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Karnataka State Chartered Accountants Association (R)
Since 1957

NEWS BULLETIN

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Building Trust, Transparency & Transformation in Real Estate

Recraft yourself

From the President

My dear KSCAA members,

For professionals, the month, MAY presents a golden opportunity to step away from daily routine and immerse themselves in new experiences. In the face of challenges and stress associated with our profession, it is imperative to recognize the importance of taking breaks and seeking support when needed. I draw reference from the words of John Templeton,

"Successful people always squeeze all that they can into today's schedule, knowing that tomorrow will be equally full of new deadlines and challenges"

KSCAA puts in a sincere effort in organising international travel for the benefit of our members. I extend my heartfelt appreciation to our dedicated Chairman of the Leadership & Skill Development Committee, for organising a successful and enriching trip to Malaysia. Such initiatives not only foster camaraderie among our members but also provide valuable networking opportunities and insights into global practices, which are essential in our ever-evolving profession. In today's context, where the opportunities for Chartered Accountants are boundaryless, it is necessary to understand the foreign country's business ethics and standards for providing Global services.

As part of this year's theme "Recraft Yourself", we are into the last "D" to achieve our goal.

"Deliver – Actions speak louder than words". This principle underscores the importance of aligning words with deeds, showcasing integrity, commitment, and the ability to deliver on promises. Ultimately, it's the actions we take that define us, inspire others, and drive meaningful change in our personal and professional endeavors. It reminds me of a global thought leader Ms.Indra Nooyi. Her journey in the corporate world exemplified the principle of action driven leadership. Her decisive action to expand her company's portfolio beyond carbonated beverages to healthier snacks, juices etc., propelled company's growth and competitiveness.

As professionals, we must stay updated with the latest industry trends, regulations, and accounting standards. Instead of limiting our learning to Continuous Professional Education hours, the time has come to take action by pursuing ongoing education, attending seminars, and obtaining relevant certifications demonstrating a commitment to professional growth and competence.

A global slowdown in tech spending and uncertainty in demand has led to lot of job cuts in major IT companies during last quarter of the Financial Year. Further, the global economic slowdown and automation have contributed to this scenario. However, the GST collection touched a record high of Rs.2.10 lakh crores since seven years of GST. Its a proud moment for Chartered Accountants for placing Karnataka as the second largest tax-collecting state.

Events at KSCAA:

- The Direct Tax Committee organised a program on "Income Tax issues in registration and re-registration of Trust" on 26th April 2024. The program was well received by many members.
- The Representation Committee of KSCAA is always proactive and vibrant in highlighting the professionals and taxpayers concerns to Government Authorities. Two representations were submitted during the last month.
- The Leadership and Skill Development committee organized an International Trip to Malaysia, which was a great success, bringing together members from across India.

Upcoming Events:

- Smart Speaker's Forum – As a skill sharpening exercise, Leadership & Skill Development committee is organising a 10 weekend workshop to enhance communication and public speaking skills. The participants are mentored by distinguished Toastmasters and limited to 20 members.
- KSCAA Direct Tax committee jointly with BCAS and other Associations, organises a 7 days Direct Tax refresher course.

Let me sign off with a known proverb, " Knowledge is the only treasure that multiplies when shared".

Thank you

Best Regards,

CA G Sujatha.
President.

Since 1957

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VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership awnd 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

INCOME TAX UPDATES

CA. Adtiya Bharadwaj

A. CBDT UPDATES

- **FUNCTIONALITIES TO FILE COMMONLY USED ITRs ENABLED BY CBDT**

  The CBDT has facilitated taxpayers to file their ITRs for the Assessment Year 2024-25 from 1 April 2024 onwards. The ITRs i.e. ITR-1, ITR-2 and ITR-4, commonly used by taxpayers are available on the e-filing portal from 1st April, 2024 onwards for taxpayers to file their Returns. Companies will also be able to file their ITRs through ITR-6 from April 1 onwards.

  (Press Release dated 4 April 2024)

- **CBDT CLARIFIES ON MEDIA REPORTS CLAIMING SPECIAL DRIVE TO RE-OPEN CASES WITH REFERENCE TO HRA CLAIMS**

  The CBDT has clarified that there shall not be any reopening of Assessments with respect to HRA claims as being circulated in the Social Media.

  Data analysis was carried out in some high-value cases of mismatch between the rent paid by the employee and receipt of rent by the recipient for the FY 2020-21. In such cases, the Department has alerted the taxpayers to enable them to take corrective action

  (Press Release dated 08 April 2024)

- **Deferment of consequences in cases non linking of PAN and Aadhar till 31 May 2024**

  Consequences of non linkning of Aadhar and PAN had the following consequences effective 1 July 2023 in terms of Rule 114AAA:

  - No refund of any amount shall be processed
  - Interest shall not be payable on the refunds
  - Higher Rates of TDS as per section 206AA
  - Higher Rates of TCS as per section 206CC

  With a view to redressing the grievances faced by such deductors/collectors, the Board, in partial modification and in continuation of the Circular No. 3 of 2023, hereby specifies that for the transactions entered into upto 31-03-2024 and in cases where the PAN becomes operative (as a result of linkage with Aadhaar) **on or before 31-05-2024**, there shall be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC, as the case maybe, and the deduction/collection as mandated in other provisions of Chapter XVII-B or Chapter XVII-BB of the Act, shall be applicable

  (Circular No.6/2024 dated 23.04.2024)

- **EXTENSION OF DUE DATE FOR FILING OF FORM NO. 10A / 10AB and Others**

  CBDT has extended the due dates for furnish Form 10A/ 10AB to **30 June 2024** in the following cases:

  - **Form No. 10A**, in case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of an intimation under fifth proviso of sub-section (1) of section 35 of the Act
  - **Form No. 10AB**, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act

  The above extension are also applicable to cases where application is made in Form 10AB and the Principal Commissioner/ Commissioner has not passed an order before issuance of this circular and where an order rejecting the application made in Form 10AB is passed solely on the reason that the application was furnished after the due date, that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. 10AB within the extended time.

  Further, any existing trust institution or fund who had failed to file Form No. 10A for AY 2022-23 within the due date as extended by the CBDT Circular

No. 6/2023 (30 Sep 2023), dated 24-5-2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. 10AC, it can avail the option to surrender the said Form No. 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund in Form No. 10A within the extended time provided in paragraph 3(i) i.e. 30-6-2024.

(Circular No 7 of 2024 dated 25 Apr 2024)

B. RECENT JUDICIAL PRONOUNCEMENTS -

(i) HIGH COURTS

- The High Court has referred the issue back to the Assessing Officer (AO), who will now reevaluate the matter, taking into account the guidelines outlined in Section 56(2)(viib). The AO will ensure that the Discounted Cash Flow (DCF) Method is followed. If the data provided by the respondent requires deeper scrutiny, the AO may engage the expertise of a suitable valuer.

PCIT v. Abhirvey Projects (P.) Ltd. [2024] 161 taxmann.com 814 (Delhi)

- The High Court declined to consider a writ under Article 226, asserting the absence of any legal question. The petitioner argues that a bank account was opened in their name without their consent, leading to transactions reflected in the assessment order. These matters involve contested factual issues that are not suitable for resolution within the scope of Article 226 proceedings under the Indian Constitution. The petitioner has the option to appeal the assessment order through statutory means. Therefore, there are no grounds for intervention under Article 226.

Rakesh Beniyal vs Income Tax Officer (Assessment) [2024] 161 taxmann.com 740 (Madras)

The High Court held Once reassessment proceedings have concluded for a specific year, there cannot be another order for the same period. This principle is fundamental; there can only be one assessment order per assessee for each assessment year. Since there is no legal declaration annulling or overturning the pre-existing reassessment order, the Assessing Authority lacks the jurisdiction to re-issue the contested notice. These proceedings are entirely devoid of jurisdiction and are deemed null and void. Consequently, the reassessment proceedings initiated for the petitioner for the same Assessment Year under Sections 147 and 148 of the Act, through a new notice, are hereby invalidated.

Arvind Kumar Shivhare vs. Union of India [2024] 161 taxmann.com 769 (Allahabad)

The Central Processing Centre (CPC) functions solely as a facilitator to the Jurisdictional Assessing Officer (JAO), who possesses authority over the assessee as per Section 120 of the Act. Merely because the return undergoes processing at the CPC, it does not diminish the regular jurisdiction of the JAO, who retains the same authority. This is evident from the fact that any demand arising from the processing of a return under Section 143(1) of the Act by the CPC is enforced by the JAO. It is the JAO who issues notices under Section 143(2) of the Act if the return is selected for scrutiny and conducts the assessment. Furthermore, even under the faceless regime, once the assessment is completed by the Faceless Assessing Officer (FAO), all documentation is transferred to the JAO for demand recovery and other related matters. In fact, in numerous cases before us, Principal Commissioner of Income Tax (PCIT) has exercised jurisdiction in similar circumstances..

Sarda Paper Ltd vs. PCIT [2024] 161 taxmann.com 362 (Bombay)

- The assessee remitted the TDS amount belatedly due to a delay caused by the absence of the staff member responsible for accounts, who was on maternity leave. Nonetheless, the assessee promptly rectified the delay and remitted the tax amount. Consequently, proceedings under Section 276B read with Section 278AA were deemed fit to be quashed

Sengoda Gounder Educational and Charitable Trust vs. Income Tax Officer, TDS Ward-2 [2024] 161 taxmann.com 123 (Madras)

Income undisclosed and surrendered during search and seizure proceedings, if originating from regular business activities, is subject to taxation at the normal rate rather than the tax rate specified under Section 115BBE

PCIT vs. Krishna Kumar Verma [2024] 161 taxmann.com 44 (Madhya Pradesh)

(ii) ITAT

- When the Principal Commissioner, invoking Section 263, set aside the assessment order with specific directives, the assessee initially opted to pursue revision proceedings before the Assessing

Officer. Subsequently, during the pendency of proceedings before the Assessing Officer, it filed an appeal challenging the order under Section 263 before the Tribunal, albeit with a delay of 384 days. As the assessee chose a "wait and see" approach to maximize its benefits, the delay in filing the appeal was deemed unworthy of condonation

Anthelio Business Technologies (P.) Ltd. Vs Assistant Commissioner of Income-tax [2024] 161 taxmann.com 385 (Hyderabad - Trib.)

- After reviewing all the facts, the tribunal concluded that the assessee did not maintain the books of accounts by the due date specified under Section 139(1) of the Act, thereby failing to comply with the provisions of Section 44AB. Consequently, the assessee cannot be penalized for not having the accounts audited. Therefore, we overturn the decision of the Learned Commissioner of Income Tax (Appeals) and instruct the Assessing Officer to remove the penalty imposed for not getting the accounts audited.

Jaydev Bavalal Thummar vs. Income-tax Officer [2024] 159 taxmann.com 1594 (Rajkot - Trib.)

- The Assessing Officer's addition of unexplained money and unexplained interest income, based solely on a WhatsApp image found on the assessee's iPhone during the search, lacked justification due to the absence of corroborative evidence
- The Assessing Officer's inclusion of unexplained money and unexplained interest, relying on an image obtained from a digital device discovered at a third-party location during the search, lacked justification in the absence of independent or corroborating evidence on record
- No addition under Section 69B could be warranted for the jewelry discovered during the search, as the entire collection of gold and diamond jewelry had been disclosed in the Wealth Tax Returns of female family members and was declared before the Settlement Commission
- The Assessing Officer's imposition of an addition under Section 69C, based on an image retrieved from the digital device of the assessee containing transactions related to furniture, cannot be upheld due to the lack of corroborative evidence
- The Assessing Officer's inclusion of an undisclosed land transaction, based on a loose paper discovered during the search at the assessee's premises, cannot be justified. The said paper was not written by the assessee, and no direct evidence was found or presented to establish that the assessee had engaged in any land purchase or sale

ACITv. Shanker Nebhumal Uttamchandani

[2024] 161 taxmann.com 536 (Surat-Trib.)

- Following the Jurisdiction HC rulings and Coordinate bench ruling, the ITAT held the joint ownership in two residential properties at the time of sale of the original asset does not disentitle the assessee to claim of deduction under section 54F of the Act

Shweta Singh vs. Income Tax Officer [2024] 161 taxmann.com 302 (Mumbai - Trib.)

Explanation (2) to section 37 of the Act imposes a limitation on the deductibility of expenses falling under Section 135 of the Companies Act, 2013, commonly known as Corporate Social Responsibility (CSR) expenses, effective from the assessment year 2015-16. This restriction applies even if the assessee voluntarily undertakes such expenditure without any statutory obligation. CSR expenditure, being incurred out of the assessee's profits, is akin to profit appropriation rather than being wholly and exclusively for the business purposes of the assessee.

City Union Bank Ltd vs Assistant Commissioner of Income-tax, Circle-1 [2024] 161 taxmann.com 118 (Chennai - Trib.)

When funds accumulated or set aside within the meaning of Section 11(2) by the assessee-trust were donated to certain institutions during the relevant previous year, such utilization of funds by the assessee violated the explanation to Section 11(2) in conjunction with Section 11(3). Consequently, the Commissioner of Income Tax (Exemption) appropriately remanded the matter to the Assessing Officer for a fresh assessment

[2024] 161 taxmann.com 165 (Delhi - Trib.)

Sanganeria Foundations For Health & Education vs Commissioner of Income-tax, Exemption

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Indirect Tax Updates

CA. Sowmya C A

The Finance Ministry in a press release issued on 01 May 2024, announced the Gross (GST) collections achieved a record high in April 2024 at ₹2.10 lakh crore representing a notable 12.4% year-on-year growth. The nation's robust GDP growth, coupled with enhanced economic activities with higher compliance and heightened efforts to address gaps in taxing system, have collectively contributed to higher revenue generation year on year.

- The Appointment Committee of the Cabinet, based on the recommendation of the SCSC (Search-cum-Selection Committee), has approved appointment of Justice (Retd.) Sanjaya Kumar Mishra, Former Chief Justice, High Court of Jharkhand, to the post of President in Goods and Services Tax Appellate Tribunal for a four-year period. The four-year period will be counted from the date of his assuming charge/ entering office.
- On the legal front, the Supreme Court announced that it would hear the batch of petitions of gaming companies challenging 28% GST on the full-face value of the bets in July 2024. Separately, the Supreme Court, taking cognizance of the special leave petitions filed by taxpayers against Delhi High Court ruling upholding anti-profiteering provisions, has issued notices to the Union Finance Ministry and the competition commission of India to reply to its claims of the constitutional validity of the anti-profiteering norms.
- The constitutional validity of Section 16(4) of the CGST Act, which prescribes a time limit for the availment of ITC, was upheld by several high courts. The judgement of the high courts (HC) has been challenged before the apex body in the case of Shanti Motors [SLP(C) Diary No. 4474/2024] on the premise that the HC has not evaluated the fact that the impugned provision creates arbitrary classification and timeline, and is therefore, arbitrary, unreasonable and violative of the constitution.
- Amidst ongoing contention on the imposition of GST on 'Corporate Guarantee' and challenged before several high courts, the Ministry of Finance is likely to issue clarification regarding the taxability of corporate guarantees under the GST law between related parties. The debate revolves around the calculation of taxable value based on actual amount utilised by the beneficiary when the guaranteed amount exceeds the utilization and spread across many years.

