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House Journal

# ACAE

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES


## Highlights



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# CONTENTS

# Editorial

Dear Members,

Sincere Greetings to all!

*"Not having the best situation, but seeing the best in your situation is the key to happiness."*– Marie Forleo.

On this note I would like to express my good wishes to all the professional members on beginning of new financial year.

I'm filled absolute appreciation and it gives me enormous joy to share the 3rd issue of ACAE House Journal.

As things are beginning to return to the pre-pandemic commonalities, as well as adjusting to the new post-pandemic approach to getting things done, it is exceptionally fundamental that we keep on taking wellbeing measure as we push ahead and remain fit.

I would like to thank my kindred members for their commitment in making this issue a successful one.

I look forward your important remarks and ideas which will helps us for further improvement of the House Journal.

With Best regards

**CA ANUP KUMAR BANKA**
***Chairman***, House Journal Sub-Committee
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# President Speaks

Dear ACAE Family,

I wish you all a VERY HAPPY AND PROSPEROUS FINANCIAL NEW YEAR.

We all are busy in completing the year end task for 2022 and welcoming the new financial year with new hope. There is a need to introspect on the moments which made the last financial year memorable as well as those which may have been difficult but would always have some learnings which improves our perspective for the future.

The last quarter has begun with a frightening wave of pandemic which has affected almost all the families, at a time when there were hope of recovery after the last wave of pandemic. We have faced the fear with confidence and belief that we shall make it through.

We have commenced this month with the traditional New Year of Hindus and Poila Baisakh. I take this opportunity to wish all a very happy new year to all fellow professionals and pray for the well-being and progress of all.

With the passing of each year in one's life, a person should work on evolving and making sure that we are not doing an assigned job in the same way as we used to do year before. We have the capabilities to evolve continuously. We can achieve this when we identify and involve ourselves in the activity which provides inner motivation to excel. This gives a sense of satisfaction. Once you are carrying on an activity with happiness and with deep belief in your ability to excel, it will lead to success.

Now turning to our profession, you all would be aware of the ongoing discussion on the "The Chartered Accountants, The Cost and Works Accountants and The Company Secretaries (Amendment) Bill, 2021" in the Lok Sabha. The Bill was introduced On 17th December, 2021 and after representation from ICAI, the Bill was referred to the Standing Committee on Finance for examination and report thereon. Subsequently, after hearing the views of the three Institutes and other stakeholders, the Standing Committee finalized their Report on 21st March, 2022 and the bill was passed by Lok Sabha on 30th March, 2022 and by Rajya Sabha on 5th April, 2022.

- It changes the disciplinary mechanism under the three Acts and specifies timelines for disciplinary proceedings. It also provides more external representation on the Board of Discipline and Disciplinary Committee.
- It creates a Coordination Committee headed by the Secretary of the Ministry of Corporate Affairs. The Committee will have representation from the three Institutes formed under the Acts.
- The Secretary to each Council will be designated as chief executive with the President as the head of the Council. The President will be responsible for ensuring implementation of decisions of the Council.
- Firms must now register with the Institutes. The Councils must maintain a register of firms containing details including pendency of any actionable complaint or imposition of penalty.
- It increases certain fines under the three Acts. If a partner or owner of a firm is repeatedly found guilty of misconduct during last five years, disciplinary action can be taken against the firm.

Let me now update you all with the initiatives at ACAE. We have organised 5 day Workshop on Forensic Accounting with best of the speakers across India. We also has several session on Forensic Accounting which will help our members in getting future read. We have organised 6 hours NBFC Conclave covering 360 degree of NBFC and its compliance with our guest GM from RBI.

ACAE has organised Seminar on Union Budget 2022. ACAE, VIPCA, Views Exchange, South City and NCLT Kolkata Bar Association and physical session on Critical Analysis of Recent Changes including Budgetary Changes in GST (Clause by Clause Analysis) Advocate Shailesh Sheth and more recently a panel discussion on Finance Act with various panellist from Kolkata. There were several Group Discussion also on Finance Act covering Direct and Indirect Tax.

ACAE was privileged to felicitate of CA (Dr) Debashis Mitra, President of ICAI and out past office bearer.

ACAE has organised 5 hr workshop on Financial Instrument with CA M P Vijay Kumar and CA Mahendra Sharma.

ACAE has organised session on Bank Audit spread over two days, CA (Dr.) Debashis Mitra, President, ICAI was the chief guest and the Guest of Honour was CA Amarjit Chopra, Past President, ICAI

These virtual events were conducted by eminent speakers across India with very good acknowledgement from members.

ACAE has successfully organised the 10th edition of CACL, the Flagship Sporting Event of ACAE Indoor Cricket Tournament. This was the first time that the event was a 2-Day affair and 8 Teams has participated as against 6 teams in previous years. Teams : ACAE – Team A; ACAE – Team B; BBD Bag, Bidhan Nagar, CKCA, DTPA, VIPCA and Views Exchange. VIPCA emerged as winner in same.

Career After Family Enterprise (CAFÉ) for first of its kind in the country organized Women's Career Expo along with CFBP (Council for Fair Business Practices), supported by various organisation. ACAE has also joined hands with CAFÉ as their Community Partner.

ACAE 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.

My sincere thanks go to the Editorial Board under the Chairmanship of **CA Anup Kumar Banka** for the Third House Journal of ACAE 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.

**Let us welcome FY 2022-23, by aiming to upgrade ourselves for a better future.**

Stay Safe and Healthy

With Warm Regards

**CA Vivek Agarwal**

***President***

# Activities at a Glance ...

| Sl.No. | Date | Topics & Speaker |
|---|---|---|
| 1.0 | **01.02.2022 (ACAE, Emami Conference Hall)** | **Live Telecast of Union Budget – 2022 with Panel Discussions.** Panelist : CA S S Gupta – Direct Tax. |
| 2.0 | **03.02.2022 (Virtual)** | **Seminar on Union Budget 2022.** ACAE, VIPCA, Views Exchange, South City and NCLT Kolkata Bar Association jointly organized Webinar on Decoding Union Budget 2022. Speakers : CA Bhupendra Shah – Direct Tax, CA Jatin Harjai – Indirect Tax and Ms. Shibani Sircar Kurian, Capital Market. |
| 3.0 | **08.02.2022 (ACAE, Emami Conference Hall)** | **Lecture Meeting on Critical Analysis of Recent Changes including Budgetary Changes in GST (Clause by Clause Analysis).** Speaker : Advocate Shailesh Sheth, Mumbai. CA Shivani Shah, Chairman – GST/Indirect Tax Sub-Committee. |
| 4.0 | **09.02.2022 (Virtual)** | **Group Discussion on Decoding Union Budget 2022 from Direct Tax perspective.** Initiator: CA S S Gupta, Kolkata. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee. |
| 5.0 | **10.02.2022 (Virtual)** | **Group Discussion on Decoding Union Budget 2022 from GST perspective.** Initiator : CA Shivani Shah. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee. |
| 6.0 | **12.02.2022 (Virtual)** | **VCM on Practical Workshop on Forensic Accounting.** Speaker: CA Sandeep Baldava, Mumbai. CA Vivek Newatia, Chairman – Forensic Accounting & Audit Sub-Committee. |
| 7.0 | **16.02.2022 – 20.02.2022 (Virtual)** | **5-Day 15 Hours Workshop on Forensic Accounting and Investigation. Topic : Walkthrough of Forensic Risk Assessment.** Speaker : CA Durgesh Pandey. Ahmedabad. Panel Discussion on Forensic Accounting – Are we ready? Panelists : CA Durgesh Pandey, Ahmedabad, CA Harish Dua, Delhi. **Topic: Forensic Accounting – Upskill yourself with Technology.** Speaker : CA Anand Prakash Jangid, Bengaluru. **Topic : Practical Case Studies of Forensic Accounting and Frauds.** Speaker : CA Chetan Dalal, Mumbai. **Topic: Using Excel in Forensic Investigation.** Speaker : CA Nachiket Pendharkar. **Topic : Detailed Procedure of Forensic Investigation and Drafting of Report.** Speaker : CA Puneet Grewal. CA Vivek Newatia, Chairman – Forensic Accounting & Audit Sub-Committee. |
| 8.0 | **16.02.20222 (Raasmanch, Swabhumi, Kolkata)** | ACAE Chartered Accountants' Study Circle – EIRC felicitated CA. (Dr.) Debashis Mitra, President, ICAI and CA. Aniket S Talati, Vice President, ICAI in the **Felicitation Ceremony** organized by EIRC of ICAI. |
| 9.0 | **17.02.2022 (The Lalit Great Eastern Kolkata)** | **Felicitation of CA. (Dr.) Debashis Mitra** on being elected the President (2022-2023) of The Institute of Chartered Accountants of India, New Delhi. |
| 10.0 | **17.02.2022 (Virtual)** | **VCM on Art of Attaining Perfection for Professionals.** Speaker : Justice J. R. Midha (Retd.), Former Delhi High Court Judge. CA Kamal Nayan Jain, Chairman – Allied Laws Sub-Committee. |
| 11.0 | **25.02.2022 (ACAE, Emami Conference Hall)** | **Lecture Meeting on Tricky points in dealing with Department's Inquiry/Investigation, etc. in GST.** Speaker : Senior Advocate (CA.) Shri J K Mittal,, Supreme Court of India, New Delhi. CA Shivani Shah, Chairman – GST/Indirect Tax Sub-Committee. |
| 12.0 | **25.02.2022 (Virtual)** | **VCM on Practical Workshop on Financial Instrument.** Speaker : CA M P Vijay Kumar, Past Central Council Member, ICAI. CA Vivek Newatia, Chairman – Forensic Accounting & Audit Sub-Committee. |

