prior use as per Section 30 of the Patents Act. The court’s interpretation underscores the distinction between statutory requirements for registration and the concept of prior publication in patent law. Merely registering a product under a specific regulatory

framework does not automatically render its technology publicly accessible for patent purposes.

(ii) Manaksia claimed that the patented process was invalid because it had been disclosed earlier in 1997 and was therefore part of the public domain. The court, however, delved into the specifics of the patented process and requested Manaksia to provide evidence of a different process they were using. This request aligned with Section 104A of the Patents Act, which empowers the court to demand such proof from the defendant. Manaksia failed to submit evidence demonstrating a distinct process from Shogun Organics’ patented method. As a result, the court rejected Manaksia’s prior use argument, highlighting that the mere use and sale of a product before patent grant does not establish prior/public use unless the manufacturing process is explicitly disclosed.

This case serves as a significant legal precedent in patent law, particularly regarding prior use and the distinction between statutory disclosures and public domain knowledge and the importance of proving a unique process in patent infringement cases.

In the coming part important cases of recent times on various concepts of IPR law will be continued.

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

Solution to Sudoku - 43 March - 2024

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

IPR

RERA - REGISTRATION OF REAL ESTATE PROJECT – KEY ASPECTS TO BE CONSIDERED



CA. Vinay Thyagaraj

Welcome to an exploration of one of the pivotal reforms in the real estate sector – the Real Estate (Regulation and Development) Act 2016, commonly known as RERA. In an endeavor to bring transparency, accountability, and efficiency to the real estate market, RERA was enacted to safeguard the interests of homebuyers and streamline the real estate ecosystem.

At its core, RERA mandates the registration of real estate projects and agents, while also establishing regulatory authorities to oversee the sector’s operations. This introduction sets the stage for a deeper dive into the nuances of RERA, its implications on various stakeholders, and its transformative impact on the real estate landscape.

In this article, we will delve into the crucial considerations when preparing the application for the grant of RERA registration for a real estate project. The process of obtaining RERA registration is a first step for promoters (land owners & developers), as it not only ensures compliance with regulatory requirements but also fosters transparency and trust among all stakeholders. From documentation to project specifications, several key aspects need meticulous attention to ensure a smooth and successful registration process. By examining these important facets in detail, promoters (land owners & developers) and stakeholders can gain a comprehensive understanding of the requirements and best practices involved in securing RERA registration for their projects.

The essential details that must be taken into account when preparing the application for grant of RERA registration, thereby navigating the regulatory landscape with confidence and proficiency.

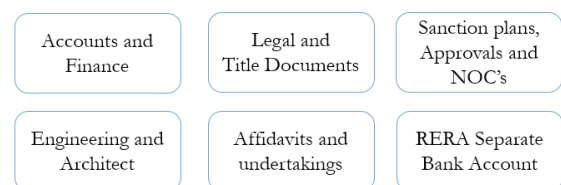
Section 3 of the RERA Act 2016 mandates the prior registration of the Real Estate Project. i.e., the promoters shall obtain the RERA registration prior to marketing, sales, collection of advances and inviting the public to purchase units in the project.

Section 4 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 3 and Rule 4 of the Karnataka

Real Estate (Regulation and Development) Rules, 2017, outlines the comprehensive list of documents, details, and information required from promoters when filing an application for the grant of RERA registration for a real estate project. These requirements are essential to ensure transparency, accountability, and compliance with regulatory standards.

The implementation of an online module for the registration process by the Karnataka Real Estate Regulatory Authority (RERA) marks a significant step towards enhancing efficiency, transparency, and accessibility of the information for the various stakeholders in the real estate sector. Since the inception of RERA in the state, the adoption of this online platform has streamlined the registration process, making it more convenient and user-friendly for promoters and other stakeholders involved in real estate projects. The online module provided by Karnataka RERA is characterized by its robustness and user-friendly interface, which simplifies the submission of details and documents required for registration. This digital platform not only expedites the registration process but also ensures accuracy and completeness of information provided by promoters.

The information, documents required for Registration can be classified as follows-



Each of these details and documents are verified by the qualified and experienced officers and forward to the secretary for further scrutiny and approvals. On approval from the secretary, two Members shall scrutinise finally and forward to the Chairman for Approval.

The authority has notified the information, details, documents required for the registration apart from the formats of professional certificates, Affidavits and

undertakings. All the information should be complete and accurate.

