



House Journal ACAIE

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES



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Editorial



Dear Members,

Heartfelt Greetings to all!

“Education is the most powerful weapon which you can use to change the world” – Nelson Mandela.

Education is the first step for people to gain the knowledge, critical thinking, empowerment and skills they need to make this world a better place. With these words, I express my sincere thanks and feel highly obliged to serve as chairman of House Journal of ACAE.

I am filled with utter gratitude and it gives me immense pleasure to share the first House Journal of this term, with contributions from professionals and members at large on various subjects.

With the onset of covid-19 we have seen some difficult days and as we are welcoming the brighter days, it is very much important to stay safe and follow safety-protocols and on that note, I hope each one of you is in good physical health. We have been adaptive to the new mode of get-together and this same mode of ‘digital world’ has offered us a lot while we discover the various aspects of it.

As you take a step forward with us into this new term offering fresh perspective, we bring to you updates in the subject matter of IBC, Income Tax, GST, Corporate Law and many more.

I humbly seek your valuable comments and suggestions which will help and guide us for further improvement of the House Journal.

With Best regards

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President Speaks



Dear Professional Colleagues,

Season's Greetings to you all !!!

This is my first communication to you through first House Journal of ACAIE.

We are pleased to inform you that during this period ACAIE has organized **Audit and Accounts conclave** jointly with EIRC and also published first e-journal on same.

ACAIE has organised several VCM on Revised Schedule III, CARO – 2020 and GST. These virtual events were conducted by eminent speakers across India with very good acknowledgement from members.

ACAIE is regularly organizing its well conceptualized event of “Group Discussion” every week on a fixed date & time to promote knowledge and interactive skills amongst its members more particularly younger ones.

Our Annual Bijoya and Diwali Get Together was organised in physical mode at Ojas Banquet and several members and their family had participated with a lot of enthusiasm.

My sincere thanks go to the Editorial Board under the Chairmanship of **CA Anup Kumar Banka** for the First House Journal of ACAIE during the year 2021-22 under my tenure as President.

All the members of Editorial Board deserve accolades and I thank them for their sincerity and dedication in bringing out this journal before you in such a short span of time.

On this note, I would like to conclude with warm greetings on upcoming Christmas and New year.

Stay Safe and Healthy

With Warm Regards

CA Vivek Agarwal
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Brief regarding Rules of Interpretation of statutes

Introduction

Enacted laws, especially the modern acts and rules, are drafted by legal experts and it could be expected that the language used will leave little room for interpretation or construction.

But the experience of all those who have to bear and share the task of application of the law has been different.

It is not necessary that the words used in a statute are always clear, explicit and unambiguous and thus, in such cases it is very essential for courts to determine a clear and explicit meaning of the words or phrases used by the legislature and at the same time remove all the doubts if any. Hence, all the rules mentioned in the article are important for providing justice.

Interpretation means

The term has been derived from the Latin term '*interpretari*', which means

- to explain,
- expound,
- understand, or
- to translate.

Interpretation is the process of explaining, expounding and translating any text or anything in written form.

This basically involves an act of discovering the true meaning of the language which has been used in the statute. Various sources used are only limited to explore the written text and clarify what exactly has been indicated by the words used in the written text or the statutes.

Interpretation of statutes is the correct understanding of the law. This process is commonly adopted by the courts for determining the exact intention of the legislature.

Because the objective of the court is

not only merely to read the law but is also to apply it in a meaningful manner to suit from case to case. It is also used for ascertaining the actual connotation of any Act or document with the actual intention of the legislature.

There can be mischief in the statute which is required to be cured, and this can be done by applying various norms and theories of interpretation which might go against the literal meaning at times.

The purpose behind interpretation is to clarify the meaning of the words used in the statutes which might not be that clear.

the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning.

It is the process of ascertaining the true meaning of the words used in a statute. The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'.

Statutory interpretation is the process by which courts interpret and apply legislation.

Some amount of interpretation is often necessary when a case involves a statute. ... But in many cases, there is some ambiguity or vagueness in the words of the statute that must be resolved by the judge.

Interpretation of statute is the process of ascertaining the true meaning of the words used in a statute.

Object of interpretation

When the language of the statute is clear, there is no need for the rules of interpretation.

But, in certain cases, more than one meaning may be derived from the same word or sentence. It is, therefore, necessary to interpret the statute to find out the real intention of the statute.

determine the intention of the legislature conveyed expressly or impliedly in the language used.

In the process of interpretation, several aids are used.

They may be statutory or non-statutory.

Statutory aids may be illustrated by the General Clauses Act, 1897 and by specific definitions contained in individuals Acts.

Non-statutory aids are illustrated by common law rules of interpretation (including certain presumptions relating to interpretation) and also by case-laws relating to the interpretation of statutes.

Interpretation of Statutes is required for two basic reasons:-

Legislative Language – Legislative language may be complicated for a layman, and hence may require interpretation; and

Legislative Intent – The intention of the legislature or Legislative intent assimilates two aspects:

- the concept of 'meaning', i.e., what the word means; and
- the concept of 'purpose' and 'object' or the 'reason' or 'spirit' pervading through the statute.

Principles of interpretation

The fundamental principle of statutory interpretation is that the words of a statute be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature.

Some Important points to be taken care of in the context of interpreting Statutes:

Intention of the legislature.

Statute must be read as a whole in its Context.

Statute should be Construed so as to make it Effective and Workable – if statutory provision is ambiguous and capable of various constructions, then that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none.

If meaning is plain, effect must be given to it irrespective of consequences.

The process of construction combines both the literal and purposive approaches.

The purposive construction rule highlights that you should shift from literal construction when it leads to absurdity.

Nature and Scope

Necessity of interpretation would arise only where the language of a statutory provision is

- ambiguous,
- not clear or
- where two views are possible or
- where the provision gives a different meaning defeating the object of the statute.

If the language is clear and unambiguous, no need of interpretation would arise.

In this regard, a Constitution Bench of five Judges of the Supreme Court in R.S. Nayak v A.R. Antulay, has held:

"... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating."

Again Supreme Court in Grasim Industries Ltd. v Collector of Customs, Bombay, has followed the same principle and observed:

"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions."

The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

The correct is one that best harmonises the words with the object of the statute.

Difference between Interpretation and Construction

"Interpretation differs from construction in the sense that the former is the art of finding out the true sense of any form of words; i.e. the sense that their author intended to convey. Construction on the other hand, is the drawing of conclusions, respecting the subjects that lie beyond the direct expression of the text.

Sl. No.	Grammatical Interpretation	Particulars
1	Literal Interpretation	Functional Interpretation
2	Letter of Law	Spirit of Law
3	Looks at Verbal Expression of Law	Looks beyond Verbal Expression of Law

Sl. No.	Grammatical Interpretation	Particulars
4	Tries to find meaning of words given in the legislature	Tries to find true intention of the legislature
5	The popular or dictionary meaning of the term is referred	Check the circumstances under which law was written
6	It gives the plain sense	It looks for inherent sense
7	Used frequently in courts	Used rarely in courts

Statute

- ✓ Constitution
- ✓ Central Acts
- ✓ State Acts
- ✓ Ordinance
- ✓ Bye laws
- ✓ Rules
- ✓ Regulations
- ✓ Notifications
- ✓ Circulars
- ✓ Instructions
- ✓ Clarifications
- ✓ Directions

Statute – classification

Duration

Perpetual statute – No duration for this statute unless repealed.

Temporary statute – Only for a short period after this it will expire.

Nature of operation

Prospective Effect – effect from the notified date;

Retrospective effect – effect from the previous period;

Directory - A directory statute is generally affirmative in its terms, recommends a certain act or omissions, but imposes no penalty on non-observance of its provisions;

Mandatory - one which compels performance of certain acts and directs that a certain thing must be done in a certain manner or form.

Rules of interpretation

The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts.

These principles are sometimes called 'rules of interpretation'.

Rules of Interpretation

1. Primary Rules -
Literal or Grammatical Rule

Important aspects of this rule

To construe the provisions literally and grammatically giving the words their ordinary and natural meaning;

Also known as plain meaning rule;

There should be no additions or substitution of words in the construction of statutes and its interpretation;

Only one meaning should be derived from the statute.

Literal meaning is subject to the following conditions-

Statute may itself provide for a special meaning for a term, which is usually to be found in the interpretation section.

Technical words are given ordinary technical meaning if the statute has not specified any other.

Words will not be inserted by implication.

Words may undergo shifting in the course of time.

It should be remembered that the words acquire significance from their context.

It is the first rule of interpretation.

According to this rule, the words used in this text are to be given or interpreted in their *natural or ordinary meaning*. After the interpretation, if the meaning is completely clear and unambiguous then the effect shall be given to a provision of a statute regardless of what may be the consequences.

The basic rule is that whatever the intention legislature had while making any provision it has been expressed through words and thus, are to be interpreted according to the rules of grammar.

It is the safest rule of interpretation of statutes because the intention of the legislature is deduced from the words and the language used.

According to this rule, the only duty of the court is to give effect if the language of the statute is plain and has no business to look into the consequences which might arise. The only obligation of the court is to expound the law as it is and if any harsh consequences arise then the remedy for it shall be sought and looked out by the legislature.

Case Laws

Maqbool Hussain v. State of Bombay,

In this case, the appellant, a citizen of India after arriving at the airport did not declare that he was carrying gold with him. During his search was carried on, gold was found in his possession as it was against the notification of the government and was confiscated under section 167(8) of *Sea Customs Act*.

Later on, he was also charged under *section 8 of the Foreign Exchange Regulations Act, 1947*. The appellant challenged

this trial to be violative under Article 20(2) of the Indian Constitution. According to this article, no person shall be punished or prosecuted more than once for the same offence. This is considered as double jeopardy.

It was held by the court that the Seas Act neither a court nor any judicial tribunal. Thus, accordingly, he was not prosecuted earlier. Hence, his trial was held to be valid.

State of Kerala v. Mathai Verghese and others, 1987 AIR 33 SCR(1) 317, in this case a person was caught along with the counterfeit currency “dollars” and he was charged under section 120B, 498A, 498C and 420 read with section 511 and 34 of Indian Penal Code for possessing counterfeit currency. The accused contended before the court that a charge under section 498A and 498B of Indian Penal Code can only be levied in the case of counterfeiting of Indian currency notes and not in the case of counterfeiting of foreign currency notes. The court held that the word currency notes or bank note cannot be prefixed. The person was held liable to be charge-sheeted.

The Mischief Rule/Purposive construction

A rule of statutory interpretation that attempts to determine the legislator’s intention – to determine the mischief and defect – to give ruling to implement the effective remedy.

Mischief Rule was originated in *Heydon’s case* in 1584. It is the rule of purposive construction because the purpose of this statute is most important while applying this rule. It is known as Heydon’s rule because it was given by Lord Coke in Heydon’s case in 1584. It is called as mischief rule because the focus is on curing the mischief.

In the Heydon’s case, it was held that there are four things which have to be followed for true and sure interpretation of all the statutes in general, which are as follows-

1. What was the common law before the making of an act.
2. What was the mischief for which the present statute was enacted.
3. What remedy did the Parliament sought or had resolved and appointed to cure the disease of the commonwealth.
4. The true reason of the remedy.

The purpose of this rule is to suppress the mischief and advance the remedy.

Case Laws

Smith v. Huges, 1960 WLR 830, in this case around the 1960s, the prostitutes were soliciting in the streets of London and it was creating a huge problem in London. This was causing a great problem in maintaining law and order. To prevent this problem, Street Offences Act, 1959 was

enacted. After the enactment of this act, the prostitutes started soliciting from windows and balconies.

Further, the prostitutes who were carrying on to solicit from the streets and balconies were charged under section 1(1) of the said Act. But the prostitutes pleaded that they were not solicited from the streets.

The court held that although they were not soliciting from the streets yet the mischief rule must be applied to prevent the soliciting by prostitutes and shall look into this issue. Thus, by applying this rule, the court held that the windows and balconies were taken to be an extension of the word street and charge sheet was held to be correct.

PyareLal v. Ram Chandra, the accused in this case, was prosecuted for selling the sweeten supari which was sweetened with the help of an artificial sweetener. He was prosecuted under the Food Adulteration Act. It was contended by PyareLal that supari is not a food item. The court held that the dictionary meaning is not always the correct meaning, thereby, the mischief rule must be applicable, and the interpretation which advances the remedy shall be taken into consideration. Therefore, the court held that the word ‘food’ is consumable by mouth and orally. Thus, his prosecution was held to be valid.

Kanwar Singh v. Delhi Administration, AIR 1965 SC 871.

Issues of the case were as follows- **section 418 of Delhi Corporation Act, 1902** authorised the corporation to round up the cattle grazing on the government land. The MCD rounded up the cattle belonging to Kanwar Singh. The words used in the statute authorised the corporation to round up the abandoned cattle. It was contended by Kanwar Singh that the word abandoned means the loss of ownership and those cattle which were round up belonged to him and hence, was not abandoned. The court held that the mischief rule had to be applied and the word abandoned must be interpreted to mean let loose or left unattended and even the temporary loss of ownership would be covered as abandoned.

Regional Provident Fund Commissioner v. Sri Krishna Manufacturing Company, AIR 1962 SC 1526, Issue, in this Case, was that the respondent concerned was running a factory where four units were for manufacturing. Out of these four units one was for paddy mill, other three consisted of flour mill, saw mill and copper sheet units. The number of employees there were more than 50. The RPFC applied the provisions of Employees Provident Fund Act, 1952 thereby directing the factory to give the benefits to the employees.

The person concerned segregated the entire factory into four separate units wherein the number of employees had fallen below 50, and he argued that the provisions were

not applicable to him because the number is more than 50 in each unit. It was held by the court that the mischief rule has to be applied and all the four units must be taken to be one industry, and therefore, the applicability of PFA was upheld.

The Golden Rule

It is a form of statutory interpretation that allows a judge to depart from a word's normal meaning in order to avoid an absurd result.

It is a compromise between the rule of interpretation and the rule of mischief. To be used in two ways-

It is applied most frequently in a narrow sense where there is some ambiguity or absurdity in the words themselves.

It is used in a wider sense to avoid a result that is obnoxious to the principles of public policy.

It is known as the golden rule because it solves all the problems of interpretation. The rule says that to start with we shall go by the literal rule, however, if the interpretation given through the literal rule leads to some or any kind of ambiguity, injustice, inconvenience, hardship, inequity, then in all such events the literal meaning shall be discarded and interpretation shall be done in such a manner that the purpose of the legislation is fulfilled.

The literal rule follows the concept of interpreting the natural meaning of the words used in the statute. But if interpreting natural meaning leads to any sought of repugnance, absurdity or hardship, then the court must modify the meaning to the extent of injustice or absurdity caused and no further to prevent the consequence.

This rule suggests that the consequences and effects of interpretation deserve a lot more important because they are the clues of the true meaning of the words used by the legislature and its intention. At times, while applying this rule, the interpretation done may entirely be opposite of the literal rule, but it shall be justified because of the golden rule. The presumption here is that the legislature does not intend certain objects. Thus, any such interpretation which leads to unintended objects shall be rejected.

Important aspects of this rule

The court must construe the contradictory provisions so as to harmonize them.

The provision of one section cannot be used to defeat the provisions in another unless the Court, despite all its efforts, is unable to find a way to reconcile their differences.

When it is impossible to reconcile the differences in contradictory provisions completely, the court must interpret them in such a way so as that effect is given to both the provisions as much as possible.

It is not a harmonious construction if the interpretation reduces one provisions to be useless and not to destroy it or render it to loose.

Case Laws

Tirath Singh v. Bachittar Singh, AIR 1955 SC 850

In this case, there was an issue with regard to issuing of the notice under section 99 of Representation of People's Act, 1951, with regard to corrupt practices involved in the election.

According to the rule, the notice shall be issued to all those persons who are a party to the election petition and at the same time to those who are not a party to it. Tirath Singh contended that no such notice was issued to him under the said provision. The notices were only issued to those who were non-parties to the election petition. This was challenged to be invalid on this particular ground.

The court held that what is contemplated is giving of the information and the information even if it is given twice remains the same. The party to the petition is already having the notice regarding the petition, therefore, section 99 shall be so interpreted by applying the golden rule that notice is required against non-parties only.

State of Madhya Pradesh v. Azad Bharat Financial Company, AIR 1967 SC 276,

Issues of the case are as follows.

A transporting company was carrying a parcel of apples was challenged and charge-sheeted. The truck of the transporting company was impounded as the parcel contained opium along with the apples. At the same time, the invoice shown for the transport consisted of apples only.

Section 11 of the opium act 1878, all the vehicles which transport the contraband articles shall be impounded and articles shall be confiscated. It was confiscated by the transport company that they were unaware of the fact that opium was loaded along with the apples in the truck.