<table>
<tr><th>Sl.No.</th><th>Date</th><th>Topics & Speaker</th></tr>
<tr><td>13.0</td><td>26.02.2022 (Virtual)</td><td>VCM on Practical Workshop on Financial Instrument and Disclosures. Speakers : CA M P Vijay Kumar, Past Central Council Member, ICAI and CA Mahendra Sharma, Director, BSR & Co. LLP, Gurgaon. CA Vivek Newatia, Chairman – Forensic Accounting & Audit Sub-Committee.</td></tr>
<tr><td>14.0</td><td>05.03.2022 & 06.3.2022 (The Space Circle, Kolkata)</td><td>CACL 2022 – A Flagship Sporting Event of ACAE - Indoor Cricket Tournament. This is the first time that the event was a 2-Day affair and 8 Teams had participated as against 6 teams in previous years. Teams : ACAE – Team A; ACAE – Team B; BBD Bag, Bidhan Nagar, CKCA, DTPA, VIPCA and Views Exchange. Three Finals amongst teams were played under different categories – Gold, Silver and Bronze. CA Pramod Kr Mundra. Chairman – Sports Committee.
<table>
<tr><th></th><th>Winner</th><th>Runner Up</th></tr>
<tr><td>Gold</td><td>VIP Road CA Study Circle</td><td>BBD Bag CA Study Circle</td></tr>
<tr><td>Silver</td><td>ACAE CA Study Circle</td><td>Central Kolkata CA Study Circle</td></tr>
<tr><td>Bronze</td><td>DTPA CA Study Circle</td><td>Bidhan Nagar CA Study Circle</td></tr>
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<tr><td>15.0</td><td>08.03.2022 (ACAE, Emami Conference Hall)</td><td>International Women's Day. Panel Discussion on Women : Breaking the Glass Ceiling. Panelists : Ms. Sambi Mitra, Advocate Professor; Ms. Kavita Agarwal, Entrepreneur; Ms. Srishti Nadhani, Influencer; Dr. Pragati Singhal, MBBS, MS. Moderator : CA Shivani Shah, World Champion, Kettlebell Sports. CA Shivani Shah, Chairman – Ladies Wing Sub-Committee.</td></tr>
<tr><td>16.0</td><td>09.03.2022 & 10.03.2022 (Virtual)</td><td>Workshop on Non-Banking Financial Companies (NBFCs). Day 1 – Topic : Recent Development on NBFCs including guidelines on appointment of Auditors. Speaker : Sri Abhijit Majumdar, General Manager, Department of Non-Banking Supervision; Reserve Bank of India, Kolkata. Topic : Regulatory Framework for NBFCs. Speaker : CA Mohit Bhuteria, Kolkata. Day 2 – Topic: Taxation aspects of NBFCs. Speaker : CA Pradip Kapasi, Mumbai. Topic : Implication of GST on NBFCs. Speaker : Advocate Puneet Agrawal, New Delhi. CA Mohit Bhuteria, Chairman – Corporate Laws Sub-Committee.</td></tr>
<tr><td>17.0</td><td>14.03.2022 (MCCI Conference Hall)</td><td>VCM on Practical Workshop on Financial Instrument. ACAE in association with Merchants' Chamber of Commerce & Industry organized Special Session on Demystifying the Saga of Valuation – New age Companies, Start-ups, Goodwill by Sri Rammohan Bhave, CA, CMA, CS, LLB, Holder of Record in Limca Book of Records.</td></tr>
<tr><td>18.0</td><td>16.03.2022 (Hindusthan Club, Kolkata)</td><td>The Institute of Chartered Accountants of India – Eastern Regional Council in association with Study Circles of EIRC organized Holi Doljatra Get-together. Music & Melodious Songs; Peacock & Vanzara Dance; Thandai, Snacks & Dinner; Fellowship with GULAL.</td></tr>
<tr><td>19.0</td><td>22.03.2022 & 23.03.2022 (Virtual)</td><td>Seminar on Bank Audit. Day 1 – Chief Guest : CA (Dr.) Debashis Mitra, President, ICAI. Guest of Honour : CA Amarjit Chopra, Past President, ICAI. Topic : Intricacies of NPA and its review. Speaker : CA Dhananjay J Gokhale, Mumbai. Topic : LFAR – Practical difficulties. Speaker : CA Nayan R Kothari, Baroda. Day – 2 : Topic : Review of Advances in Bank Audit. Speaker : CA Ismail B Sonawalla, Mumbai. Topic : Using Excel in Bank Audit. Speaker : CA D S Premnath, Hyderabad. CA Vivek Newatia, Chairman – Forensic Accounting & Audit Sub-Committee.</td></tr>
<tr><td>20.0</td><td>29.03.2022 (Taj Bengal, Kolkata)</td><td>Career After Family Enterprise (CAFÉ) for first of its kind in the country organized Women's Career Expo along with CFBP (Council for Fair Business Practices), supported by WICCI Eastern Region Councils, Rotary Clubs, Friends of Tribal Society, Inner Wheel, TIE Kolkata, ICBI, YI, JCI and also T2 and Sanmarg as the Print Media Partner. ACAE has also joined hands with CAFÉ as their Community Partner.</td></tr>
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# Four golden rules of doing business and stock investments

**Shailesh Saraf**
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The golden rules of doing business and investing in the capital market are the same. Many businessmen fail in business as well as investing in stock market as they do not follow these 4 golden rules.

In my experience on capital markets for 27 years, I have only seen the Nifty Index rising since 1995, so this means that the capital market is always good for investments in the long run and any market fall in the stock market is always a good opportunity for investments, On 19th Oct 2021 Nifty made a high of 18604 and on 8th March 22 Nifty was at 15671. During these 6 months many investors got dejected and felt that stock markets are not a good place for investments, but today on 25th March 22 Nifty is again back at 17200 levels and all the stocks have risen. Similarly, during Covid19 Nifty fell from 12430 (on 1st Jan 2020) to 7511 (on 24th Mar 2020) and the market made high of 18604 on 19th Oct 21.

To make money in the stock market we need patience and holding power, we can develop holding power only when we pick good stocks, the big question is how we pick good stocks. **In this article, we will share 4 Golden Rules of stock picking,** keeping in mind that capital market is always good for investing in good quality companies with a clean Track record of last 5 years.

### ➢ 1st Golden Rule:

**Always invest in Profitable and Growth companies. Many investors invest in stocks but they do not even know whether the company is making profits or not. Stock prices are the slaves of profits.**

When the company's products are in demand it will reflect in the sales growth of the company, the result of which the company will have cash flows to pay off the debt in time, use working capital efficiently and have surplus funds available for any opportunity. When the company has profits and growing sales then those companies price always goes up in the long run, profits drive stock prices up is a simple rule which many investors are not aware of, till the time the company can grow its sales and profits we can hold the shares without looking at the stock market fall.

This rule will give confidence and holding power of stocks. There are only 50 companies out of 5000 companies, which have consistent Sales and Profits Growth for the last 5 years and they have become great wealth creators. These companies are not affected by the economy or markets falls because inherently these companies' products have demand in the market and their profits are growing consistently.

### ➢ 2nd Golden Rule:

**We invest in companies where their Return on Equity (ROE) or return on capital employed is greater than the cost of capital or at least 15 percent.**

This simple rule is forgotten by most businessmen, more than 80 percent of listed companies do not even earn more than the fixed deposit rate which is 6 percent and they are doing business, if any business is earning upto 6 percent then it's better to close the business and put our capital in fixed deposit in banks. We have seen companies who can make ROE greater than 15 percent regularly for last 5 years and they are the real wealth creators in the market, it also means that the Management is highly efficient in using its capital. They use their Assets such as Land and Machinery in such a way that creates great profits for their business. In my interaction with

hundreds of businessmen, almost 80 percent do not know the ROE of their business. While making an investment one should only invest in companies that have a track record of ROE greater than 15 percent.