Recent GST Notifications:

- **Waiver of the interest levied on late filing of GST returns**

  Notification issued for waiver of interest in respect of four registrations of Indian Oil Corporation Limited for delay in filing of GSTR3B due to technical glitch during the tax periods Jul 2017 - July 2018 where they had sufficient balance in their electronic cash ledger / electronic credit ledger or had deposited the required amount through challan in the electronic cash ledger.

  (Notfn No. 7/2024–CT dated 8 Apr 2024)

- **Extension of timeline for implementation of Notification No. 04/2024-CT dated 05.01.2024 from 1st April, 2024 to 15th May, 2024**

  The Central Government had notified special procedure for manufacturers of, Pan Masala and certain types of Tobacco products in Form SRM-I, SRM-II and SRM-III for furnishing details of Packing Machine, Special Monthly Statement, Chartered Engineer Certificate respectively, to be submitted on the common portal effective 01 Apr 2024 vide notification No. 4/2024–CT dated Jan 05, 2024. The timeline for implementation of the same is now extended to 15 May 2024.

  (Notfn No. 8/2024–CT dated 10 Apr 2024)

- **Extension of time limit for furnishing the details of outward supplies in FORM GSTR-1 for specified persons**

The time limit for furnishing the details of outward supplies in FORM GSTR-1 for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act (*monthly filers*), for the tax period March 2024, shall be extended till the twelfth day of April, 2024.

(Notfn No. 9/2024–CT dated 12 Apr 2024)

Recent Advisories :

- **Advisory on Reset and Re-filing of GSTR-3B of some taxpayers**

  Certain discrepancies were identified in between the saved data and the filed data, particularly relating to ITC availment and tax liabilities in the GSTR3B filed returns. Following deliberation by the Grievance Redressal Committee of the GST Council, affected returns are reset and taxpayers have been notified via email and they are accessible on their dashboards for correction. Taxpayers are urged to revisit their dashboards and submit corrected GSTR-3B filings within 15 days upon receipt of intimation.

  (GSTN update dated 09 Apr 2024)

- **Auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1**

  New feature enabled and made available relating to auto-population of the HSN-wise summary from e-Invoices into Table 12 of GSTR-1. Table 12 of GSTR1 is auto-drafted based on e-invoice data. However, data auto populated must be reconciled and rectified with taxpayer records before final submission in GSTR1 to ensure accuracy**.**

  (GSTN update dated 09 Apr 2024)

- **Enhancements in the GST Portal**

Enhancements have been made to the GST portal to enhance user experience and improved accessibility and navigation. Key enhancements include -

- **News and Updates Section**: dedicated section for news and updates with a beta search functionality and access to archived advisories dating back to 2017;
- **User Interface Improvements**: Minor tweaks have been made to the homepage to enhance usability and aesthetics.
- **Updated Website Policy**: Updated website policy including the data archival policy and details regarding web managers.

(GSTN update dated 26 Apr 2024)

DGFT Circulars:

- **Clarification on discharge of export obligation of Advance Authorisation (AA) by making physical exports or by making domestic supplies**

  a. Advance Authorisation Holder holding an Authorisation issued on or after April 01, 2015, has option to fulfill the export obligation either by physical exports or by making domestic supplies under para 7.02(A) (a) of FTP 2015-2020 i.e. Supply of goods against Advance Authorisation/ /DFIA.

  b.Advance Authorisation Holder holding an Authorisation issued on or after 10 Jan 2019, can fulfill the export obligation either by physical exports or by making domestic supplies under Para 7.02 A (a) of as indicated above, they can also supply goods to EOU/STP/EHTP/BTP Para 7.02A(b) or make supplies under para 7.02(A) (c) of FTP 2015-2020 i.e. supply of capital goods against EPCG authorisation subject to conditions.

  c. Similarly, Advance Authorisation for deemed export have an option to fulfill their export obligation either by way of supplies under para 7.02(A) (a), (b) & sub para (c) of FTP 2015-2020 or by making physical exports.

(DGFT Policy Circular No. 1/2024 Dt. 12 Apr 2024)

Customs Circulars:

- **Queries raised on non-applicability of drawback while processing the claims - certain instructions towards reduction of physical interface**

  It is to be noted that when goods under export are manufactured by EOU/FTWZ/SEZ, such exports are ineligible for drawback. Before processing any drawback applications, queries were issued to this effect as to whether exports were by units in EOU/ SEZ/EPZ. In order to achieve better management of drawback with fewer queries, exporters are advised to upload a duly signed self-declaration to this effect, reducing the requirement of raising query by officers and customs brokers/ exporters visiting the drawback section physically in this regard.

  (Public Notice No. 18/24 dated 25 Apr 2024)

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Handling Litigation Under GST – Part II

CA. Vikas Shenoy

Given that litigation under GST is a long-drawn-out process requiring patience and perseverance as much as knowledge of the subject matter, it significant to take an overall approach in handling the litigation. This particular aspect was covered in Part I of this series of article on the subject matter. This being said, before delving further into the matters such as techniques and strategies of GST litigation, it would be prudent to find answer to a more relevant question – "Whether it is worthwhile to litigate?". The question demands a practical answer than to merely say that it is but a matter of cost-benefit analysis. This is not to say that cost-benefit analysis does not play a part in making a decision to litigate, but only to point out that there are other factors to be considered.

Cost-benefit analysis

For any business-person, at the end of the day, the bottom-line matters and consequently, it is but natural that in making any decision he weighs monetary reward against monetary risk. In the matter of GST litigation, this would translate to mean whether the pay-out in case of an unfavourable outcome would be more than the costs involved in pursuing the litigation. This factor coupled with the chances of success in the litigation would help determine whether a litigation is feasible or not.

For example, let us take a case of a notice issued under section 73 of the CGST Act, 2017 ('the Act'), seeking cause as to why demand should not be made on account of excess claim of ITC as compared to form GSTR-2A for the FY 2017-18. In this case, if the demand raised is significantly higher than the estimated litigation cost, one would jump into conclusion that it is a fit case for pursuing litigation. Here, there is a presumption that the chance of success is high backed by the judgements of various High Courts holding that demand in these cases cannot be made from the recipient unless action has been taken against the defaulting supplier.

However, though *prima facie* a case may look winnable, independent efforts must be put in to determine the chances of success in each case starting with finding out if the present case can be distinguished from those adjudged upon by the courts. For instance, if in the above case the supplier has actually not paid the taxes on account of cancellation of their registration, which fact is evidenced by the documents submitted by the taxpayer himself prior to issuance of notice, then chances of success may significantly drop.

It may not be out of place to mention that the above decision making exercise is a classic example of strategic game theory of statistics, where due consideration is given to the possibility, plausibility and probability of outcome in each situation for making a decision.

Setting of precedent

Another significant factor for determining whether to pursue litigation or not would be whether a particular outcome sets a precedent for subsequent tax periods. If a particular GST matter is subject of litigation and it is a recurring matter, in most cases it would be beneficial to have the matter settled in litigation rather than chose not to litigate based on cost-benefit analysis.

The above discussed factor is derived from the judicial principle which suggests that when a thing or matter that has been finally judicially decided on its merits, the same cannot be litigated again between the same parties. This principle is enshrined in the legal maxim *res judicata.*

For example, in case of refund accumulated ITC on account of export of goods, where the exporter taxpayer is availing the benefit of schemes such as Advance Authorisation for only certain exports, it is still not clear how the refund is to be computed and applied in terms of Rules 89(4) and (4B) of the CGST Rules, 2017. In cases such as these, where a taxpayer is found staring at a notice, he would be wise to litigate in anticipation of attaining finality in the matter.

It may be argued that, for matters covered under section 97(2) of the Act, as an alternate to litigation the taxpayer may as well represent the matter before an Authority for Advance Ruling ('AAR') and have it settled. But the

downside to this is that, as most experts suggest, the chances of getting a favourable order from AAR are sleek since the members on the bench are deputed from revenue department who invariably carry a revenue bias. Also, if a matter is settled against the taxpayer through the AAR route, the decision would be binding on the taxpayer and only a limited recourse would be available.

Need for justice to be upheld

The urge to prove once innocence in a matter where there was no wrongdoing is a common feature in making the decision to litigate. However, it is not the want for fairness in proceedings which the author intends to promulgate but the need for instituting justice which the GST law amply provides for. It is common to see that taxpayers based on their strong belief that they have not done any wrong, seek to challenge a notice despite there being a good case for the revenue. On the other hand, it is equally common to see matters not being litigated based on the taxpayers belief that he has wronged while no case exists for the revenue.

In the earlier example, while a Supplier may have defaulted in making the deposit of tax with the government, if a taxpayer believes that he has not wronged by taking ITC that is not reflecting in GSTR-2A/2B, the taxpayer is likely to litigate the matter. Here, it may not be fair to abstain from litigating the matter, but it is in the interest of justice that the matter must be litigated. In such cases where the taxpayers are driven by their need for justice, the cost-benefit analysis may not always be a prominent factor.

Though there is no scope for emotions in this game of litigation, the need to uphold justice (as against the urge to inflict fairness in the proceedings) comes out as a virtue that drives a certain class of persons. As such, between being emotionally attached to proving oneself right and being completely objective of the outcome of litigation, the need for upholding justice could play an important role in determining whether to pursue litigation or not.

Other factors

Some other factors that may determine the decision to litigate include (a) availability of documentary evidence in support of defence; (b) risk of new findings leading to new cause of action for fresh proceedings; (c) tax policy of the taxpayer; and (d) anticipation of amnesty scheme in the future.

Availability of good grounds to defend a case would determine the chances of success, which in turn impacts the cost-benefit analysis discussed earlier. Similarly, availability of sufficient documentary evidence in support of the defence is another such factor that is paramount in succeeding at litigation but which is often neglected. It is true that in terms of the Evidence Law a person who makes an assertion bears the burden to prove the same. However, it is also important that such evidences are adduced in the proceedings at the earliest stage possible.

Once an enquiry such as audit, scrutiny etc. are concluded and notice issued, no further enquiry can be made in the same matter for the same period. However, there is nothing stopping a proper officer from issuing a separate notice for a separate issue that was not earlier covered. There could be discovery of new facts indicating cause of action during an adjudication proceeding that may trigger issuance of another notice for the same or subsequent tax periods. As such, if there are chances of new issues being raised in a fresh proceeding, the taxpayer may factor this in deciding whether to litigate or not.

Taxpayers, especially companies, frame tax policies that guide the decision to litigate. Broadly, the policy could vary from taking aggressive positions, i.e. litigate even if there is a small chance of success, to taking conservative positions to avoid litigation as much as possible.

Interestingly, apart from the above, some taxpayers who anticipate amnesty schemes by the government waiving off liabilities such as interest and penalties, tend to litigate merely to put the matter into abeyance and avoid recovery until such schemes are notified.

To litigate or not

As seen from the discussions in this article, various factors influence various kinds of taxpayers in making the decision to litigate. It can be concluded that there is no blanket answer for the subject question and the decision to litigate has to be made on case to case basis considering all the factors involved. Last but certainly not the least, timely availability of professional advice and assistance in the matter would definitely go a long way in guiding the taxpayers to the right course of action.

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Indirect Tax - Recent Judicial Pronouncements


CA. Bhanu Murthy J S
CA. Raghavendra C R

High Courts

1. Lokenath Construction (P.) Ltd. *v.* Tax /Revenue, Government of West Bengal, [2024] 162 taxmann.com 156 (Calcutta):

Background: The State GST authority issued notice under Section 73 (1) of the CGST Act, 2017/ WBGST Act, 2017holding that the appellant had failed to produce any evidence from which it can be ascertained that the suppliers had paid tax to Government on those supplies (which are disclosed/ admitted by the suppliers in their statement in GSTR-I). Upon adjudication demands were confirmed. The show cause notice and the order has been challenged before the High Court.

Held: Relying on the decision of the High Court in the case of Suncraft Energy Private Limited [reported in [2023] 153 taxmann.com 81/99 GST 400/2023 (77) G.S.T.L. 55 (Cal.) and SLP against which was dismissed by the Supreme Court as reported in [2024] 80 GSTL 225 (SC)], the High Court held that if the authority has admitted the fact that the recipient has made payment of the tax to the supplier against the transaction and if it is a case of the department that such tax has not been remitted to the State exchequer, the elementary principle to be adopted is to cause enquiry with the supplier and without doing so to penalise the recipient would be arbitrary, illegal and without jurisdiction.

2. Kusuma Poonacha vs. DGGI) order of the Karnataka High Court dated 20th Feb 2024 in WP 25864 OF 2023:

Issue: Whether cash could be seized during the course of search in terms of Section 67 of the CGST/State GST Act, 2017?

Held: The Hon'ble Karnataka High Court on perusal of the provisions contained in Section 67(2) of the CGST Act and relying on the judgment of Hon'ble Delhi High Court in the case of Deepak Khandelwal Vs Commissioner of CGST W.P (C) No.6739/2021 dated 17.08.2023 (Del), it was held that cash / currency / money are not "things" within the meaning of the said provision and therefore cannot be confiscated during the course of search and seizure in terms of the said provision.

3. Nepra Resources Management (P.) Ltd vs. State of Gujarat, [2024] 162 taxmann.com 63 (Gujarat)

Issue: The issue before the High Court was whether 'Notified Area Authority, Vapi', recipient of Solid Waste Management and recycling services, would qualify as 'local authority' or 'Governmental authority', and consequently, the services so provided are exempt from GST.

The Hon'ble Gujarat High Court on the basis of the following observations, held that the Notified Area Authority, Vapi neither qualify as 'local authority' nor as 'Governmental authority':

a) Exemption entry in terms of Notification NO. 12/2017 does not cover 'any other authority'.

b) In view of the decision of the Hon'ble Apex Court in the case of New Okhla Industrial Development Authority (2018) 9 SCC351, Notified Area Authority is not akin to the municipality constituted under Article 243Q(1) of the Constitution of India.

c) The Notified Area Authority, Vapi would be a "Governmental Authority" or a "Government Entity" cannot be considered in view of Notification No.32/2017 dated 13th October 2017, whereby the Entry 9C is inserted in the Notification No.12/2017, which provides for exemption for supply of services by a Government Entity to the Central Government.