The court held that although the words contained in section 11 of the said act provided that the vehicle shall be confiscated but by applying the literal rule of interpretation for this provision it is leading to injustice and inequity and therefore, this interpretation shall be avoided. The words 'shall be confiscated' should be interpreted as 'may be confiscated'.

State of Punjab v. QuiserJehan Begum, AIR 1963 SC 1604,

a period of limitation was prescribed for, under section 18 of land acquisition act, 1844, that an appeal shall be filed for the announcement of the award within 6 months of the announcement of the compensation. Award was passed in

the name of QuiserJehan. It was intimated to her after the period of six months about this by her counsel. The appeal was filed beyond the period of six months. The appeal was rejected by the lower courts.

It was held by the court that the period of six months shall be counted from the time when QuiserJehan had the knowledge because the interpretation was leading to absurdity. The court by applying the golden rule allowed the appeal.

Harmonious Construction

When there is a conflict between two or more statutes or two or more parts of a statute then this rule is to be adopted.

If it is not possible to harmonize the two statutes, then the court is to decide the same and it shall prevail. There should be consistency.

According to this rule of interpretation, when two or more provisions of the same statute are repugnant to each other, then in such a situation the court, if possible, will try to construe the provisions in such a manner as to give effect to both the provisions by maintaining harmony between the two. The question that the two provisions of the same statute are overlapping or mutually exclusive may be difficult to determine.

The legislature clarifies its intention through the words used in the provision of the statute. So, here the **basic principle** of harmonious construction is that the legislature could not have tried to contradict itself. In the cases of interpretation of the Constitution, the rule of harmonious construction is applied many times.

It can be assumed that if the legislature has intended to give something by one, it would not intend to take it away with the other hand as both the provisions have been framed by the legislature and absorbed the equal force of law. One provision of the same act cannot make the other provision useless. Thus, in no circumstances, the legislature can be expected to contradict itself.

Cases –

IshwariKhaitan Sugar Mills v. State of Uttar Pradesh, in this case, the State Government proposed to acquire sugar industries under U.P Sugar Undertakings (Acquisition) Act, 1971. This was challenged on the ground that these sugar industries were declared to be a controlled one by the union under *Industries (Development and Regulation) Act, 1951*. And accordingly, the state did not have the power of acquisition of requisition of property which was under the control of the union. The Supreme Court held that the power of acquisition was not occupied by *Industries*

(*Development and Regulation*) Act, 1951. The state had a separate power under Entry 42 List III.

M.S.M Sharma v. Krishna Sinha, AIR 1959 SC 395.

Facts of the case are as follows- *Article 19(1)(a)* of the Constitution provides for freedom of speech and expression. *Article 194(3)* provides to the Parliament for punishing for its contempt and it is known as the Parliamentary Privilege. In this case, an editor of a newspaper published the word-for-word record of the proceedings of the Parliament including those portions which were expunged from the record. He was called for the breach of parliamentary privilege.

He contended that he had a fundamental right to speech and expression. It was held by the court that *article 19(1)(a)* itself talks about reasonable freedom and therefore freedom of speech and expression shall pertain only to those portions which have not been expunged on the record but not beyond that.

Rule of reasonable construction

This rule stresses upon the intention of the legislature to bring up the statute and sensible and not the prima facie meaning of the statute.

This helps to clear the error caused due to the faulty draftsmanship.

Rule of beneficial construction

Beneficial construction is a tendency and not a rule.

This principle is based on human tendency to be fair, accommodating and just.

In one case the Tribunal awarded more number of paid leaves to the workers than stated in section 79(1) of the Factories Act. This has been challenged. The Supreme Court held that the enactment being welfare legislation for the workers had to be beneficially constructed in favor of the workers.

Rule of exceptional construction

It stands for the elimination of statutes and words in a statute which defeats the real objective of the statute or makes no sense. 'and' 'or', 'may', 'shall', 'must'.

2. Secondary Rules -

1. **Noscitur a sociis** - It can be used wherever a statutory provision contains a word or phrase that is capable of bearing more than one meaning.

Noscere means to know and sociis means association

Thus, Noscitur a Sociis means knowing from association

Adoctrine or rule of construction: the meaning of an unclear or ambiguous word (as in a statute or contract)

should be determined by considering the words with which it is associated in the context.

The meaning of an unclear word or phrase should be determined by the words immediately surrounding it.

In other words, the meaning of a word is to be judged by the company it keeps.

The questionable meaning of a doubtful word can be derived from its association with other words.

This rule is explained in Maxwell on the interpretation of statutes (12th edition) in following words – When two or more words susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The words take their colour from and are quantified by each other, the *meaning of the general words* being restricted to a sense analogous to that of the less general.

When a word is ambiguous, its meaning may be determined by reference to the rest of the statute.

Thus, under the doctrine of "noscitur a sociis" the questionable meaning of a word or doubtful words can be derived from its association with other words within the context of the phrase.

Relying on the above,

The apex court in **Pradeep Agarbatti** with reference to the Punjab Sales Tax Act held that the word, "perfumery" means such articles as used in cosmetics and toilet goods viz, sprays, etc but does not include 'Dhoop' and 'Agarbatti'. This is because in Schedule 'A' Entry 16 of Punjab Sales Tax Act reads as "cosmetics, perfumery & toilet goods excluding toothpaste, tooth powder kumkum & soap."

Delhi Tribunal in the case of, **Parsons Brinckerhoff India (P.) Ltd. vs. Asstt. DIT** (Int. Tax) applying the rule of Noscitur a Sociis held that, the words 'model' and 'design' cannot fall under definition of 'royalty' under Explanation 2 to section 9 (I) (VI) of the Income Tax Act. They have to take colour from the other words surrounding them, such as, patent, invention, secret formula or process or trade mark, which are all species of intellectual property.

Noscitur a sociis cannot prevail in case where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

It can also be applied where the meaning of the words of wider meaning import is doubtful; but, where the *object* of the Legislature in using wider words is clear and free from ambiguity, the rule of construction cannot be applied.

This doctrine is broader than the doctrine of ejusdem generis because this rule puts the words in context of the whole phrase and not just in relation to the nearby words.

The language of the phrase can be used as a guide to arrive

at the true meaning of the word.

This rule is illustrated in **Foster v Diphwys Casson (1887)** 18 QBD 428, involving a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The courts had to consider whether a cloth bag was within the definition. Under Noscitur a sociis, it was held that the bag could not have been within the statutory definition, because parliament's intention was referring to a case or container of the same strength as a canister.

In State of **Assam vs R Muhammad AIR 1967**, SC made use of this rule to arrive at the meaning of the word "posting" used in Article 233 (1) of the Constitution. It held that since the word "posting" occurs in association with the words "appointment" and "promotion", it took its colour from them and so it means "assignment of an appointee or a promotee to a position" and does not mean transfer of a person from one station to another.

Further, this rule can only be used when the associated words have analogous meaning. It *cannot be used when the words have disjoint meanings*. For example, in the case of **Lokmat Newspapers vs Shankarprasad AIR 1999**, it was held that the words "discharge" and "dismissal" do not have the same analogous meaning and so this rule cannot be applied.

2. **Ejusdem Generis** - When a list of two or more specific descriptors are followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them e.g. vehicles in "cars, motorbikes, motor powered vehicles" would be interpreted in a limited sense and therefore cannot be interpreted as including air planes.

The ejusdem generis, or 'of the same genus' rule, is similar though narrower than the more general rule of noscitur a sociis.

According to this rule, when particular words pertaining to a class or a genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified by the class or the genus. The meaning of an expression with wider meaning is limited to the meaning of the preceeding specific expressions.

However, for this rule to apply, the preceeding words must for a specific class or genus.

Further, this rule cannot be applied in the words with a wider meaning appear before the words with specific or narrow meaning.

In **UP State Electricity Board vs Harishankar**, AIR 1979, SC held that the following conditions must exist for the

application of this rule –

1. The statute contains an enumeration of specific words
2. The subject of the enumeration constitute a class or a category
3. The class or category is not exhausted by the enumeration
4. A general term is present at the end of the enumeration
5. There is no indication of a different legislative intent

Justice Hidayatullah explained the principles of this rule through the following example - In the expression, "books, pamphlets, newspapers, and other documents", private letters may not be held included if "other documents" be interpreted ejusdem generis with what goes before. But in a provision which reads, "newspapers or other documents likely to convey secrets to the enemy", the words "other documents" would include documents of any kind and would not take their meaning from newspaper.

This was also illustrated in the case of **Ishwar Singh Bagga vs State of Rajasthan** 1987, where the words "other person", in the expression "any police officer authorized in this behalf or any other person authorized in this behalf by the State government" in Section 129 of Motor Vehicles Act, were held not to be interpreted ejusdem generis because the mention of a single species of "police officers" does not constitute a genus.

It can be seen that this rule is an exception to the rule of construction that general words should be given their full and natural meaning. It is a canon of construction like many other rules that are used to understand the intention of the legislature.

This rule also covers The **rank principle**, which goes as follows - Where a string of items of a certain rank or level is followed by general residuary words, it is presumed that the residuary words are not intended to include items of a higher rank than those specified.

By specifying only items of lower rank the impression is created that higher ranks are not intended to be covered. If they were, then their mention would be expected a fortiori. For example, the phrase "tradesman, artificer, workman, labourer, or other person whatsoever" was held not to include persons above the artisan class. Similarly, the phrase "copper, brass, pewter, and tin, and all other metals" in a local Act of 1825 was held not to include precious metals such as gold and silver.

3. **Reddendo Singula Singulis** - When a list of words has a modifying phrase at the end, the phrase refers only to the last word, e.g., firemen, policemen, and doctors in a hospital. Here, "in a hospital" only applies to doctors and not to firemen or policemen. The reddendo singular

principle concerns the use of words distributively. Where a complex sentence has more than one subject, and more than one object, it may be the right construction to render each to each, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech. A typical application of this principle is where a testator says 'I devise and bequeath all my real and personal property to B'. The term devise is appropriate only to real property. The term bequeath is appropriate only to personal property. Accordingly, by the application of the principle reddendo singular singulis, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property, to B'.

This rule has been applied in the case of **Koteshwar Vittal Kamat vs K Rangappa Baliga**, AIR 1969, in the construction of the Proviso to Article 304 of the Constitution which reads, "Provided that no bill or amendment for the purpose of clause (b), shall be introduced or moved in the legislature of a state without the previous sanction of the President". It was held that the *word introduced applies to bill and moved applies to amendment*.

Conclusion

Every nation has its own judicial system, the purpose of which to grant justice to all. The court aims to interpret the law in such a manner that every citizen is ensured justice to all. To ensure justice to all the concept of canons of interpretation was expounded. These are the rules which are evolved for determining the real intention of the legislature.

It is not necessary that the words used in a statute are always clear, explicit and unambiguous and thus, in such cases it is very essential for courts to determine a clear and explicit meaning of the words or phrases used by the legislature and at the same time remove all the doubts if any. Hence, all the rules mentioned in the article are important for providing justice

On the basis of the above description of the rules of interpretation, it can rightly be concluded that the above rules of interpretation are like the tools of carpenter or sculptor. To a great extent their value depends on the fact that with what care or skill they are used. Actually, it depends upon the wisdom and care which the judges take in interpreting the statutes by applying the above rules of interpretation.

"May", 'shall' and 'must'

The words 'may', 'shall' and 'must' should initially be deemed to have been used in their natural and ordinary sense.

May signifies permission and implies that the authority has been allowed discretion.

In state of **UP v Jogendra Singh**, the Supreme Court observed that “there is no doubt that the word ‘may’ generally does not mean ‘must’ or ‘shall’.

But it is well settled that the word ‘may’ is capable of meaning ‘must’ or ‘shall’ in the light of context. It is also clear that when a discretion is conferred upon a public authority coupled with an obligation, the word ‘may’ should be construed to mean a command (Smt. Sudir Bala Roy v West Bengal).

‘May’ will have compulsory force if a requisite condition has to be filled. Cotton L.J observed that ‘May’ can never mean ‘must’ but when any authority or body has a power to it by the word ‘May’ it becomes its duty to exercise that power.

‘Shall’ in the normal sense imports command.

It is well settled that the use of the word ‘shall’ does not always mean that the enactment is obligatory or mandatory. It depends upon the context in which the word ‘shall’ occurs and the other circumstances. Unless an interpretation leads to some absurd or inconvenient consequences or

contradicts with the intent of the legislature the court shall interpret the word ‘shall’ in mandatory sense.

‘Must’ - is doubtlessly a word of command.

Specific Terminologies

99% of negative terms are mandatory; affirmative terms are mostly mandatory where guiding principle for vesting of powers depends on context.

~~In procedural statutes both negative and affirmative are mandatory.~~ Aids to construction for determination of the character of words can be used.

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**Our Executive Committee Member and
Co-Chairperson of House Journal
Sub-Committee, CA Shivani Shah Won
Double Gold Medals at
Kettlebell World Championship 2021
organised by The International Kettlebell
Marathon Federation In France.**



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Remand for fresh adjudication allows limited objections in reply to SCN

Introduction

When Tribunal sees that the facts necessary to make an accurate determination of liability has not received due consideration, Tribunal enjoys the authority in s.113(1) of Central GST Act to itself make the necessary determination of liability or 'remand' the matter back to the original authority for fresh consideration of the facts along with the directions for 'second round' of adjudication on the 'points of direction' stated in Tribunal's orders. This is referred as 'remand with directions' and taxpayers need to examine whether remand can be considered a 'half favourable' outcome when there was a real possibility that a 'fully unfavourable' outcome was in the offing.

Nature of 'limitation' in Rule 112

Grounds not taken in earlier proceedings are not permitted to be raised in appellate proceedings. But this is not to compel taxpayer to reply to illegal noticed without satisfying themselves, with benefit of appellate consideration, about the validity of the notice itself. As such, no rule 112 will come in the way of taxpayer choosing to leave all the arguments on merits, for later and get the question about validity of notice resolved even by the highest forum of appeal. Replying to invalid notices by submitting objections on merits 'without prejudice' to the objections on validity of notices are almost always considered by reaching findings on merits and somehow skirting the question about validity of proceedings, and hence the notice. Taxpayers are left with no choice but to proceed with replying to notices only on matters of legality at the first instance. And any anxiety that it will

'upset' the Officer, that is misplaced understanding of rights and remedies in law.

Legitimate action in 'illegitimate' proceedings

Entire society of taxpayers look to the Government to ensure that not a single taxpayer gets away with an unjust advantage by adopting an innovative interpretation of the plain words of the law. When society expects this, Legislature would have laid down a 'due process' by which the Government is to carry out this oversight. And without such legislative 'due process', each Officer is likely to do what seems right. When there is authority without any guidance or boundaries, that is arbitrary in itself, even if Officer has not exercised this authority yet. And if a law allows an Officer to act arbitrarily, the law is illegal because it can result in unequal treatment of two persons for the same cause. This affects 'equality before law' and for this reason, arbitrariness touches equality in law. And where legitimate tax demand is made by an Officer who is NOT the 'Proper Officer', although the demand is legitimate, the proceeds are illegitimate. And in ensure passion to protect interests of revenue does not make way of abuse of law by administration, legitimate demands too can be let go if the Officer is not the Proper Officer.

Validity of notices not limited to validity of their 'service'

Validity of service of notice is required to be questioned at the earliest opportunity and if invalid notices are either acted upon by responding on merits or not questioned as to their validity, section 160(2) of Central GST Act makes taxpayers' actions lend

legitimacy to an otherwise illegitimate proceeding. Validity of service is not limited to the 'modes' of service in section 169 of Central GST Act, validity of service covers:

- a) Validity of 'mode' of service
- b) Of a notice prepared in the 'format' prescribed
- c) Under the 'permitted' section
- d) Containing the 'ingredients' for the cause-of-action
- e) By the 'authorised' Proper Officer
- f) To the 'distinct person' involved

And failure of any of these 'ingredients', would render the notice invalid and the proceedings bad in law. With the mandate in section 160(2) of Central GST Act, taxpayer is to examine all these ingredients and object that the first available opportunity. Unexplainable delay or complete failure (to question its validity) will legitimize illegitimate proceedings, that is 'acquiescence'.

Notices to contain 'essential ingredients'

Adverting to show cause notices, which demand tax or repayment of input tax credit, no demand can be made on a 'premise'. For example, a notice cannot state that since financials contain 'other income', tax is payable on such income as no income will arise unless a supply was made. The fact that taxpayer as reported 'other income' there is no occasion for taxpayer to claim that this income arose without anything being supplied. GST is not a 'turnover tax' to fasten demand on every head of 'income' accounted in financials. GST is a tax on supply and to demand tax, 'essential ingredients' necessary to attract the incidence of tax. Reference to instructive words of Apex Court would be apposite:

*"The components which enter into the concept of a tax are well known. **The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure of or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defined any of the components of the levy will be fatal to its validity.**"*

Govind Saran Ganga Saran v. CST &
Ors. AIR 1985 SC 1041

Demand for CGST-SGST presumes it is an intra-State supply and provisions of section 10 or 12 of Integrated GST Act may have been applied on some facts. Demand for tax under paragraph 1, schedule I presumes that they are

business assets, that credit has been availed on them and that they have been taken away permanently. It is these ingredients that must be brought out and not left to taxpayer's imagination as these ingredients demand proof to accept their existence.