- **3rd Golden Rule:**

**Free Cash Flow, it safeguards our investments in the long run. We need to see whether the company is generating positive Free Cash Flow or not.**

Free Cash Flow simply means that companies have enough savings after doing Capex and has surplus funds for any external threats to the company, an external threat can be a sudden change in Govt Tax Policies such as GST or natural calamities like Covid where the companies had to shut down their operations for some time. When the company has enough savings in the form of positive Free Cash Flow then they can survive these external threats and these companies become great wealth creators in the long run. In my experience Companies which have become great wealth creators, all had Positive Free Cash Flow. Free cash flow also shows the efficiency of the management to use Capex intelligently.

- **4th Golden Rule:**

**For investments is the Valuation of a company, the entire investment fraternity makes complex calculations to know the fair valuation of the stock, through various parameters such as PE Ratio, Discounted Free Cash Flow calculations, and Price to Sales Ratio.**

I will only suggest the Price to Sales ratio as it is easy to understand the fair value of a company through this ratio. The Price to sales Ratio is calculated by the stock Price divided by revenue per share or market cap by revenue for the full year. This metric is considered a valuation metric that confirms whether the sales of the company justifies the stock Price. There isn't necessarily an optimum PS ratio, since different industries will have different ranges of PS Ratio. Because of this PS Ratio is great to evaluate from the relative standpoint with other similar companies. PS Ratio might also be a handy metric for companies that are not profitable yet, since they might be valued more so by the overall sales and potential to become profitable in the future. Out of the 200 biggest companies of India the average Price to Sales ratio on 20th Jan 2020 was 4.07 on 23rd March 2020 it was 3.02. On 19th Oct 2021 it was 8.24 and today it is at 5.94.

It means that companies having Price to Sales ratio less than 3 is good for investments and the investor should also follow the above 3 Golden Rules together with the 4th Golden Rule, Companies with more than 8.5 is an expensive investment.

The price to sales ratio also helps to know the valuations of loss-making companies where PE Ratio and other calculation fails to provide any valuation.

Paytm (Price to Sales at issue price was 49.77). Policy bazaar (Price to Sales at issue price was 49.68), Zomato (Price to Sales at issue price was 30) and Nykaa (Price to Sales at issue price was 21.85), all made public issues at a very high Price to Sales ratio, all general public invested in the companies and lost heavily. By using these simple rules we can avoid getting trapped in highly overpriced companies and avoid investing in such IPO's and save our hard earned money.

**"Long ago, Ben Graham taught me that 'Price is what you pay; value is what you get.' Whether we're talking about socks or stocks, I like buying quality merchandise when it is marked down." - 2008 Berkshire Hathway Chairman Letter by Warren Buffett**

In short, if we use follow the above 4 Rules then

Capital Market is always good for investments, if we enter the capital market without knowledge then we can lose our hard-earned money very rapidly. On the other hand, if we invest in quality stocks and follow the above-mentioned rules wisely, then that can create a huge wealth in the longer run.

*To get the above data you can contact me at shailesh@valuestocks.in*

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**"Don't judge each day by the harvest you reap but by the seeds that you plant."**

**– Robert Louis Stevenson**

# Budget 2022 – Proposed important changes in GST

**CA Tarun Kr. Gupta**
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In the Budget Speech of Hon'ble Finance Minister, she has recognised that collections of GST in the month of January 2022, being about 1.4 Lakh Crores, which is the highest ever since GST was introduced. This calls for celebrations as January 2022 being the worst impacted month by the third wave of Covid, withstood the same and business activities were at an all time high. The robust collections are representative of a robust economy, greater compliance and sustained business activities. Let us understand the proposed changes in this year's budget w.r.t. GST:

1. **No change in tax rates –** There is no proposed change in the tax rates of GST. The rates for GST remains as it is. There were expectations that because of good collections in GST and to provide some relief to the businesses impacted by Covid in the last 2 years, rates of some goods or services may be reduced so as to fuel consumption. However the Government has decided not to tinker with the rates and has kept it as it is.

2. **Relief of extended date for availment of Input Tax Credit (ITC) and making amendments in outward supplies –** Presently the last date for availment of Input Tax Credit (ITC) in GSTR 3B and making amendments in outward supplies by amending invoices in GSTR 1 or by issuing debit or credit notes is return for the month of September of the next financial year. There have been demands by the industry that the period provided of 6 months is not enough and there are cases when one wants to make changes even after that. The Government has acceded to the demands of the industry and provided relief on this front, which is a very welcome step. The proposed date is now November 30 instead of return for the month of September of next year.

3. **Payment of interest on Input Tax Credit (ITC) only if it is wrongly availed and utilised –** There have been instances wherein Input Tax Credit (ITC) has been availed by the industry either wrongly or in case of a disputed matter, so as to save itself from time barring provisions, but has not been utilised the same. They have been facing notices for payment of interest on such Input Tax Credit (ITC) which has been wrongly availed but not utilised. This had although been clarified by the Government that interest on such Input Tax Credit (ITC) which has been wrongly availed and not utilised will not be payable, amendments in the Act is now proposed through the Finance Bill, 2022 w.r.e.f. July 1, 2017 itself. Further the rate of interest on such ITC wrongly availed and utilised has been prescribed at 18% p.a.

4. **Relief in interest rate from 24% to 18% -** The rate of interest for undue or excess claim of input tax credit or undue or excess reduction in output tax liability has been reduced from 24% to 18% w.r.e.f. July 1, 2017 itself, as was notified vide Notification No. 13/2017 – Central Tax, dated the 28th June, 2017. This is a welcome step of the Government as interest rate of 24% was quiet draconian.

5. **Removal of all reference to two**

**way communication for matching of invoices –** When GST was introduced, there was a concept of two way communication between suppliers and customers wherein one could accept/ reject or modify the invoices and communication could be established between the two parties. However the same could never be implemented on the GST portal. The Government has now proposed amendments to the GST Act, to permanently remove all such references of two way communication.

6. **Additional condition for availment of Input Tax Credit (ITC) –** The Government has proposed to add an additional condition for availment of Input Tax Credit (ITC) in section 16. The additional condition further restricts Input Tax Credit (ITC) to that which is shown as not available in GSTR 2B. So, now, for any invoice which in GSTR 2B is shown as ITC is not available, the assessee will not be eligible to avail ITC on the same.

7. **Reversal of Input Tax Credit (ITC) in case tax is not paid by the supplier –** There have been many instances wherein assessees have claimed that they have paid tax to the supplier and if the supplier has not paid the tax to the Government, they should not be made liable. The Government has now proposed an explicit amendment in the Act wherein it has mentioned that the credit of ITC availed the tax on which has not been paid by the supplier, shall be reversed along with applicable interest, by the assessee. The assessee shall be eligible to re-avail the amount of credit reversed by him, upon payment of the tax by the supplier and in such manner as may be prescribed. This change has also been proposed to take care of some judgements which had ruled in favour of the assessee. Thus this amendment in section 41 read with section 16(2)(c) now makes it amply clear that in case supplier has not paid the tax to the Government, ITC cannot be availed and has to be reversed.

8. **Registration liable to be cancelled –** The provisions related to registrations liable to be cancelled for non-filing of returns have been made stricter. The amendments propose that in cases of a composition dealer who has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return, his registration shall be liable for cancellation, against the present provision of returns for three consecutive tax periods. Further in all other cases, registration shall be liable for cancellation if one has not furnished returns for such continuous tax period as may be prescribed, against the present provision of a continuous period of six months. This amendment will give legal backing to the action of the Government wherein they were doing suo-moto cancellation of registrations for non-filing of returns henceforth.

9. **Filing of GSTR 3B by Non Resident Taxable Persons (NRTP) –** The due date for filing of GST returns by a Non Resident Taxable Persons (NRTP) is proposed to be amended to 13th of the next month or within seven days after the last day of the period of registration, whichever is earlier against the present provision of 20th of the next month.

10. **Payment of tax while filing GSTR 3B based on either self-assessment basis or as may be prescribed –** We have all known that GST is based on a self-assessment basis. The tax that is paid by an assessee is based on self-assessment. However amendment is now being proposed in the Act, to say that the payment alongwith GSTR 3B shall be based on either the self-assessment basis or an amount that may be prescribed. We need to see the proposed changes in the Rules as to how the same shall be practically implemented and what is the meaning of the words "as may be prescribed".

11. **Furnishing of GSTR 1 made mandatory for filing of GSTR 3B –** The Government has been linking the filing of GSTR 1 and GSTR 3B so that the two are filed in tandem. Presently a registered person is not allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month. Now in Budget 2022 it is proposed that a registered person shall not be allowed to furnish FORM GSTR-3B, if he has not furnished the return in FORM GSTR-1 for the same tax period. Thus, now GSTR 3B cannot be filed if GSTR 1 for the same period has not been filed and GSTR 1 cannot be filed if GSTR 3B has not been filed for the previous month. The sequence of GSTR 1, then GSTR 3B, then GSTR 1 and so on now needs to be followed strictly.