Authors' comment: With due respects, the order of the Hon'ble Court requires to be revisited for the following reasons:

a) The Hon'ble Court failed examine the aspect as to whether the 'Notified Area Authority' could qualify as any other authority covered under section 2(69) (c) of CGST Act,2017;

b) Further, amendment vide notification No 32/2017 has wrongly been interpreted to mean that the definitions of 'governmental authority' & 'government entity', which were substituted by the said notification are applicable only to supply of services by Government entity to Government;

c) Decision of the Hon'ble Supreme Court in the case of Saij Gram Panchayat v. State of Gujarat reported in 1999 (2) SCC 366, which has bearing on the present issue, has not been considered in proper perspective.

4. Thai Mookambikaa Ladies Hostel vs. Union of India - [2024] 160 taxmann.com 667 (Madras)

Background: The petitioner was running private ladies hostels by providing hostel accommodation services. It filed an application for advance ruling to determine taxability of hostel accommodation services. The Authority for Advance Ruling (AAR) held that services by way of providing hostel accommodation supplied by the petitioner would be taxable at the rate of 18%. Appellate Authority for Advance Ruling (AAAR) also upheld the order of AAR. Consequently, order of AAAR was challenged before Hon'ble Madras High Court.

Held: The Honorable High Court noted that the hostel would be used by the students for the purposes of residence and the imposition of GST on hostel accommodation should be viewed from the perspective of the recipient of service. Since renting out hostel rooms to girl students and working women by the petitioners is exclusively for residential purpose, the condition that 'residential dwelling for use as residence', as required under the notification would be fulfilled. Consequently, the services of providing hostel accommodation was held to be exempted from GST.

5. Tvl. Vardhan Infrastructure, Vs. Special Secretary, Head of the GST Council Secretariat, New Delhi, [2024] 160 taxmann.com 771 (Madras)

Issue before the High Court was whether the assesses who are assigned to either the Central Tax Authorities or the State Tax Authorities under respective CGST/ State GST provisions, can be subjected to investigation and further proceeding by the counterparts under the respective GST Enactments.

Held: The High Court, considering the fact that no notification has been issued under the provisions of Section 6(1) of the respective GST Enactments which empowers cross empowerment, the proceedings initiated by other officers are to be held without jurisdiction. However, the Court held that liberty is given to respective jurisdictional officers to initiate proceedings, in accordance with law.

Supreme Court

6. Riddhi Jewels vs. Commercial Tax Officer[2024] 161 taxmann.com 824 (Telangana):[SLP is dismissed as reported in [2024] 161 taxmann.com 825 (SC)]

Issue: Proprietor of the petitioner firm, was an employee of another company, 'Shree Ganesh Jewellery House Limited'. He was an authorised signatory for the VAT purposes during his employment. However, after his resignation from the company, he was released from all affairs of the Company. The VAT department sought to recover the dues of the company, from the bank account of the petitioner, which was challenged before the High Court.

Held: The Hon'ble High Court held that without bringing in any material to link the proprietor of the petitioner with M/s.Shree Ganesh Jewellery House Limited, no recovery could be initiated against the petitioner.

7. Chevron Philips Chemicals India Pvt. Ltd. Vs. CCE, (2024) 15 Centax 102 (Tri.-Bom)- Civil Appeal against the said order has been dismissed as reported in (2024) 15 Centax 103 (S.C.)

The assessee provided sales promotion and sales support services to foreign entity and claimed refund of the unutilised credit. Considering the said services as intermediary services, the refund was denied.

Held: On the basis of the agreement based on which the services were rendered, the Tribunal observed that the assessee is appointed by their overseas company for sales promotion of the goods for their client in the defined territory. The assessee has no role in fixation of price nor they negotiate in any manner between foreign

company and their clients relating to sales promotion of the goods sold. Therefore, it was held that the assessee cannot be called as an intermediary.

8. SNQS International Socks (P.) Ltd. Vs. CCE, [2024] 160 taxmann.com 708 (Chennai – CESTAT)- Civil Appeal against the said order is dismissed by the Supreme Court as reported in [2024] 160 taxmann.com 709 (SC)

The assessee was engaged in the business of procuring orders for supply of garments for exports. During the period from October 2014 to March 2016, the assessee provided the following services to their foreign clients:

- Design and development of products
- Evaluation and development of vendors
- Quality assurance including testing of live production samples
- Logistical and operational support to vendors

The consideration for the above services was quantified as a percentage of the FOB value of export goods for which orders were procured by them and were paid in convertible foreign exchange termed as 'commission'.

The department contended that the above service falls under 'intermediary services' and consequently demanded service tax.

Held: The Tribunal, considering the nature of services, observed that the assessee provided bouquet of services covering selection of vendors, monitoring quality of the goods, designing of samples, live testing of the samples produced and carrying out various other quality checks on the garments till their final dispatch to the foreign client. All these services were rendered to the foreign client on principal-to-principal basis. Therefore, the said services do not qualify to be 'intermediary services'. It is further observed that merely because remuneration for the services rendered to the foreign client is computed on the basis of FOB value of the garments exported itself would not make the assessee an intermediary.

9. Junaid Kudia Vs.CC, Mumbai, 2024) 16 Centax 503 (Tri.-Bom)- Civil Appeal against the said decision is dismissed by the Supreme Court as reported in (2024) 16 Centax 504 (S.C.):

Based on the investigations by the DRI, show cause notices were issued for re-assessment of imported goods on the basis of allegation of misdeclaration of value of goods.

The Tribunal allowed the appeal by setting aside the order of the Commissioner on the basis of the following observations:

A. The Bills of entry, which are being re-assessed, has not been appealed against thereby, the assessments have attained finality.

B. Statements recorded during the investigations, cannot be the sole reason to confirm the charge of undervaluation as are no evidences produced by the department that the excess amount over and above the invoice price was paid to suppliers.

C. Computer printouts taken out from laptops and other electronic devices without following the procedures as prescribed under the provisions of section 138C of the Customs Act, 1962, cannot be considered as evidence.

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KSCAA REPRESENTATIONS

Representation regarding extention of time limit for payment of professional tax under the Karnataka Tax on Professions, Trades, Calling and Employment Act 1976

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

Yoga Services- Is it liable for GST?

CA. Annapurna Kabra

Yoga is an ancient physical, mental and spiritual practice that originated in India. The word 'yoga' derives from Sanskrit and means to join or to unite, symbolizing the union of body and consciousness. The oxford English dictionary defines 'yoga' as a system involving breathing exercises and holding of particular body positions based on Hindu philosophy. It is the general belief that services of training yoga is not liable to tax.

Service Tax

Recently in case of ***Patanjali Yogapeeth Trust Vs Commissioner of Central Excise 17, Centax, 350 (SC) 19.4.2024***, it was held that service tax is leviable on entry fees for yoga camps. The Trust was engaged in providing yoga training at various residential and non-residential camps. Though the fees were collected as a donation, it was treated as consideration against the services and fit under the category of 'health and fitness service' and will attract service tax from April 2006 to March 2011.

The amendment was made in October 2015 by incorporating the entry 'yoga' along with 'religion or spirituality' in Service Tax Exemption Notification. Thereafter, retrospective amendment was made 'to exempt the yoga services vide Not 24/2016 by incorporating the entry as services provided by way of advancement of yoga by entities registered under section 12AA of Income Tax Act 1961 (Charitable or Religious Trust and Institutions)" with effect from the year 2012. In other words, the retrospective notification was issued to exempt the yoga services from 2012.

GST law

Vide Not.12/2017-CT (R)dated 28/06/2017, exempts the services provided by entity registered under Section 12AA of the Income-tax Act, 1961 by way of "charitable activities". It specifies that "services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities" is exempt from whole of the GST.

"Charitable activities" means activities relating to -

(i) Public health by way of: -

(A) …….

(B) ……

(ii) Advancement of religion, spirituality or **Yoga**;

Therefore, the services provided by entity registered under Section 12AA of the Income Tax Act, 1961, by way of advancement of religion, spirituality or yoga are exempt vide Not.12/2017. It is also clarified vide circular **No.66/40/2018** GST dated 26.9.18 the activities which are exempt and taxable under the GST law as follows:

The following activities are Exempt under the GST law

- Fee or consideration charged in any form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga.
- Residential programmes or camps where the fee charged includes the cost of boarding and lodging so long as the primary or predominant activity, objective and purpose is advancement of religion, spirituality or yoga.

The following activities are Taxable under the GST law

- If charitable trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation
- Activities such as holding fitness camps or classes such as those in aerobics, dance, music, etc.

The Rajasthan Authority of Advance Ruling (AAR) in case of ***Stonorti Marketplace Private Limited RAJ/AAR/2021-2022/37 dated 25.01.2022*** has observed that services by way of training or coaching of various yoga courses by applicant for consideration, is not exactly for "Recreation activity" whereas the same is for 'Physical

well-being activities' and hence it is not covered under entry No. 80 of the Notification No. 12/2017-CT(R) dated 28 June 2017. Further, as per circular No. 66/40/2018-GST dated 26, September 2018, ***only those services which are provided by entities registered under Section 12AA of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga, are exempt***. The essence of the said circular is to provide exemption in respect of services of advancement of yoga to only those entities who registered under Section 12AA of the Income Tax Act, 1961.

- Entry no 80 of Notification No 12/2017 Central Tax (Rate) dated- 28.06.2017 include the services by way of training or coaching in

a. …….

b. **Sports** by charitable entities registered under section 12AA or 12AB of Income tax At.

Sports Ministry vide Press Information bureau dated 1.09.2015 has recognized 'yoga' as a sports discipline Notification. Serial number 80 of Exemption (Not 12/2017) exempts services by way of training or coaching in recreational activities related to sports by charitable Institutions.

The services by way of yoga activities for physical and mental wellness are considered as service under GST and covered under chapter 9997. The Author believes that GST exemption should be given to all the service providers who is teaching and training this great discipline **'yoga'** which is originated in India. The benefit of exemptions should be given not only to the charitable institutions but also other institutions who is promoting yoga for better self-care.

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Ejusdem Generis:

45 WORD CHEST A TREASURY OF VOCABULARY

In a legal framework, the principle of *ejusdem generis* is often used in statutory interpretation to determine the meaning of general words or phrases in a law or contract. Here's how it typically works:

1. Specific and General Terms: When a list of specific words is followed by more general words, the general words are interpreted to be limited to things of the same kind as the specific words.
2. Example: If a law prohibits "dogs, cats, and other animals," the term "other animals" would likely be interpreted to include only animals similar to dogs and cats, rather than all animals.
3. Purpose: The purpose of ejusdem generis is to prevent overly broad interpretations and ensure that the scope of the general term is consistent with the specific examples provided.
4. Context Matters: However, the application of ejusdem generis depends on the context and the specific wording of the law or contract in question. If the context suggests a broader interpretation is intended, the principle may not apply.

In essence, *ejusdem generis* is a tool used to interpret the meaning of words in legal documents to ensure they are applied appropriately and in line with the intent of the law.

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Financial Reporting and Assurance

CA. Vinayak Pai V

KEY UPDATES

A. AS | Ind AS

1. EAC Opinion – Accounting treatment of additional capitalisation arisen due to arbitration award

The May, 2024 edition of the ICAI Journal has carried an Expert Advisory Committee **(EAC) Opinion** – ***Accounting treatment of additional capitalisation arisen due to arbitration award.***

Background – The querist (steel producing PSU company) had placed an order for blast furnace. The commissioning took place in 2014. Due to project delay, the Company had demanded liquidated damages from the vendor contractor. The contractor did not accept the delay and raised various claims on the Company towards extra work, price variation, prolongation cost and interest. In 2022, a settlement agreement was signed. The settlement amount was determined as compensation for various elements including balance amount (as per contract), extra price variation claim, extra civil work and additional design engineering cost. A certain amount of liability was already provided for in respect of the above elements in the books on capitalisation of the asset in 2014 and the balance amount was capitalised w.e.f. March 2022 prospectively. Depreciation was provided prospectively on this component of cost of PPE.

The opinion of the EAC was sought on the following issue: Whether depreciation on the amount capitalised pertaining to extra work and price escalation amount should be charged retrospectively, i.e., from the original date of capitalisation, or the accounting treatment of additional capitalisation and depreciation followed by the Company, is in accordance with Ind AS.

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

- The **change in estimate due to adjustment of the carrying amount of an asset should be recognised prospectively** by adjusting the carrying amount of the related asset in the period of the change. In the extant case, the additional amount incurred towards the cost of asset due to change in the initial estimate of the cost of the asset arising because of the settlement of the provision/liability towards design engineering cost, extra civil work, price variation claims etc., should be capitalised with the cost of the PPE/ asset(s) prospectively.
- The **depreciation on the amount capitalised subsequently due to change in estimate** should be **charged prospectively**.
- The accounting treatment of additional capitalisation and depreciation followed by the Company is in accordance with the requirement of Ind AS 16 and Ind AS 8.

Link to the Opinion – **https://resource.cdn.icai.org/80079cajournal-may2024-30.pdf**

B. ASSURANCE

2. IESBA – First Global Ethics Standards on Tax Planning

On 15th April, 2024, the International Ethics Standards Board for Accountants (IESBA) launched the first comprehensive suite of ***Global Standards on Ethical Considerations in Tax Planning and Related Services*** incorporated in the *IESBA Code of Ethics*.

The objective of the Tax Planning Standards is to provide a **principles-based framework** and a **global ethical benchmark** applicable to **tax planning services and activities**. This is expected to establish a consistent point of reference for all professional accountants, as well as other tax professionals. The IESBA strongly encourages the use of these standards, when dealing with tax planning, to ensure due consideration of public interest as well as potential reputational, commercial, and wider economic consequences for their clients or employing organizations.

Link to the Pronouncement - **https://www.ethicsboard.org/publications/final-pronouncement-revisions-code-addressing-tax-planning-and-related-services**

3. ICAI Exposure Draft – Guidance Note on Reports on Audit u/s 12A/10(23C)

On 29th April, 2024, the ICAI issued an Exposure Draft (ED) of ***Guidance Note on Reports on Audit under***

Section 12A/10(23C) of the Income-tax Act, 1961 for the benefit of members taking the previously issued *'Technical Guide on Reports of Audit under Section 12A/10(23C) of the Income-tax Act, 1961'* as the base document.

The ED is open for comments till 29th May, 2024.

Link to the ED -
https://resource.cdn.icai.org/80016dtc64148.pdf

C. NFRS

4. IASB Exposure Draft – Proposed Amendments to Order u/s 132(4) – Reliance Capital Ltd. Audit

On 12th April, 2024, the National Financial Reporting Authority (NFRA) issued an order (No.008/2024) u/s 132(4) of the Companies Act finding the Audit Firm (and the Engagement Partner (EP) and Engagement Quality Control Review (EQCR) Partner) that conducted the statutory audit of Reliance Capital Ltd. for F.Y.2019 guilty of professional misconduct.