1. KYC and General Documents:

- a. Company Incorporation Certificate, GST and PAN Card
- b. Aadhaar Card, PAN Card and Photo of Authorized signatory, Proprietor or Partners or Directors, Project Head etc
- c. Land owners - Aadhaar Card
- d. Authorisation letter or Board resolution (with seal and signature)
- e. Organization structure
- f. Project name, Project start date and Project end date.
- g. Project Specification (Mention Project name, Project address and issue on Letterhead).
- h. Chartered Accountant, Architects, Engineers – Aadhaar Card and Professional membership registration document (viz., ICAI, COA, IIE etc)
- i. Professional Certificates of Engineer (Form No 3), Architect (Form No 2) and a Chartered Accountant (Form No 1)

2. Financial Details of the promoters (Partners, directors in case of the entity is less than 3 years old):

- a. Income Tax Returns for last 3 years
- b. Balance Sheet, Profit & Loss Account with schedules with CA Attested and UDIN (FY 20-21,21-22,22-23)
- c. Cash flow Statement, Director report (in case of Company)
- d. Auditors report for last 3 years wherever applicable
- e. Bank details – Bank name should be- (Promoter name – RERA Designated A/C for Project Name)
 - a. 100%
 - b. 70%
 - c. 30%
- f. Means of Finance (Source of Funds) with supporting documents substantiating the promoter is having capability and liquidity to deploy the funds for the construction purposes.

3. Project approval related documents -

- a. Approved Building Plan and letter.
- b. Commencement certificate – If applicable and obtained
- c. Building Section and Elevation plans.
- d. STP / Septic tank drawing with water and sewer line connection.
- e. CDP plan
- f. Project Photos and Location (Latitude and longitude) of the project.
- g. Carpet Area Statement duly attested with Architect (as per RERA)
- h. Guidance Value copy
- i. Single plot layout plan and order
- j. Relinquishment deed – where ever applicable
- k. Applicable NOC's – based on the size, location and scheme of the project.
(Water supply, Electricity, Fire, NHAI, Railways, CZR, NGT, AAI, PCB, Horticulture etc)

4. Land / Title Related documents:

- a. Encumbrance Certificate – for 15 years
- b. RTC, Mutation – MR (Which is reflecting in RTC, Khata)
- c. Change of Land Use, Land Conversion Orders
- d. Sale Deed, JDA & GPA
- e. Hissa Phody, Survey Sketch Aakarband, Village Map
- f. Legal search report / Legal opinion by an advocate having 10 years' experience in Real Estate Sector

5. Engineering / drawings Documents:

- a. Abstract of cost Estimation (Construction cost abstract) attested with engineer.
- b. Carpet area Calculation, Common area details, Land Area Calculation
- c. Source of water supply
- d. Drawings with respect to sanitation, power, water etc

6. Affidavits Legal Drafts:

- a. Affidavits on stamp paper duly notarised -
 - a. Section 3(1) Affidavit.
 - b. Form B Affidavit.
 - c. Joint Development Affidavit (if applicable)
 - d. No Litigation.
 - e. No mortgage.
 - f. Bank Account Affidavit
- b. Legal draft
 - a. Proforma of Agreement of Sale
 - b. Proforma of Sale deed.
 - c. Proforma of allotment Letter.
 - d. Booking Forms
 - c. RERA Separate Bank account Should be opened in a Scheduled Bank – Refer RERA Bank Account Directions 2020 for how to open, operate, close the RERA Separate bank account of a real estate project.
 - d. Professionals involved in advising the real estate promotes, should be well-versed in the importance of documents and the implications of incorrect information under the Real Estate (Regulation and Development) Act, 2016 (RERA).

7. Important aspects to be considered while filing the Application –

1. Start Date and End Date of the Project
2. Internal and External Development details
3. Estimated Cost of the Land and Development Costs
4. RERA Carpet Area, Common Area and Undivided interest in the Land
5. List of Litigation on the Project Land
6. Borrowings and Mortgage of Project Land
7. Specification of the project and Scheme of the project.

FAQ'S on RERA Registration

Q. 1. What is the status of the Act?

Ans. The entire Act has come into force as on 01st May 2017 across India

Q. 2. Does the definition of 'promoter' include public bodies such as Development Authorities, Housing Boards, Housing Co Operative Societies?

Ans. The Act covers all bodies [private and public] which develop real estate projects for sale to the general public or to its members. This includes bodies like Development Authorities, Housing Board, Housing Societies etc.,

Q. 3. Does the Act cover layout, residential and commercial real estate?

Ans. The Act covers for layout, residential and commercial real estate projects which intends to sell

Q. 4. Can Promoter sell after obtaining completion certificate without RERA registration?

Ans. The Act mandates the projects to be registered before advertise, market, book or sell. So irrespective of the stage of development, every project mandate registration. Hence promoter required to register before selling the apartments or plots even after completion with own money or borrowed money.

Q. 5. Who should file application for RERA Registration in case of Joint Development?

Ans. The developer holding the JDA and GPA shall submit the application for grant of RERA Registration.