12. **GSTR 1 for a particular month cannot be filed if previous returns are not filed –** The proposed amendment now gives legal backing to the procedural issue of filing of GSTR 1 sequentially. The proposed amendment prescribes that an assessee shall not be allowed to file return for a tax period, if the return for any of the previous tax periods has not been furnished by him. This is however subject to certain relaxation as may be given by the Government.

13. **Levy of late fees on late filing of returns by TCS collectors –** The Budget proposes to extend the levy of late fees for late filing of returns u/s 52 by collectors

of Tax Collected at Source (TCS) e.g. e commerce operators. The fine is Rs. 200/- per day subject to a maximum of Rs. 10,000/- per return.

14. **Transfer of balance available in Electronic Cash Ledger between distinct persons –** In line with the decision of GST Council wherein it was decided that balance in Electronic Cash Ledger could be transferred between distinct persons, suitable amendment in the GST Act has been proposed. The amendment allows transfer of amount available in electronic cash ledger of a registered person to the electronic cash ledger of a distinct person (person with the same PAN). This is a welcome step as many a times assessees had balance in one registration but still they had to pay in some other registration, which was a huge hit on working capital. Now, this problem has been addressed to the relief of such assessees.

15. **Maximum proportion of output tax liability which may be discharged through the electronic credit ledger –** Presently Rule 86B restricts the utilisation of ITC upto 99% in certain cases. The same has now been brought in as a part of the Act wherein the maximum proportion of output tax liability which may be discharged through the electronic credit ledger is now proposed to be inserted.

16. **Refund of balance in Electronic Cash Ledger –** Refund of any balance in Electronic Cash Ledger can be demanded by the taxpayer anytime as per his wish. Now section 54 of the GST Act is being amended so as to explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed. This is a welcome step as it will remove any arbitrariness which an Officer can exercise in providing such refund.

17. **Refund by UN and other agencies –** Present UN and other similar institutions can seek refund of ITC before the expiry of six months from the last day of the quarter in which such supply was received. This is now proposed to be amended by providing time limit of two years from the last day of the quarter in which the supply was received. This is being done to align the requirements with the time limit provided in all other cases of refund.

18. **Refund claim in respect of supplies made to a Special Economic Zone –** The proposed amendment has been done to provide clarity regarding the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit. The "relevant date" shall mean to be the due date for furnishing of GSTR 3B in respect of such supplies.

19. **Designation of ww.gst.gov.in as the common portal – The GST Notification no. 9/2018 –** Central Tax, dated the 23rd January, 2018, is being amended so as to notify www.gst.gov.in, retrospectively, w.e.f. 22nd June, 2017, as the Common Goods and Services Tax Electronic Portal, for all functions provided under GST, other than those provided for e-way bill and for generation of e-invoices.

20. **Relief in specific tax rates -** The proposed amendment seeks to provide retrospective exemption from tax in respect of supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, during the period from the 1st day of July, 2017 upto the 30th day of September, 2019 (both days inclusive). Further service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee which has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service shall be given retrospective effect from 01.07.2017. However no refund shall be made of the said tax which has already been collected.

These amendments will come into effect upon passing of the Finance Act and from a date to be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States & Union territories with legislature or on the date of its enactment, as may be applicable.

*(Views expressed are personal.*
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**"Somewhere inside all of us is the power to change the world."**

**– Roald Dahl**

# Valuation of Unquoted Equity Shares under Income Tax Act, 1961

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Unlike the Companies Act, 2013 where the valuation of shares has been defined under a broad framework and the nitty-gritties involved have been left upon the judgment of a Registered Valuer, the Income Tax Act, 1961 has defined a confined set of rules that need to be followed at the time of valuation of shares under the various provisions of the Act.

Income Tax Act, 1961 requires valuation of unquoted equity shares under the following provisions:

- Section 9(1)(i) – *Computation of Capital Gain on transfer of a capital asset namely unlisted equity share of Indian Company held by a foreign company or entity*
- Section 50CA – *Computation of Capital Gain for seller on transfer of unquoted equity share*
- Section 55(2)(ac) – *Computation of Cost of Acquisition for a listed equity share covered u/s 112A if the said equity share was not listed as on 31.01.2018*
- Section 55(3) – *Computation of Cost of Acquisition for unquoted equity share received as gift where the cost of acquisition for previous owner is unascertainable*
- Section 56(2)(viib) – *Determination of Income from Other Sources as Gift in case of further issue of unquoted equity shares by a closely-held company at a premium*
- Section 56(2)(x) – *Determination of Income from Other Sources as Gift in case of receipt of unquoted equity shares*

The various rules as enumerated in the Income Tax Rules, 1962, as amended from time to time, that are related to the valuation of unquoted equity shares are as follows:

- Rule 11U – *Definition of expressions used in determination of the Fair Market Value (FMV)*
- Rule 11UA – *Determination of the FMV of the shares*
- Rule 11UAA – *Determination of the FMV of the shares other than quoted shares for the purpose of section 50CA*
- Rule 11B(3) – *Determination of the FMV of the unlisted share of Indian Company held by a foreign company or entity for the purpose of section 9(1)(i)*

Rule 11U – The most important expression that would be required by us in determination of the FMV is of "balance sheet". As per the rule 11U, *"balance-sheet", in relation to any company, means,—*

(i) *for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and*

(ii) *in any other case,—*

(A) *in relation to an Indian company, the balance-sheet of*

*such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and*

(B) *in relation to a company, not being an Indian company, the balance-sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;*

To simplify the understanding of the rule above it states that whenever the valuation has to be carried out under Rule 11UA then we will require the balance sheet of the company drawn up as on the valuation date and audited by the statutory auditors of the company appointed under the Companies Act, 2013. However, if the valuation pertains to rule 11UA(2) for the limited purpose of issue of shares u/s 56(2)(viib) and if the balance sheet drawn up on the valuation date is not available then the last audited balance sheet as approved and adopted in the AGM will suffice.

Rule 11UA – Rule relevant to the determination of FMV of unquoted equity shares is reproduced below,

(1) *For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—*

(a) *valuation of shares and securities,—*

*(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—*

*the fair market value of unquoted equity shares =(A+B+C+D – L)× (PV)/(PE), where,*

*A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—*

*(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and*

*(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;*

*B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;*

*C = fair market value of shares and securities as determined in the manner provided in this rule;*

*D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;*

*L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—*

*(i) the paid-up capital in respect of equity shares;*

*(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*

*(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*

*(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*

*(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*

*(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

*PV= the paid up value of such equity shares;*

*PE = total amount of paid up equity share capital as shown in the balance-sheet;*

(2) *Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:—*

*(a) the fair market value of unquoted equity shares* $= \frac{(A-L)}{(PE)} \times (PV)$

*where,*

*A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction*


# VALUATION - UNDER INCOME TAX

*or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;*

*L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—*

*(i) the paid-up capital in respect of equity shares;*

*(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*

*(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*

*(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*

*(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*

*(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

*PE = total amount of paid up equity share capital as shown in the balance-sheet;*

*PV = the paid up value of such equity shares;*

*or*

*(b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method.*

As it can be understood from above, for the determination of valuation of unquoted equity shares we will have to follow the Net Asset Value method wherein assets such as jewellery, artistic work, shares, securities and immoveable property has to be taken at market value and any other asset & the liabilities appearing in the balance sheet shall be taken at book value itself.

However, when we are valuing the shares u/s 56(2)(viib) for further issue of share capital then the Net Asset Value method has to be computed taking all the assets and liabilities appearing in the balance sheet at book value itself. An alternative method is also prescribed wherein, the FMV can be determined by the merchant banker using the Discounted Cash Flow method.

Rule 11UAA – This rule states that the FMV of unquoted equity share for a seller u/s 50CA shall be calculated using the Net Asset Value method wherein assets such as jewellery, artistic work, shares, securities and immoveable property has to be taken at market value and any other asset & the liabilities appearing in the balance sheet shall be taken at book value.

Rule 11UB(3) – This rule states that the FMV of the unquoted equity share for the purposes of section 9(1)(i) shall be the FMV as determined by a merchant banker or an accountant in accordance with an internationally accepted valuation methodology.

Thus, it can be seen that the Income Tax Act, 1961 does not allow for any application of mind when we are determining the FMV of the unquoted equity shares under the Act. The FMV certificate as stated above, other than those specifically to be issued by a Merchant Banker, can be issued by any Chartered Accountant and there is no requirement of a Registered Valuer registered under Companies Act as per the Income Tax Act, 1961. These certificates should be procured at the time of the transaction itself so that it avoids any uncertainty at the time of Income Tax Scrutiny.