Ingredients missing in notices impairs entire notice

Where a notice is devoid of all the essential ingredients, there is no occasion for taxpayer to 'fill in the blanks' howsoever obvious it may be. Section 101 of Indian Evidence Act states that the one who makes any assertion bears the burden to prove. And section 59 of Central GST Act states that GST is a 'self-assessment-based' tax regime. If administration believes that the liability determined by taxpayer is not correct, then it is for revenue to bring home this allegation along with evidence commensurate with the nature and seriousness of allegations levelled. Taxpayer is under no obligation to 'prove innocence'. Reference to section 155 of Central GST Act shows that 'except eligibility to input tax credit', burden to prove all other matters lies on Revenue. Section 58 of Indian Evidence Act cautions that undisputed facts do not require any proof. Now, taxpayer can neither remain silent when invalid proceedings are proposed nor remain oblivious when notice is missing the essential ingredients.

Bad notices remain 'incurable'

The urge to cure missing ingredients in notices is barred by section 75(7) of Central GST Act mandating order of adjudication to be based on the 'same grounds' as stated in the notices. If the ingredients are essential to fasten the demand, missing one or more of them is incurable as per law. Enthusiasm to 'fill in the blanks' gives yet another ground in appeal against adjudication orders for travelling beyond the scope of the notice.

'New and improved' notice barred only by limitation

Demands dropped due to incurable deficiencies in the notices does not bring down the curtains on the issue involved and consequent demand. Revenue is not barred from issuing a 'new and improved' second notice for the same issue but with all deficiencies suitable addressed in a well-drafted show cause notice. Only hurdle being the limitation of time laid down and section 75(10) of Central GST Act lays down the outer time limit. So, Revenue too is entitled to keep up the pursuit until the time limitation runs out. And for this reason, taxpayers are known to engage in dilatory tactics so that the time to issue the second notice runs out.

Appraising infirmities in notices must be 'timed' right

If notices will be issued to everyone, which is better – to get a bad notice issued in haste or a good notice issued carefully? Taxpayers with initiative are mindful of the

course that every notice takes and choose their response. Taxpayers must choose 'when' to make their objections known. Allowing limited time, say, five (5) days to reply to notices may seem like a good trick but section 73(8) and 74(8) of Central GST Act allow minimum of thirty (30) days although for altogether different reasons, makes such short response times bad in law. Taxpayers also avail themselves of the opportunity to seek extension allowed by section 75(6) of Central GST Act to make sure adjudication is not in haste and on facts poorly appreciated. This is the interplay that is not apparent but almost invariable at work.

'Ex parte orders' not a bad outcome

With both sides tugging at the notice, it is not uncommon for adjudication orders to be passed *ex parte* perhaps due to the 'nothing more to say' facts operating in the notice. While principles of natural justice frowns upon such *ex parte* disposal, taxpayers might find it easier to secure favourable outcome in appeal for the reason that hasty disposals are without giving any consideration to additional information or evidence that taxpayer could have brought in the course of defence submissions. With extension of section 172 of Central GST Act by two (2) more years in 2021, relief that has been extended in the past could well become available if more Orders as issued by Jun 2022. And taxpayers case could well be covered by those Orders. As such, *ex parte* orders may not be so bad after all as part of the litigation strategy.

'Curative' authority not allowed in law

Without power to cure incurable deficiencies in notices, carrying matters in appeal allows taxpayers to continue the grounds contained in the notice originally issued without any corrections or improvements. Section 107(11) of Central GST Act in *second proviso*, bars inclusion of any new discovery during disposal of appeal. And equally, Appellate Authorities are required to examine grounds pleaded by Appellant and even when some additional relief is merited. Relief not prayed for cannot be allowed. Appellants must

plead carefully and strategically choose to omit certain types of relief.

'Limited' power of remand in law

Although Appellate Authority is NOT permitted to remand matters for fresh consideration by Adjudicating Authority, section 75(3) of Central GST Act appears to indicate that where computation of relief already allowed is required, matter can be remanded by Appellate Authority. But Tribunal enjoys more latitude in remanding 'with directions' either to the Appellate Authority or back to the Adjudicating Authority. Since, 'findings' by Appellate Authority are only on trial before the Tribunal, Appellants' pleadings become significant so that the Tribunal is only to decide legality of the notice and if upheld to remand for fresh consideration on merits since no objections on merits have been made by Appellant before Adjudicating Authority. Omission to make submissions on merits cannot be overcome due to rule 112 of Central GST Rules because even Tribunal would not be in a position to determine the demand without giving full consideration to facts on merits. And for this reason, Tribunal would have rendered justice either by striking down an invalid notice or by upholding it and then remanding it for reconsideration of the merits for the first time in this second round of adjudication.

Conclusion

Now therefore, taxpayers need to consider 'who can grant which relief' and make their pleadings accordingly. Officers who are creatures of the law cannot sit in judgement over the *vires* of the very law that created them. And when the matter reaches Tribunal, and there is no higher authority to consider the facts, Tribunal cannot see injustice done when the matter has reached it without receiving consideration of those facts. And taxpayer's grievance to question validity of entire proceedings goes to the root of the very proceedings itself. And this question is not unreasonable to seek resolution first before introducing arguments on merits because merits do not matter when matter is taken up in invalid proceedings.

* * * * *

"Never worry about numbers. Help one person at a time, and always start with the person nearest you."

– Mother Teresa



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45th GST Council Meeting – GST Rate Changes



GST amount basically depends upon the two foremost important aspects- GST Rate and Value of supply. Value of Supply is governed by Sec 15 of CGST Act, 2017. GST Rate changes will be recommended by GST Council, which is formed under Article 279A of Constitution of India. Charging of correct GST rate is very important since it will affect the amount of GST to be collected by the registered person and in case the rate is incorrect then either supplementary invoice to be raised or the GST officer to recover the tax short paid under section 73/ 74, as the case may be.

45th GST Council Meeting held on 17.09.2021 recommended various changes related to GST rates on goods and services which will be discussed in this article.

Important Notification for Rate changes

Description	Goods	Services
Taxable	1/2017	11/2017
Exempt	2/2017	12/2017
RCM	4/2017	13/2017

Synopsis of GST Rate Notification

Schedule	Rate (%)	Sl. No. of Entries*
I	2.5	264
II	6	243
III	9	453
IV	14	229
V	1.5	18
VI	0.125	4

* Sl. of entries after considering omitted items (Entries) and multiple entries in same serial number.

GST Rate for Goods :

Industry	HSN	Rate till 30.09.2021			Rate after 30.09.2021			
		Sch I S.No.	Entry	Rate	Sch I S.No.	Entry	Rate	Remarks
Renewable Energy	84,85 or 94	I 234	Following renewable energy devices and parts for their manufacture: - (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. Explanation: - If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.	5	II 201-A	Following renewable energy devices and parts for their manufacture: - (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. Explanation: - If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (*Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.	12	Increase in rate
Packing Industry	4819	II 122	Cartons, boxes and cases of corrugated paper or paper board	12	III 153A	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like	18	Increase in Rate of Tax
Printing Industry	4906 0000	II 127	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing	12	III 157A	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing	18	Increase in Rate of Tax
Printing Industry	4907	II 128	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips)	12	III 157B	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title (other than Duty Credit Scrips)	18	Increase in Rate of Tax

Printing Industry	4908	II 129	Transfers (decalcomanias).	12	III 157C	Transfers (decalcomanias).	18	Increase in rate of tax
Printing Industry	4909	II 130	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.	12	III 157D	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.	18	Increase in Rate
Printing Industry	4910	II 131	Calendars of any kind, printed, including calendar blocks.	12	III 157E	Calendars of any kind, printed, including calendar blocks.	18	Increase
Printing Industry	4911	II 132	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	12	III 157F	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	18	Increase in rate of tax
Waste & Scrap Industry	3915	I 187A	Waste, parings or scrap, of plastics	5	III 101A	Waste, parings or scrap, of plastics	18	Increase
Pen Industry	9608	III 447	Fountain pens, stylograph pens and other pens	18	III 447	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens; stylograph pens and other pens; duplicating stylos; pen holders, pencil holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609	18	Description Matched with custom
Pen Industry	9608	II 232	Pens [other than Fountain pens, stylograph pens]	12		Omitted		Deleted
Pen Industry	9608, 9609	II 233	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	12	II 233	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	12	Same
Railway Industry	8601	II 205A	Rail locomotives powered from an external source of electricity or by electric accumulators.	12	III 398A	Rail locomotives powered from an external source of electricity or by electric accumulators.	18	Increase
Railway Industry	8602	II 205B	Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof.	12	III 398B	Other rail locomotives; locomotive tenders; such as Diesel electric locomotives, Steam locomotives and tenders thereof.	18	Increase

Railway Industry	8603	II 205C	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604.	12	III 398C	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604.	18	Increase
Railway Industry	8604	II 205D	Railway or tramway maintenance or service vehicles, whether or not self propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles).	12	III 398D	Railway or tramway maintenance or service vehicles, whether or not self propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles).	18	Increase
Railway Industry	8605	II 205E	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604).	12	III 398E	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604).	18	Increase
Railway Industry	8606	II 205F	Railway or tramway goods vans and wagons, not self-propelled.	12	III 398F	Railway or tramway goods vans and wagons, not self-propelled.	18	Increase
Railway Industry	8607	II 205G	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof.	12	III 398G	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof.	18	Increase
Railway Industry	8608	II 205H	Railway or tramway track fixtures and fittings; mechanical (including electromechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.	12	III 398H	Railway or tramway track fixtures and fittings; mechanical (including electromechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing.	18	Increase
Fruit Drink Industry	2202 9920	II 48	Fruit pulp or fruit juice-based drinks	12	IV 12B	Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice.	28	Inserted
Mining Industry	26 (other than 2619, 2620, 2621)	I 138	All ores and concentrates [other than slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel; slag, ash and residues (other than from the manufacture of iron or steel) containing metals, arsenic or their compounds; other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste]	5		Omitted		Deleted
Mining Industry	2601	I 139	Iron ores and concentrates, including roasted iron pyrites.	5	III 26C	Iron ores and concentrates, including roasted iron pyrites.	18	Increase

Mining Industry	2602	I 140	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.	5	III 26D	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.	18	Increase
Mining Industry	2603	I 141	Copper ores and concentrates.	5	III 26E	Copper ores and concentrates.	18	Increase
Mining Industry	2604	I 142	Nickel ores and concentrates.	5	III 26F	Nickel ores and concentrates.	18	Increase
Mining Industry	2605	I 143	Cobalt ores and concentrates.	5	III 26G	Cobalt ores and concentrates.	18	Increase
Mining Industry	2606	I 144	Aluminium ores and concentrates	5	III 26H	Aluminium ores and concentrates	18	Increase
Mining Industry	2607	I 145	Lead ores and concentrates.	5	III 26I	Lead ores and concentrates.	18	Increase
Mining Industry	2608	I 146	Zinc ores and concentrates.	5	III 26J	Zinc ores and concentrates.	18	Increase
Mining Industry	2609	I 147	Tin ores and concentrates.	5	III 26K	Tin ores and concentrates.	18	Increase
Mining Industry	2610	I 148	Chromium ores and concentrates	5	III 26L	Chromium ores and concentrates	18	Increase
Bio Diesel Industry	3826	II 80A	Bio-diesel	12	II 80A	Bio-diesel (other than bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel)	12	Reduced for specific
Bio Diesel Industry	3826				I 186A	Bio-diesel supplied to Oil Marketing Companies for blending with High Speed Diesel	5	Reduced

GST Rate for Services :

Rate till 30.09.2021				Rate after 30.09.2021			
S. No.	Chapter\ heading or section	Entry	Rate	S. No.	Chapter\ heading or section	Entry	Rate
17	Heading 9973 (Leasing or rental services, with or without operator)	(i) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software.	12	17	Heading 9973 (Leasing or rental services, with or without operator)	Omitted	-
17	Heading 9973 (Leasing or rental services, with or without operator)	(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software. [Please refer to Explanation no. (v)]	18	17	Heading 9973 (Leasing or rental services, with or without operator)	ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right.	18
27	Heading 9989	(i) Services by way of printing of all goods falling under Chapter 48 or 49 including newspapers, books (including Braille books), journals and periodicals], which attract CGST @ 6 per cent. or 2.5per cent. or Nil, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer.	12	27	Heading 9989	Omitted	-
27	Heading 9989	(ii) Other manufacturing services; publishing, printing and reproduction services; materials recovery services, other than (i) above.	18	27	Heading 9989	Other manufacturing services; publishing, printing and reproduction services; material recovery services	18
34	Heading 9996 (Recreational, cultural and sporting services)	(iii) Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet.	18	34	Heading 9996 (Recreational, cultural and sporting services)	(iii) Services by way of admission to; (a) theme parks, water parks and any other place having joy rides, merry- go rounds, go Carting, or (b) ballet, - other than any place covered by (iiia) below	18

Rate till 30.09.2021				Rate after 30.09.2021			
S. No.	Chapter\ heading or section	Entry	Rate	S. No.	Chapter\ heading or section	Entry	Rate
34	Heading 9996 (Recreational, cultural and sporting services)	(iiia) Services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.	28	34	Heading 9996 (Recreational, cultural and sporting services)	(iiia) Services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like Indian Premier League.	28
26	Heading 9988 (Manufacturing services on physical inputs (goods) owned by others)			26	Heading 9988 (Manufacturing services on physical inputs (goods) owned by others)	(ica) Services by way of job work in relation to manufacture of alcoholic liquor for human consumption	18

Exemption/New rates provided to specified pharmaceutical products from 1st October 21 to 31st December 21 (Notification No. 12/2021-Central Tax (Rate) dt. 30th September 2021)

Sr No	HSN	Description	New Rates
1	30	Tocilizumab	Nil
2	30	Amphotericin B	Nil
3	30	Remdesivir	5%
4	30	Heparin (anti-coagulant)	5%
5	30	Itolizumab	5%
6	30	Posaconazole	5%
7	30	Infliximab	5%
8	30	Bamlanivimab&Etesevimab	5%
9	30	2-Deoxy-D-Glucose	5%
10	30	Favipiravir	5%

Important Exemptions for Services- (Vide N. No 07/2021-CT Rate dated 30th Sep 2021)

Sr No	Chapter, Section or Heading	Exemption Entry	GST Rate	Condition	Remarks
19A	Heading 9965	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30 th day of September, 2022.	The existing exemption of Export Freight is extended from Sep 2021 to Sep 2022
19B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30 th day of September, 2022.	The existing exemption of Export Freight is extended from Sep 2021 to Sep-2022

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Buyback Under Companies Act, 2013 – Limit on Number of Shares ??

Brief Introduction

A buyback of shares is buying back of own shares by a company that was issued earlier. It is a corporate action event wherein a company offers to acquire the shares from existing shareholders within a given timeframe. It is a tax efficient way of distribution of money to shareholders.

Statutory Provisions of Buyback

Section 68, 69 and 70 of the Companies Act, 2013 read together with Rule 17 of the Companies (share capital and debentures) Rules, 2014 regulates the process of Buyback of shares by an unlisted company. Section 68 of the Act empowers a Company to Purchase its own shares or other specified securities. This section, in so far as relevant here, reads as follows:

Clause (c) of sub-section (2) of Section 68 provides for the maximum limit upto which the shares can be bought back by the Company which reads as under:

“the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.”

By a simple reading of the provision, it can be interpreted that the maximum limit upto which any company can buy back its shares or securities is 25% of the aggregate of the paid-up capital and free reserves. The overall buy back of shares should not exceed 25% of paid-up capital, which includes equity share capital and preference share capital,

and free reserves of the Company. The free reserves for this purpose include Securities Premium.

The proviso to clause (c) of sub-section (2) of Section 68 states that in respect of the buyback of equity shares in any financial year, the reference to twenty-five per cent in this clause should be construed with respect to its total paid-up equity capital in that financial year. Thus there is no restriction as far as number of preference shares which may be bought back so longer it is within the overall limit of 25% or less of aggregate of paid-up capital and free reserve.

The issue which arises for consideration is whether the proviso can be read to restrict the number of equity shares to be bought back in any financial year to twenty-five percent.