Q. 6. Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of advertisement?

Ans. Any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails etc.,

Q. 7. Does the Act cover ongoing/incomplete project?

Ans. As regards the ambit of the Act, there is no distinction between an ongoing, incomplete project and a future project, i.e. both ongoing / incomplete project and future projects are covered under and Act. The promoters of 'all ongoing projects which have not received completion certificate shall register their project, within 3 months of its commencement' (i.e., by 31st July 2017)

Q. 8. Does the Act cover all projects in urban and in rural areas?

Ans. All projects within a planning area will require to be registered with the Authority and the Authority can order/direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority

Q. 9. Which projects are exempt from the ambit of the Act?

Ans. The following are excluded:

- where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phase;
- where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Q. 10. At what stage can a promoter start to advertise his project for sale?

Ans. The promoter can advertise his project for sale after the project has been registered with the Real Estate Regulatory Authority.

Q. 11. Is the promoter required to maintain an 'project bank account' or a 'separate account'?

Ans. The promoter should maintain a separate account for every project undertaken by him wherein 70 % of the money received from the allottees shall be deposited to meet the cost of construction and land cost. Such account shall open at the time of RERA registration and submit along with the application for grant of RERA registration.

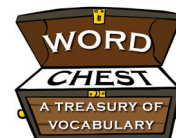
Q. 12. What is the punishment prescribed for non-registration of a project under the Act?

Ans. The Promoter become liable to a penalty upto 10% percent of the estimated cost of the project. In case the failure to comply with directions / orders of the Authority an additional fine of 10% percent of the estimated cost of the project or imprisonment upto 3 years or both.

To conclude, importance of providing accurate and factual information in the application for RERA registration cannot be overstated. Accurate documentation ensures compliance with the Real Estate (Regulation and Development) Act, thereby safeguarding the interests of all stakeholders involved, including developers, investors, and homebuyers. It facilitates transparency, builds trust, and enhances the credibility of the project, preventing potential legal complications and financial liabilities. Moreover, factual and precise information is crucial for the timely approval of projects and maintaining a good standing in the real estate market. Adhering to these standards not only upholds the integrity of the real estate sector but also promotes a stable and reliable market environment, fostering sustainable development and consumer confidence. Hence, ensuring the accuracy of information in the RERA registration application is fundamental to achieving these objectives and securing the successful RERA registration and execution of real estate projects.

Author can be reached at :
vinay@vvnv.ca

44



Rule of Literal Construction:

The primary rule of interpreting statutes is that the intention of the legislature should be derived from the words used in the statute itself. If the language is clear and unambiguous, courts should not invent hypothetical interpretations based on alleged policy objectives. The rule of literal construction emphasizes giving words their ordinary meaning. When a statute's language is plain, courts should not deviate from it. Plain words need no further explanation.

This principle is contained in the Latin maxim "absoluta sententia expositore non indiget" which literally means "an absolute sentence or preposition needs not an expositor".

In other words, plain words require no explanation. In summary, courts interpret statutes based on their natural and grammatical sense, avoiding unnecessary hypothetical constructions.

IN PURSUIT OF TRUTH

(PART IV)



CA. Arun Chintopanth

Our minds are meant to provide us with the capacity to think. Unfortunately our thoughts are so tempestuous and wandering that harnessing it is a great effort.

Arjuna tells Bhagawan Krishna in the Srimad Bhagwad Gita :-

चञ्चलं हृदि मनः कृष्ण प्रमाथ बिलव दम् ।

तस्याहं नगिरहं मन्ये वायोरपि सुदुष्करम् ॥

“Krishna the mind is very unsteady, turbulent, tenacious and powerful; therefore, I consider it as difficult to control as the wind.”

Bhagwan Krishna no doubt endorses this view of Arjuna but gives the solution as well.

He says,

असंशयं महाबाहो मनो दुर्नगिरहं चलम् ।

अभ्यासेन तु कौन्तेय वैराग्येण च गृह्यते ॥

“The mind is restless no doubt, and difficult to curb, Arjuna; but it can be brought under control by repeated practice and by the exercise of vairagya”.

We have already discussed Vairagya or renunciation. This is to be complemented with “abhyasa” or practice. One time is not enough; it must be a continuous practice. It must become a Sadhana since the mind can be distracted so easily.

A person went to a Guru for lessons in meditation for controlling his mind.

The Guru told this person to meditate on anything. “But”, he said, “do not let monkeys come into your thoughts. Meditate on anything you wish, just not monkeys.”