As per the Order,

- The **other joint auditor brought some significant matters** (including potentially irrecoverable loans and investments amounting to ₹ 12,571 crore to group companies portrayed as recoverable) to the respondent Audit Firm's notice. The Audit Firm **failed to carry out any independent procedures** on these matters and discharge the responsibilities of a Joint Auditor.
- The Audit Firm **indulged in self-review** by preparing material information for the Company's financial statements, which subsequently became the subject matter of their audit opinion, and thereby violated the Code of Ethics and SAs.
- The Audit Firm **used the Emphasis of Matter (EoM) para** in its audit report in which it concluded that there were no matters attracting section 143(12). The EoM para was in **non-compliance with the SAs** and was misleading.
- Despite the evidence of documented irregularities, the **EP did not question the management**.
- The Audit Firm failed to notice that the loans amounting to ₹6,557 crore were sanctioned by the Company violating its lending policy and **failed to examine the fraud risk factors.**
- The Audit Firm **failed to evaluate the adequacy of the expected credit loss (ECL) provisions** of ₹2,577 crore on loans, resulting in the non-reporting of material misstatements in the financial statements.

NFRA imposed a **monetary penalty of ₹3 crore on the Audit Firm and ₹ 1 crore** and **₹ 50 lakhs, on the EP and EQCR partner,** respectively. In addition, the **EP and EQCR partners** have been **debarred for 10 years** and **5 years**, respectively.

Link to the Order -

https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2024/04/20240413980099888.pdf

5. Order u/s 132(4) – CMI Ltd. Audit

On 26th April, 2024, the NFRA issued an order (No.013/2024) u/s 132(4) of the Companies Act finding the Audit Firm and its Engagement Partner (EP) that conducted the statutory audit of CMI Ltd. for F.Ys. 2019 to 2022 guilty of professional misconduct. NFRA imposed a **monetary penalty of ₹50 lakhs on the Audit Firm and ₹ 10 lakhs on the EP**. In addition, the **EP** has been **debarred for 2 years**.

The Order finds that the auditors failed to meet the relevant requirements of the Standards on Auditing in respect of several significant areas, including:

- The auditors failed to report the **non-recognition as liabilities of interest accrued on loans classified as NPAs.**
- The auditors **failed to analyse the going concern assumption** even though the Company had continuous declining trend in Revenue; continuous declining trend in PAT; and continuous declining trend in Net Worth.
- The auditors **failed to perform physical verification or alternative audit procedure** to determine the existence and condition of **inventory**.
- The auditors **failed to demonstrate sufficiency and appropriateness of audit work** in several critical aspects of the audit i.e., determining materiality, evaluation of the going concern assumption, verification of inventories and trade receivables, verification of reported revenue and evaluating the audit results.

Link to the Order -

https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2024/04/20240426370150663.pdf

6. Order u/s 132(4) – Reliance Home Finance Ltd. Audit

On 26th April, 2024, the NFRA issued an order (No.012/2024) u/s 132(4) of the Companies Act finding the Engagement Partner (EP) and Engagement Quality Control Review (EQCR) Partner of the Audit Firm that conducted the statutory audit of Reliance Home Finance Ltd. for F.Y.2019 guilty of professional misconduct.

As per the Order, despite the resignation of the previous auditor and a reporting of suspected fraud, the Auditor failed to conduct the audit as per SA. The material misstatements in the financial statements due to **inadequate provision**, **unjustified valuation of loans** and **irrational business practices** were concurred by the Auditor in disregard of their responsibilities under the Act and SAs. The deficiencies in the audit resulted in rendering the opinion unreliable since the material misstatements in the financial statement assertions remain unreported. The Order concludes that the Auditor failed to meet the relevant requirements of the SAs and violated the Act, and the Code of Ethics in respect of several significant areas of audit.

NFRA imposed a **monetary penalty of ₹ 1 crore on the Audit Firm and ₹ 50 lakhs** and **₹ 10 lakhs, on the EP and EQCR partner,** respectively. In addition, the **EP and EQCR partners** have been **debarred for 5 years** and **3 years**, respectively.

Link to the Order -

https://cdnbbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2024/04/202404261795478852.pdf

D. IFRS

7. IASB – IFRS 18, Presentation and Disclosure in Financial Statements

On 9th April, 2024, the International Accounting Standards Board (IASB) issued **IFRS 18, *Presentation and Disclosure in Financial Statements.*** The new standard replaces IAS 1, *Presentation of Financial Statements.* IAS 18 aims to improve how companies communicate in their financial statements, with a focus on information about financial performance in the Statement of Profit or Loss.

IFRS 18 aims to improve financial reporting by:

1. Requiring **additional defined subtotals in the Statement of Profit or Loss**

   Companies are required to classify income and expenses into **operating**, **investing** and **financing** categories in the statement of profit or loss—plus **income taxes** and **discontinued operations**; and Companies are also required to report operating profit and profit before financing and income taxes.

2. Requiring **disclosures about management-defined performance measures**

   Companies that report alternative performance measures (APMs/non-GAAP measures) and that meet the definition of management-defined performance measures (MPMs) are required to disclose reconciliations between those measures and subtotals listed in IFRS 18/IFRSs. MPMs are subtotals of income and expenses used in public communications to communicate management's view of an aspect of the financial performance for the company as a whole.

3. Adding **new principles for grouping (aggregation and disaggregation) of information**

   IFRS 18 sets out requirements to help companies determine whether information about items should be in the primary financial statements or in the notes and provides principles for determining the level of detail needed for the information.

IFRS 18 is effective for annual reporting periods beginning on or after 1st January, 2027 with early adoption permitted.

Link to the new Standard -
https://www.ifrs.org/news-and-events/news/2024/04/new-ifrs-accounting-standard-will-aid-investor-analysis-of-companies-financial-performance/

E. SELECT GLOBAL ENFORCEMENT ACTIONS/INSPECTION REPORTS

Enforcement Actions

8. UK FRC – Audit Firm charged for failure to comply with Regulatory Framework for Auditing

On 8th April, 2024, the **UK Financial Reporting Council's (FRC)** Audit Quality Review (AQR) team, the FRC's Enforcement Committee concluded that an Audit Firm failed to comply with the Regulatory Framework for Auditing in its audit of a local authority's pension fund for the year ended 31st March, 2021. The Committee found failures in the reviewed audit, including **two uncorrected material errors** which appeared in the version of the pension fund's audited financial statements that was included in the local authority's annual report (these errors did not appear in the pension fund's own financial statements) and **insufficient audit evidence obtained** that the value of investments was materially accurate. The Committee considered that it is necessary to impose a Sanction to ensure that the Audit Firm's audit functions are undertaken, supervised and managed effectively. The Committee imposed a penalty of £50,000.

Extracts from US PCAOB Inspection Reports of Audit Firms

9. Inspection report of an Audit Firm Headquartered in Massachusetts

Audit deficiency identified - With respect to **Revenue**, the Audit Firm did not perform sufficient procedures to test whether revenue was recognized in accordance with FASB ASC Topic 606, *Revenue from Contracts with Customers*, because it did not evaluate whether contracts were negotiated as a package with a single commercial objective where the amount of consideration to be paid in one contract depended on the price or performance of the other contract, or whether goods and services promised in each contract were a single performance obligation when the contracts were entered into at or near the same time with the same customer.

With respect to Revenue, for which the Audit Firm identified a fraud risk: For product revenue, it did not evaluate the shipping terms to assess whether it was appropriate to recognise revenue upon shipment. For service revenue, the Audit Firm did not evaluate whether (1) performance obligations were appropriately identified, (2) the allocation of revenue between performance obligations was appropriate, and (3) performance obligations were satisfied. [Release No. 104-2024-054]

10. Inspection report of an Audit Firm Headquartered in Colombia

Audit deficiency identified- The Audit Firm did not perform procedures to evaluate the issuer's presentation and disclosure of the current and non-current portions of debt beyond obtaining and reviewing a checklist prepared by Management. [Release No. 104-2024-056]

F. SELECT PUBLICATIONS

11. International Federation of Accountants (**IFAC**) – ***Equipping Professional Accountants for Sustainability: What's New and What Hasn't Changed.*** [10th April, 2024] [https://www.ifac.org/knowledge-gateway/preparing-future-ready-professionals/publications/equipping-professional-accountants-sustainability]
12. The International Auditing and Assurance Standards Board (**IAASB**) – ***Elevating Trust in Audit and Assurance: IAASB's Strategy and Work Plan for 2024-2027***. [11th April, 2024] [https://www.iaasb.org/publications/elevating-trust-audit-and-assurance-iaasb-s-strategy-and-work-plan-2024-2027]
13. The International Ethics Standards Board for Accountants (**IESBA**) – ***Towards a More Sustainable Future: Advancing the Centrality of Ethics.*** [11th April, 2024] [https://www.ethicsboard.org/publications/towards-more-sustainable-future-advancing-centrality-ethics]
14. **IFRS Foundation – Digital Financial Reporting: Facilitating Digital Comparability and Analysis of Financial Reports.** [11th April, 2024] [https://www.ifrs.org/content/dam/ifrs/standards/taxonomy/digital-financial-reporting/digitalreportingarticle-april2024.pdf1
15. **IFRS Foundation – *Annual Report 2023, Better Information for Better Decisions.*** [26th April, 2024] [https://www.ifrs.org/content/dam/ifrs/about-us/funding/2023/ifrs-foundation-annual-report-2023.pdf]
16. Reserve Bank of India (**RBI**) – ***Guidance Note on Operational Risk Management and Operational Resilience.*** [30th April, 2024] [https://rbidocs.rbi.org.in/rdocs/notification/PDFs/

H. WHAT THEY SAID…

Today we are **considering a proposal to require certain audit firms to report 11 categories of performance metrics related to their audits and audit practices**. More importantly, it is a crucial step in increasing transparency for investors, audit committees, and the capital markets overall.

It is often said that auditing is a "credence good," that is, its operation and qualities are hard to observe. This is because investors and other stakeholders lack the information available to auditors, and the companies they audit, about what auditors do and how they do it. That is why **the promise of these metrics in generating insights into the ways audits are conducted, both within and between audit firms, is substantial.**

They can provide accurate, standardized, and decision-relevant information that measures aspects of firm and engagement performance. They can aid in assessing an audit firm's readiness and execution, making possible comparisons not only between firms but also between engagement teams within the same firm.

Still, the metrics do not purport to create a magic formula for assessing audit quality, and for good reason. A sound audit depends first and foremost on some intangible qualities - such as each auditor's independence, due care, and professional skepticism. **The metrics can illuminate the environment that helps foster those critical qualities, but the qualities themselves are hard to measure.**

Kara. M. Stein, **PCAOB Board Member** [9th April, 2024]

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Bio-Diversity Reporting

CA. Aditya kumar S.

Background: Humans are just one of the thousands of species on Planet Earth and we share this 'Home' with them. Planet Earth provides us and other species equally land, water, food, and shelter. The term biodiversity refers to the variety of life on Earth at all its levels, from genes to ecosystems, and can encompass the evolutionary, ecological, and cultural processes that sustain life. Biodiversity includes not only species we consider rare, threatened, or endangered but also every living things - from humans to organisms we know little about, such as microbes, fungi, and invertebrates[1]. Humans for their own interests ventured into activities which now endangers the life of other species and some of them have become extinct thanks to our mindless exploitation of the planet.

The Living Planet Index reports an average decline of 69% across tens of thousands of wildlife populations since 1970.[2] We need development, but the question remains unanswered is at what cost we need this development. Significant amount of our GDP is from biodiversity related industries like agriculture, aquaculture, forestry, mining, nature-based tourism, just to name a few. The natural beauty of earth is vanishing at a dangerous rate. The countries who are blessed with natural resources are exploiting them for economic growth. On one side we are facing the risk of climate change-global warming and on another side, we are also seeing that biodiversity being exploited rapidly.

As part of sustainability reporting the Global Reporting Initiative ('GRI') has recently introduced GRI 101 – Reporting on Biodiversity replacing the 2016 Standard on the same subject. One of the key issues that the business we face is on tackling the biodiversity loss including plant and animal life, on earth / underwater and which would eventually impact our Environment including impact on our food chain (shrinking acreage of agricultural land). GRI 101 proposes stringent reporting requirements on the impact of business on biodiversity. GRI 101 outlines the requirements and guidance for reporting on biodiversity-related issues within the organization's sustainability report. GBF lays out its 2050 of a world 'living in harmony with nature' where 'biodiversity if valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits for all people'. The GBF also has targets to be achieved by 2030. The goals and the targets are to stimulate efforts in, *'reducing the threats to biodiversity, meeting people's needs through sustainable use and benefit sharing; providing tools and solutions for implementing and integrating practices that conserve and sustainably use biodiversity'*. The Kunming-Montreal Global Biodiversity Framework[3] (Global Biodiversity Framework – GBF) is one of the major frameworks that provides the goals that are expected to be achieved. The following article attempts to summarize the requirements of the Disclosure Standard GRI 101 ('Standard').