We refer to Section 77A(2)(c) of the Companies Act, 1956 (repealed), where the corresponding provision reads as follows:

“the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company:

Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year”

Unlike proviso to clause (c) of sub-section (2) of Section 77A of the Companies Act, 1956, corresponding proviso in Companies Act 2013 does not specifically restricts the buyback of equity shares in any financial year to twenty-five per cent of its total paid-up equity capital in that financial year. Proviso to clause (c) of sub-section (2)

of Section 68 of the Act 2013 only states that in respect of buyback of equity shares in any financial year, the reference to twenty-five per cent in clause (c) of sub-section (2) should be construed with respect to its total paid-up equity capital in that financial year, the difference in the language is notable.

The first and primary rule of statutory interpretation, which is elementary, is that the words used in the section must be given their plain grammatical meaning.¹ This is the 'literal rule' (called the 'golden rule of interpretation') is the basic and cardinal rule of interpretation of statutes, according to which words that are reasonably capable of only one meaning must be given that meaning whatever may be the result. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.² The intention of the Legislature must be gathered from the words used by the Legislature, for the words declare best the intention. The Legislature might have intended to do a certain thing, but if the words employed do not express that intention, it is not for the courts to assume the role of legislators and give effect to the unexpressed intention. No confusion must be made between what the draftsman might have intended to do and the effect of the language which in fact was employed by him. If the words, which are a medium of expressing intention, fall short of declaring the intention, it is for the Legislature to amend the language of the section. So far as the courts are concerned, where the words are clear and precise, they must be given their natural meaning.³

A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be part of the main provision. A proviso, must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing by way of an addition to the main provision which is foreign to the principal provision itself. Indeed, in some cases, a proviso may be an exception to the main provision though it cannot be inconsistent with what is expressed therein and, if it is, it would be ultra vires the main provision and liable to be struck down. As a general rule, in construing an enactment containing a proviso, it is proper

to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justifying its necessity.

A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso. On the other hand, an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole; each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially.



A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read

as divorced from their context. The rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause. To expand the enacting clause, inflated by the proviso, is a sin against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious Rules of Interpretation of Tax Statutes.

Therefore, a view can be taken that there is no restriction on the number of equity shares that can be bought back so long as the buyback is twenty-five percent or less of aggregate of paid-up equity capital and free reserve.

¹ Madanlal Fakirchand Dudhediya vs Shree Changdeo Sugar Mills Ltd on 20 March, 1962 (indiankanoon.org)

² Kanai Lal Sur vs Paramnidhi Sadhukhan on 10 September, 1957 (indiankanoon.org)

³ Madanlal Fakirchand Dudhediya Versus Changdeo Sugar Mills Ltd. on 24 July 1957 - Judgement - LawyerServices

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Detailed analysis on issuing bonus debentures

A new realm of reality

Introduction

Issue of Bonus Debentures, though not a recent phenomenon yet a unique concept does seem to see its glory days ahead. This method is seldomly used by companies, only a handful of companies have has dealt with the idea of issuance of bonus debentures to the equity shareholders was coined by Hindustan Unilever Limited back in 2001.

In this case, the company instead of issuing bonus shares to its members, offers debentures, therefore, retaining the characteristics of debentures in its core. While the CA, 2013 covers bonus issue of **shares** in its ambit (Section 63), issuance of bonus debentures has not been exclusively dealt with in the CA, 2013.

Therefore, to issue such bonus debentures, a company shall have to approach the tribunals/high court with a scheme of arrangement under section 230-232 (391) of the CA, 2013 (1956) for the approval of such issue.

A Brief analysis of this concept is covered under this write up as below -

Background

As per Section 2(30) of the Companies Act, 2013 ("CA 2013") the term debenture encompasses –

"(30) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

Provided that—

a. *the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and*

b. *such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;"*

The process of issuing such debentures is covered under Section 71 of CA 2013 and in case of listed companies, such issuance shall also be regulated under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS Regulations") which have been dealt with in this write up.

Modes of issue of debentures

Regulation 2(e) of SEBI ILDS Regulations defines debt securities as **non-convertible debt securities** which create or acknowledge indebtedness and includes debentures, bonds and such other securities of a body corporate or a Trust registered with the Board as a Real Estate Investment Trust or an Infrastructure Investment Trust, or any statutory body constituted by virtue of a legislation, whether constituting a charge on the assets of the body corporate or not, but excludes bonds issued by Government or such other bodies as may be specified by the Board, security receipts and securitized debt instruments

Non-convertible debentures ("NCDs") are financial instruments that are used to raise long term capital of a company. NCDs as the name suggests, cannot be converted into equity at any point in time. NCDs are further classified into two types of securities, i.e., secured and unsecured. Notably, a company cannot issue unsecured NCDs unless the same are listed on any stock exchange platform as per Rule 2(1)(c)(ix) Companies (Acceptance of

Deposits) Rules, 2014.

Factors that induce a company to issue such debentures

- Issuance of bonus debentures leads to gradual conversion of accumulated reserves of the company into its debt, which further leads to an increment in the debt quotient. The contrary holds to be true in case of issuance of bonus shares since it does not alter the net worth of company.
- Payment of interest on the debentures to be issued can be seen as replacement for the dividend that the company would have given
- A material difference in the above is that the dividend is paid out of the tax paid profits while it's the contrary in case of payment of interest on debentures which are tax deductible.
- The company can further claim the interest paid on the debentures as an expense for tax purposes, which in turn shall reduce the tax incidence of the company.
- While dividends are paid out of the profits of a company, interest on money lent (i.e., debentures) must be paid even when the company does not make any profit from the money borrowed. A.H. Wadia v. Commissioner of Income-Tax.¹
- Issuing of bonus debentures drastically alters the debt-equity ratio, which enhances due to issuance of debentures, resulting in an increase in the leverage ratio of the company (debt-equity ratio). While in case of issuance of equity shares, the opposite is held to be true, i.e., the equity of the company increases thereby reducing the leverage ratio of the company.

Procedure for issuing of Debentures

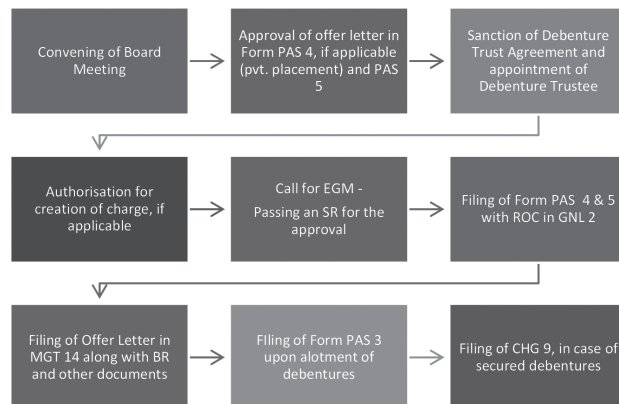
For issuing debentures, a company shall have to comply with multifarious rules and regulations laid across several platforms. The key provisions have been detailed in the forthcoming.

Before delving into Section specific applicability, the company on a preliminary basis shall have to ensure the following –

- a. The company shall not issue any debentures carrying any voting rights.
- b. The company shall further have to create a debenture redemption reserve account out of its profits which are otherwise available for distribution as dividends and that such amount credited to the reserve shall be solely used for the purpose of redemption of debentures.
- c. The company shall under no circumstances issue the prospectus of such debentures to members exceeding

five hundred, unless a debenture trustee has been appointed to this accord.

The general procedure of issuing debentures under the Companies Act, 2013 comprises the following:



The mentioned procedure is applicable only in case where the company is issuing such debentures on a private placement basis, which implies that Section 42 along with Section 71 of the CA, 2013 shall be applicable in such situations. However, when the company is already listed on a stock exchange or that such company is proposing to issue the debentures to public at large, a different set of provisions shall also be applicable to such company in addition to that of the CA, 2013. In furtherance, when such company proposes to issue the said set of debentures inter-alia foreign investors as well, the company shall further have to comply with the guidelines of RBI in this regard. Therefore, the company in such cases shall have to comply with the following –

1. Companies Act, 2013.
2. SEBI ILDS, LODR Regulations.
3. Guidelines for issuance of Non-Convertible Debentures (NCDs) by the RBI.

Applicable provisions for issuance of bonus NCDs to its shareholders

Companies Act, 2013

Section 39 and Companies (Prospectus & Allotment of Securities) Rule, 2014

Whenever a company having a share capital makes any allotment of **securities**, it shall file with the Registrar a return of allotment in such manner as may be prescribed.

Rule 12: (1) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS-3, along with the fee as specified

in the Companies (Registration Offices and Fees) Rules, 2014

Form PAS 3: The company upon completion of allotment of the debenture shall have to file Form PAS 3 within 30 days of allotment of the said securities.

Applicability of Section 71 and Companies (Share Capital and Debentures) Rules, 2014:

The tenet of Section 71 of CA 2013 essentially involves issuance of **secured debentures**, hence, there are several provisions which shall remain inapplicable to the company as regards to issuance of **unsecured non-convertible debentures**.

For the sake of brevity, Sections which are applicable in such case has been pointed out (reason for non-applicability of sections wherever necessary has been covered).

As per Section 71(4) of CA, 2013 read along with Rule 18(7) of SHA Rules, the company shall have to create a debenture redemption reserve account out of profits of the company which is otherwise available for distribution of dividend. The company shall further have to ensure that such reserve created shall only be utilised for the purpose of redemption of debentures.

Further, as per Section 71(5) and Rule 18(2) of the CA 2013 and SHA Rules respectively, the company shall further have to ensure that the appointment of Debenture Trustee is in place in case such allotment of debentures to the members exceeds five hundred in number.

Section 71(13) of CA 2013 read along with 18(5) of the SHA Rules further demands the company to duly file the Debenture Trust Deed as may be executed in Form SH-12.

Creation of a debenture redemption reserve as laid down in the foregoing paragraphs.

Provisions not applicable

Provisions of below-mentioned Sections shall not apply in case of issuance of bonus unsecured non-convertible debentures-

Applicability of Section 42, Section 62 and Section 63 of CA, 2013:

Section 42 of the Act deals with **private placement** of securities.

In the instant case, Section 42 of CA 2013 shall remain inapplicable because the said securities are allotted to the members of the company and not to a specific set of people.

In addition to the above, Section 62 and Section 63 specifically deals in issuance of shares of a company, therefore, when it comes to issuance of debentures, these provisions shall also remain inapplicable.

Section 73 of CA, 2013

The concept of issuing bonus debentures or securities is to distribute the accumulated profits of the company. The company in return is not receiving any consideration in this regard. Hence, the applicability of deposits shall not arise.

Further, as per 2(1)(c)(ixa) Companies (Acceptance of Deposits) Rules, 2014 – **Deposit excludes any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognized stock exchange.**

Provisions of SEBI

SEBI (Issue and Listing of Debt Securities) Regulations, 2008

As per Regulation 3 the provisions of the Regulations are applicable to the following –

- Public issue of debt securities and
- listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange.

Given that bonus issue of non-convertible debentures has not been dealt with in the Regulations, a company should therefore, rationally apply the applicability of these Regulations.

The first and foremost action that a company should take in order to list its securities is to duly file an application before the recognized stock exchange and obtain an in-principal approval from the said stock-exchange (Regulation 4 and 19).

The company shall further have to comply with the provisions of the CA 2013 and simultaneously ensure that a proper credit rating for the issuance of the said debentures are in order and that the same has been disclosed wherever necessary.

Regulation 5-14 shall not be applicable to a company which is issuing bonus non-convertible debentures since the same deals with issuances of prospectus and the likes of it which is inapplicable in case of bonus issue of debentures.

NCDs are a special kind of issuance under Section 230-232 of the CA 2013, wherein the issue is proposed by a way of scheme of arrangement duly approved by the Adjudicating Authority, therefore, the company need not issue any prospectus and its ancillary activities in this regard.

Regulation 16 encompasses the creation of debenture redemption reserve which is in lines with the provisions of CA 2013 and the company shall have to comply with the same.

Regulation 17 entails creation of a security which is inapplicable in case of an unsecured debenture.

SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2008

Chapter V of the above-mentioned Regulations shall be applicable to a company in case of issuance of non-convertible debentures.

As per Regulation 50(2) The listed entity shall intimate the stock exchange(s), **its intention to raise funds through new non-convertible debt securities** or non-convertible redeemable preference shares it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities:

Provided that the above intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through new non-convertible debt securities shall be considered.

As per Regulation 50(3), the entity should intimate the stock exchange about the meeting of Board of Directors at least two working days in advance.

A tabulated list of applicable Regulations has been referred below:

Regulation	Relevant Provisions
Regulation 50(2)	Intimation to stock exchange regarding intention of raising funds through NCDS
Regulation 50(3)	Intimation to stock exchange about the meeting of Board of Directors at least two working days in advance
Regulation 51	Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information
Regulation 52(3)	Submission of annual audit report and "Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)"
Regulation 52(4)	Disclosure of line items along with financial results
Regulation 52(5)	Submission of certificate signed by debenture trustee that it has taken note of the contents
Regulation 52(6)	Financial Results-additional disclosure as a notes to financials
Regulation 53	Annual Report
Regulation 55	Credit rating
Regulation 56	Documents and Intimation to Debenture Trustees
Regulation 57	Other submissions to stock exchange
Regulation 58	Documents and information to holders of NCDS
Regulation 59	Structure of NCDs
Regulation 60	Record Date
Regulation 61	Terms of non-convertible debt securities

Provisions FEMA

FEM (Debt Instruments) Regulations, 2019

As per Regulations 6 of the above-mentioned Regulations,

Merger or demerger or amalgamation of Indian companies

Where a Scheme of Arrangement for an Indian company has been approved by National Company Law Tribunal (NCLT)/ Competent Authority, the Indian company may issue non-convertible redeemable preference shares or nonconvertible redeemable debentures out of its general reserves by way of distribution as bonus to the shareholders resident outside India, subject to the following conditions, namely:

- the original investment made in the Indian company by a person resident outside India is in accordance with these Regulations and the conditions specified in the relevant Schedule;*
- the said issue is in accordance with the provisions of the Companies Act, 2013 and the terms and conditions, if any, stipulated in the scheme approved by National Company Law Tribunal (NCLT)/ Competent Authority have been complied with;*
- the Indian company shall not engage in any activity/ sector in which investment by a person resident outside India is prohibited.*

Further, Schedule I of the said Regulation also allows the Non-resident Indians or Overseas Citizens of India to purchase listed non-convertible debentures issued in terms of Regulation 6 on a repatriation or non-repatriation basis.²

Therefore, complying with the abovementioned provisions is simpler, the company shall have to ensure that the compliances with respect to the applicable provisions are in place and that the Adjudicating Authority has given its stamp of approval to the said scheme so proposed by the company.

Taxation at the time of Issue of NCDs

Given that the allotment of debentures is done from the additional balances in the reserves and surplus of the company, one may draw reference to section 2 (22) (b) of the Income Tax Act, 1961 ("ITA"), per which such distribution of debentures by a company, to its shareholders, whether with or without interest, out of its accumulated profits, **are deemed dividends** and therefore shall be taxed accordingly.

Until Assessment Year 2020-21, companies were required to pay a dividend distribution tax under Section 115-O of the ITA. However, w.e.f. Assessment Year 2021-22, domestic companies are no longer required to pay dividend distribution tax on any amount declared, distributed or

paid by such company by way of dividend. Such dividend received from the company shall be taxable in the hands of the shareholder. Section 10(34) which provides for exemption in respect of dividend received by shareholder has been amended to provide that no exemption shall be available in respect of dividend received on or after April 1, 2020.

In case of issue of such debentures to the non-residents - Under Section 195 of the ITA, any person paying a sum to a non-resident that is chargeable to tax under the ITA (read with the applicable DTAA) would be required to withhold taxes on such sum at the appropriate rate. **Such with holding is required to be made either at the time of payment or at the time of credit of income to the account of the non-resident, whichever is earlier.** As provided, distribution of such NCDs shall be deemed as dividend, therefore, applicable withholding tax shall be applicable to such non-residents. While the regular rate of tax is 20% for non-resident shareholders, lower rate may be applicable based on the applicable DTAA.

Taxation at the time of Redemption of NCDs

Redemption of debentures may be done by an actual repayment to the debenture-holders, or by conversion of debentures into shares. In the latter option, only available in case of convertible debentures, the issuing company simply issues its shares of equivalent amount to the debenture-holders in exchange for the debentures.

In subsequent years, from the tax point-of-view when the debentures are either sold or redeemed, the sale price or the redemption amount received by the debenture holder will not be taxable to the extent of the capital value of the debentures already taxed as dividend in the year of the issue of the bonus debentures. Only the additional appreciation will be taxed as capital gains.

Taxation w.r.t. interest on NCDs

In case of payment of interest, the amount received by the members of the Company shall be included in its regular income itself and shall be taxed under the head "Income from other Sources" and is taxed at the slab rates (if, individual shareholders) or as per tax rates of the company (if, shareholder is a domestic Company). The interest income can be offered for tax either on receipt basis or on accrual basis.

For the issuer company, such payment of interest shall qualify for deduction under Section 37 of the ITA.