“That’s easy,” thought the disciple. At the same time he thought to himself that “this Guru seems to be crazy. Of all the things why will I ever think of monkeys?” This thought haunted him and ultimately all that he could think of was monkeys. He closed his eyes and at once monkeys appeared. All kinds of monkeys small, big, young, old etc. Traumatized by these monkeys he came to his guru in the morning and told him that while he tried not to think of monkeys, all he had done the entire time was to think of monkeys!

The guru was not surprised. He knew the power of exclusion.

“In reality one cannot live with just what one wants to live with. To be able to steer your mind away from that which is not desired to that which is desired, is the true art of meditation,” the guru pointed out.

The last one on purity is that of emotions.

Once purity of mind is accessed, purity of emotions follows without much ado.

Purity of emotions involves having clean likes and dislikes. Purity of emotion is when the emotions are not diabolical.

Fasting, observing vows, chanting of hymns, mantras, prayers, bhajans and other such activities breed pure emotions.

There is this story of two monks making their way to the Monastery after a visit to the village. On the way they heard sounds of deep distress. On looking around they saw a young lady virtually undressed and drowning in an attempt to swim in the lake there. The elder of the monks immediately jumped into the lake, rescued this lady, resuscitated her and left her there. Both the monks then resumed their journey.

Neither of them spoke during the remaining part of the journey. However, as they were entering the gates of the Monastery, the younger of the monks who was witness to the elder one rescuing an almost naked lady remarked, “How could you do what you did? You are a monk and expected to practice severe austerities. Instead, you jumped into the lake and carried a young half naked lady. How could you do such a thing?” The older Monk smiled and said, “Yes. I did indulge in the act you mentioned to save a young life. But after that I have completely forgotten about the incident. I have dropped the whole thing from my mind and emotions. But look at you; while you did not indulge in this act, you have been carrying this emotion in your mind all through the journey!”

The next part of NIYAMA is TAPAS. There being no English equivalent to it, perhaps the closest expression would be austerity or self discipline.

The Oxford dictionary defines “Discipline” as “training or way of life aimed at self control and conformity.”

Discipline teaches us that it is our duty to repay with patience and humility involuntary and unintentional wrongs and errors. This discipline teaches one to accept the fallibility of human judgement.

This happens in our day to day life. We become frustrated when the response to our work is different from what we expect and then we react in a totally wrong manner and make matters worse for ourselves and others.

Self discipline or austerity teaches us to bear with patience and humility until the appropriate result or gain will fall on us.

The Earth itself is a great example of discipline; The Earth is an example of forbearance and forgiveness. It is disciplined to bear all adverse circumstances, all insults, or hurt inflicted upon it by its occupants.

One may plough the land, or light a fire on it, or throw dirt, garbage or rubbish on it, yet it still gives all its resources abundantly.

Thus, we have to be disciplined to bear whatever that may come our way. We have to accept honour and dishonor, joy and sorrow with a calm and balanced mind.

We will now consider SELF STUDY, the next component of NIYAMA.

Alexander Pope writes beautifully: “Know then thyself; presume not God to span, the proper study of mankind is man.”

Here is a story :

There was an old man who was running an antique and curio shop. One day, a tourist came to his shop and after viewing all the exhibits he started talking to this old owner and then he asked him: “what do you think is the most mysterious and strangest thing that you have in this shop?”.

The old man surveyed the entire stock he had in his shop. The stock of artifacts, the archaeological find, the fossils, the rocks, the stuffed animals, birds and finally he turned to this visitor and said”, the most mysterious and strangest thing in my shop is unquestionably myself.” Generation after generation, man after man, has been in the quest of an answer to this question. Who am I?

where do I come from? where do I go? “Ko hum” is an universal question which has prompted quest from all parts of the world, from all human beings, from all generations.

It is said that Schopenhauer the great philosopher was once resting in a public park and it was closing time. The sentry came and asked him, “Sir, who are you? what are you doing here?” Schopenhauer replied, “that is the question for which all my life I am trying to find an answer. Who am I? What am I doing here?”

The I is associated or enmeshed in so many roles, in so many points of references, that to be able to answer this question, who am I, we must first isolate this “I”.

Normally we associate the body with the “I”. When I am wearing a jacket, I associate it to the body. I say, “I am wearing the jacket”. But is the body really I? Bhagavan Krishna tells Arjuna in the Bhagavad Gita, “you are not the body, you are something beyond the body”.

For example, if one Mr. X is ill and is in the hospital, we say how is Mr. X recovering? How is he progressing? But if Mr. X dies, we do not say, when is Mr. X coming home? We say, when is the body coming home? The body is different from I. The body is not “I”. The body is only a means of identification.

Then perhaps the mind is I. What is the mind? The mind is nothing but a screen on which series of thoughts are being projected continuously. What are thoughts? Thoughts are recording of our own experiences. When I am hurt the mind records the thought. “I am hurt”; pain is recorded. That is the recording of an experience. So is recording of experiences “I”? If all our experiences that are recorded represents reality then yes it is I.