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# The Necessity of the 'Doctrine of Necessity'

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Whenever a Court of Law adjudges a case, the principles of natural justice play pivotal role. These principles are considered important while interpreting a Law, complying with the Law, filing appeals as well as deciding a case. One such principle of natural justice is 'Nemo in propria causa judex', which means 'no one should be made a judge in his own cause'. In other words, it is a principle against bias. A person cannot be given the power to judge the case where he himself is the one accused. However, what would happen if there is no other person, apart from the said competent enough to judge such a case?

There is an interesting exception to this principle against bias, the 'Doctrine of Necessity'. Bias should not disqualify a person/ judge/ officer to take action in any case, in the absence of any other competent person to act in his place. In simple terms, if the adjudicator is disqualified on the ground of bias, he can still adjudicate if there is no other competent person available for adjudication or when a quorum cannot be formed without him. Necessity is a defense to violation of law where it was done in order to prevent the worse.

Example: A person must have a license to operate a motor vehicle. However, if a person was requiring immediate medical attention and the only person who could drive them to the hospital did not have a license, it would be permissible for them to drive the sick person to the hospital.

*[Source: Wikipedia]*

**First Use: Pakistan, 1954**

This doctrine was first used in the year 1954 in a case in Pakistan. The Chief Justice confirmed the use of emergency powers of the Governor General, even though it was extra-constitutional. It was held that it was necessary to go beyond the Constitution and general legal maxims, stating that the well-being of the people is the supreme law.

**Usage in the Central Excise Law**

In the case of *M/s J & K Cigarettes Limited vs Collector of Central Excise [2011 (22) S.T.R. 225 (Del.)],* it was held that when a person is dead or incapable of giving evidence or cannot be found, no better evidence can be had in the circumstances than the statement tendered by witnesses before a quasi-judicial authority. The relevant extract of the judgment is as under:

*The provisions under Section 9D of the Act are necessary to ensure that under certain circumstances, as enumerated therein, viz. if the witness has been won over by the adverse party or is avoiding appearance despite several opportunities being given. The rationale is that decision making in a case cannot be allowed to continue in perpetuity. These provisions are based on the Doctrine of Necessity. It provides for relevancy of statements recorded under Section 14 of the Act dispensing with or without the opportunity for testing the truth of such evidence by cross-examination.*

**Doctrine of Necessity in 'The GST Law'**

In the case of *M/s. Ganges International Private Limited & Ors. Vs The Assistant Commissioner of GST and Central Excise & Ors., [2022 (3) TMI 544 - MADRAS HIGH COURT]*, it was observed that normally, the theory of "Doctrine of Necessity" could be invoked when there is a dire necessity with regard to the forum, before whom, the issue has to be referred to and disposed and decided by such forum. Earlier the view was that, it would apply only to judicial matters but in *Mohapatra and Company and Anr. Vs. State of Orissa and Anr. [1985] 1 SCR 322*, it was held that "the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters".

In this case, the issue pertained to credit of service tax paid by the petitioner. The payment was made in December 2017, i.e., after the enactment of GST by when the service tax law was repealed. It was a peculiar situation faced by the petitioner as he paid the service tax only on 30.12.2017. In order to get the refund of the said amount, because, the service tax paid was purely an input tax, for which, credit could be taken by the petitioner under erstwhile Cenvat Credit Rules, he made an application within the time limit to the Revenue. However, the said application seeking for refund filed by the petitioner was rejected.

Section 142(3) of the CGST Act states every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

The petitioner relied on the doctrine of necessity for invoking Section 143(2) in this case. Therefore, it was held that though normally the "Doctrine of Necessity" would only be invoked for want of forum, here in the case, it also can be construed that, if Section 142(3) is not permitted to be invoked in meeting situations like this, that situation would render that taxpayer remediless, hence, here also the "Doctrine of Necessity" can be invoked. The petition was allowed by way of remand.

**Conclusion**

In the words of Henricus Bracton, *'that which is otherwise not lawful is made lawful by necessity'*. Doctrine of necessity is invocable in a situation where the choice lies in between two options, which are, to allow a biased person to act or to set aside the proceedings altogether. In such a situation, the principle against bias can be overridden.

*Disclaimer: All views expressed above are personal and do not represent any organization or group.*

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**If you can't show through an audit trail how you arrived at the numbers on your balance sheet, that is a significant internal control failure.**

**– Robert Cobb**

# Important Amendments made by Finance Act of 2022

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The present article deals with some of the important amendments which have been made by the Finance Act, 2022 which was recently passed. Although there are few other amendments as well as but they have not been discussed in order to maintain brevity.

I. **Amendments related to computation of income under the head "business and profession"**

Several important amendments have been made in so far as computation of income under the head "business and profession" is concerned which are as follows:

**Section 40(a)(ii) – amount not deductible**

1. **Clarification regarding treatment of cess and surcharge**. Before the clarificatory amendment made by Finance Act, 2022, there was a dispute in so far as the allowability of cess and surcharge as deductible expenditure is concerned The dispute arose because as per provisions of Section 40(a)(ii) of the Act any sum paid on account of any rate or tax was not an allowable expenditure and therefore the Courts and Tribunals, particularly the Bombay High Court in the case of **Sesa goa** Vs. **Joint Commissioner of Income Tax**, **(2020) 423 ITR 426 (Bom)**, took a view that cess and surcharge having not been covered within the ambit and scope of tax, cannot be disallowed while computing the income. However recently the Kolkata bench of Income-tax Appellate Tribunal(ITAT), in the case of **Kanoria Chemicals and Industries Ltd**. Vs. **Additional Commissioner of Income Tax**, **(2021) 1991 ITR Tri. (SN) 82 (Kol)**, took different view.

This issue has however, been set at rest by clarifying that the term "tax" includes and shall be deemed to have always included any surcharge or cess by whatever name called on such tax. This amendment has been made retrospectively with effect from April 1, 2005 and will accordingly apply in relation to assessment for the assessment year 2005-06 and subsequent years. The amendments have been made from April 1, 2005 being the same date from which the provisions of Section 40(a)(ii) were inserted in the Statute book. In view of the fact that the present amendments have been made retrospectively, in case of those assessees where the amounts have already been claimed as expenditure and have been allowed also a question arises as to what will happen to the said allowance already made and whether these assessments will be subjected to rectification/review/reassessment. This issue was set at rest while making amendments to the Finance Bill at the time of passing in Lok Sabha where the Act itself has made it clear that the deductions which have been claimed will be subjected to Rectification under Section 155(18) of the Act by inserting the said Section and time limit of four years from the end of the previous year commencing on 1st April, 2021 has been provided meaning that in all cases where the claim has been made and allowed, they will be subjected to rectification by March 31, 2026. Also to add to this, it has also been provided that those assessees who do not pay the tax on their own following the procedure which is going to be

prescribed, they will be liable to pay penalty for under-reporting of income under Section 270A(3) of the Income-tax Act, 1961 @ 50%.

It can be seen that the amendments are in the nature of declaratory statutes since the amendments seek to remove doubts existing in the law or the meaning or effect of the statute on which there was divergence of opinion amongst various High Courts/Tribunals. Two questions arises, first is the retrospectivity given to the charging section and second is the retrospectivity given to the penal provisions regarding interest and penalty. As far as retrospectivity given to a declaratory statute is concerned, the law is very clear that the same is generally retrospective. See Allied Motors (P) Limited Vs CIT AIR 1997 SC 1361. However, what is to be seen is the act of treating the claim as deemed under-reporting of income when the claim was made in view of the decision of the high court. In law where two views are possible the assessee cannot be faulted for adopting a view favourable to him. Moreover, from the amendment which is made in Section 155(18) of the Act by stating that the claim if made shall be deemed to be under-reported income of the assessee for such previous year for the purpose of Section 270A of the Act, without making any corresponding amendment in the said provisions of Section 40(a)(ii) and/or Section 270A , the provision is not sustainable in law because the said provisions of Section 270A(2) defines when a person shall be considered to have under-reported his income. The said Section 270A(2) does not contain any such deeming fiction and without making an amendment in the charging provisions dealing with penalty, the imposition of penalty on account of the deeming fiction by making amendment in Section 155(18) of the Act is not tenable in law. Not only this even though the provisions of Section 40(a)(ii) have been retrospectively amended with effect from April 1, 2005, thereby meaning that the rectification under Section 155(18) shall be made in respect of assessment year 2005-06 onwards till date, however it is not understood as to how the concept of deemed under-reported income can be made applicable in respect of the years prior to assessment year 2017-18 as the provisions for penalty for under-reporting and mis-reporting of income in Section 270A were inserted in the statute book by the Finance Act of 2016 with effect from April 1, 2017 and before the introduction of said provision the penalty for concealment and/or furnishing of inaccurate particulars of income were governed by Section 271(1)(c) of the Act. One cannot argue that under-reported income which is deemed as per Section 155(18) will cover the penal provisions as applicable in Section 271(1)(c) also. Therefore the provisions of Section 155(18) in so far as it seeks to levy penalty for deemed under-reporting of income will subject matter of litigation in coming days.