Disclosure requirements:

i. **Policies to halt and reverse biodiversity loss:**

   a. How the entity is taking initiatives to meet the 2050 Goals and 2030 targets and what are the timelines of the entity to achieve them, activities or business relationships to which biodiversity would impact, details of scientific consensus, use of national / government biodiversity strategies or independent assessments carried out.

   b. Disclosure would also include baseline for the goals & targets and timeline.

ii. **Management of Biodiversity impacts:**

   a. Quantification of impact including size of hectares of land under restoration, rehabilitation;

   b. Actions taken to avoid or mitigate risk of biodiversity loss that could have happened or after the incidence, restoration, and rehabilitation steps,

https://www.amnh.org/research/center-for-biodiversity-conservation/what-is-biodiversity
https://ourworldindata.org/living-planet-index-decline
https://www.cbd.int/gbf

c. Conservation action taken,

d. Goals established for restoration and rehabilitation – Goals, location, are the actions being certified by a third party, how principles of good offset practices are met;

e. List of sites where the biodiversity impact is more and whether there are any sites which does not have management plan to mitigate biodiversity risk;

f. Impact of the above on the stakeholders including possible synergy derived from climate change impact mitigation with biodiversity related actions.

iii. Access and Benefit-sharing: Compliance with Access and Benefit-sharing regulations and measure including voluntary actions taken where there no regulations and measures and any other legal obligations. Where the entity is using the traditional knowledge of indigenous people and local community, the Standard requires disclosure on how they have established policies and procedures to ensure that the local community / indigenous people are given fair treatment including sharing of the benefits. The legal obligations would arise on account of various regulations including Convention on Biological Diversity, The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Access and Benefit Sharing Clearing House (ABS) is a platform for exchanging information on access and benefit-sharing and is a key tool to facilitate the implementation of the Nagoya Protocol. The organization can also prioritize products that are or contain threatened species listed in the International Union for Conservation of Nature and Natural Resources (IUCN) Red List of. Threatened Species or species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These regulations are to be complied to ensure that the entities do not endanger the life, nature, human settlement, aqua life etc., in their business endeavor.

iv. Locations with biodiversity impacts: This disclosure requires to whether the business is in a site which ecologically sensitive (defined by Taskforce on Nature-related Financial Disclosures) area, the distances to these areas and classify them based on biodiversity importance, rapid decline in ecosystem integrity, high physical water risks or impacting the indigenous people, local community, or any other stakeholder. The disclosure appears to be quite complex since it requires not only the distance but also the size, % of sites near the ecologically sensitive areas either by law or otherwise, One of the disclosures mentions, "The organization can also report polygon outlines, or maps of the ecologically sensitive areas and overlay them with the polygon outlines or maps of its sites".

v. Direct Drivers of Biodiversity Loss: The disclosure requirements includes possible change in land usage or conversion of ecologically sensitive land / water source for business, pollution related activities including methodologies applied, etc., The entity has to disclose how they have used framework like Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)[4] , geographically specific or local regulations for example Brazil Soy Moratorium[5], Forest Stewardship Council[6], and other regulations. The ecosystem conversion is measured from a cut-off date, which is governed by the framework(s) or local laws or regulations and the activities from the cut-off date to date of reporting should be disclosed.

vi. Other Disclosures include reporting Changes to the state of biodiversity from the baseline information, how the local community is impacted or would be potentially impacted due to ecosystem services (i.e., procurement of harvest, rehabilitation programs, impact on the environment etc.,)

Biodiversity Risks and Challenges:

The above is just a snapshot of the reporting requirements. GRI 101 also requires compliances with various frameworks, some of which are quoted above and also with UN Bill of Human Rights, International Labor Organization, Declaration on Fundamental Principles and Rights at Work etc., and other local laws and regulations. Organizations in the business of Oil and Gas, Agriculture, Fishing, Aquaculture, Mining, and other similar industries where there is direct or indirect link to Biodiversity may find this Standard quite challenging to apply and comply.

https://www.ipbes.net
https://www.nature.com/articles/s43016-020-00194-5
https://www.google.com/search?client=safari&rls=en&q=Forest+Stewardship+Council&ie=UTF-8&oe=UTF-

- Project evaluation needs to be done in a more stringent manner wherein the biodiversity risk needs to be mitigated. The implications of the project on the biodiversity needs to be measured hence the baseline to be considered and methodologies to be used to measure the implications also needs to be planned much in advance.
- The projects' impacting biodiversity is also challenging considering the fact that if there is excessive resistance to new projects then how are we going to meet the growing demand for commodities (especially those which need natural resources), possible loss of employment opportunities to the local community, ancillary business, and loss of return on capital of the investors. Investors may hesitate to take the risk in investing in new projects which may have Biodiversity Risk. That's the new risk that the organization would be looking at. There is this need of the risk management framework to be more robust and consider Biodiversity risk as a priority.
- The concept of Triple P (Profit, People and Planet) are now to be taken seriously and GRI 101 would require companies to evaluate Triple P's before finalizing the project. GRI 101 would clearly showcase whether People and Planet have been compromised. Triple P triangle should be thought of as an equilateral triangle (i.e., rightly balanced at all sides) and not excessively inclined to profits alone thereby depriving the people (society) and planet (environment) concerns.
- Project Financing would have to be done more carefully considering Biodiversity Risks a project may entail in future if there is non-compliance arising or non-reporting of material facts in sustainability reporting.
- Local laws like pollution control, forest clearance, environmental impact, social and community issues also needs to be addressed and thereby large projects may find it difficult to take off considering the complexities involved. The agencies which regulate pollution and natural resources should also use GRI 101 report for the performance measurement which then acts like a statutory requirement for the organizations to comply with the reporting requirements.
- Stakeholder engagement: The importance of engaging with stakeholders, including local communities, NGOs, and experts, to address biodiversity challenges effectively and transparently cannot be understated. Considering that the expectations of the stakeholders could be varying there has to be a team with representatives from each of the stakeholder who would all discuss the issues in a holistic manner and come to a mutually acceptable solution. They may need subject matter experts including those relating to human rights, environmental and related laws.
- Integration with Other Sustainability Topics: Biodiversity reporting in GRI 101 needs to be integrated with other sustainability topics such as climate change, water management, and social impacts. This holistic approach provides a comprehensive view of the organization's sustainability performance. The organization should ensure that the requirements of GRI 101 report is aligned to the reporting of other GRI reporting requirements.
- Continuous Improvement: Reporting on biodiversity performance enables organizations to set goals, track progress, and continuously improve their biodiversity management practices over time. Overall, GRI 101 provides a structured approach for organizations to report on biodiversity-related issues and demonstrate their commitment to protecting and enhancing biodiversity as part of their sustainability efforts.
- In India we have laws such as Biological Diversity (Amendment) Act, 2023, Fisheries Act 1897, Indian Forests Act 1927, Wildlife Protection Act 1972, Forest Conservation Act 1980, Environment Protection Act 1986, and host of other regulations. Organizations need to ensure that they do have an adequate 'biodiversity due diligence' done before embarking on any new projects to avoid non-compliances.

What should biodiversity sensitive organizations do?

- Set the 'tone at the top'. The Board should have adequate governance towards approving and managing projects which biodiversity sensitive and ensure to have a proper due diligence done both for new projects and to the existing ones on an ongoing basis to ensure there are no non-compliances. Have Biodiversity Manager or similar role dedicated to ensuring monitoring of activities of the Organization. Integrate biodiversity risks in all strategic and operational decisions.

- Adopt Biodiversity Policy. Companies like (Hindustan Zinc[7], Ultratech Cement[8] Tata Steel[9], NTPC[10], Biocon[11] are some of the Companies in India who have Biodiversity Policy published on their official websites.
- Key Performance Indicators to monitor the progress should also include biodiversity exploitation and risk mitigation strategies.
- Collaborate with external agencies, community, non-governmental organizations in the project.
- Audit of Biodiversity. The Comptroller and Auditor General of India has brought out Biodiversity – Audit Guidelines[12] which may be used in non-government sector to the extent applicable.
- Be ready for new financial reporting requirements. ISSB would commence research projects about risks and opportunities related to nature and human capital including biodiversity, ecosystems, and ecosystem services. This project is aimed to focus on the common information needs of investors in assessing whether and how the risks and opportunities could reasonably be expected to affect the company's prospects.[13]
- Align sustainability report to CDSB – Climate Disclosure Standards Board Framework – Application Guidance for Biodiversity-related disclosures.

Conclusion: The components of sustainability reporting and compliance requirements are also evolving. Organizations should be aware of the expectations of the stakeholders and align their activities accordingly. On the professional front, needless to say that we are expected to be advisors to our clients on matters which impact their business and add value to the whole organization.

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https://www.ifrs.org/news-and-events/news/2024/04/issb-commence-research-projects-risks-opportunities-nature-human-capital/

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KSCAA invites Chartered Accountants and other subject experts to submit articles and share their expertise through KSCAA News Bulletin. The article may cover any topic covering auditing, finance, Tax laws, strategy, technology, Health, RERA and so on. The authors can share the articles to info@kscaa.com.

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- ✓ The committee cannot assure the authors of immediate publishing of the article. A repository of articles would be maintained and accordingly published in the upcoming editions on an appropriate basis as decided by the committee.
- ✓ The article should be limited to 1,500 to 1,750 words. The Author is requested to exercise due care, diligence and professional judgement to restrict their article to the above-mentioned limits.
- ✓ The article should be submitted only in Word Document.

Since 1957

Intellectual Property Rights and Protection in India Judicial Decisions on IPR

(Part - XLV of IPR series)

Adv. M G Kodandaram

In this part important cases are deliberated with a view to explain some of the basic concepts of patent law.

Patent Law and Public Interest

Patent law and public interest are deeply intertwined, i.e., between granting inventors the exclusive rights and ensuring the broader benefits of innovation for the society. At its core the patent law serves to encourage inventors and innovators by providing them with a temporary monopoly over their creations. This exclusivity is meant to incentivize investment in research and development, ultimately leading to technological progress and improved products and processes.

However, this monopoly power can sometimes lead to concerns about anti-competitive practices, high prices, and limited access to essential goods or technologies. To address these issues, Indian patent law incorporates provisions that consider the public interest. For instance, Indian patent law includes mechanisms like compulsory licensing, which allows the government to grant licenses to produce patented inventions under specific circumstances, such as during public health emergencies.

Compulsory Licensing

Compulsory licensing is a legal concept that allows a government to grant permission to a third party to produce or use a patented invention without the consent of the patent holder. This concept is often employed in situations where there is a public interest or necessity, such as in healthcare or during emergencies, ensure National Security, avoid abusing of Monopoly. The idea behind compulsory licensing is to balance the rights of patent holders with the need to ensure access to essential goods or services. It allows for the production or use of patented inventions without the patent holder's authorization, typically in exchange for reasonable compensation to the patent holder.

Bayer Corporation v. UOI

The case of Bayer Corporation v. UOI is a landmark legal battle that emphasises the interplay between patent rights, public interest, and access to essential medicines. The dispute revolves around Bayer Corporation's patent for the drug 'Sorafenib Tosylate,' used in treating liver and kidney cancer, and the issuance of Compulsory Licenses by the Indian government to enable the production of generic versions of the drug.

Bayer Corporation, a pharmaceutical giant, obtained a patent for Sorafenib Tosylate, marketed as Nexavar, in 2008. The drug was priced at a high cost, making it financially inaccessible to many patients in need. In 2012, Natco Pharma, a generic drug manufacturer, obtained a Compulsory License from the Drug Controller General of India (DCGI) to produce a generic version of Sorafenib Tosylate, significantly reducing its price and increasing the accessibility. Bayer Corporation challenged the validity of the Compulsory License, arguing that it infringed upon their patent rights.

The central issue was whether the Compulsory License granted by the DCGI aligned with the provisions of the Patent Act and served the public interest in affordable healthcare. The case raised questions about the legitimacy of Compulsory Licenses in situations where patented drugs are priced prohibitively high, affecting patient access. The court had to balance the need to incentivize pharmaceutical innovation through patent protection with ensuring access to life-saving drugs for the public.

The Intellectual Property Appellate Board (IPAB) upheld the Compulsory License, citing public interest in affordable healthcare as a primary factor. The Bombay High Court affirmed the IPAB's decision, emphasizing the importance of public health and affordable access to medicines. The court highlighted provisions in the Patent Act allowing for Compulsory Licenses in the public interest. The Supreme Court dismissed Bayer's appeal, affirming the lower court's rulings, and reinforcing the primacy of public interest in healthcare decisions.

This case reaffirmed the government's authority to issue Compulsory Licenses for essential medicines in the interest of public health. The case highlighted the importance of balancing patent rights with public access to affordable medicines, particularly in life-threatening medical conditions.

Access to Life-Saving Medications

The Roche vs. Cipla dispute over the lung cancer drug 'Erlotinib' is a crucial legal battle that explores into patent infringement, public interest, and access to life-saving medications. The case centers on Roche's patent for Erlotinib Hydrochloride and Cipla's production and marketing of a generic version of the drug, raising significant legal and ethical considerations.

Roche holds a patent for Erlotinib Hydrochloride, a critical drug used in treating lung cancer. Roche markets a particular polymorph (Polymorph B) of Erlotinib Hydrochloride under the brand name Tarceva. In contrast, Cipla entered the market with a generic version of Erlotinib Hydrochloride based on Polymorph B, offering it at a significantly lower cost than Roche's Tarceva. Roche alleged that Cipla's generic version infringes upon its patent rights for Erlotinib Hydrochloride.

The primary issue involved is whether Cipla's generic version of Erlotinib Hydrochloride based on Polymorph B infringes upon Roche's patent rights for the drug. The case raises broader questions about the public interest in ensuring affordable access to life-saving medications, particularly in the context of high-cost patented drugs.

Court's Decision: Roche's initial plea for an interim injunction against Cipla's generic Erlotinib Hydrochloride was dismissed by the Delhi High Court, citing public interest and the life-saving nature of the drug. Roche's appeal to the division bench was also dismissed, with the bench emphasizing public interest considerations under the Patent Act of 1970 and raising doubts about the validity of Roche's patent. The Supreme Court upheld the division bench's decision, highlighting the importance of affordable access to essential medicines and the need to balance patent rights with public health concerns.

The Court considered Cipla's argument regarding public welfare, noting that the generic version of "Erlotinib" served the public interest as a life-saving medication exclusively produced and imported in India. In denying an interim injunction, the court emphasized the importance of assessing the impact of the requested relief, given the affordable availability of this life-saving medication.

While Cipla alleged a violation of Roche Ltd.'s patent on "Erlotinib," the court found this claim baseless, affirming that Cipla's production and distribution of the generic version was lawful. Ultimately, although Roche Ltd. prevailed in the case, Cipla was permanently enjoined from manufacturing as of March 2016. Cipla was also directed to provide accounts for the production and sale of Erlocip, and Roche Ltd. was granted some amount in expenses.

Patents and Competition Act - Interplay

The Patents and Competition Act revolve around the intersection of patent rights and competition law, aiming to ensure a fair balance between promoting innovation through patents and nurturing competition within markets. This Act addresses situations where the exercise of patent rights may potentially harm competition or consumers' interests. The IP laws recognize the importance of IPRs in incentivizing innovation by granting inventors /creators /authors exclusive rights over their inventions/ original expression for a limited period. This exclusivity encourages investment in research and development, leading to technological advancements and economic growth.

Using patent rights to create unjustified monopolies, such as tying agreements that require the purchase of one patented product to gain access to another, evergreening etc. Also entering into agreements with competitors to settle patent disputes in a way that harms competition, such as agreeing not to compete in certain markets or limiting production or distribution. Denying reasonable access to patented technologies to potential competitors, particularly when such access is essential for market competition or innovation. The Competition Act prohibits anti-competitive practices that abuse patent rights to stifle competition.

Telefonaktiebolaget LM Ericsson v. CCI of India

The case of Telefonaktiebolaget LM Ericsson v. Competition Commission of India (CCI) is a significant legal battle that centers on antitrust laws, fair competition, and IPRs. The case was decided by a Delhi Division Bench on 13-07-2023 which involves complex issues related to standard essential patents (SEPs), technology licensing, and abuse of dominant position.

Telefonaktiebolaget LM Ericsson (Ericsson) is a multinational telecommunications company that holds several SEPs related to mobile communication technologies. These SEPs are essential for implementing industry standards such as 3G, 4G, and 5G. Ericsson licenses its SEPs to other companies in the industry under fair, reasonable, and non-discriminatory (FRAND) terms to promote fair competition and innovation. The Competition Commission of India (CCI) is the regulatory authority responsible for ensuring fair competition in the Indian market and preventing anti-competitive practices.

The legal dispute between Ericsson and CCI revolves

around allegations of abuse of dominant position and anti-competitive behaviour concerning Ericsson's licensing practices for its SEPs.