But our thoughts do not represent reality always. We look at the stars and our experience tells us that the stars are very tiny, very far away. But astronomers will tell us, the star is no doubt far away, but it is certainly not very tiny. It is very huge. It is much bigger than this earth or other planets.” This means that this experience is not the reality, it is not the correct experience. Similarly even though we know that this is not reality we say that the sun rises in the East and sets in the West. So, if the experiences of the mind is not always reality, then the mind cannot be “I”.

Can the intellect be I? The intellect is the knowledge that we have developed. If one is a Doctor, it means that he has developed, cultivated or acquired the intellectual knowledge of being a doctor. If one is a lawyer, it means that person has acquired, learnt and studied the knowledge of law. These are only intellectual representations of

what one has learnt. It is not “I” because the Lawyer was not born as a lawyer, nor was the doctor born as a doctor. These are things that we have acquired over the years and what is acquired cannot be the same as the acquirer. Hence, the intellect is not “I”.

The fourth option would be to say : I do not know who am I. I do not know so many things for that matter. So, ‘I’ must be ignorance. This is a fallacious statement. If I know that I am ignorant, it means that I know something. So this “I” knows something else outside of that I. So ignorance cannot be “I”.

The next option is to say that “I” does not exist at all. This is to say a ridiculous proposition. It’s an absurd statement to say that I don’t exist. I must exist So non existence being equal to “I” is not correct.

Now we have isolated “I” away from the body, away from the mind, away from the intellect, away from ignorance and away from non-existence. Then what is this “I”?

Vedanta says, “I” is Chaitanya. That is pure consciousness. This consciousness has no form, nor a body. Because it has no form or a body, it becomes unlimited. It becomes infinite and it can not be destroyed. Since it cannot be destroyed it is called ‘SAT’. Since it is all pervading and is everywhere, it is called ‘CHIT’. The nature of this consciousness being bliss or happiness it is ANANDA. So this “I”, called Chaitanya, awareness, consciousness, is SAT CHIT ANANDA,

We now come to the last aspect of NIYAMA which is self surrender

सर्वधर्मान्परतियज्य मामेकं शरणं व्रज । अहं त्वा सर्वपापेभ्यो मोकषयिष्यामि मा शुचः ॥

says Bhagawan Krishna in the Bhagawad Geeta ‘Leave everything and come to me. Totally surrender to me. Take refuge in me alone. I will absolve you of all sins.’

This is what self surrender means. Total and unconditional sharanagathi without any doubt whatsoever.

In such a surrender there are no doubts about God’s intentions. Thy will be done is the slogan.

An accomplished mountaineer wanted to climb the highest peak but he did not want anybody’s help. He wanted to do it all by himself and take the credit also all by himself. And one night when nobody was around he started climbing the peak all by himself. It was a pitch-pitch-dark night and as he reached the peak, he slipped and came hurtling down.

He thought this was the end of his life.

Fortunately his hand got stuck to a branch of a tree. He held on to this branch with both his hands. He was suspended in air. He needed somebody’s help. He looked towards God and said, “Help Me! Save Me!”

God said “do you have faith in me?” The man said “Yes”. God asked him “Will you do what I tell you to do?” The man said, “Yes I will do what you tell me to do.” God said, “Let go of the branch”. The man said, “If I let go of the branch, then I will die”. He doubted God and he held onto the branch tightly and did not let go of it. He would not surrender to HIS Will.

Two days later a group of mountaineers found this man frozen, dead and holding on tightly to the branch and the irony of the whole thing was that the ground was just four feet below!

It is said that when Draupadi was being disrobed in the court of Duryodhana, she called out to Bhagawan Krishna with one hand and was holding her garments with the other hand. But Bhagawan Krishna would not come. Only when she let go of her garments from the other hand and surrendered totally to Him with both her hands did Bhagawan Krishna come and help her.

To those who fully surrender Bhagawan Krishna has given His own GUARANTEE :

कौन्तेय प्रतजिनीहनि मे भक्तःप्रणश्यति।

“Be assured Arjuna that no devotee of mine will be destroyed.”

Author can be reached at :
panth@panthco.co.in

Representation

Representation regarding incorrect/delay in submitting application u/s 12A(1)(ac)

Ethics from Epics - 8



Vidura Neeti - the rich repository of wisdom CA Allama Prabhu M S

Part - 2

When Dhritrashtra requested for his advice, Vidura used the opportunity to skilfully express his insightful views while also addressing the king's ethical dilemmas.

Throughout his narration, Vidura counsels, mocks, condemns, and even forewarns Dhritrashtra about the immoral course of action that he and his sons were taking.