As far as interest on account of taxes which will become payable upon rectification of Section 155(18) is concerned, here also the law is very clear that the liability to pay interest would only arises on default and is really in the nature of quasi punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect. As regards liability to pay interest on delayed payment of tax, it has been held that interest can be levied and charged only if the statute that levies and charges the tax makes a substantive provision in this behalf. If there is a provision in a taxing Act for charging interest to compensate the state, in case of delay in payment of tax by the assessee, that provision is not to be strictly construed but is construed to effectuate its purpose. But the expression 'tax payable' in this context has been interpreted, in a case where there is a highly debatable dispute on a point, to mean tax payable according to return and not the amount assessed as tax after resolution of dispute. Further, if liability to tax is created retrospectively, such liability could not entail the punishment of payment of interest with retrospective effect for the liability to pay interest will arise on default of payment of tax which will occur on the coming into force of the Act creating retrospection liability. See **Star India Pvt. Ltd**. Vs. **CCE**, **(2005) 7 SCC 203(SC)**. Therefore the amendment made to Section 40(a)(ii) of the Act in so far as it is sought to be given retrospective effect for almost 17 years is likely to be a matter of dispute in so far as payment of interest and penalty is concerned.

2. **Section 37(i) - Perquisite, benefits etc**

Another loophole which has been plugged by the Finance Act, 2022 is regarding the clarification on allowability of the expenditure under Section 37 of the Act. Section 37 deals with general allowability of expenses whereby any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of business or profession shall be allowed in computing the income chargeable under the head "profits and gains of business or profession". As per Explanation (1) of the said section any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been

incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. Therefore the law is clear that an expenditure the purpose of which is an offence or which is prohibited by law is not allowable by virtue of this provision.

It is to be noted that the existing Explanation 1 which was inserted by the Finance (No. 2) Act of 1998 with effect from April 1, 1962 dealt with the said issue. However the present Explanation 3 it seems has been inserted to explain the meaning of the phrase "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law". An important point to be noted is that in Explanation 1 as per as prohibition of an offence in law is concerned it was not clarified whether it would cover any expenditure incurred for violation of the law outside the country. However Explanation 3 now explicitly lays down that expenditure incurred for any purpose which is an offence or which is prohibited by any law for the time being in force even outside India will not be allowable. To take an example: few years ago when Satyam Computer Services became bankrupt on account of misdeeds of the promoters and class action suit was filed in USA for violation of the laws of Security Exchange Commission of USA and the said suit was settled by Tech Mahindra Ltd by paying a sum of US$ 125 Million may be an example where the amounts like these can be held to be not deductible as an expenditure if similar expenditure is incurred after April 1, 2022, i.e., for assessment year 2022-23 onwards.

The next sub-clause deals with the benefit or perquisite to a person whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person. This amendment, it seems, has been driven due to the practice followed by the medical profession. It was seen that the pharma companies were claiming expenditure incurred in offering certain benefits or perquisites like meeting expenditure related to travel, hospitality, conference, etc. which were strictly speaking were not directly violative of any law as such but they violated the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2000 whereby a prohibition was imposed on the medical practitioners and their professional associations from taking any gift, travel facility, hospitality, cash or monetary grant from the pharmaceuticals and allied health sector industries and this payment was clarified by CBDT in its Circular No. 5 dated August 1, 2012 as not allowable as a deductible expense. However this circular was challenged before the Himachal Pradesh High Court in the case of **Confederation of Indian Pharmaceuticals Industries** Vs. **CBDT**, **(2013) 353 ITR 388 (HP)** where the High Court rejected the challenge to the circular by directing the petitioner in that case to satisfy the Assessing Officer that the expenses is not in violation of the Medical Council Regulations. Thereafter several Courts and Tribunals held for and against. This debate/litigation has been set at rest by inserting Explanation 3 to Section 37(1) to clarify that the expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall include and shall be deemed to have always included the expenditure incurred by an assessee to provide any benefit or perquisite in whatever form to a person whether or not carrying a business or profession and acceptance of such perquisite or benefit by such person is in violation of any law or rules or regulations or guidelines, as the case may be, for the time being in force governing the conduct of such person.

Therefore the effect of said amendment is that not only the expenditure which was being made by pharmaceutical companies in violation of the Medical Council guidelines will get covered but expenditure incurred by any company in violation of guidelines in respect of any professional field like Chartered Accountant in case of Institute of Chartered Accountants of India guidelines, Advocates in case of Bar Council of India guidelines so on and so forth will get covered. After the pronouncement of the budget, the said issue was dealt with by the Supreme Court also in the case of **Apex Laboratories Pvt ltd Vs DCIT, LTU (2022) SCC OnLine SC 221 when** Justice Ravindra Bhatt while dealing with the said issue refused to follow the Memorandum Explaining the said provisions in Explanation 1 by Finance(No 2) Bill, 1998 where it was explained that the explanation was being inserted to disallow protection money, extortion, hafta, bribes etc. Thus the amendment made as above can be said to have the stamp of approval from the Supreme Court also now.

Another item that has been included in Explanation 3 is any expenditure by way of fees for compounding an offence incurred by the assessee will also get covered and therefore will be held to be not allowable. In this regard the dictionary meaning of "compounding" as given in Advanced Law Lexicon is arranging, coming to terms, condone for money, arranging to the creditor

to his satisfaction. Again "compounding an offence" is defined to be the offence of taking a reward for forbearing to prosecute a felony, as where the party robbed takes his goods again and other amends upon an agreement not to prosecute. Compounding is an usual procedure in commercial world and even in Income Tax Act has provisions in Section 279 of the Act whereby an offence under Chapter XXII of the Act may either before or after the institution of proceedings be compounded by the appropriate authority as referred to in that section. There are similar provisions in Foreign Exchange Management Act, 1999 and practically all other legislations. Compounding is generally taken to mean that the person whose offence is compounded can be said to have neither accepted nor denied the commission of offence which is compounded. In such a situation it remains to be seen that to what extent the expenses incurred for compounding of an offence will be eligible to be deducted under the Income Tax Act. Compounding of an offence can be related to say small offence like jumping a traffic signal by a motor car or other vehicle which is compounded under the Motor Vehicles Act by payment of a compounding fees or it can be a grave offence like settling an insider trading case under the SEBI laws. To view both the above offences in the same weighing scale would not be a correct interpretation of law, since it cannot be said that the purpose for which the expenditure incurred is an offence. Though, there are decisions where this issue has been considered. The Karnataka High Court in the case of **CIT Vs. Mamta Enterprises(2004) 266 ITR 356(Kar)** was dealing with payment of compounding fees under the Municipal laws and after considering the decision of the Supreme Court in the case of **Haji Aziz & Abdul Shakoor Bros**. Vs. **CIT**, **(1961) 41 ITR 350 (SC)**, the Karnataka High Court held that the expenditure incurred on compounding was not eligible for deduction under Section 37 of the Act. The decision in the case of Haji Aziz & Abdul Shakoor Bros (supra) was related to the import of goods contrary to law and the fine which was paid for release of the goods and the question arose whether this expenditure was allowable. The Supreme Court held that if a sum is paid by an assessee conducting his business, because in conducting it he has acted in a manner, which has rendered him liable to penalty for infraction of law it cannot be claimed as a deductible expense. It cannot be called commercial losses incurred by an assessee in carrying on his business. Infraction of the law is not a normal incident of business.

In another decision, the Supreme Court in the case of **CIT** Vs. **Piara Singh**, reported in **124 ITR 40 (SC)** was dealing with a case where the assessee was carrying on the business of smuggling and a sum of Rs. 65,500/- was confiscated on account of violation of law. In these circumstances the question arose whether the loss to the assessee on account of confiscation of the notes could be claimed against the income from smuggling because the purpose for which the notes were being taken out of India was for the purpose of smuggling of gold. On these facts the Supreme Court relying on the decision in the case of **CIT** Vs. **S. C. Kothar**, **(1971) 82 ITR 794 (SC)** where it was held that the taint of illegality of the business cannot detract from the loss being taken into account for the purpose of computation of income of such illegal business, the Supreme Court held that the loss from confiscation of notes was allowable against income from smuggling. Again there can be issue regarding the damages which are paid by a company as to whether these damages can be said to be disallowable by virtue of Explanation 1 or Explanation 3. Liquidated damages have been held to be allowable. In **Thermax Babcock & Wilcox Ltd.** Vs. **Additional CIT**, **(2008) 304 ITR (A.T.) 130** whereas unliquidated damages cannot be allowed as an expenditure. Bribes cannot be allowed as a business expenditure but mamools were held to be allowable in **CIT** Vs. **Coimbatore Salem Transport Pvt. Ltd**.(1966) **61 ITR 480(Mad)**. Again payment to police and rowdies for protection was held to be illegal and not allowable in the case of **CIT** Vs. **Neelavathi and others (2010**) **322 ITR 643(Karn).** Thus it appears that the Explanation 3 to Section 37 which has been inserted will definitely lead to lot of litigation not only on account of widening of the Explanation but also on account of inclusion of various other expenses as above.