The central issue is whether Ericsson abused its dominant position in the market by imposing unfair and discriminatory licensing terms for its SEPs, thereby stifling competition and innovation. The case involves an assessment of whether Ericsson adhered to its FRAND obligations while licensing its SEPs to other market players.

Court's Decision: The CCI initially found Ericsson guilty of abusing its dominant position and imposing discriminatory and unreasonable licensing terms for its SEPs. Ericsson appealed the CCI's decision to the Delhi Division Bench, challenging the findings of abuse of dominant position and contesting the imposition of fines. On 13-07-2023, the Delhi Division Bench rendered its decision, overturning certain aspects of the CCI's ruling while upholding others. The bench provided detailed reasoning and analysis regarding Ericsson's licensing practices, FRAND obligations, and compliance with competition law.

This case has several implications. The case sets a precedent for assessing the legality of licensing practices for SEPs and ensuring compliance with FRAND obligations. It underscores the role of competition authorities in regulating markets and preventing anti-competitive behaviour to promote innovation and consumer choice.

Patent Infringement

Patent infringement is a crucial concept in IP law that pertains to the unauthorized use, manufacture, sale, or distribution of a patented invention without the patent holder's permission. Patents grant inventors exclusive rights to their inventions for a limited period, typically 20 years from the filing date, during which they can prevent others from making, using, or selling the patented invention. Patent infringement occurs when someone engages in activities that fall within the scope of the claims of a valid and enforceable patent without obtaining a license or authorization from the patent holder. This can include creating a product that incorporates patented technology, using a patented process, or selling a product covered by a patent.

The determination of patent infringement involves a detailed analysis of the patent claims, the accused product or process, and any potential defences or exceptions. Courts consider factors such as literal infringement (when every element of a patent claim is present in the accused product or process) and infringement under the doctrine of equivalents (when the accused product or process performs substantially the same function as the patented invention). Patent holders can enforce their rights against infringers through legal actions, including cease and desist letters, negotiations for licensing agreements, or filing lawsuits in civil court seeking remedies such as injunctions, damages, and royalties.

Bajaj Auto Limited vs. TVS Motor Company Limited

The case of Bajaj Auto Limited vs. TVS Motor Company Limited is a significant legal battle in the Indian automotive industry, revolving around allegations of patent infringement, unfair competition, and the use of IPRs. The case reached the Supreme Court and resulted in a landmark decision with far-reaching implications for patent law and competition in the two-wheeler market.

Bajaj Auto Limited is a leading Indian manufacturer of motorcycles and scooters, known for its innovative designs and technological advancements. TVS Motor Company Limited is another prominent player in the Indian automotive sector, specializing in the production of motorcycles, scooters, and three-wheelers. The dispute between them centers on the design and technology of a specific motorcycle model, the TVS Flame, launched by TVS Motor Company. Bajaj alleged that TVS infringed upon its patent rights and engaged in unfair competition by copying certain features of Bajaj's patented motorcycle model, the Bajaj Pulsar. The legal dispute between them involves complex issues related to patent infringement, design infringement, unfair competition, and the interpretation of IPRs under Indian law, which are narrated in brief.

The central issue in the litigation is whether TVS Motor Company infringed upon Bajaj Auto Limited's patents by incorporating similar features or technologies in its TVS Flame motorcycle. The case also involves allegations of design infringement, focusing on the visual appearance and aesthetic elements of the motorcycles in question. Bajaj alleges that TVS engaged in unfair competition by imitating or copying key features of Bajaj's patented motorcycle model, leading to market confusion and economic harm.

Court's Decisions: The trial court initially ruled in favour of Bajaj Auto Limited, finding TVS Motor Company guilty of patent infringement and design infringement. The court ordered injunctions against TVS and awarded damages to Bajaj. TVS Motor Company appealed the trial court's decision to the appellate court, challenging the findings of infringement and seeking a reversal of the injunctions and damages.

The case eventually reached the Supreme Court, where the court conducted a detailed analysis of the patent claims, design elements, and allegations of unfair competition. The court examined issues like, Whether the Defendants infringed the patent despite making improvements to the patented article? Whether there were design similarities between TVS Flame and Bajaj's patent? Whether TVS Motor Company unjustly threatened Bajaj for monopolistic purposes?

The Supreme Court held that TVS did not infringe Bajaj's patent because it made improvements, such as using three valves instead of two. The court's clarifications on IP issues in brief are as follows:

(a) Inventive Step and Patent Infringement: The Court's decision emphasized the concept of inventive step in patent law. It clarified that if a technology uses different combinations or processes to achieve the same result as a patented procedure, it does not infringe on the patent. This interpretation promotes innovation by allowing variations that result in unique solutions.

(b) Scope of IPRs: The case also expanded the scope of infringement of trademark, patent, and copyright. The Court highlighted the importance of speedy resolution of IP disputes and issued guidelines for timely disposal of such cases.

(c) Guidelines for Lower Courts: The Court's direction to lower courts and tribunals to expedite IP cases and resolve them within a specified timeframe reflects a proactive approach to protecting IPRs.

(d) Balancing Innovation and Competition: The judgment strikes a balance between protecting IPRs and encouraging competition and innovation. It acknowledges that slight variations and improvements should not be stifled by strict interpretations of patent infringement.

This case has several implications for clear understanding of Indian patent and design laws. It clarifies the legal standards and requirements for proving patent infringement, design infringement, and unfair competition in the Indian automotive industry. The case highlights the importance of IPR protection and the consequences of unauthorized use or imitation of patented technologies.

The Supreme Court's ruling sets a precedent for future cases involving patent disputes, design infringement, and unfair competition, guiding businesses and legal practitioners in navigating complex IP issues.

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Seven Years of RERA: Building Trust, Transparency and Transformation in Real Estate

CA. Vinay Thyagaraj

The Real Estate (Regulation and Development) Act 2016, commonly known as RERA, has indeed been a significant milestone in the regulation of the real estate sector. Over the past 7 years, RERA has played a crucial role in bringing transparency, accountability, and fairness to the real estate market, benefiting both homebuyers and developers. As we step into the 8 years of its implementation, let's continue to work towards ensuring the goals of RERA are met and that the real estate sector continues to thrive in a regulated and ethical environment. Following are discussed in this Article -

1. Notable Achievements of RERA over 7 years
2. Pro-active steps / Efforts of RERA Authorities
3. Central Advisory Council Meetings and action plans
4. RERA Workshops by Government of India
5. Detailed Report and Action plans for Stalled Legacy Projects
6. RERA Implementation Status – PAN India
7. Support needed for better implementation and growth of the Real Estate Industry.

Over 7 years RERA has significantly improved the regulatory framework governing the real estate sector in India, leading to greater transparency, accountability, and consumer protection. Its implementation has contributed to the overall growth and development of the real estate market while safeguarding the interests of homebuyers.

The Real Estate (Regulation and Development) Act (RERA) has brought about several notable achievements in India since its implementation -

1. **Transparency**: RERA mandates that all real estate projects (both residential and commercial) must be registered with the regulatory authority. This requirement ensures that all project details, including approvals, timelines, and financial aspects, are disclosed to potential buyers transparently.
2. **Accountability**: Developers are required to adhere to strict timelines for project completion as per the commitments made in the registered plans. Any delays or deviations must be adequately justified and compensated to homebuyers, fostering accountability in project execution.
3. **Consumer Protection**: One of the primary objectives of RERA is to protect the interests of homebuyers. The Act establishes clear guidelines for developers regarding project specifications, quality of construction, and possession timelines, reducing instances of fraud and malpractices.
4. **Dispute Resolution**: RERA provides for the establishment of Real Estate Regulatory Authorities (RERAs) at the state level to adjudicate disputes between developers and homebuyers quickly and efficiently. This mechanism ensures timely resolution of grievances, enhancing consumer confidence in the real estate market.
5. **Promotion of Fair Practices**: RERA prohibits unfair trade practices and ensures that developers maintain transparency in advertising and marketing of real estate projects. This has led to a more ethical conduct within the industry, promoting fair competition and fostering trust among stakeholders.
6. **Boost to Institutional Financing**: With increased transparency and accountability, institutional investors and financial institutions have gained confidence in the real estate sector. This has led to greater availability of financing options for developers, facilitating timely project completion and delivery.

The proactive steps taken by RERA Authorities aim to promote transparency, accountability, and consumer protection in the real estate sector, thereby enhancing investor confidence and fostering sustainable growth, have taken the initiatives over 7 years –

1. **Public Awareness Campaigns**: RERA authorities conduct public awareness campaigns through various media channels, including newspapers, television, radio, and social media platforms. These campaigns aim to educate consumers about their rights and responsibilities under RERA and raise awareness about the importance of dealing with registered real estate projects and agents.

2. **Workshops and Seminars**: RERA authorities organize workshops, seminars, and training programs for developers, real estate agents, and homebuyers to familiarize them with the provisions of the Act. These events provide a platform for stakeholders to clarify doubts, share best practices, and understand the compliance requirements under RERA.
3. **Online Portals and Help Desks**: Many RERA authorities have developed user-friendly online portals and help desks to facilitate registration of real estate projects, filing of complaints, and accessing information related to RERA. These platforms enhance transparency and accessibility, making it easier for stakeholders to interact with the regulatory authority.
4. **Capacity Building**: RERA authorities invest in capacity building initiatives for their staff members to ensure efficient implementation and enforcement of the Act. Training programs cover various aspects of RERA, including legal provisions, technical standards, financial management, and dispute resolution mechanisms.
5. **Monitoring and Compliance Enforcement**: RERA authorities monitor the progress of registered real estate projects to ensure compliance with the timelines, quality standards, and financial disclosures specified under the Act. They conduct regular site inspections, review project documents, and take enforcement actions against non-compliant developers to maintain accountability and protect the interests of homebuyers.
6. **Collaboration with Stakeholders**: RERA authorities collaborate with various stakeholders, including government agencies, industry associations, consumer forums, and legal experts, to address challenges and foster a conducive regulatory environment. Such partnerships help in sharing knowledge, resources, and experiences to improve the effectiveness of RERA implementation.
7. **Incentives for Compliance**: Some RERA authorities offer incentives or recognition to developers who demonstrate compliance with RERA regulations, such as timely project delivery, adherence to quality standards, and transparent financial practices. These incentives encourage developers to prioritize RERA compliance and build trust among homebuyers.

The Central Advisory Council (CAC) is constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016, to advise the central government on matters related to the implementation of the Act and the real estate sector in general. Section 41 of the Real Estate Regulation & Development Act, 2016 provides for the constitution and composition of the CAC. Central Government has established Central Advisory Council (CAC) vide notification no. O-17024/429/2017-H dated 20th November 2017.

Here are some of the key actions and functions of the CAC –

1. **Policy Recommendations**: The CAC advises the central government on policy matters concerning the real estate sector, including regulatory frameworks, procedural reforms, and industry best practices. It provides recommendations to promote transparency, efficiency, and investor confidence in the sector.
2. **Guidance on Rules and Regulations**: The CAC assists in the formulation and revision of rules, regulations, and guidelines under the RERA Act. It provides inputs on drafting provisions, interpreting legal clauses, and addressing practical challenges in the implementation of the Act at the national level.
3. **Monitoring Implementation**: The CAC monitors the implementation of the RERA Act across different states and union territories to ensure uniformity and consistency in regulatory enforcement. It reviews the performance of Real Estate Regulatory Authorities (RERAs) and advises on measures to strengthen their capacity and effectiveness.
4. **Stakeholder Consultation**: The CAC facilitates consultations with various stakeholders, including industry representatives, consumer groups, government agencies, and legal experts. It seeks feedback on the functioning of RERAs, emerging trends in the real estate market, and areas requiring regulatory intervention.
5. **Capacity Building**: The CAC supports capacity-building initiatives for RERA officials, developers, real estate agents, and homebuyers through training programs, workshops, and knowledge-sharing sessions. It promotes awareness about RERA provisions, compliance requirements, and dispute resolution mechanisms among stakeholders.
6. **Research and Analysis:** The CAC conducts research and analysis on issues relevant to the real estate sector, such as housing affordability, land acquisition, financing mechanisms, and urban development policies. It provides insights and recommendations to address systemic challenges and promote sustainable growth in the sector.

S. No	Title	Date
1	Minutes of First Meeting of the Central Advisory Council constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016.	May 14, 2018
2	Minutes of Second Meeting of the Central Advisory Council constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016 held through webinar on 29.04.2020 at 03:00 P.M. under the chairmanship of Shri Hardeep S Puri, Hon'ble Minister of State (1/C), Housing and Urban Affairs.	15/05/2020
3	Minutes of Third Meeting of the Central Advisory Council constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016 held on 12th April,2022 at 03:00 P.M. under the chairmanship of Shri Hardeep Singh Puri, Hon'ble Minister of Housing and Urban Affairs.	02-05-2022
4	Minutes of Meeting of Sub-Committee constituted by Central Advisory Council of RERA on 2nd November 2022 at 2:00 PM under the Chairmanship of Secretary, Ministry of Housing and Urban Affairs.	02/12/2022
5	Minutes of Fourth Meeting of the Central Advisory Council constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016 held on 9th May 2023 at 02:00 P.M. under the chairmanship of Shri Hardeep Singh Puri, Hon'ble Minister of Housing and Urban Affairs.	19/05/2023
6	Minutes of the 2nd Meeting of the Sub-Committee constituted by the Central Advisory Council of RERA held on 19th January 2024 at 2:00 PM under the Chairmanship of Secretary, Ministry of Housing and Urban Affairs	06/02/2024

* minutes of the meeting can be downloaded from - https://mohua.gov.in/cms/notifications.php

RERA Workshops has conducted on all four regions on 2nd year of implementation of RERA tilted RERA- a New Era of Transparency and Accountability in Real Estate- 2 Years of Implementation – North, South, East and West – details are available and can be downloaded from https://mohua.gov.in/cms/rera-workshops.php

Legacy stalled real estate projects have become a persistent challenge in many regions, casting a shadow over the real estate sector's growth and impacting both developers and homebuyers alike. These projects, often marred by a combination of financial, regulatory, and operational issues, remain incomplete, leaving behind a trail of unfinished structures and unfulfilled promises. For developers, these stalled projects represent a drain on resources, tied up in investments with uncertain returns, while for homebuyers, they result in delayed possession, financial strain, and anxiety about the fate of their investments. The legacy of stalled projects underscores the need for concerted efforts from regulatory authorities, financial institutions, and industry stakeholders to address underlying issues, expedite resolution mechanisms, and restore confidence in the real estate market. Only through collaborative action and innovative solutions can these stalled projects be revived, ensuring that the sector moves forward with resilience and integrity, leaving behind a legacy of lessons learned and a commitment to better practices for the future.