In case of non-residents

Section 194LC was introduced in the Finance Act, 2012³. Initially, the scope of the section was to provide for a lower rate of withholding tax on interest in case of amounts

borrowed in foreign currency from a source outside India in the form of loan or long term infrastructure bonds.

Subsequently, the Finance Act, 2013⁴ brought in two significant changes with respect to withholding taxes on interest on investments made by non-residents :

- (a) First, the inclusion of investments made by non-residents in rupee-denominated long term infrastructure bonds within the scope of section 194LC; and
- (b) Insertion of section 194LD - Section 194LD extended the lower withholding taxes on interest paid on investments in rupee denominated bonds issued by Indian companies and government securities.

Subsequently, on 29th October, 2015, the Central Board of Direct Taxes ['CBDT'] issued a Press Release⁵, by which relaxation with respect to the rate of withholding taxes was extended to amounts borrowed in the form of rupee denominated bonds. The said Press Release was issued with an objective to align the Income Tax Provisions with the RBI's guidelines⁶ on issue of rupee denominated bonds outside India dated 29th September, 2015.

Finally, the section was amended vide the Finance Act, 2017⁷, whereby interest paid on amount borrowed from a source outside India in the form of rupee denominated bonds was inserted. The amendments were made effective retrospectively with effect from 1st April, 2016, hence, covering FY 2015-16 as well. The Objects and Reasons⁸ of this amendment stated.

"Further, consequent upon demand from various stakeholders for granting benefit of lower rate of TDS to rupee denominated bonds, a Press Release dated 29th October, 2015 was issued clarifying that TDS at the rate of 5 per cent would be applicable to these bonds in the same way as it is applicable for off-shore dollar denominated bonds. In order to give effect to the above, it is further proposed to extend the benefit of section 194LC to rupee denominated bond issued outside India before the 1st July, 2020."

Section 194LD of the Income Tax Act, 1961, provides that *"Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent."*

Section 194LD was introduced with effect from 1st June, 2013, in such cases wherein the deductee is a foreign institution investor or a qualified foreign investor⁹. While

the rate of TDS is fixed at 5%, if the recipient does not have PAN, tax is deductible at the rate of 20%, and shall be paid at the time of payment, or giving credit to the recipient, whichever is earlier.

Thus, section 194LC referred to rupee denominated bonds issued outside India, and section 194LD refers to rupee denominated bonds, presumably issued in India, but held by specified classes of investors, viz., Foreign Institutional Investors and Qualified Foreign Investors as an investment, whether pursuant to primary market or secondary market acquisition.

Nature of expense incurred while issuance of debentures

Capital Expenditure or Revenue Expenditure

For Income Tax purposes, expenses incurred by an assessee may be categorised as Capital Expenditure or Revenue Expenditure. While the ITA does not define the two terms exclusively, in common parlance, capital expenditure refers to deployment of funds towards enhancing the revenue generating capacity of an entity, for instance- acquiring and/ or upgrading assets; whereas, Revenue Expenditure are expenses which are incurred on a regular basis, to actually generate income.

The distinction between the two is crucial from a taxation point of view because capital expenditure, even if incurred for the purpose of earning income, is **not** deductible unless expressly provided for. In fact, as may be seen above, section 37 (1) explicitly disallows capital expenditure while computing income. On the contrary, Revenue Expenditure is deductible while computing taxable income, unless expressly disallowed.

As such, to determine whether the issue related expenses would be admissible, the first step would be to check whether it is a capital expenditure or revenue expenditure.

As opposed to the cost incurred for issuance of equity capital, the expense incurred on the issuance of debentures is a revenue expense¹⁰, and hence an admissible deduction¹¹ under section 37 (1). Now, in absence of any straight-jacket definition of "revenue expenditure", the rationale for categorising debenture-issue related expenses as such can be drawn from the order of the Hon'ble Supreme Court of India in the matter of India Cements Ltd. v. CIT¹², wherein it was held that expenditure incurred on raising a loan after setting up a business is a revenue expenditure. In determining the nature of expenditure (revenue or capital) incurred in obtaining a loan, it is irrelevant to consider the purpose of the loan.

Hence, relying on the above principle and given that debentures, by their very nature, are nothing but a specie of "loan", expenses incurred in its issue shall therefore be classified as revenue expenses, and hence be admissible.

Further more, the said expenses shall be entirely availed by the issuer company in the year of issue¹³; and as such, debentures may also be considered as a tool for reducing the overall tax incidence of the issuing company.

Further, as per Section 37 of the ITA provides that any expenditure (not being capital or personal in nature), incurred wholly and exclusively for the purposes of the business, would qualify as an allowable expenditure to be considered while computing taxable business or professional income therefore reducing the tax incidence of the company. The Hon'ble Supreme Court in *Eastern Investments Ltd. v. CIT [1951] 20 ITR 1 (SC)*¹⁴ held that interest paid on the purchase of debentures will be allowed under Section 37(1) and not under Section 36(1)(iii) of the Income Tax Act.

Thus, from a broader perspective, it may be said that the expense incurred for issuance of debentures is an allowable expense under section 37 (1) of the ITA.

Applicability of TDS

TDS received from listed NCDs shall not be subject to TDS as per Section 193(ix) of the ITA.

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Glossary

CA 2013	Companies Act, 2013
FEMA	Foreign Exchange Management Act
ILDS	Issue and Listing of Debt Securities
ITA	Income Tax Act, 1961
LODR	Listing Obligations and Disclosure Requirements
NCD	Non-convertible debenture
SEBI	Securities and Exchange Board of India
SHA Rules	Share and Debentures Rule

¹ <https://egazette.nic.in/WriteReadData/2019/213316.pdf>

² <https://indiankanoon.org/doc/768449/>

³ http://egazette.nic.in/WriteReadData/2012/E_25_2012_152.pdf

⁴ http://egazette.nic.in/WriteReadData/2013/E_21_2013_216.pdf

⁵ <https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/404/Press-Release-Off-shore-Rupee-Denominated-Bonds-29-10-2015.pdf>

⁶ <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10049&Mode=0>

⁷ <http://egazette.nic.in/WriteReadData/2017/175141.pdf>

⁸ <https://www.indiabudget.gov.in/budget2017-2018/ub2017-18/memo/memo.pdf>

⁹ "Qualified Foreign Investor" shall the meaning assigned to it in Circular No. Cir/IMD/ DF/ 14/ 2011 dated 9th August, 2011, as amended from time to time, issued by SEBI

¹⁰ Asst. CIT v. VXL India Limited [2015] 54 103/ 229 Taxman 199 (Guj.), ITA No. 531/ Bang/2017 Shanders Properties Pvt. Ltd. Vs The Income Tax Officer (ITAT Bangalore)

¹¹ Premier Automobiles Ltd. v. CIT [1971] 80 ITR 415 (Bom);

¹² [1996] 60 ITR 52 (SC)

¹³ Held by Hon'ble ITAT, Ahmedabad in Gruh Finance Ltd. vs. JCIT, Range-4 in No.2903/Ahd/2015

¹⁴ <https://indiankanoon.org/doc/1627616/>

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Income Tax Search and Seizure: Irregularity versus an illegal Income Tax Search- Analysis

Section 132 of the Income Tax Act'1961 prescribes that the competent authorities are empowered to permit the authorized officers to enter, search, break open, seize, place marks of identification and take other steps as contemplated under sub-clauses (i) to (v). However, such powers can be exercised against a person upon fulfilment of certain conditions. Firstly, the competent authority must have information in its possession and, secondly, on the basis of such information it must have reason to believe that the conditions as stipulated in sub-clauses (a), (b) and (c) of section 132(1) of the Income-tax Act, 1961 exist. Sub-clauses (a), (b) and (c) of section 132(1) speak of any person. Search and seizure cannot be sustained unless it is clearly shown that it was done by the authority duly authorized, and all the conditions precedent in relation thereto existed. Thus, before issuance of search warrant in order to take recourse under section 132 of the Income-tax Act, 1961, the authority competent to issue search warrant must be satisfied that search under section 132(1) is needed in respect of a definite person. Satisfaction required under section 132(1) of the Act 1961 is *qua* the person whose name appears in the warrant of authorization.

Rule 112 of the Income Tax Rules'1962 lays down the procedure, forms of authorization, manner and other procedural effects of carrying out search and seizure action as enumerated u/s 132 of the act.

Issue under Consideration:

During the course of search there may be certain procedural irregularities

which may inadvertently crept in such as:-

- (a) Name of the person searched not mentioned in the Panchnama though duly recorded in the search warrant.
- (b) Delay in revocation of prohibitory orders issued u/s 132(3) of the act but within time prescribed u/s 132(8A) of the act.
- (c) Seizure of certain irrelevant documents during search due to an error of judgement.
- (d) Seizure of certain disclosed asset inadvertently.
- (e) Witnesses called by the authorized officer as against offered by the searched person.
- (f) Delay in conclusion of search proceedings.
- (g) Any other procedural irregularity which may crept in except any fundamental defect which may led to very search action as void.

It is seen from the verdicts of the courts that procedural irregularities that have crept in inadvertently does not vitiate the very search action as void unless the very defect crept is fundamental in nature going to the roots of the search and seizure action.

At this juncture, it is pertinent to put-forth a judgement of the Delhi High Court in case of **MDLR Resorts (P.) Ltd.v.Commissioner of Income-tax [2013] 40 taxmann.com 365 (Delhi)** wherein the assessee challenged the search action consequent assessment to certain procedural defect in the panchanama drawn. The court held that though there is certainly lapse

and failure to comply with the requirements of search and seizure manual as the panchnama did not contain names of the petitioners but this would not affect the validity of the search.

The brief facts of the case are as under:-

- A search and seizure operation against the petitioners was initiated who belonged to one MDLR Group.
- The petitioners accepted the search and seizure operations in the writ petitions but the contention raised was that against them no panchnamas were drawn/issued and, thus, proceedings under section 153A were void and bad for want of jurisdiction.
- Another contention which had neither been raised in the writ petition nor in the amended writ petition but in the rejoinder affidavit to the amended writ petition, was to the effect that probably and possibly no warrant for search under section 132 was issued against the petitioners and, therefore, their names did not appear in the panchnamas.

The Hon'ble Court held as under:-

"Firstly, as regards contention raised in affidavit, it was noted that search warrants (i.e. Form No. 45) were printed documents in which requisite blanks i.e. names and details have been filled by hand. Due to paucity of space in the column, the authority issuing the search warrant had put an, () mark and thereafter mentioned other names in respect of whom the search warrant had been issued. [Para 10]*

Names of parties to be subjected to search have been mentioned at two separate places on the first page of search warrants Form No. 45. The first point or place refers to pre-conditions mentioned in sections 132(1)(a) and (b) and the second point or place refers to the pre-conditions stipulated in section 132(1)(c).

Second page of the form requires mentioning the address where the suspected books of account, other documents, money, bullion, jewellery, valuable articles etc. were kept, by the persons who were being subjected to search. [Para 11]

In the panchnamas relating to MDLR Estate Private Ltd., MDLR Hotels Private Ltd. and 'S' Builders Private Ltd., it was noticed that their names were not included in the names of the persons mentioned in the column relating to clauses (a) and (b) of section 132(1). However, their names were mentioned in the column relating to section 132(1)(c).

In these circumstances, suspicion of the petitioners is not affirmed. It does not impel to form and decide the contention in favour of the petitioners. [Para 12]

The contention with regard to their addresses being different, is misconceived and mere ipse dixit. Address of a company will normally mean its registered office, head office etc. A person can operate from or keep documents, money etc. at different places and not necessarily from the registered office etc. or from where business is conducted.

The address mentioned in the warrant and the panchnama need not be the registered office or the head office of company but it has to be the place where the search has to be conducted and has been conducted. The address at which search could be conducted would be the place or location, where books of account, documents, jewellery, unaccounted assets etc. could be located/found. [Para 13]

In view of above, the petitioners' contention is rejected.

Coming to the first question relating to validity of notice under section 153A, it is undisputed that section 153A is a non obstante provision which is invoked in case of a person where the search is initiated against him under section 132 or books of account or other documents or any other assets which are requisitioned under section 132A after 31-5-2003.

The section requires the Assessing Officer to issue notice under section 153A, requiring the assessee in whose case search was initiated to file return of income for six assessment years in the prescribed form and thereupon the Assessing Officer is required to assess or reassess the total income of the said six years. Pending proceedings for regular or reassessment proceedings in respect of the six assessment years abate subject to sub-section (2). [Para 16]

What is noticeable that the mandate and language of section 153A(1) does not make any reference to panchnama or the date of panchnama. It does not state that the panchnama is a pre-condition for invoking the said section.

The words used by the Legislature are 'search is initiated under section 132....' The word 'initiate' means to commence or start. The section is invoked and applicable when the search is 'initiated'. In other words, the section ticks off and comes into play when the search commences or is undertaken against a person. [Para 17]

The petitioners relied upon section 153B and submitted that the said section prescribes time limits for completing assessments under section 153A etc. Adjudication order under section 153A has to be passed within 2 years from the end of financial year in which last of the authorization for search under section 132 or 132A was executed.

Section 153B(2) states that the authorization is deemed to have been executed in case of search, on conclusion of

search as recorded in the last panchnama drawn in relation to any person in whose case, warrant of authorization was executed.

Thus, the time limit for completion of the assessment is reckoned and has to be counted for 'search' under section 132 from the date as recorded in the last panchnama drawn in relation to any person. The contention is that sections 153B(1) and (2), refers to panchnama and when there is no panchnama, proceeding in respect of petitioners cannot be validly initiated under section 153A. [Para 19]

The aforesaid contention of the petitioners has to fail in the present cases for several reasons. The said contention was not raised against the first order under section 153A passed by the Assessing Officer which was made subject matter of challenge in a revision before the Commissioner under section 264.

The Commissioner has set aside the first assessment order under section 153A and has passed an order of remand for fresh adjudication. The petitioners have not questioned and challenged said orders and have accepted the same. All panchnamas are dated 31-1-2008. There are no subsequent or second set of panchnamas in the case of the search warrants against the petitioners. 31-1-2008 was the date of search as recorded in the warrants of search.

The petitioners, including petitioners whose names do not feature in the panchnamas, have not denied that they were subjected to search on 31-1-2008. It is also not repudiated or contested that several documents/papers relating to the petitioners were seized and were included in the list of the seized documents/papers attached to the panchnamas.

Thus, there cannot be any dispute or debate regarding the question of time limit or limitation period for completion of assessment under section 153A and indeed the said issue is foreclosed. In the facts of the present case, the contention should be and is rejected. [Para 21]

As per the manual prepared by the revenue relating to search and seizure operations, at the end of search or when it is temporarily concluded, a panchnama is required to be prepared or drawn. It is evidently clear that this document has considerable evidentiary value and should be prepared with care and caution.

The panchnama should be exhaustive, record of all events in the same sequence in which they have occurred and should specify details like name of person against whom warrant was issued, time of temporary conclusion of search etc. Panchmana should be prepared even in cases where nothing is found or seized in the search. [Para 22]

There is certainly lapse and failure to comply with the requirements of search and seizure manual as the

panchnama did not contain names of the petitioners and does not record any suspension of search. Even the obstruction and presence of third persons were not mentioned in the panchnamas. But this would not affect the validity of the search. The Court recorded that the panchmanas in the present case to this extent are defective, but the search or initiation of search cannot be disputed. However, the respondents should take remedial steps and ensure that such lapses do not occur in future, otherwise similar allegations will get repeated, entailing litigation. [Para 23]

Panchnama is an important document because it informs the person from whose premises the articles are seized or the person searched as to the name of the person or the building etc. where the search was carried out and the officers who were authorized and had carried out the search and the articles, if any, seized.

The copy of the warrant of search is only shown to the occupant or persons against whom it is issued and their signatures obtained but no copy is furnished to them. Any search and seizure operation invades constitutionally protected and cherished right of privacy. Administrative lapse even of minor nature when there is invasion of the said right does lead to criticism and allegations.

It will be salutary and proper that a copy of the search warrant be furnished to the occupant or the person searched. This would curtail any allegation of interpolation, addition of names etc.

However, in the facts of the present case, the lapse or failure in the panchnamas does not affect the validity of the search or nullifies notice under section 153A of the Act. It certainly would not affect initiation of search which is the starting point and pre-condition for invoking section 153A. Panchnama is drawn when the search stands concluded finally or temporarily.

The effect of the said lapse on merits or to the value or degree of importance to be given to the material seized is a matter of appraisal and merits and not a question to be examined and answered in these writ petitions. [Para 24]

In view of the aforesaid, no merit was found in the writ petitions and the same are accordingly dismissed. [Para 29]"

In yet another case of **Naraindas V CIT (1984) 148 ITR 567 (MP)** the petitioner contended that the action of the authorised officers in making search and seizure was illegal and out the following irregularities : (i) respectable persons of the locality were not called as witnesses, (ii) inventory of the books of account and documents was not made, (iii) boxes were not sealed, and (iv) ornaments were also seized from the ladies in the family.