The magnificent epic Mahabharata is translated and rewritten ino numerous languages. *Kumara Vyasa* (Gadugina Narayanappa) (Circa 1419-1446 BCE), an acclaimed Kannada poet, retells the Mahabharata in his distinct style. He progressively develops, broadens, and adds several new dimensions in *Vidura Niti*, demonstrating his philosophical profundity and linguistic richness.

Following verses of *Kumara Vyasa* places emphasis on ways of educating the offspring, as parents.

1. “ಮಾತಾಪಿತೃಗಳು ಶತ್ರು ಭಾವವ ನಾಂತು ನಿಜಸಂತಾನದಲಿ ಸಂ ಪ್ರೀತಿಯನು ನೆಲೆಗೊಳಿಸಿ ಸರ್ವಜ್ಞಾಧಿಕಾರದಲಿ ಖ್ಯಾತರನು ಮಾಡದಡೆ ಹಂಸ ವ್ರಾತ ಮಧ್ಯದ ಬಕನವೊಲು ವಿ ಖ್ಯಾತ ಸಭೆಯೊಳು ಯೋಗ್ಯರಹರೇ ಭೂಪ ಕೇಳೆಂದ”

ಭಾವಾರ್ಥ ವಿವರಣೆ:

ತಂದೆತಾಯಿಗಳು ಮಕ್ಕಳಲ್ಲಿ ಸಂಪ್ರೀತಿಯನ್ನು ನೆಲೆಗೊಳಿಸಿ ಜ್ಞಾನಿಗಳನ್ನಾಗಿ ಯೋಗ್ಯರನ್ನಾಗಿ ಮಾಡಬೇಕು. ಇಲ್ಲದಿದ್ದರೆ, ಮಕ್ಕಳಿಗೆ ಅವರೇ ಶತ್ರುಗಳಾದಂತೆ. ಪಂಡಿತರ ಸಭೆಯೊಳು ಅಯೋಗ್ಯರು ಯೋಗ್ಯರೆನಿಸಿಕೊಳ್ಳುವರೇ? ಹಂಸಗಳ ಮಧ್ಯೆ ಇರುವ ಕೊಕ್ಕರೆಯಂತೆ ಕಾಣುತ್ತಾರೆ.

In essence:

“Parents should endeavour to instil love and compassion in their children to make them good members of society. Otherwise, they will appear foolish amidst the council of erudites, much like a crane among swans.”

2. “ವರುಷವೈದರೋಳರಸೆನಿಸಿ ದಶ ವರುಷ ದಾಸತ್ವವನು ಭಾವಿಸಿ ವರುಷ ಹದಿನಾರರಲಿ ಪುತ್ರನ ಮಿತ್ರನೆಂದೆನಿಸಿ ಪರಿವಿಡಿಗಳಲಿ ನಡೆಸಿ ಮದ ಮ ತ್ಸರವ ಮಾಣಿಸಿ ನೆರದ ಮಕ್ಕಳ ನರಮೃಗವ ಮಾಡುವರೆ ಭೂಮೀಪಾಲ ಕೇಳೆಂದ”

ಭಾವಾರ್ಥ ವಿವರಣೆ:

ತಂದೆ-ತಾಯಿಗಳು ಮಕ್ಕಳನ್ನು ಐದು ವರ್ಷದವರಾಗುವವರೆಗೂ ಅರಸರಂತೆ ನಡೆಸಿಕೊಳ್ಳಬೇಕು. ಮುಂದಿನ ಹತ್ತು ವರುಷಗಳು ಸೇವಕರನ್ನು ನಡೆಸಿಕೊಳ್ಳುವಂತೆ ಶಿಸ್ತಿನಿಂದ ಪೂರಕವಾಗಿ ತಿದ್ದುತ್ತಾ, ಬುದ್ಧಿ ಹೇಳುತ್ತಾ ಬೆಳಸಬೇಕು. ಅವರು ಹದಿನಾರು ವರುಷದವರಾದಾಗಿನಿಂದ ಮಿತ್ರರಂತೆ ನೋಡಿಕೊಳ್ಳಬೇಕು. ರೀತಿ-ನೀತಿಗಳನ್ನು ಬುದ್ಧಿ ವಿವೇಕಗಳನ್ನು ಸೂಕ್ತ-ಸಲಹೆಗಳನ್ನು ಸಮಯೋಚಿತವಾಗಿ ಸಮಂಜಸವಾಗಿ ನೀಡುತ್ತಾ, ಅರಿವನ್ನು ತುಂಬುತ್ತಾ ಬೆಳಸಬೇಕು. ಮದ-ಮತ್ಸರಾದಿಯಾದ ಅರಿಷಡ್ವರ್ಗಗಳನ್ನು ಅವರು ಮಾಣಿಸಲು, ನಿಗ್ರಹಿಸಲು ನೆರವಾಗಬೇಕು.