The Ministry of Housing and Urban Affairs (MoHUA) had constituted a Committee under the Chairmanship of **Shri Amitabh Kant**, G 20 Sherpa (Ex-CEO, NITI Aayog) vide its Order No. O-17024/1059/2017-Housing Section-MHUPA Part (9)/EFS-9138424 dated - 31.03.2023 to examine all the issues related to legacy stalled Real Estate projects and suggest various ways to complete these legacy stalled projects.

The detailed report and minutes of the meetings of the committee can be downloaded from https://mohua.gov.in/upload/uploadfiles/files/report(1).pdf

PAN INDIA - Real Estate (Regulation & Development) Act, 2016 [RERA]

Implementation Progress Report - (as on 08-04-2024)

Sl.	State	Registrations		Total no. of Cases disposed by Authority
		Projects	Agents	
1	Andhra Pradesh	3900	175	228
2	ArunachalPradesh	--	--	--
3	Assam	777	74	156
4	Bihar	1658	581	3477
5	Chhattisgarh	1777	799	1964
6	Goa	1244	468	420
7	Gujarat	12972	2667	5702
8	Haryana*	1461	3334	20604

Sl.	State	Registrations		Total no. of Cases disposed by Authority
		Projects	Agents	
9	HimachalPradesh	186	117	116
10	Jharkhand	1349	14	277
11	Karnataka	6582	3763	4035
12	Kerala	1639	575	1434
13	MadhyaPradesh	5980	1491	5839
14	Maharashtra	45245	47273	16843
15	Manipur	--	--	--
16	Meghalaya	--	--	--
17	Mizoram	--	--	--
18	Nagaland	--	--	--
19	Odisha	1053	170	2519
20	Punjab	1259	3160	3307
21	Rajasthan	3019	8178	3224
22	Sikkim	--	--	--
23	Tamil Nadu	21505	3040	3055
24	Telangana	8227	3335	1070
25	Tripura	121	5	0
26	Uttar Pradesh	3581	6714	45221
27	Uttarakhand	497	400	868
28	West Bengal	167	118	51
29	Andaman & Nicobar Island	3	28	0
30	Chandigarh	4	17	30
31	Dadra& Nagar Haveli and Daman & Diu	211	2	907
32	Jammu & Kashmir	0	0	0
33	Ladakh	--	--	--
34	Lakshadweep	0	0	0
35	NCT of Delhi	100	710	615
36	Puducherry	222	4	4

* source - https://mohua.gov.in/cms/implementation-status.php

All States/UTs have notified rules under RERA except Nagaland, which is under process to notify the rules.

1. 32 States/UTs have set up Real Estate Regulatory Authority (Regular - 27, Interim – 05). Ladakh, Meghalaya, Nagaland
2. and Sikkim are yet to establish Real Estate Regulatory Authority.
3. 28 States/UTs have set up Real Estate Appellate Tribunal (Regular -24, Interim – 04). Arunachal Pradesh, Jammu &
4. Kashmir, Ladakh, Meghalaya, Mizoram, Nagaland, Sikkim and West Bengal are yet to establish Appellate Tribunal.
5. Regulatory Authorities of 30 States/UTs have operationalized their websites under the provisions of RERA. Arunachal
6. Pradesh and Manipur are yet to operationalize.
7. 26 States/UTs have appointed Adjudicating Officer. 10 States/UTs i.e., Arunachal Pradesh, Bihar, Manipur, Meghalaya,
8. Nagaland, Sikkim, Uttarakhand, West Bengal, Jammu & Kashmir, Ladakh are yet to appoint Adjudicating Officer.
9. 1,24,739 Real Estate Projects and 87,212 Real Estate Agents have registered under RERA across the Country.
10. 1,21,966 Complaints have been disposed-off by the Real Estate Regulatory Authorities across the Country.

Un resolved / Support needed for better growth and certainty to all the stake holders –

1. **Non-Registration of Projects and Agents**: Despite the statutory requirement, some developers and real estate agents continue to operate without registering their projects or themselves under RERA. This non-compliance undermines the Act's objectives of transparency, accountability, and consumer protection, necessitating stricter enforcement measures.
2. **Consumer Awareness and Redressal Mechanisms**: Despite efforts to raise awareness, many consumers remain unaware of their rights and the recourse available under RERA. Strengthening consumer education initiatives and improving accessibility to dispute resolution mechanisms are essential to empower homebuyers and ensure timely redressal of grievances.
3. **Enforcing mandatory registration of Agreement of Sale** in accordance with local laws
4. **Clarity on formation of Association of Allottees**. Government to provide clear and uniform guidelines on the formation and functioning of the Association of Allottees. Appointment of Competent authority, framing the regulations, Standardized procedures, thresholds, and timelines can help streamline the process and ensure consistency across states.
5. **Implementation of Section 17 of the RERA Act 2016** – Conveyance of common Areas to the Association of the Allottees. All State Governments

to frame the policy and implement how to convey the common Areas to the Association of the Allottees under Group Housing Schemes for the homebuyers to get the better title of the project land.

6. **Enforcing financial discipline and strict utilisation of funds** collected from the Homebuyers and financial institutions. There shall exist a mechanism to measure the utilisation of funds, periodical audit to ensure the funds are utilised for the projects only.
7. **Recommendation and implementation for digitisation of Land Records** will lead to more transparency, reduction in litigation, financial burden and lead to good practices under Real Estate Sector
8. **Single Window Clearance Approvals** will enable the speed and efficient way of delivering the projects by all stakeholders
9. **Seamless availability of funds and financial assistance** – government and banks should encourage, extend seamless funding to the real estate project will enable the project be completed within time and available to the market.
10. **Filling vacancy of Members, Chairpersons of Authority, Appellate without delay-** Government shall fill the vacancy of Members, Chairpersons of Authority, Appellate without delay for continuous and effective functioning of RERA

In conclusion, the implementation of RERA over the past seven years marks a significant milestone in the evolution of the real estate sector in India. While challenges remain in achieving full compliance and addressing systemic issues, RERA has laid a strong foundation for promoting transparency, accountability, and fairness in real estate transactions. Looking ahead, continued collaboration between stakeholders, effective enforcement of regulations, and ongoing reforms will be essential to sustain the positive momentum and realize the full potential of RERA in shaping a vibrant and sustainable real estate market.

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Power of Wisdom

C.A. Rajat Rashmi

Wisdom is quite underrated. Most of us don't mention it, or mention it only when no one's listening. Wisdom scares. The freedom which wisdom provides can completely remove dependency on gospels. It is terrifying to know at the very outset that something is wrong because wisdom suggests so, when a whole army is supporting the idea.

The bombing of Hiroshima and Nagasaki for example. It was not needed to end the war. Some experts claim that the Japanese had already made their wish to end the war known to the US. The bombing was a vendetta, for the Pearl Harbour attack.

Could there have been a wiser choice? Yes. Was the wiser alternative ignored? Yes. Then proof is right in front of you ladies and gentlemen, we are indeed living in a world driven by forces other than pure wisdom. And so it goes. We can change this! If your stomach rumbles at the sound of the word CHANGE? Ahha. Caught. My argument rests.

Let the war thoughts be with the statesmen / (stateswomen!). We are mere professionals with more pressing things to worry about. Like the audit reports and the tax returns. We have one of the safest professions, we created formats and rules for everything, to such miniscule level, that reports can be belted out, even if we are half asleep or have not slept for over a week. And we totally utilise this luxury!

As a professional how can we contribute to wisdom and the freedom of thought? Because our profession draws strict lines for us to tread within. Often I have asked this question to myself. That is what made me catapult into varied professions. And that is how I found some answers. Let me share one. You may resonate with it.

How can we make a society which can actually favour wisdom, which may encourage it and nourish and nurture it? We could be much better off in such a society. Only a few are willing to take that leap of faith and follow their wisdom. Most others don't. They wait for someone else to come forward. Let us take this leap of faith as a fraternity as a whole.

As a CA a wise question to ask is, what can we do? To answer that we need to ask… Who do we influence? Our clients of course. Why do we have influence on our clients? Because we have knowledge which is at a premium. We also have access to the entire business community through our profession. This is the community that drives the GDP and the prosperity of countries. So we are in a position of power viz-a-viz our country's chance to prosperity as a whole! What could we do to maximise this advantage into something enormous? Before I answer that, let me digress a little.

Not many know Beena Baby. A nurse whose suicide in october 2011, caused the whole nursing profession to come out of the dredge of arbitrary two year employment bond and subsistence level low pay, in hospitals across India. It was a small revolution. Revolution in a tea-cup, it caused a nationwide nurses strike. And eventually this resulted in the supreme court giving their landmark judgement in December of the same year, ordering all hospital to release nurses of their bonds and to streamline the minimum pay for the nurses. I am not suggesting suicide as an option for revolution. On the contrary there is a lot more people can do when alive.

Borrowing from this idea of revolution in a teacup, let us ask what is the most disturbing problem in commerce within our country? Could we say the lack of ethical conduct? So here is a salad bowl size revolution, tailor made for the CAs of India.

If the profession takes an oath to inspire clients and to train them to have ethical conduct and to help them set up ethical practices, very soon our profession can come to be known for generating ethics in business. If we create ethical clients, we will create ethical systems that are hard to break. At this time when the entire world is looking up to India for the steady growth trajectory, how great would it be to offer training to client organisations so they would prosper ethically in the long run!

You remember Theranos? A fudged up operation which was misunderstood as a pathbreaking medical technology startup? We could preempt Theranoses and discourage them from taking root. Remember Enron?

The multi billion dollar shady setup which was mistaken for a power giant of the USA? There might not be another Enron or for that matter even Satyam.

India's independence was won by Lawyers. Let us be the harbingers of commercial success of India. This is the need of the hour. CAs are an inseparable part of businesses. They have power of influence over their clients. They would make a huge difference if they took up this as a social accountability program and tried to create as many ethical organisations as possible.

We are not a free country unless we are free from every kind of suppression, oppression, corruption and misconduct. Wisdom dictates finding and disintegrating all kinds of disparaging issues within the social and commercial framework of our country and installing systems and processes which can resist such issues from arising again. We can choose absolutely new professions for our children, such as 'Equality Expert', 'Ethical Practices Charter', 'Rural Motivator', 'Anti Discrimination Lawyer' etc etc. There are so many things waiting to be done to make our country the most outstanding country in the world. Let's make these wise choices. Let wisdom rule, let there be revolution in teacups!

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KSCAA Welcomes New Members Jan, Feb and March - 2024

S.N.	Name	Place
1	Uma Maheshwari Venkatesan	Salem
2	Ganapati Hegde	Bengaluru
3	Jyothi Sharanabasappa Biradar	Kalaburagi
4	Bodam Kiran Kumar	Bengaluru
5	Anil Kollimarla	Bengaluru
6	Vinay S	Bengaluru
7	V Chaitanya	Bengaluru
8	Shanthamurthy Shashank	Bengaluru
9	Mohankumar B Yadlapur	Kalaburagi
10	Chandra Kiran Ramakrishna	Andhra Pradesh
11	Athrey K Joshi	Bengaluru
12	Prateet Chetan	Shivamogga
13	Prashanth Mg	Mysore
14	Muddubasava Karchedu	Bellary
15	Puneethkumara	Bengaluru
16	Rohith R	Bengaluru
17	Mani M	Bengaluru
18	Chattanahalli Govindaiah Srinivasa	Tumkur
19	Venkatesh K T	Bengaluru
20	Venkatesh Bhat Hosabettu	Bengaluru
21	P Srikanth Bhat	Bengaluru
22	Vikram Varma G	Bengaluru
23	P Gowrinaidu	Bengaluru
24	P R Ganesh	Bengaluru
25	Suresh R	Bengaluru
26	Vardhaman Rakhecha	Bengaluru
27	Pradhan Priya Dass	Bengaluru
28	Sujit Suresh Mehta	Pune
29	Sharath Rao Udupi	Bengaluru
30	Sushmita Revagouda Patil	Bengaluru
31	Sumukha M G	Bengaluru

S.N.	Name	Place
32	Vinod Garg	Bengaluru
33	Senthilkumar	Bengaluru
34	Naveen Bhat	Bengaluru
35	Maheswara Reddy G	Bengaluru
36	K Chaitanya Kumar	Bengaluru
37	Sujith Kumar K	Bengaluru
38	Shilpa M	Bengaluru
39	M Krishnamurthi	Bengaluru
40	Basaveshwara Hiremath	Bengaluru
41	Kiran Hg	Bengaluru
42	Amit Rajendra Bajaj	Nashik
43	Kommineni Kushal	Andhra Pradesh
44	Rakshith Gk	Shivamogga
45	Sumeet Khurana	Bengaluru
46	Gayatri Pandharapur	Raichur
47	Sai Prakash	Bengaluru
48	K N Sathya Sankeerth	Bengaluru
49	Charan Raj R	Bengaluru
50	Parvatagouda Siddanagoudar	Dharwad
51	Anagha Vadul	Bengaluru
52	Mohit Agarwal	Bengaluru
53	Rohith G	Bengaluru
54	Prasad Pramod Bandekar	Bengaluru
55	Sana Baqai	New Delhi
56	Kushal R S	Bengaluru
57	Abhishek A V	Bengaluru
58	Karthik T J	Bengaluru
59	Vilas V Shetty	Kundapura
60	Partha Sarathi R	Kurnool
61	Santhosh B S	Bengaluru
62	Mayank A Jain	Bengaluru

In Pursuit of Truth - Part V

CA. Arun Chintopanth

We were last discussing the final aspect of NIAYAMA i.e. Self Surrender or resignation to the Lord i.e. Sharanagathi.

Bhagwan Krishna, again, in the Srimad Bhagwad Gita emphasizes this when He says :-

"yat karosi yad asnasi

yaj juhosi dadasi yat

yat tapasyasi kaunteya

tat kurusva mad-arpanam"

"O son of Kunti, all that you do, all that you eat, all that you offer and give away, as well as all austerities that you may perform, should be done as an offering unto Me."

There are two components required for such a self surrender. One is annihilation of the ego and the second is bhakti or faith.

Ramakrishna gives the example of the young of a monkey and a kitten. The young monkey clings strongly to its mother's stomach. The kitten mews piteously staying wherever her mother has placed her. If the young monkey lets go of its mother, it falls down and gets hurt. This is because the monkey relies on its own strength and ego. But the kitten has no such risk. The mother herself carries her from place to place. Similarly one who has no faith but has only an ego may loose his grip and fall. On the other hand a person with faith without much ego is secure in as much that he believes that the Lord is the disposer of everything; and leaves everything to God.

Also, annihilation of the ego should be by love for God and not out of fear. It is popularly said that EGO stands for Edging God Out. The converse of this i.e. invoking God at all times is annihilation of the ego.

When the great car manufacturer Henry Ford was once complemented by someone by saying "You are great – you built this industrial empire all by yourself, you started with nothing" Henry Ford is said to have replied, "No I had God with me."