The Hon'ble Court held as under:

"In our opinion, none of these objections can be reasonably sustained or can make the search and seizure illegal. It is stated in the return that the names of the witnesses were suggested by the petitioners. They wanted that outsiders should not be called as that would have affected their credit and prestige. The petitioners cannot now complain that the witnesses suggested by them were not respectable persons of the locality. As regards the inventory of the books and other documents seized, the return discloses that after the seizure of books and documents, Naraindas said that he was not feeling well and that the work of preparing the inventory could not be carried on. Naraindas requested that the books and documents be kept in a box and that he will himself come next day to Jabalpur and the inventory may then be prepared. It was on this request that the books and documents were kept in a box locked by Naraindas and the department. Similar request was made after the seizure of books of account and other documents of Venkatesh Trading Co. and Maheshwari Lime Works by Y.K. Maheshwari who was present at the time of the search of the business premises of these two concerns which are at the same place. Maheshwari signed the panchnama showing that the documents recovered were put in two boxes which were locked by the department and also by him. The returns clearly state that this was done at the request of the petitioners on the plea that Naraindas was not well. It is, thus, clear that the inventory of the books of account and other documents seized could not be made because of the request made by the petitioners themselves. They cannot now complain that the officers conducting the search did not make the inventory of the books of account and other documents, that were seized, then and there. As regards the objection that ornaments from the ladies were also seized, the fact is denied in the return. In the return it is clearly stated that nothing was seized from the ladies of the family. We are satisfied that none of the objections raised by the learned counsel for the petitioners has any weight. Moreover, as observed by the Supreme Court in the case of Seth Bros.' case (supra), any irregularity in the course of search and seizure committed by the officers acting in pursuance of the authorisations will not be sufficient to vitiate the action taken provided the officers had in executing the authorisations acted bona fide. In this case we are satisfied that the authorised officers had acted bona fide and, therefore, even if there was some irregularity, the action taken is not vitiated."

Further reliance can also be placed in case of decision of Hon'ble Kerala High Court in case of **CITV. Dr. C. Balakrishnan Nair (2006) 282 ITR 158** wherein it is held that keeping of the documents either in a room or almirah under seal could not be said to be irregular procedure. Therefore, there was,

no infirmity in the action of the department in keeping the documents in the almirah kept in the premises after issuing an order under section 132(3). Similar was the ratio of the Hon'ble Delhi High Court in case of **VLS Finance Ltd. V CIT (2007) 289 ITR 28** upholding the inadvertent procedural delay in revocation of prohibitory orders issued u/s 132(3) of the act but within time prescribed u/s 132(8A) of the act. No fault with the search was found by the Hon'ble Court.

The sum and substance is that the bona fide inadvertent procedure irregularities do not render the very search action illegal.

To the contrary search action conducted in violation of Section 132 of the act per se going to the roots of the matter can't be cured and rectified at a later stage leading to search action along with consequential action as illegal.

Few of the instances are as under though not exhaustive:-

- (a) Non recording of valid reasons to believe and non possession of some credible information by virtue of conditions stipulated in clauses (a), (b) and (c) of Section 132 (1).
- (b) Reasons of believe coming into existence after issuance of warrant of authorization.
- (c) Defective warrant of search qua person and qua premises.
- (d) Failure to justify the issuance of warrant of authorization in absence of fulfillment of conditions stipulated in clauses (a), (b) and (c) of Section 132 (1).
- (e) Search and seizure action conducted on surmises and conjectures as a fishing and roving expedition.

The consequences of a search being held as illegal are very fatal which may include as under:-

1. The department can't initiate assessment proceedings since they only arise pursuant to a valid search action. Search assessment already concluded may also be rendered as void ab initio depending on case to case basis. Another controversial question arises so far as to whether in case where a search has been held illegal than as to whether the material unearthed in course of such search held illegal can still be used by the department against the assessee. As such the matter is still open to debate with both sides of arguments.
2. The assets and documents seized during the course of search including cash, jewellery etc. has to be returned to the assessee.
3. The statements recorded during the course of search shall be otiose and having no legal evidentiary value.
4. No legal presumption shall be available to the department under section 132(4A) and 292C of the act.

5. No penal and prosecution matter shall lie against the assessee as a consequence of the search held illegal which otherwise is available under the statute.

Reliance can be placed on the decision of Hon'ble Delhi High Court in case of **Madhu Gupta V DIT (2013) 350 ITR 598**. In this the court held as under:-

"With regard to the argument raised by the learned counsel for the respondent that there was no need for the competent authority to have any reason to believe and a mere reason to suspect would be sufficient, we may point out that the answer is provided by the fact that the warrant of authorization was not in the name of the DS Group but was in the name of the petitioner. In other words, the warrant of authorization under Section 132(1) had been issued in the name of the petitioner and, therefore, the information and the reason to believe were to be formed in connection with the petitioner and not the DS Group. None of the clauses (a), (b) or (c) mentioned in Section 132(1) stood satisfied in the present case and, therefore, the warrant of authorization was without any authority of law insofar as the petitioner was concerned. Had the warrant of authorization been issued in the name of the DS Group and in the course of the searches conducted by the authorized officer, the premises of the petitioner had also been searched, then the position might have been different. But, in the present case, that is not what has happened. The warrant of authorization was in the name of the petitioner and, therefore, it was absolutely necessary that the pre-conditions set out in Section 132(1) ought to have been fulfilled. Since those pre-conditions had not been satisfied, the warrant of authorisation would have to be quashed. Once that is the position, the consequence would be that all proceedings pursuant to the search conducted on 21.01.2011 at the premises of the petitioner would be illegal and, therefore, the prohibitory orders would also be liable to be quashed. It is ordered accordingly. The jewellery/ other articles/documents are to be unconditionally released to the petitioner. The writ petition is allowed as above. There shall be no order as to costs."

Further reliance can be placed in the case of **L.R. Gupta v. Union of India [1992] 194 ITR 32**, wherein it was held by the Delhi High Court as under:-

"49. As we have come to the conclusion that, in the present case, no reasonable person could have come to the conclusion that the ingredients contained in clause (a), (b) or (c) of section 132 were attracted, therefore, we issue a writ of mandamus quashing the impugned authorisation and also the further action which has been taken by the respondents pursuant to the said authorisation including the seizure of all documents, cash and jewellery. The respondents are directed to return the said documents,

cash and jewellery, seized by them, to the petitioners within two weeks from today.

50. The petitioners will also be entitled to costs. Counsel's fee Rs. 1,000."

Furthermore reliance can also be placed in the case of **Shah E Naaz Judge v. Additional Director of Income-tax (Inv)-Unit-VI [2018] 100 taxmann.com 346 (Delhi)**, wherein it was held by the Delhi High Court as under:-

"32. In view of the aforesaid discussion, we find merit in the present writ petitions and hold that the warrants of authorization for search and seizure operations in respect of the three lockers in the case of three petitioners are vitiated and illegal. Warrants of authorization against the petitioners are quashed and set aside. Consequently, proceedings under Section 153A of the Act are also set aside and quashed. We, however, clarify that we have not commented on evidence, if any, collected during the course of search and whether the said evidence or material can be used in any proceedings initiated by the income-tax authorities in accordance with law. Writ petitions are allowed in the aforesaid terms. In the facts of the present case, there would be no order as to costs."

The apex court in case of **Director General of Income-tax v. Diamondstar Exports Ltd. [2006] 156 Taxman 299 (SC)** the apex court while upholding the decision of the high court to forthwith return the gold, diamond and jewellery and ornaments seized from the assessee respondents with interest and directed to pay cost in lieu of interest.

To legislature conscious of such situation, by virtue of Finance Act, 2018 with retrospective effect from 01-06-2003 inserted sub-section (2) in Section 153A of the act which reads as under:-

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the [Principal Commissioner or] Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

However, such enactment shall only take care of the abated years however the concluded assessments cannot be cured by virtue of Section 153A(2) of the act. Interestingly, no such rider is forming part of the new schema of search assessments u/s 148 r.w.s 148A of the act for the searches conducted on or after 01st Day of April'2021.

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Audi Alterem Partem: Grant every person an opportunity of being heard

It is a well-established principle of natural justice that no decision shall be given against a person without awarding him an opportunity of reasonable hearing. 'Audi Alterem Partem' is a Latin phrase which means 'listen to the other side or let the other side be heard as well'. It is a fair chance given to each side to present their case, make arguments and submit representations and documents in support of their proposition and for their defense.

Show Cause Notice must be issued

The purpose of issuing a show cause notice is to intimate the party, who has to show cause as to what is the allegation against him for which he has to respond. The notice apart from being clear and unambiguous and specific, it should also be issued with an open mind, which should be manifest on reading of the show cause notice. Every statute provides its own mechanism for initiation and continuation of adjudication proceedings. However, even if there is no specific provision for 'show cause' in a statute, no action shall be taken against any party without being heard. In the case of *Maneka Gandhi v. Union of India* [1978 (1) TMI 161], the Hon'ble Supreme Court observed that it is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

In a recent case of *M/s Laxmi Barter Private Limited versus the Union of India & Ors.* [2021 (11) TMI 888], Hon'ble Patna High Court set aside the Order passed by the Assistant Commissioner of State Tax on the grounds of violation of principle of natural justice and that the order does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. It was submitted by the petitioner that the Order was passed without issuance of show cause notice.

Hearing

Reasonable opportunity of hearing or fair hearing is a vital facet of this maxim. It is the duty of the authority to confer upon the assessee / noticee, a fair chance of presenting his case before an unbiased and impartial judge. This ingredient is considered to be a basic requirement in the court proceedings. The term 'reasonable' is subjective. Hence, a reasonable opportunity of hearing cannot be interpreted in a stringent manner owing to the fact that principles of natural justice are flexible. Simply put, a privilege is given to the party in concurrence with 'audi alterem partem' to submit his arguments, whether written or oral.

Order should not traverse beyond the Show Cause Notice

In several cases it has been observed that the Demand Orders have been passed on grounds which were not mentioned in the show cause notice at all. The Hon'ble Madras High Court in the case of *R. Ramadas versus The Joint Commissioner of Central Excise* [2020 (11) TMI 84] observed that it is a settled proposition of law that a show

cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals. Similarly, the Hon'ble Jammu & Kashmir High Court in the case of *Navneet R. Jhanwar versus State Tax Officer & Ors.* [2021 (3) TMI 857] remanded the matter to the lower authority on the ground that the Order was not in conformity with the proposal made in the show cause notice.

Audi Alterem Partem in 'The GST Law'

Section 75(4) of the CGST Act, 2017 prescribes an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. Section 75(7) of the CGST Act, 2017 states that the amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice. The GST Law stipulates providing a fair chance of

hearing to the assessee.

However, there has been a surprising amendment in Rule 21A(2) of the CGST Rules, 2017 which provides for suspension of registration by the proper officer during the pendency of GST registration cancellation proceedings. With effect from 22.12.2020, the phrase "after affording the said person a reasonable opportunity of being heard" has been omitted from the said sub-rule. Resultantly, the officer may suspend the registration of a taxpayer during the pendency of cancellation proceedings without an opportunity of hearing. The arbitrariness of this change should be challenged before the judiciary.

Conclusion

Although there is a plethora of judgments in and around this maxim, yet it has been observed that Orders in violation of this principle of equity have been passed time and again by the authorities. In several cases reasonable time is not provided in the show cause notice whereas, in other cases it has been observed that Orders have been passed by the authorities without expiry of the time awarded in the show cause notice. It is crucial to appropriately respond to such Orders.

* * * * *

If you are kind, people may accuse you of selfish, ulterior motives; be kind anyway.

If you are successful, you will win some false friends and true enemies; succeed anyway.

If you are honest and frank people may cheat you; be honest and frank anyway.

If you find serenity and happiness, they may be jealous; be happy anyway.

The good you do today, people will often forget tomorrow; do good anyway...

You see, in the final analysis, it is between you and God; it was never between you and them anyway.

– Mother Teresa



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50 Reportable Transactions in New Annual Information Statement under Income-tax

The Income Tax Department has announced the roll-out of a new statement namely Annual Information Statement (AIS) which would provide you with almost all details about your financial transactions during the year. So far, the Income Tax Department has been issuing Form 26AS to provide information related to taxable income and tax deducted at source (TDS), which will now be replaced with the Annual Information Statement (AIS). The new AIS statement will provide comprehensive information of the taxpayer and will be significantly useful while preparing the tax return. The information will be provided in AIS after removing duplicate information and taxpayers can download such information in PDF, JSON, CSV formats.

A taxpayer can submit online feedback if the information is erroneous or refers to another person/year, or is duplicate. Here's the list of Top 50 Transactions to be reported in the New Annual Information Statement.

1. Salary

Employer submits detailed breakup of salary, perquisites, profits in lieu of salary etc paid to the employee in Annexure II of the TDS statement (24Q) of the last quarter. This information is also provided by the employer to the employee (taxpayer) in Part B (Annexure) of Form 16. AIS displays all the financial transactions such as, salary income, dividend income, interest income from saving/fixed deposits, sale and purchase of securities, etc. With the help of all such financial information, it would be easy for a taxpayer to report the

correct information in the income tax return.

2. Rent Received

Tenants responsible for paying rent are liable to deduct tax at source on payment of rent. Deductor reports details of amount paid/credited, date of payment, details of Tax deduction made etc. in Form 26Q. This information is provided by the deductor to the deductee (taxpayer) in Form 16A. Tenant (Individual/HUF) paying a rent of more than 50,000 is liable to deduct tax while making payment to the landlord. Tenant reports details of rent paid amount paid/credited, property details, date of payment and tax deduction details etc. pertaining to rent paid in Form 26QC.

3. Dividends

Dividend paid/declared by all companies (reporting entity) is reported under Statement of Financial Transactions (SFT). Company paying/distributing dividend is liable to deduct TDS from the amount paid subject to the threshold applicable in the act and report through form 26Q (quarterly statement). This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

4. Interest from savings bank

Interest paid/credited/accrued on saving account is reported under Statement of Financial Transactions (SFT).

5. Interest from deposit

Bank/deductor at the time paying/

crediting interest on deposits is liable to deduct tax from deposit holder paid subject to the threshold applicable in the act. This information is reported by the Bank/deductor in form 26Q (quarterly statement). This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

6. Interest from others

Interest paid/credited/accrued on others (other than savings account, term deposit, recurring deposit) is reported under Statement of Financial Transactions (SFT). Bank/deductor at the time paying/crediting other interest (interest on securities) is liable to deduct tax from deposit holder paid subject to the threshold applicable in the act. This information is reported by the Bank/deductor in form 26Q (quarterly statement). This information is provided by the deductor to the deductee (taxpayer) in Form 16A

7. Interest from income tax refund

Interest received on Income Tax Refund in the financial year is liable to be taxed as Income from other sources.

8. Rent on plant & machinery

Tenant paying rent is liable to deduct tax at applicable rate as per the Act from rent paid. Details of rent on Plant & Machinery is reported by the deductor in TDS form 26Q. Tenant furnishes the details of rent paid on quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

9. Winnings from lottery or crossword puzzle

Payer is liable to deduct tax at applicable rate as per act from winnings from lottery or crossword puzzle etc. Information about winnings is reported by payer in TDS form 26Q. Information is reported on quarterly basis. Income is taxable at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

10. Winnings from horse race

Payer is liable to deduct tax at applicable rate as per act from winnings from Horse race. Information about winnings is reported by payer in TDS form 26Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

11. Receipt of accumulated balance of PF from employer u/s 111

Employer/recognised provided fund reports information about accumulated balance due to an

employee in form 26Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

12. Interest from infrastructure debt fund

Information relating to interest paid is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

13. Interest from specified company by a non-resident u/s 115A(1)(a)(iiaa)

Information relating to interest paid is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

14. Interest on bonds and government securities

Information relating to interest paid is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

15. Income in respect of units of non-resident u/s 115A(1)(a)(iiab)

Information about income in respect of units of Non Resident is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

16. Income and long-term capital gain from units by an offshore fund u/s 115AB(1)(b)

Information about income and long-term capital gain from units payable to an off shore fund is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

17. Income and long-term capital gain from foreign currency bonds or shares of Indian companies u/s 115AC

Information about income and long-term capital gain from foreign currency bonds or shares of Indian companies is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

18. Income of foreign institutional investors from securities u/s 115AD(1)(i)

Information about income of foreign institutional investors from securities is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

19. Insurance commission

Information about insurance commission received is reported by the payer in Form 26Q on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

20. Receipts from life insurance policy

Receipts from life insurance policy are exempt under section 10(10D) subject to conditions specified therein. If such conditions are not met, the receipts become taxable and tax is also deducted u/s 194DA. The information is reported by the payer in Form 26Q on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

21. Withdrawal of deposits under national savings scheme

Withdrawals from NSS are taxable. Tax is also deducted on such withdrawals and reported in Form 26Q by the payer on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

22. Receipt of commission etc. on sale of lottery tickets

Commission on lottery business is subject to tax deduction under section 194G. The payer reports such information in Form 26Q on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

23. Income from investment in securitization trust

Income from investment made in securitization trust is subject to tax deduction. The payer reports such information in Form 27Q on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

24. Income on account of repurchase of units by MF/UTI

Receipt of income on account of repurchase of units by MF/UTI is subject to tax deduction under section 194F. The payer reports such information in Form 26Q on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

25. Interest or dividend or other sums payable to government

Income from interest or dividend or other sums payable is not subject to tax deduction. The payer reports such information in Form 26Q on a quarterly basis. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

26. Payment to non-resident sportsmen or sports association u/s 115BBA

Information pertaining to amount paid to non-resident sportsmen or sports association is reported by deductor in form 27Q. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

27. Sale of land or building

Sales consideration of immovable property transferred is reported under Statement of Financial Transactions (SFT). The information will be shown in AIS of all sellers to enable submission of feedback. Sale of immovable property is also reported in Form 61 where PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person. Information related to receipts under specified agreement is reported by person making payment for specified agreement entered into. This information is provided by the deductor to the deductee (taxpayer) in Form 16A.