ಹೀಗೆ ಮಾಡದೇ ಹೋದಲ್ಲಿ, ತಂದೆ-ತಾಯಿಗಳು ತಮ್ಮ ಮಕ್ಕಳನ್ನು ನರಮೃಗಗಳನ್ನಾಗಿ ಮಾಡಿದಂತೆಯೇ (ಅಂದರೆ, ಪ್ರಾಣಿಗಳನ್ನು ಬೆಳಸಿದಂತೆ).

In essence:

“Parents should treat their children like kings till the age of five.

The next 10 years, they have to enforce discipline and monitor their emotional, social and cognitive developments.

After the age of 16, parents should treat their children like friends, instilling values, morals, empathy, and bonding; imparting knowledge to distinguish the right and the evil, and assist them in overcoming shortcomings such as jealousy & arrogance.

If the parents do not engage in this manner, it is akin to rearing animals.”

Dhritarashtra: Model of perils of parenting favouritism

Even though Dhritarashtra was well aware of Duryodhana's immoral behaviour, he was blindly in love with him and failed to address his flaws. He hesitated to take the right step at the proper time, as he did not want to displease or disappoint Duryodhana. His blind affection prevented him from acting in the best interests of his children, which eventually led to the ultimate disaster and loss of lakhs of lives.

He is an excellent example of the perils of favouritism in parenting and the results of failing to carry out one's parental duties.

He was in total darkness: physically, mentally, emotionally, morally, and spiritually.

"If your eye is pure, there will be sunshine in your soul. But if your eye is clouded with evil thoughts and desires, you are in deep spiritual darkness. And oh, how deep that darkness can be!"

Matthew 6:22-23

One of the verses in Vidura Niti that emphasise on doing good to society is as follows:

यावत्कीर्तीर्तिर्मनुष्यस्य पुण्या लोकेषु गीयते
तावत्स पुरुषव्याघ्र स्वर्गलोके महीयते

ಎಲ್ಲಿಯವರೆಗೂ ಇಲ್ಲಿ ಕೀರ್ತಿ ಪ್ರಶಂಸಿಸಲ್ಪಡುವುದೋ
ಅಲ್ಲಿಯವರೆಗೂ ಮಾತ್ರ ಅವರೆಗೆ ಸ್ವರ್ಗದಲ್ಲಿ ಸ್ಥಾನ

"As long as one's good deeds are praised and sung in this world, so long, is he welcomed & respectfully treated in heaven."

Sage Markandeya narrates a captivating story of Indradyumna to Yudhishtira.

Indradyumna, a pious monarch who had accumulated enormous religious merits by his humanitarian works while on earth, was now in heaven.

One day, Indra told him:

"You have been in heaven all these years because of your Punya. Time on earth has flown by so much that no one remembers you or any of your good deeds. It is time for you to depart from heaven and to be reborn (punarjanma)."

However, after seeing Indradyumna's disappointed expression, Indra assures him that even if one living being recalls his good deeds, he will allow him to continue in heaven.

When Indradyumna arrives on Earth, he discovers an incredibly ancient owl that has lived for ages. He asks the owl if it recalls any of his good actions. Owl responds that he must have been before his birth and leads him to a large lake where an elderly crane, much older than owl, lived.

Indradyumna became distressed again when the crane informed him that it had not heard his name. But, it did, however, advise him to get in touch with his old friend, a large turtle that had been in the lake since before its parents were born.

Indradyumna called the turtle's name loudly, many times. After a few moments, a very old turtle slowly emerged to the surface and failed to recognise him.

When Indradyumna revealed his identity, it fell to his feet with great reverence. Emotionally moved and with tears of joy, it gratefully said:

"Oh Lord, I am blessed, fortunate and happy to have seen you at least today. My parents used to often talk about your generosity with great admiration. I was told that this lake was formed because of the tug-of-war like activities exerted by the thousands of cow hooves that you donated. Cows refused to leave you, while donees were unwilling to leave the cows you gave them. They each pulled in opposite directions, creating a puddle that grew larger and larger each day and became a large lake. Such was the magnitude of your donation"

Before it could finish its words, divine messengers appeared and transported him back to the heavens on a celestial plane.

One of the Rules of heaven:

"A person will remain in heaven until their actions in this world are pleasantly remembered."