This amendment though has been made with effect from April 1, 2022, however a question may arise that the amendment has been made by way of insertion of an explanation and is clarificatory in nature it has been held by the Supreme Court in number of judgments that clarificatory insertions to the provisions of an Act by way of an explanation even though may have been inserted from a particular date but the provision gets attracted from the date when the original provisions were inserted in the law and thus notwithstanding the fact that the explanation has been inserted from April 1, 2022 the original explanation (1) having been inserted by the Finance Act of 1998 with retrospective effect from April 1, 1962 the present amendments will therefore in all probability be applied by the Department with retrospective effect from April 1, 1962. However the lawmakers have not made provisions like Section 155(18) while inserting Explanation 3 in Section 37 of

the Act to make the revenue rectify the assessment where such type of expenditures have already been allowed but the dispute cannot be ruled out.

For Tax auditors, the present amendment will be onerous since the tax auditors are required to report on the expenditure incurred for violation of law and thus compounding fees say paid for ROC filing, Motor vehicle traffic violations and so on and so forth, will be a very difficult task to segregate and report.

3. **Section 43B-Clarification regarding deduction on payment of interest only on actual payment**.

Section 43B of the Act deals with certain deductions to be only on actual payment and the provisions of said section are there in the statute book since long as they were inserted by the Finance Act 1983 with effect from April 1, 1984. However even though the provisions are so old disputes have regularly come regarding the interpretation of the said provision and once such dispute which is said to be set at rest by the Finance Act of 2022 is regarding the eligibility to claim the deduction of amount of interest in respect of certain borrowing which was not being paid due to whatever reasons whatsoever and hence was disallowed under Section 43B but subsequently due to understanding/ agreement/settlement by way of lenders and the borrowers the accumulated interest due was converted into loan/debentures etc and the question arose whether the act of such conversion amounted to payment of the interest for the purpose of deductibility under Section 43B of the Act. This issue has been set at rest by amending the Explanations (3c), (3ca) and (3d) to provide that conversion of interest payable into debenture or any other instrument by which liability to pay is deferred to a future date shall not be taken to have been actually paid. This amendment has been made with effect from April 1, 2023 and will apply in relation to assessment year 2023-24 and the subsequent assessment years. It is important to note that the lawmakers have clarified specifically that the amendment will apply from assessment year 2023-24 and subsequent years and thus there cannot be any cause for retrospectively applying the said provisions, though dispute cannot be ruled out. It will not be out of place to mention here that the Supreme Court in the case of MM Acqa Technologies Limited Vs CIT, Delhi(2021) SCC OnLine SC 575 in its judgement dated 11th August 2021 dealt with a case where the word debenture was missing in the Explanation 3C which was amended and thus it appears that to get over the said decision, the present amendment has been made. However, still in genuine cases argument can be made that the conversion of unpaid interest into loan or debenture is genuine and the courts may take a view otherwise.

4. **Section 115BAB-Extension of the last date for commencement of manufacturing or production under Section 115BAB**.

Section 115BAB of the Income Tax Act provides for an option of concessional rate of income tax @15% for new domestic manufacturing companies provided they do not avail of any special incentives of deduction or fulfilment certain other conditions. The sunset clause for availing this deduction was that the manufacturing or production of an article or thing should commence on or before March 31, 2023 which has been extended by one year to make it March 31, 2024. Thus any assessee intending to avail the concessional rate as above can start the manufacturing within March 31, 2024.

## II. Amendments related to Filing of Returns/ Assessment/Reassessment

1. **Section 139(8A) - Updated Return**

One of the important amendments which has been made is introduction of provision relating to filing of updated return. The concept of undated return was not there in the statute book till the introduction of this amendment as under the existing law an assessee was allowed to file only the original return within the time as prescribed under Section 139(1) and revised return as per Section 139(5) of the Act. The time for filing of revised return has also been gradually reduced substantially and it is hardly 3 months from the last date of filing of the original return. Thus the lawmakers thought it appropriate to introduce a provision to enable the assessees to file updated return in case of those assessees who had either omitted to file their returns or after filing their original or revised returns, as the case may be, found certain errors in the returns which were already filed. In order to give another chance to such type of assessees the concept of filing of updated return has been introduced by insertion of Section 139(8A) to enable any person whether or not he has furnished the return under Sections 139(1) or 139(4) or 139(5) to furnish an updated return of his income or income of any other person in respect of which he is assessable under the Act for the previous year relevant to such assessment year within 24 months from the end of the assessment year. However as the privilege of filing updated return within the extended period of 2 years have been allowed the said concession is not without cost and as per the provisions of Section

140(b) in case an updated return has been filed by the assessee such assessee is required to pay additional tax based on the period within which the updated return is filed which ranges from 25% of the aggregate of the tax if the updated return is furnished before completion of 12 months from the end of the relevant assessment year to 50% if the updated return is furnished after 12 months but before 24 months. Thus the provisions of updated return can be said to be a welcome move and will come in handy for those assessees who have genuinely not been able to file their returns or after having filing the returns or revised returns finds some error in such return.

2. **Section 147/148-Reassessment**

The law relating to reassessment was completely changed by the Finance Act of 2021 with effect from April 1, 2021 and not even barely one year has passed since the amendment became applicable ,the entire country is reeling under huge litigation in the form of thousand and thousand of writ petitions having been filed challenging the notices issued under Section 148 of the Act which had been issued under the old law after the provisions of new law came into force which matter is pending before the Hon'ble Supreme Court of India. The last word will have to come from the mouth of the Hon'ble Supreme Court. The Finance Act of 2022 has made some far reaching amendments to Section 148 of the Act and other provisions which are briefly discussed hereinunder.

The provisions of Section 148 which were revamped to make information available with the Assessing Officer to be a ground for reassessment was dealt with in the Explanation to Section 148. Under the provisions as originally introduced there were only two clauses dealing with information. However the present amendments have included several new cases which will be said to be information for the purpose of reassessment and even audit objection to the effect that the assessment in the case of the assessee has not been made in accordance with the provisions of the Act has been made an information for the purpose of reassessment thereby nullifying the decision in the case of **Indian & Eastern Newspapers Society** Vs CIT(1979) **119 ITR 996(SC)** where the Supreme Court had clearly held audit objection to be not an eligible ground for reassessment.

Another important amendment which has been made is by substituting sub-clause (b) in Section 149(1) by entirely new sub-clause whereby the scope of reassessment has been widened enormously and thus in a case where the subject matter of reassessment is more than Rs. 50 lakhs even an entry or entries in the books of account or expenditure in respect of a transaction or in relation to an event or occasion will lead to reassessment proceedings. This when seen in the light of notices under Section 148A are being issued without any enquiry as is warranted will reveal that the provisions of reassessment are being sought to be resorted to as an ordinary assessment and that too any number of times. Litigation will thus rise astronomically in so far as the area of reassessment is concerned.

The scope of Reassessment provisions have been widened in such an enormous manner and the notices u/s 148A are being issued without any enquiry on the pretext that no enquiry is required to be done and it seems that the sanction of the authority as required u/s 151 has been reduced to a farce. Only time will tell that to what extent the present reassessment provisions can be made to rewrite the whole reassessment jurisprudence right from the Calcutta Discount case in 41 ITR 191 to New Delhi Television Limited Vs DCIT(2020) 116 taxmann.com 151(SC).

## III. Amendments related to other sources

**Section 68-Cash credit**

Section 68 of the Act has always been a disputed subject which deals with the taxability of unexplained cash credit. The provisions of Section 68 as originally inserted in the statute book were amended by the Finance Act, 2012 with effect from April 1, 2013 by making the provisions more stringent to provide that where the assessee is a company in respect of receipt by way of share application money, share capital, share premium or any such amount by whatever name called the assessee was required to explain not only the source of such receipt but also the source of source to the satisfaction of the Assessing Officer. The Finance Act, 2022 has made the said provision even more onerous so as to provide that the aforesaid provisions relating to source of source shall now be made applicable to receipts in the form of loan or borrowing or any such other liability credited in the books of the assessee thereby putting additional onus of satisfactorily explaining the source in the hands of the loan creditor also. This amendment when seen in the light of numerous notices under Section 148 of the Act prevailing upto March 31, 2021 and Section 148A under the law prevailing after March 31, 2021 will assume huge significance as it seems that the Income Tax Department is now targeting those assessees vigorously who are resorting in bringing their unaccounted income through the medium of

name lending and other nefarious means.