28. Receipts from transfer of immovable property

Information related to receipts from transfer of immovable property is reported by buyer of property in Form 26QB. This information is provided by the deductor to the deductee (taxpayer) in Form 16B.

29. Sale of vehicle

Sale of motor vehicle is reported in Form 61 where PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.

30. Sale of securities and units of mutual fund

In the SFT reporting of depository transactions, the estimated sale consideration for the debit transaction is determined on the best possible available price of the asset with the depository (e.g. end of day price). The taxpayer will be able to modify the sales consideration and other related information before filing the return. In the SFT reporting of depository transactions, the estimated sale consideration for the debit transaction is determined on the best possible available price of the asset with the depository (e.g. end of day price). The taxpayer will be able to modify

the sales consideration and other related information before filing the return.

31. Off market debit transactions

In the SFT reporting of depository transactions, the depository reports details of off market debit transactions. The value of transaction is computed on the basis of end of day price of the security. In case, the consideration is available, the same is also shown.

32. Off market credit transactions

In the SFT reporting of depository transactions, the depository reports details of off market credit transactions. The value of transaction is computed on the basis of end of day price

33. Business receipts

Information pertaining to amount paid to contractor is reported by contractee in form 26Q. This information is provided by the deductor to the deductee (taxpayer) in Form 16A. Information pertaining to amount paid to the service provider is reported by recipient of services in form 26Q. This information is provided by the deductor to the deductee (taxpayer) in Form 16A

34. Business expenses

Information pertaining to purchase of alcoholic liquor is reported by tax collector in TCS form 27EQ (quarterly statement). This information is provided by the collector to the taxpayer in Form 27D.

35. Rent payments

Information is reported by person making payment in form 26QC. This information is provided by the deductor to the taxpayer in Form 16C.

36. Miscellaneous payments

Information is reported by person making payment in form 26QD. This information is provided by the deductor to the taxpayer in Form 16D. Purchase of bank drafts or pay orders may be reported in Form 61 if PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.

37. Cash deposits

Information pertaining to cash deposits in an account other than current account is reported by reporting entity in form 61A. The information will be shown in AIS of all account holders to enable submission of feedback. Information pertaining to cash deposits in current account is reported by reporting entity in form 61A. The information will be shown in AIS of all account holders to enable submission of feedback.

38. Cash withdrawals

Information pertaining to Cash withdrawals from current account is reported by reporting entity in form 61A. The information will be shown in AIS of all account holders to enable submission of feedback. Sometimes, cash withdrawals from accounts other than current account are reported by the Reporting Entity in SFT-004. The information will be shown in AIS of all account holders to enable submission of feedback. Information pertaining to Cash withdrawals is reported by reporting entity through TDS statement 26Q. This information is provided by the deductor to the taxpayer in Form 16A.

39. Cash payments

Information pertaining to Cash payments for goods and services is reported by reporting entity in form 61A. Information pertaining to Purchase of bank drafts or pay orders or banker's cheque in cash is reported by reporting entity in form 61A. Information pertaining to Purchase of prepaid instruments in cash is reported by reporting entity in form 61A.

40. Outward foreign remittance/purchase of foreign currency

Information of outward foreign remittance is reported by authorised dealer in form 15CC. Information about Remittance under LRS for educational loan taken from financial institutions mentioned in section 80E (Third proviso to Section 206C(1G)) is reported by authorised dealer through TCS form 27EQ for specified foreign remittances made by remitter PAN. Information about Remittance under LRS for purpose other than for purchase of overseas tour package or for educational loan taken from financial institution (Section 206C(1G(a))) is reported by authorised dealer through TCS form 27EQ for specified foreign remittances made by remitter PAN.

41. Receipt of foreign remittance

Information relating to payment of royalty or fees for technical services etc., paid to non-residents is reported by deductor in form 27Q. This information is provided by the deductor to the deductee (taxpayer) in Form 16A. Information is reported by authorised dealer in form 15CC for foreign remittances made by remitter PAN. Information of receipt of foreign remittance by a remitee is reported by authorised dealer in form 15CC.

42. Foreign travel

Information is reported by deductor in TCS form 27EQ (quarterly statement). This information is provided by

the collector to the taxpayer in Form 16D. Payment in connection with travel to any foreign country may be reported in Form 61 if the PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.

43. Purchase of immovable property

Information relating to immovable property is reported by the Property Registrar through SFT. The information will be shown in AIS of all buyers to enable submission of feedback. Buyer at the time of making payment towards purchase of property is liable to deduct tax from the amount paid to the seller subject to the threshold applicable. This information is reported in form 26QB. Seller of property reports the details of property buyer in schedule CG of ITR. Payment for purchase of immovable property may be reported in Form 61 if the PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.

44. Purchase of vehicle

Information is reported by deductor in TCS form 27EQ (quarterly statement). This information is provided by the collector to the taxpayer in Form 16D. Payment for purchase of motor vehicle may be reported in Form 61 if the PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.

45. Purchase of time deposits

Information relating to Purchase of Time deposits is reported by reporting entity (such as the bank) in the Statement of Financial Transaction (SFT). Information pertaining to investment in Time deposit is reported in Form 61 where PAN is not furnished by the transacting

party. PAN is populated based on aadhaar and other attributes of the person.

46. Purchase of securities and units of mutual funds

Information is reported by reporting entity in the Statement of Financial Transaction (SFT). Purchase of shares (including share application money). Information is reported by reporting entity in the Statement of Financial Transaction (SFT). Information is reported by reporting entity (such as mutual fund companies) in the Statement of Financial Transaction (SFT).

47. Credit/Debit card

Information pertaining to application for issuance of credit/debit card is reported in Form 61 where PAN is not furnished by the transacting party. PAN is populated based on aadhaar and other attributes of the person.

48. Balance in account

Details of bank account other than saving and time deposits opened during the year, as reported in Form 61. Bank account with balance exceeding 50,000 at the closing of Financial year, as reported in Form 61.

49. Income distributed by business trust

Information relating to income from units of a business trust is reported by payer in form 27Q. Information is reported on quarterly basis and is chargeable to tax at special rate.

50. Income distributed by investment fund

This information is reported by the deductor in Form 26Q on a quarterly basis.

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“When one door of happiness closes, another opens; but often we look so long at the closed door that we do not see the one which has been opened for us.”

– Helen Keller

Direct Tax Updates

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Circular No. 20 of 2021

F. No.370142/56/2021-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated 25th November, 2021

Subject: Guidelines under sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Income-tax Act, 1961 – reg.

Finance Act, 2020 inserted a new section 194-O in the Income-tax Act 1961 (hereinafter referred to as “the Act”) which mandates that with effect from 1st day of October, 2020, an e-commerce operator shall deduct income-tax at the rate of one per cent of the gross amount of sale of goods or provision of services or both, facilitated through its digital or electronic facility or platform. However, exemption from the said deduction has been provided in case of certain individuals or Hindu undivided family subject to fulfilment of specified conditions. This deduction is required to be made at the time of credit of the amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier.

2. Finance Act, 2020 also inserted sub-section (1H) in section 206C of the Act which mandates that with effect from 1st day of October, 2020 a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year shall collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax. The collection is required to be made at the time of receipt of amount of sale consideration. Seller is defined as the person whose total sales or gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of good is carried out. Central Government has been authorised to specify by notification in the Official Gazette, the person who would not be considered as seller for the purposes of this section, subject to the fulfillment of certain conditions as specified therein.

3. Finance Act, 2021 inserted a new section 194Q to the Act which took effect from 1st day of July, 2021. It applies to any buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding fifty lakh rupees in any previous year. The buyer, at the time of credit of such sum to the account of the seller or at the time of payment, whichever is earlier, is required to deduct an amount equal to 0.1% of such sum exceeding fifty lakh rupees as income tax. Buyer is defined to be person whose total sales or gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Central Government has been authorised to specify by notification in the Official Gazette, person who would not be considered as buyer for the purposes of this section, subject to fulfillment of specified conditions.

4. Sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties.

4.1 In this regard, vide circular no. 17 of 2020 dated 29.09.2020, guidelines were issued by the Board (with the approval of the Central Government) in relation to the provisions of section 194-O and section 206C(1H) of the Act in certain cases to remove difficulties and provide clarity for certain transactions.

4.2 Further, vide circular no. 13 of 2021 dated 30.06.2021, guidelines were issued by the Board in relation to the provisions of section 194Q of the Act through which the difficulties arising from the applicability of the provisions of section 194Q in certain cases were removed. Furthermore, guidelines with respect to the cross application of the provisions of sections 194-O, 194Q and 206C (1H) of the Act were also issued through the said circular.

4.3 In continuation of the above, to further remove the difficulties, the Board, with the approval of the Central Government, hereby issues the following guidelines under sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-I) of section 206C of the Act.

5. Guidelines

5.1 E-auction services carried out through electronic portal:

5.1.1 Representations have been received from various stakeholders involved in the business of carrying out e-auction services through electronic portal owned, operated or maintained by them (hereinafter referred as 'e-auctioneer'). It has been stated that in an e-auction, the e-auctioneer involved in conducting the e-auction through its portal is responsible only for the price discovery for the sale/purchase of goods or services and the result of the auction report is submitted to the client. The client could be the buyer or the seller. Participants in the auctions are sellers (if client is buyer) or buyers (if client is seller). The transaction of sale/purchase is being carried out directly between the buyer and the seller which are not done through the electronic portal of the e-auctioneer. Further, the price so discovered can be further negotiated between the parties without the knowledge of the e-auctioneer. In such a scenario, it has been represented that provisions of section 194-O of the Act does not apply as the transaction of sale/purchase itself is not taking place through the electronic portal.

5.1.2 From the representations made, the following facts have been noticed:

- (a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery **only** which is reported to the client.
- (b) The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.
- (c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale.
- (d) The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery.

- (e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.
- (f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O of the Act.

5.1.3 In order to remove difficulty, it is clarified that the provisions of section 194-O of the Act shall not apply in relation to e-auction activities carried out by e-auctioneers if **all the facts** listed at (a) to (f) of para 5.1.2 are satisfied. This clarification shall not apply if any of these facts are not satisfied. Further, it is clarified that the buyer and seller would still be liable to deduct/ collect tax as per the provisions of section 194Q and 206C (1H) of the Act, as the case may be.

5.2 Adjustment of various state levies and taxes other than GST

5.2.1 In Para 4.3.2 of circular no. 13 of 2021 dated 30.06.2021, it has been provided that in case the GST component has been indicated separately in the invoice and tax is deducted at the time of credit of the amount in the account of the seller, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such GST. It has been further provided that in case the tax is deducted on payment basis as the payment is earlier than the credit, the tax is to be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future. Further, adjustment of tax deducted in case of purchase return has also been provided.

5.2.2 It has been represented that in case of goods which are not within the purview of GST, such as petroleum products, various levies like VAT, Excise duty, sales tax etc. are charged. While the treatment of GST component has been clarified in the circular no. 13 of 2021, the same is silent on other non-GST levies which have otherwise been subsumed and replaced by GST.

5.2.3 In this regard, it is hereby clarified that in case of purchase of goods which are not covered within the purview of GST, when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of VAT/Sales tax/Excise duty/CST, as the case may be, has been indicated separately in the invoice, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such VAT/Excise duty/Sales tax/CST, as the case may be. However, if the tax is deducted on payment basis, if it is earlier than the credit, the tax is to be deducted on the whole amount as it will not be possible to identify the payment with VAT/Excise duty/Sales tax/CST component to be invoiced in the future. Furthermore, in case of purchase returns, the clarification as provided in Para 4.3.3 of circular no. 13 of 2021 shall also apply to purchase return relating to non GST products liable to VAT/excise duty/sales tax/ CST etc.

5.3 Applicability of section 194Q of the Act in cases where exemption has been provided under section 206C (1A) of the Act

5.3.1 Sub-section (1A) of section 206C of the Act provides that notwithstanding anything contained in sub-section (1) of the said section, no tax is to be collected in case of a buyer, who is a resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration to the effect that the goods (as referred to in sub-section (1)) are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

5.3.2 As per the provisions of sub-section (1H) of section 206C of the Act, tax is to be collected in respect of sale of goods other than the goods which have not been covered under sub-section (1) or sub-section (1F) or sub-section (1G). It has been represented that in case of goods which are covered under the provisions of sub-section (1) of the said section but exempted under sub-section (1A), tax will not be collectible under either sub-section (1) or sub-section (1H) of section 206C as the provisions of sub-section (1H) categorically exclude the goods which are covered under sub-section (1) of section 206C. It has been requested to clarify if the provisions of section 194Q of the Act will be applicable in such cases.

5.3.3 The issue has been examined. It is seen that the provisions of section 194Q of the Act does not apply in respect to those transactions where tax is collectible under section 206C [except sub-section (1H) thereof] of the Act. Since by virtue of sub-section (1A) of section 206C of the Act, the tax is not required to be collected for goods covered under sub-section (1) of the said section, it is hereby clarified that in such cases, the provisions of section 194Q of the Act will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are fulfilled.

5.4 Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation

5.4.1 There have been representations from department of the Government (both Central Government and State Government), to enquire if such department is required to deduct tax under the provisions of section 194Q of the Act.

5.4.2 As per the provisions of section 194Q, tax is to be deducted by a person, being a buyer, whose total sales, gross receipts or turnover from **business** carried on by that person exceed ten crore rupees during the financial year immediately preceding the financial year in which the goods are purchased by such person. Thus, for a person to be considered as a buyer for the purposes of section 194Q of the Act, following conditions are required to be fulfilled:

- (a) Such person shall be carrying out a business/ commercial activity;
- (b) The total sales, gross receipts or turnover from such business/ commercial activity shall be more than Rs. 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

In case of any Department of the Government which is not carrying out any business or commercial activity, the primary requirement for being considered as a 'buyer' will not be fulfilled. Accordingly, such an organization will not be considered as 'buyer' for the purposes of section 194Q of the Act and will not be liable to deduct tax on the goods so purchased by them. However, if the said department is carrying on a business/commercial activity, the provision of section 194Q of the Act shall apply subject to the fulfillment of other conditions.

5.4.3 Issue has been raised in case where any department of the Government will be considered as a 'seller' for the purposes of deduction of tax under section 194Q of the Act. In this regard, it is hereby clarified that for the purposes of section 194Q, Central Government or State Government shall not be considered as 'seller' and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods.

5.4.4 In connection with above, it is further clarified that any other person, such as a Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, shall be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.


 25.11.2021
 Ankit Jain

Under Secretary to the Govt. of India

* * * * *

Faceless Appeals whether constitutionally valid?

Compiled by CA Anup Kr Sanghai

Why the hearings before the National Faceless Appeal Centres have not been stayed considering the fact that National Faceless Scheme is being reconsidered by the Central government : Bombay High Court

The Bombay High Court on 22nd November 2021 asked the Central Board of Direct Taxes (CBDT) why the hearings before the National Faceless Appeal Centres have not been stayed considering the fact that National Faceless Scheme is being reconsidered by the Central government (***Chamber of Tax Consultants v. Central Board of Direct Taxes & Anr.***).

A Bench of Chief Justice Dipankar Datta and Justice MS Karnik was hearing a public interest **litigation (PIL)** petition challenging the **constitutional validity of the 'Faceless Appeal Scheme' along with certain amended provisions of the Income Tax Act, 1961.**

Additional Solicitor General Anil Singh appearing for the Central Govt informed the Court at the outset, that the parliament would be reconsidering the scheme.

Senior Advocate Arvind Datar appearing for the petitioner, stated that the Appeal Units constituted under the scheme were issuing hearing notices and proceeding with the same despite the reconsideration move.