Author can be reached at:
prabhu_allama@yahoo.com

ADVERTISE WITH US

Get reach to over 3800+ members all over India
The News Bulletin will also reach various Government Departments. & Ministries.
Soft copy of News Bulletin sent through email to 18500+ Chartered Accountants in India

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

ADVERTISE WITH US

Full Page Color Inside		Black & White	
Outside Back Cover	Rs. 25,000/-*	Full Page	Rs. 12,000/-*
Inside Back Cover	Rs. 20,000/-*	Half Page	Rs. 6,000/-*
Inside Colour	Rs. 16,000/-*	Quarter Page	Rs. 4,000/-*

*Plus GST

For More Enquiries Contact +91 - 95357 15015 or write to us at info@kscaa.com

NOTICE

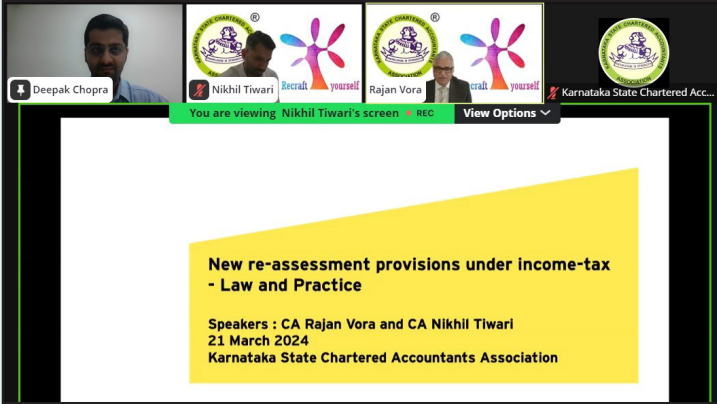
Official Liquidator attached to the Hon'ble High Court of Karnataka, Bengaluru is looking for a fresh qualified Chartered Accountant purely on contract basis for period of 1 year extendable to further period subject to the approval of Hon'ble High Court of Karnataka. A consolidated monthly remuneration of Rs.50,000/- will be paid to the selected Professional. If interested, please contact Office of the Official Liquidator, Government of India, attached to High Court of Karnataka, Corporate Bhavan, No.26-27, 12th floor, Bengaluru-560 001. West Wing, Raheja Towers, MG. Road,



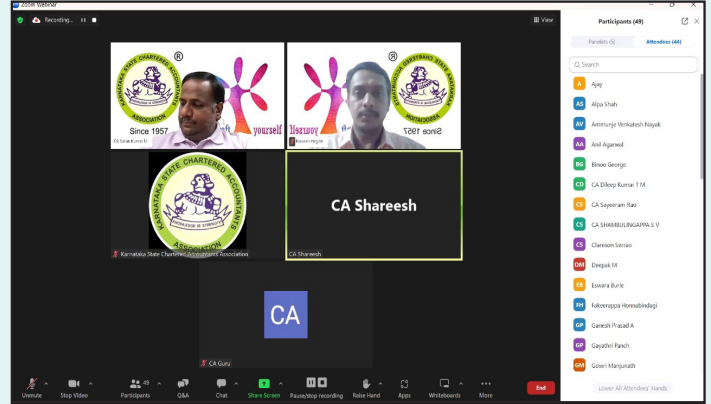
CV. SAJEEVAN
OFFICIAL LIQUIDATOR
HIGH COURT OF KARNATAKA



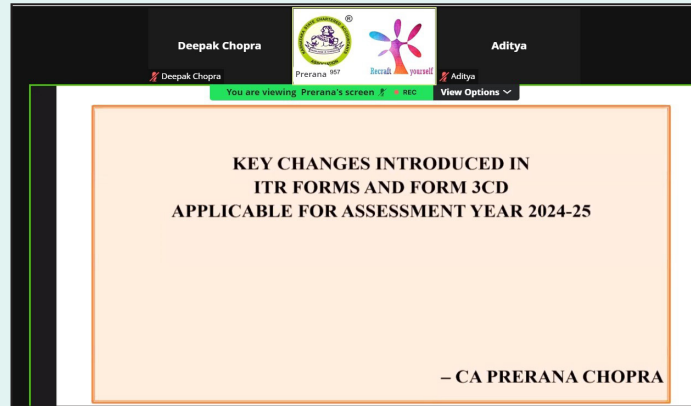
PHOTO GALLERY



Reassessment provisions under Income Tax Act – Law and Practice
 Organized by the Direct Tax Committee of KSCAA on 21st March 2024



Webinar on Bank Audit Using Excel Organized by the Corporate and
 Allied Laws Committee of KSCAA on 31st March 2024



Webinar on changes in Income Tax Returns and Form 3CD for AY 24-25
 Organized by the Direct Tax Committee of KSCAA on 10th April 2024



Meeting with Officials of Co-Operative Audit - Karnataka on 27.03.2024
 Discussion on Format of Audit Report and Financial Statements.