Now, coming to faith or bhakti, the Srimad Bhagawatam in the Prahlada Charitra mentions 'Nava Vidha Bhakti' i.e. nine modes of bhakti. They are :-

1. **Sravanam** - listening to Bhagawan's Leelas.
2. **Kirtanam** - Chanting
3. **Smaranam** - Meditation on his Form
4. **Pada Sevanam** - Focus on His feet
5. **Archanam** - Simple poojas
6. **Vandanam** - Offering prayers.
7. **Dasyam** - Become servant in mind, body and spirit
8. **Sakyam** - Consider Him as best friend.
9. **Atma Nivedanam** - Surrender to Him.

And again Bhagwan Krishna mentions four kinds of bhaktas or devotees :-

i. The distressed

ii. The seeker of material things

iii. The enquirer and

iv. The knower of truth.

Bhagwan Krishna goes on to say that at while all the four are dear to Him, the knower of truth is close to Him.

Speaking of the ego, I remember my schoolteacher giving me a beautiful and simple story. A man was very proud of himself with a blown up ego. He would never look down; he would always walk looking up at the sky. He thought himself to be very very great. He had such an ego.

Once a Guru came to his town.

This man went to the Guru and said, 'you know I am the most important person in this town. I am so great. I have so many qualifications. There is no one who does not know me. I am the greatest.'

The Guru replied, 'Very fine, I am much impressed". He then showed him a map of the Universe and said, "can you tell me which part of this universe we live in". The man said 'Very simple, you see the earth there, that is the

planet we are staying on, we are living on.' The Guru said, 'is that so? Which is the continent? "So the man showed a small portion on the map and said, 'that is the continent, Asia that we are staying in". "The Guru then asked,' which is the country that we are staying in?" "The man showed a small speck on the map and said, ' that is India. "Oh that is India." Now where is the town you are staying in?" This man could not locate exactly as it was such a small speck but showed it there nevertheless. The Guru then said ' is that so? Then where are you?'

There was no place on the map for the man to show his presence. That brought him down to the ground and he realized how arrogant he had been and how he had cared so much for his ego and thus far removed from reality.

To shed the ego is to realize that we are one of the millions of species that God has created. Millions and billions of species He has created and we are just one tiny bit of it. Also to realise that as Henry Ford has mentioned, we are nothing without His support and grace. We are ciphers by ourselves.

Bhagawan Krishna in the Bhagwad Gita says' Nimita Matram Bhava Sabhya Sashim'. "You are nothing; Arjuna you don't say how can I kill my grandfather? How can I kill my granduncle? How can I kill my kith and kin? You are not killing them, you are a mere nimita, a mere instrument. I have already killed them, whether you like it or not, I have already killed them. You are only giving them a RIP, a mortuary. You are only giving them a label. You are a mere nimita, a mere instrument nothing more." Once we have that concept that we are mere instruments in His hands, then the ego is humbled.

Having spoken so much of God, a basic question arises in us some time or the other in some remote part of the mind :- Is there a God at all? Is it only a creation of man's mind? After all animals and birds also have life energy like us, they also live like us. They have life in them; But they do not worship any God. Is it only a creation of man's mind?

A very unusual confirmation of this comes from an unexpected quarter. Eugene A. Cernan, an astronaut, who went to the moon on two occasions Apollo 10 and 17 writes that – "When we go to the moon and see the luminous surroundings- we have no choice but to believe in a supreme creator, who has created the Universe. He says, when you sit on the moon and watch the universe, it is like sitting on God's front porch and watching the scenery. The earth at a distance rotating on its axis, in a three dimensional darkness which envelopes it, without being suspended without having a support and yet does not tumble down. This is incomprehensible and his only answer is that, there must be a supreme creator who has created the universe."

So if there is a God, the next question that comes is- Where is He?

Omnipotent, Omniscient, and Omnipresent. He is all pervading. Every inch of this universe contains this all pervading God. The story of Prahlad and Hirankasyapu is a classic example of this concept of the omnipresence of this Supreme Creator God. The Isavasya Upanishad says'Esaawasya midam sarwam yat kinchita jagatyam jagat". The whole Universe is pervaded by the creator there is no part, no inch where the supreme Creator is not present'.

A young boy, who was coming out of his Sunday school, was returning home when a passerby picked up a conversation with him. On learning that he was coming out of Sunday school, the man said to the boy. "Son, I will give you a brand new dime, if you tell me where God is". Quick as a flash the boy replied, "Mister I will give you a dollar if you tell me where God ain't."

In summing up, it would be appropriate to remember these words of Bhagawan Krishna Himself

"मन्मना भव मद्भक्तो मद्याजी मां नमस्कुरु।

मामेवैष्यसि युक्त्वैवमात्मानं मत्परायणः ॥"

"Always think of Me, be devoted to Me, worship Me, and offer obeisance to Me. Having dedicated your mind and body to Me, you will certainly come to Me."

Thus we have completed the discussion on this last component of NIYAMA that is self surrender.

We will next move on to the third step prescribed by the sutras i.e. ASANA.

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General

Ethics from Epics - 9

Paradoxical Characters - 1

CA Allama Prabhu M S

Many of the characters in Mahabharata are paradoxical, contradictory, and relatable because they exhibit a combination of virtues, momentary flaws, & weaknesses that reflect the complexity of the very human nature.

When we dive deeper, we see persons succumbing to moments of weakness. Impulsive decisions and questionable silence generate issues of ethics, revealing the intricacies of human decision making.

And some characters are stubborn and blindfolded, devoted like slaves regardless of morals.

Silence is also a decision, & it could be morally ambiguous!

Action is also a decision, & it could be controversial!

Inaction is also a decision, & it could be disastrous !

Can we find explanations and get answers to the moral choices that humans face?

I have attempted to delve into a few paradoxical characters, a few.

1. Dhritarashtra – the Power Greedy King!

After the great conflict, when the Pandavas went to meet him, Dhritarashtra opens his arms to embrace Bheema, but Krishna pulls Bheema away and pushes a metallic idol of Bheema into his arms.

Dhritarashtra has been waiting for this moment. Believing that it is Bheema, he embraces the idol and crushes it into bits, displaying his deep & secret rage.

A fair King will always prioritize justice and societal peace over power. But, this King is not!

Even after Draupadi's disrobement, Duryodhana made friends with several esteemed Kings. Approximately 24 lakh warriors (11 Akshohini Army), joined him and were willing to die for him, & they died! He had his 100 brothers and the legendary Karna dedicated their lives to him.

But Dhritarashtra was all alone!

Vidura and Sanjaya, basically treated him as their Master, but not as a friend.

Dhritarashtra's blindfold love to his son, unbridled ambition, unchecked ignominious intentions, involvement in the conspiracies, all these have made him extremely paradoxical.

> "*You truly cannot afford the luxury of even one negative thought.*
> *A worrisome thought is like an embryo: it starts off small but grows and grows*"
> Julian to John in Robin Sharma's *The Monk who sold his Ferrari*

One of the popular verses from Mahabharat is as follows:

> पुण्यस्य फलमिच्छन्ति पुण्यं नेच्छन्ति मानवाः ।
> न पापफलमिच्छन्ति पापं कुर्वन्ति यत्नतः ॥
> ಪುಣ್ಯದ ಫಲವನ್ನು ಮಾನವರು ಇಚ್ಛಿಸುತ್ತಾರೆ,
> ಪುಣ್ಯದ ಕಾರ್ಯಗಳನ್ನ ಮಾಡುವುದಲ್ಲ,
> ಪಾಪದ ಫಲವನ್ನು ಇಚ್ಛಿಸುವುದಿಲ್ಲ,
> ಪಾಪದ ಕಾರ್ಯಗಳನ್ನ ಮಾಡದೇ ಇರುವುದಿಲ್ಲ.
> *Humans desire the fruits of punya,*
> *without engaging in virtuous deeds.*
> *They do not desire the fruits of sins,*
> *but they keep performing sinful deeds.*

2. Vikarna & Yuyutsu – the complex loyalists !

Vikarna is known for standing up against the injustice suffered by Draupadi.

Dushyasana drags Draupadi to the Court Hall holding her long plights; humiliated Draupadi questions the elders in the Hall, and asserts that they are not elders unless they speak up for justice.

Vidura firmly declares that Yudhishthira had no right to make the wager by placing Draupadi, because he had already lost himself in the bet.

Bhisma, Drona, Kripa all, & all others remained silent...an indelible stain on their profiles.

Now, Vikarna stands up and displays his sense of fairness & courage of conviction.

By remaining with Duryodhana during the Kurukshetra War he also displays his Loyalty to his family, and finally dies in the hands of Bheema.

Even if it meant damaging his relationship with his brother, Vikarna felt he had an obligation to speak up for the righteous and not to support the dictatorial atrocities. And he did it at the right moment.

D.V.G says:

ಹೋರಾಡು ಬೀಳ್ವನ್ನಮೊಬ್ಬಂಟಿಯಾದೋಡಂ ।
ಧೀರಪಥವನೆ ಬೆದಕು ಸಕಲಸಮಯದೊಳಂ ॥
ದೂರದಲಿ ಗೊಣಗುತ್ತ ಬಾಳ್ವ ಬಾಳ್ಗೇನು ಬೆಲೆ ?।
ಹೋರಿ ಸತ್ತ್ವವ ಮೆರೆಸು – ಮಂಕುತಿಮ್ಮ ॥

Fight, even if you are alone and fallen;
Always tread the brave path.
What worth is life lived merely grumbling afar?
Fight and display your mettle – Mankutimma.

He questioned where others were afraid, a clear conviction of courage.

Vikarna demonstrated his strength of character; he lived with courage and died with courage.

Being upright: thinking alone is insufficient.

It requires mental tenacity to be put into practice.

Being rightful just on paper is useless without practice; until one learns to denounce, criticize and censure the wrongdoers…be it a King or a Minister.

"Many people, especially ignorant people,
want to punish you for speaking the truth,
for being correct, for being you.
Never apologize for being correct,
or for being years ahead of your time.
If you're right and you know it, speak your mind.
Even if you are a minority of one,
the truth is still the truth."

- Mahatma Gandhi

Yuyutsu is also Dhritarashtra's son; however, he is Duryodhana's half-brother.

In Kurukshetra, just before the great combat, Yudhishtira announces

"*We welcome anyone from the Kauravas side who desire to join us*."

Hearing this, Yuyutsu immediately defects to Yudhishthira's camp !

He shows his commitment to his believed values by associating with the righteous.

Was he just waiting for the announcement?

What if Yudhishtira had not made the announcement? Had he fought against the Pandavas?

And what kept him from joining the Pandavas earlier?

Throughout his life, he was with Duryodhana, never questioned the most heinous atrocities committed against Draupadi, and ultimately joins hands with Yudhishtira. And, he is one amongst the few who survived the war!

Vikarna and Yuyutsu both displayed loyalty to righteousness, albeit at times that were distinct. It is too subjective and dependent on individual perceptions and interpretations to determine who is better. Alternatively, it may be unnecessary or even imprudent to decide that question.

(…continued)

Corrigendum: In last issue, *(Circa 1419-1446 BCE)* to be read as *(Circa 1419-1446 CE)*

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Ethics

UPCOMING EVENTS – 2024

Topics and speakers for Direct TAX Home Refresher Course (DTHRC)

Session	Date	Topic	Speaker
1	22-05-24 Wednesday	Fundamentals of Income Tax – Scope and Charge of Income and Issues on the same	CA Yogesh Thar
2	22-05-24 Wednesday	Taxation of Royalties and Fees for Technical Services including TDS under section 195	CA Pradeep Modi
3	24-05-24 Friday	Charitable Trusts Taxation – Understanding the recent uncharitable amendments in law and compliance including registration	Advocate T Banusekar
4	24-05-24 Friday	Taxation with respect to various instruments in investments space like AIFs, REITs etc. – Riding the Indian Bull market	CA Gautam Nayak
5	27-05-24 Monday	Private Trusts – Succession, FEMA and Income Tax implications	CA B Ramakrishnan
6	27-05-24 Monday	Deduction on payment basis 43B – A relook including payments to MSMEs including Form 3CD Reporting and landmark judgements on legacy issues of Section 43B - Tentative	Adv. Dharan gandhi
7	29-05-24 Wednesday	Judicial Analysis of recent judgments with special emphasis on case laws with respect to Reassessments	CA Naresh Ajwani
8	29-05-24 Wednesday	Related Party Transactions – Understanding the implications under various sections of Income Tax vis-à-vis other acts and disclosure norms	CA Chinnaswami Ganeshan
9	31-05-24 Friday	Cash Transactions under Section 69/69A and other issues	CA Ketan Vajani
10	31-05-24 Friday	Income Tax issues arising out of compulsory acquisition of Immovable Property	CA Pradeep Kapasi
11	03-06-24 Monday	Reporting of Foreign Assets and repercussions of non-compliance vis-à-vis Black Money Act and PMLA	CA Kartik Badiani
12	03-06-24 Monday	Taxation issues on redemption of insurance policies, ULIPs etc	CA Jagdish Punjabi
13	05-06-24 Wednesday	TDS/TCS obligations – A code in itself – Overview of recent additions and issues surrounding them	CA Bhaumik Goda
14	05-06-24 Wednesday	Assessments, Reassessments and Appeals – Has Faceless regime made life easy? Common Mistakes or scenarios where assessees get notices for assessment	CA Manthan Khokhani

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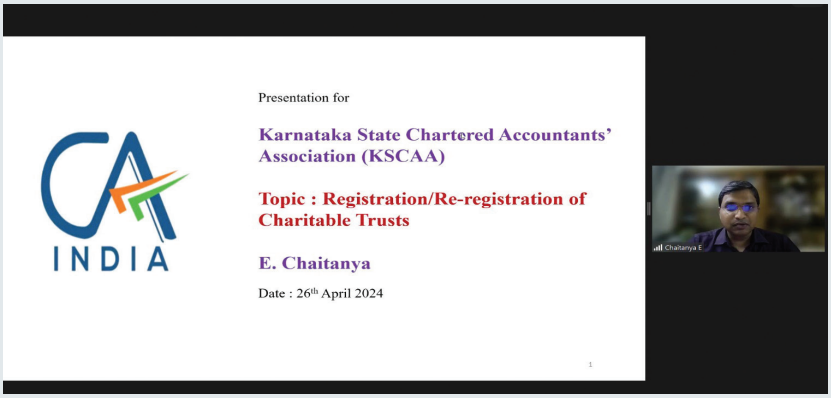
PHOTO GALLERY

Meeting with CIT(Exemptions) Mr. Manian Mathivanan to discuss issues relating to Trusts on 23rd April 2024.

Meeting with JCCT, Minority Acts, Ms. Sonala Nayak to discuss issues relating to Professional Tax Payment on 4th May 2024.



Webinar on registration/ Re-registration of Charitable Trusts | Organized by the Direct Tax Committee of KSCAA on 26th April 2024

Family trip to Malaysia | Orgainsed by Leadership and Skill Development Committee of KSCAA

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