In response, the Bench said that it does not want to waste time hearing a petition only for it to be eventually decided by the parliament.

The Court, however, demanded why Centre was “not holding their hands on the appeals being heard” till their scheme is reconsidered.

“You cannot have it both ways, if you are reconsidering the scheme, then don’t hear the appeals,” the Bench said.

The Bench was also informed of the Supreme Court being approached with a transfer petition on the issue, though the top court had not granted any stay on the High Courts hearing the appeals.

In light of this, the Bench proceeded to hear the submissions on the appeal.

The PIL was earlier filed as a writ petition by the Chamber of Tax Consultants, challenging two notifications issued in 2020 by which the scheme was rolled out, and sub-sections (6B), (6C) and (6D) of Section 250 of the Act on the grounds that the same are arbitrary and in excess jurisdiction and authority.

The following submissions were made on behalf of the petitioner :

- **Excessive Delegated legislation***
 - Essential statutory functions which included change in policy could not be delegated;
 - The entire amendment pertaining to the appeal had been brought out by way of a notification, instead of following the due procedure under law.
- **Quasi-judicial authority of Commissioner of IT (Appeals) threatened :**
 - The provision of Faceless Appeal Scheme had directly threatened the quasi-judicial authority of the Commissioner of Income Tax (Appeals) and hence the scheme is unconstitutional.
- **Mand onstitutional :**
 - Provisions of the scheme provide for a mandatory review of the order where the tax involved is more than a specified limit. It was argued that such a review has to be done by a higher authority, and after the order is passed and not at a draft stage.
- **The order was passed without hearing the assessee as per the scheme, which is illegal.**
- ***No physical hearing is against principles of equity***
 - The scheme does not provide for physical hearings even though the parent act does not completely negate physical hearing;
 - The provisions of the Faceless Appeal Scheme which completely negate physical hearings or make it available to the assessee at the discretion of the respondents should be struck down.
 - If the scheme is implemented, what will essentially happen is assessment, appeals and subsequent appeals will be faceless and the first time the assessee’s voice is heard will be in the High Court.
- ***Oral hearing via video conferencing***
 - Appellant has no right of oral hearings via video conferencing and at best can only make a request to be heard.
 - The authority must not determine how an appellant can argue his case.
- ***Administrative interference in judicial work***
 - National Faceless Assessment Centre, an administrative wing, is going to control the entire appellate function which is otherwise a duty to be discharged by a quasi-judicial authority.
- **Scheme is violating articles of the constitution**
 - It was also argued that the provisions in the scheme were in violation of Articles 14, 19 and 265 of the Constitution.
- **Additional Solicitor General’s response awaited on above arguments.**

* * * * *

GST Updates, Compliance Calendar and HC Judgement

Compiled by **CA Swapnil Jain**

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Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017
(Circular No CBEC-20/16/05/2021-GST/1552 dated 2nd November 2021)

Background: In certain circumstances, as per Rule 86A of the Central Goods and Services Tax Rules, 2017, Commissioner or an officer authorised by him, on the basis of reasonable belief that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger. The ITC availed by a registered person is sought to be blocked by the GST department for utilisation against the output liability.

In this regard, CBIC has issued certain guidelines to be followed by the departmental officers with respect to exercise of power under rule 86A of the Rules:

Grounds for blocking of ITC

- The Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person, only after considering the following grounds.
 - proper application of mind considering all the facts of the case
 - nature of ITC prima facie fraudulently availed or ineligible input tax credit
 - whether the ITC fraudulently availed is covered under the grounds mentioned in sub-rule (1) of rule 86A,
 - the amount of input tax credit involved
 - whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.
- The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution.

Proper Authority for Rule 86A

- Commissioner/Principal Commissioner may authorize exercise of powers under rule 86A based on the following monetary limits as mentioned below:

Total amount of ineligible or fraudulently availed input tax credit	Officer authorised
<= 1crore	Deputy Commissioner /Assistant Commissioner
>1cr <= 5Cr	Additional Commissioner / Joint Commissioner
>5cr	Principal Commissioner/ Commissioner

- The Additional Director General /Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A
- Where during the course of Audit under section 65 or 66 of CGST Act, 2017 it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (1) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 86A, the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

Procedure for disallowing debit of electronic credit ledger/blocking credit

- The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions/ grounds mentioned.
- Also, the officer should determine whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

3. The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible
4. The action by the Commissioner or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.

Allowing debit of disallowed/restricted credit

1. Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.
2. Upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person.

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices (Circular No. 165/21/2021-GST dated the 17th of November 2021)

Background: An invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds five hundred crore rupees, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said rules, and registered person referred to in section 14 of the IGST Act, 2017, to an unregistered person (i.e., B2C invoice), shall have Dynamic Quick Response (QR) code.

Vide this circular the CBIC has clarified that no dynamic QR code is required in case of supply of services where the receiver of services is located outside India, the place of supply is in India, but the payment is being received by the supplier of services in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI.

Clarification on certain refund related issues (Circular No. 166/22/2021-GST dated the 17th of November 2021)

Background: The excess amount lying in the electronic cash ledger (ECL) of the registered person can be refunded to the registered person under section 54(1) of the CGST Act.

Vide this circular the CBIC has clarified certain issues relating to refund of excess balance in ECL which have been provided below:

1. The time period mentioned in Section 54(1) (2 years from the relevant date) would not be applicable for refund of excess balance in ECL
2. Furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 is not required in cases of refund of excess balance in ECL as unjust enrichment clause is not applicable in such cases
3. The TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act is equivalent to cash deposited in electronic cash ledger. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues, can be refunded as excess balance ECL in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act
4. In case of refund of tax paid on the supplies regarded as deemed export, the relevant date for purpose of filing of refund claim would be the date of filing of return, related to such supplies, by the supplier.

Compliance Calendar

Due Date	Particulars
10-December-2021	Monthly GSTR-7 for November 2021 for TDS Deductors Monthly GSTR-8 for November 2021 for TCS collection by E-Commerce Operators
11-December-2021	Monthly GSTR-1 for November 2021 (monthly taxpayers)
13-December-2021	Monthly GSTR-6 for November 2021 for Input Service Distributors Monthly IFF for November 2021 (QRMP Taxpayers, Optional)
20-December-2021	GSTR 3B for November 2021 (AT more than 5 Cr in Previous FY)
22-December-2021	GSTR 3B for November 2021 (AT up to 5 Cr in PY) - Not opting QRMP Scheme (Category 1 States)
24-December-2021	GSTR 3B for November 2021 (AT up to 5 Cr in PY) - Not opting QRMP Scheme (Category 2 States)
25-December-2021	PMT-06 Monthly tax payment for November 2021 under QRMP Scheme. Taxpayers have a choice to pay tax either, as per - A) Fixed Sum Method <u>or</u> B) Self-assessment basis subject to interest on short payment of taxes.

*AT= Aggregate Turnover

Category 1 States: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep

Category 2 States: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi.

HC Judgement

Citation:	TS(DB)-GST-HC(P&H)-2021-58
In the matter of:	Kaushal Kumar Mishra vs. The Additional Director General.
Name of the Authority:	Punjab & Haryana HC
Relevant Section/ Rule:	CGST Act, 2017 S.3 (Officers under this act) S.6 (Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances) S.70 (Power to summon persons to give evidence and produce documents)
Matter in Dispute:	Whether simultaneous investigations by different GST officers can be initiated against the assessee
Judgement of the Authority:	Where different Officers appointed under Sections 3 & 6 of CGST Act, 2017 are independently investigating altogether different matters involving contraventions of prima facie cognizable & punitive offences in CGST, without any overlapping, such investigation is not barred by Section 6(2)(b)

Citation:	TS(DB)-GST-HC(MAD)-2021-346
In the matter of:	ARS Steels and Alloy International Private Limited vs. State Tax Officer
Name of the Authority:	Madras HC
Relevant Section/ Rule:	CGST Act, 2017 S.17 (Appointment of credit and blocked credits)
Matter in Dispute:	Whether ITC needs to be reversed on inputs for inherent loss during manufacturing process
Judgement of the Authority:	The manufacturing loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in section 17(5)(h). The situations set out in section 17(5)(h) indicates loss of inputs that are quantifiable, involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself. Hence, reversal of ITC involving Section 17(5)(h), in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations covered under Section 17(5)(h)

* * * * *

**“The greatest religion is to be true to your own nature.
Have faith in yourselves.”**

– Swami Vivekananda



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“Forgiveness is not a matter of who is right or wrong. It is a matter of doing the right thing.”

Master Choa Kok Sui

Talking about **forgiveness** and its benefits, we also need to discuss how to forgive! There are many people out there that know about forgiveness, but not all know how to forgive! It is not always easy to forgive and forget and move on, especially if the effects of the unfavorable event are highly destructive to a person's life, marriage or family. Small or big, petty or massive, the key is to know how to forgive and to be able to release the **anger** and pain from our system to get free; otherwise we may dry up in the long run...

There are in fact techniques that can show us how to forgive and can help us deal with the unfavorable experiences and continue living and loving.

How to Forgive? Method 1 Increase the Love

Often we focus so much on the problems and differences that we forget most of the good times we have had with our friends, family members and colleagues. So instead of feeling **happy** and grateful, we often feel unsatisfied.

Most of the time, we get hurt by our loved-ones and the people who are close to us rather than strangers, and the reason is our close interactions with them.

“When two people interact closely, there is friction. The lubricant is Love – in the form of Loving Thoughts, Loving Feelings, Loving Words and Loving Actions.”

Master Choa Kok Sui

It means that frictions, disagreements and arguments are bound to happen in any relationship. How to forgive?! Increase the love!

How to Forgive? Method 2 Put Yourself in the Other Person's Shoes

We need to think realistically. We are all human beings and none of us is perfect!

So we all make mistakes and in fact mistakes are part of life and evolution. Don't make a big fuss when you or others make mistakes. Just learn how to forgive!

Without mistakes how can we learn our lessons and grow?! Mistakes are bound to happen but what is important is to learn from them and not to make the same mistake over and over again.

So anytime you get hurt or an argument happens before reacting immediately, wait for a moment and think about the situation from various perspectives. Try to analyze why the person is behaving such, what could be his problems, why you feel angry and what would be the correct action and how to forgive.

Try to put yourself in the other person's shoes.

Often people who keep hurting others are weak internally and have many problems to deal with. Try to sympathize with them.

And understand that reacting in the midst of an argument won't work since everyone is operating from the emotional level. Explaining and trying to convince your actions do not work. What you need to do is to calm the situation down and wait for the proper time to discuss about the matter when you are both calm and alert. Once you analyzed the unfavorable experience and learned the lessons, forget about it and move on!

* * * * *

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APPLICATION FORM FOR MEMBERSHIP

To
The General Secretary,
Association of Corporate Advisers & Executives
6, Lyons Range, 3rd Floor, Unit - 2
Kolkata - 700 001

FOR OFFICE USE ONLY

Date of Receipt _____

Membership Approved on _____

Membership No. Allotted _____

Chairperson

Membership Development Sub-Committee

General Secretary

Dear Sir,

Please **ENROL** me/us as a **LIFE/GENERAL MEMBER** of the Association. I/We agree to abide by the Memorandum and Rules & Regulations of the Association.

1. Name in Full (IN BLOCK LETTERS) : _____
2. Father's Name : _____
3. Date of Birth : _____
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5. Occupation : _____
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7. GSTIN : _____
8. Designation : _____
9. CA/CS/ICWAI Membership No. : _____
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11. Date of Marriage : _____ Name of Spouse _____
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Mobile : _____ E-mail : _____

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I am/We are sending herewith Rs. _____ (Rupees _____)
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towards ☐ Life Membership ☐ General Membership.

Place : _____

Date : _____

Signature of the Applicant

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ACAIE Membership No. : _____ Signature : _____

Seconded By : Name : _____

ACAIE Membership No. : _____ Signature : _____

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 - c) Annual Subscription will be half, if Membership Commences after 30th September of the year in which the membership is approved.
 3. Cheques should be drawn in favour of **Association of Corporate Advisers & Executives**.



Activities at a Glance ...

Sl.No.	Date	Topics & Speaker
1.0	24.09.2021 (Virtual)	VCM on GST. Overview of Refunds under GST. Speaker : CA Yash Dhadda, Jaipur. Refunds under Inverted Duty Structure (including VKC Footsetps). Speaker : CA Aanchal Kapoor, Amritsar. CA Shivani Shah, Chairman – GST/Indirect Tax Sub-Committee.
2.0	25.09.2021 (Physical at The Park, Kolkata and Virtual)	Audit Conclave Theme : The Future of Audit Profession organized by The Institute of Chartered Accountants of India – Eastern India Regional Council jointly with ACAE Chartered Accountants Study Circle – EIRC. Inaugural Session : Chief Guest : CA A C Chakraborti, Past President, ICAI. Technical Session 1 Topic : Carrying out an effective Audit and properly communicating results – “Let’s get to the point”. Speaker : CA P R Ramesh, Hyderabad. Technical Session 2 Topic : The Evolution of Forensic Accounting as profession. Speaker : CA Durgesh Pandey, Ahmedabad. Technical Session 3 Topic : Issues in Tax Audit and ICDS. Speaker : CA Bhaumik Goda, Mumbai. Technical Session 4 Panel Discussion on “Future of Audit Profession – Harnessing Value from Transition”. Panelists : CA Dipankar Chatterji, Past Council Member, ICAI, Kolkata; CA Abhijit Bandopadhyay, Past Council Member, ICAI, Kolkata; CA M P Vijaykumar, Chairman, Accounting Standards Board, ICAI & CCM, ICAI, Chennai. Moderator : CA Mohit Bhuteria, Kolkata.
3.0	06.10.2021 (Virtual)	Group Discussion on Accounting Standards for Non-Corporate Entities. Initiator : CA Kamal Garg, Delhi. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
4.0	27.10.2021 (Virtual)	Group Discussion on Audit Simplified with Tally Prime and Excel. Initiator : CA Vivek Jain, Guwahati. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
5.0	28.10.2021 (Virtual)	VCM on Unravelling the Mystery of CARO 2020 and Schedule III FS Changes. Speakers : CA Abhijit Agarwal, Partner, Deloitte India, Bengaluru and CA Shruti Lohia, Senior Manager, Deloitte India, Bengaluru. CA Vivek Newatia, Chairman – Forensic Accounting & Audit Sub-Committee.
6.0	10.11.2021 (Virtual)	Group Discussion on GST Impact on Real Estate Sector. Initiator : CA Aditya Dhanuka, Kolkata. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
7.0	13.11.2021 (MCCI Conference Hall, Kolkata)	Interactive Session in association with Association of Corporate Advisers & Executives, BBD Bag CA Study Circle, IWIRC and NCLT Kolkata Bar Association on The Insolvency Profession & the IBC Space with Dr. Navrang Saini, Acting Chairperson, Insolvency and Bankruptcy Board of India. Moderator : Dr. Mamta Binani, Chairperson, Council on Legal Affairs, MCCI.



ACTIVITIES AT A GLANCE

Sl.No.	Date	Topics & Speaker
8.0	14.11.2021 (Ojas Banquet, Kolkata)	Bijoya & Deepawali Get-together. Lucky Draw, Games, Antanksari, Theme based Special Prizes. CA Niraj Kr Harodia, Chairman – Fellowship Sub-Committee.
9.0	16.11.2021 (Virtual)	VCM on GST. Response on Merits vs Technical Deficiencies in Notices. Speaker : CA A Jatin Christopher, Bengaluru. Writ vs Alternate Litigation Strategies. Speaker : Advocate Vinay Shraff, Kolkata. CA Shivani Shah, Chairman – GST/Indirect Tax Sub-Committee.
10.0	17.11.2021 (Virtual)	Group Discussion on ITR and AIS – Spreading Wings/Claws. Initiator : CA Ayush Goel, Kolkata. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
11.0	24.11.2021 (Virtual)	Group Discussion on Winding up : Practice, Procedure and Provisions. Initiator : Adv. (CA) Nipun Singhvi, Ahmedabad. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
12.0	29.11.2021 (Virtual)	VCM on on Section 148 and 148A of the Income Tax Act, 1961. Topic: Intricacies in Section 148A vis-a-vis Section 148 under the old Provisions of the IT Act and analysis of recent judicial pronouncement on Notices issued under the old Provisions of the Act. Speaker: Advocate (CA) Kapil Goel, New Delhi. CA Anup Kr Sanghai, Chairman - Direct Tax Sub-Committee.



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ACAE AGM at a Glance ...

61st Annual General Meeting of Association of Corporate Advisers & Executives
held at ITC Royal Bengal, Kolkata on Saturday, 11th September, 2021





ACAE Bijoya & Deepawali Get-together at a Glance ...

Bijoya & Deepawali Get-together
held at Ojas Banquet, Kolkata on Sunday, 14th November, 2021





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