An important point to be noted is that in so far as amendments made regarding source of source in case of loan is concerned, it is applicable to all assessees and not restricted to a company (not being a company in which public are substantially interested) as in the case of share capital/share premium. However, it must be noted that the primary responsibility to explain the source of source is on the person from whom the loan has been taken and the assessee who has taken loan can seek information from the AO as to what steps have been taken by him in accordance with the law to seek explanation about the nature and source of such sum from the person who has lent the money. It is not that the AO is under no obligation to exercise his powers in such a case and simply put the onus on the assessee.

## IV. Amendments relating to Charitable Trusts/ Institutions

1. **Far** reaching amendments have been proposed relating to NGO/Charitable Trusts/Institutions. At the present these types of Institutions are governed by two types of provisions – (i) Institutions registered u/s 12AA or 12AB and (ii) Institutions approved under various sub-clauses of Section 10(23C). There is divergence in the exemption regime of these two types of Institutions and the amendments made by Finance Act 2022 seeks to rationalise these two types of exemption regime and these are briefly discussed hereinbelow:-

i) **Maintenance of books of account** - At present there is no provision for specific provision providing for books of accounts to be maintained by these two types of institutions and as such the amendments has been made in Section 12A and 10(23C) to provide that those institutions whose income exceeds the maximum amount not chargeable to tax shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed. The form and manner is yet to be prescribed but the same will soon be done.

ii) **Reference to the PCIT/CIT for cancellation of registration/approval -** At present there is no consistency in the manner of cancellation of registration/approval for various deficiencies in the working of the trust/institution and in order to provide consistency, the Finance Act, 2022 has proposed to amend Section 12AB and Section 10(23C) to provide that I) if the Principal Commissioner or commissioner has noticed occurrence of one or more specified violations during the year; ii) the Principal Commissioner or commissioner has received a reference from the AO under the second proviso to Section 143(3) or iii) such cases which have been selected by the Board from time to time in accordance with the risk management strategy then the Principal Commissioner or Commissioner after calling for such document or information or making such inquiries as it thinks fit pass an order in writing cancellation the registration after affording reasonable opportunity of being heard or pass an order in writing refusing to cancel the registration if he is satisfied that there is no such violation as has been referred by the AO under the second proviso. Moreover, there were no provision for cancellation for provisional registration and now the provisional registration can also be cancelled by virtue of these provisions

iii) **Accumulation provisions -** At present, as per the provisions of Section 11(2), if in any year an institution which is governed by the provisions of Section 11/12, is not able to spend 85% of its income of that year, then it can by filing Form No 10 accumulate the said income to be spent in next five years or year following the end of five years. Moreover, if the amount is not spent in the aforesaid period then in the subsequent year which is in effect 7th year, the amount is liable to be treated as income of the trust or institution. There are similar provisions in respect of the institutions covered by Section 10(23C) however, there is no parity. In view of this, amendment has been proposed to such provisions to provide that if the amount which is accumulated by both the types of institutions is not spent for the purpose for which it is accumulated, the same will be liable to treated as income in the last year i.e., 5th year itself and thus the luxury of additional year is now no longer available.

iv) Bringing consistency in the provisions relating to payment to specified persons- As per Section 13 of the Income-tax Act, 1961 trusts or institutions enjoying benefits u/s 11/12 are not eligible to pass on any unreasonable benefit to the trustee or any other specified person. However, the said provisions were not applicable to the Institutions availing exemption u/s 10(23C) and thus these provisions have now been made applicable to the institutions availing exemption u/s 10(23C) also.

v) Provisions of Section 115TD-Chapter XII-EB was inserted in the Statute book by Finance Act, 2016. It provides for the taxation of accredited income of the trust in certain cases. The said chapter was introduced to impose a levy in the nature of exit tax when an institution availing benefits of Section 11/12 was converted into a non-charitable organisation or was merged with a non-charitable organisation or a charitable organisation with dissimilar objects. However, the said chapter did not apply to the institutions which were registered/approved u/s 10(23C). The Finance Act, 2022 has plugged this loophole by providing that the provisions of Chapter XII-EB shall apply to these institutions also.

## V. Other amendments

1. **Insertion of Section 170(2A) – succession to business otherwise than on death**.

In this globalised world merger and amalgamation is one of the tools of reorganisation or restructuring of the business. One of the important difficulty which was faced by the department was in relation to the assessment in case of succession of an entity on account of merger or amalgamation into another entity. As the succession or amalgamation is a time taking process which could have taken 6 months to one year or even more, the question of assessment of the entity which is getting merged and the entity in which it is getting merged has always been a difficult task and in this regard there have been several decisions including the decision of the Supreme Court where the Courts have clarified regarding the manner in which the assessment is to be conducted in the case of the amalgamating/amalgamated companies and the notices have to be issued in which name in view of the fact that the department either knowingly or unknowingly made mistakes while issuing the notices.

The provisions of Section 170(2A) which has been inserted with effect from assessment year 2022-23 start with a non-obstante clause whereby irrespective of what has been stated in Sections 170(1) and 170(2), Section 170(2A) will prevail. Section 170(1) deals with the assessment of the predecessor and successor by providing that the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession and the successor shall be assessed in respect of the income of the previous year after the date of succession. As per Section 170(2) it is only when the predecessor cannot be found, the assessment of the income of the previous year belonging to the predecessor can be assessed in the hands of the successor. When business re-organization takes place by merger and amalgamation, de-merger, etc., the issue regarding the manner in which the assessment has to be done of the amalgamated company and amalgamating company, the Supreme Court of India in the case of **PCIT** Vs. **Maruti Suzuki Ltd**., reported in **(2019) 416 ITR 613 (SC)** while dealing with a case where after a company have been amalgamated into another company the notices were continued to be issued in the name of the company which had already been amalgamated, i.e., in the name of non-existing company, it was held that this was a substantive illegality and not a procedural violation which could be created by resorting to Section 292B of the Act. After the decision in the case of Maruti Suzuki Ltd. (supra) it was thought that the matter has been set at rest. However, the Supreme Court recently in the case of **PCIT, Central-II** Vs. **Mahagun Realtors Pvt. Ltd**. refused to follow the decision in the case of Maruti Suzuki Ltd. (supra) by observing that in those cases the assessee had himself brought on record the fact of amalgamation, whereas in the present case the assessee continued to file the return of income and other documents in the name of the company which had already been amalgamated and the fact of amalgamation was not disclosed. On these facts the Supreme Court held that the assessment order passed in the case of a company which had already amalgamated to be a valid assessment. Not only this the Supreme Court in this judgment highlighted that the fact of the case has to be seen meaning thereby that depending upon the facts of a case different view can be taken. Thus leaving this issue wide open and it remains to be seen that whether the amendment made in Section 172A can take care of in each and every situation.

2. **Insertion of Section 170A - Modified Return**

Another issue that has been set at rest is the controversy regarding filing of the revised return, by inserting a new Section 170A to enable for the entities going through business reorganisation for filing modified return for the period of between the date of effectivity of the order and date of issuance of the final order of the competent authority. This is a welcome move as under the existing provision upon receiving the final order from the competent authority the income tax software was not enabled in such a manner to allow filing of return even beyond the time as was prescribed under Section 139(1) of the Act.

3. **Section 94 - Bonus stripping**

**Section 94**(8) has been amended to include the

provisions relating to bonus stripping applicable to securities also and thus in a case where the securities particularly shares are acquired within a period of three months prior to the record date and any loss is incurred by such person on sale of shares on which bonus has been issued and the original shares are sold within 9 months from the record date then such loss shall be ignored for the purpose of computation of income though the loss will be deemed to be the cost of bonus shares.

4. **Dividend from Foreign Companies - Section 115BBD**

Dividend received by an Indian Company from specified foreign companies(being a company in which the Indian Company holds 26% or more in nominal value of equity share capital of the company) was made taxable at a concessional rate of 15% by the Finance Act, 2011 w.e.f. 1/4/2012. While introducing the said provisions, the Memorandum explaining the provisions as appended to the Finance Bill 2011 explained that the dividend from foreign companies was taxable at the applicable marginal rate in his case and thus in order to give concession, it seems to the dividend received from foreign companies, the special rate of taxation @ 15% was provided by introducing the said section 115BBD. It was apparently done in order to bring some kind of parity regarding the manner of taxation of dividend received from Indian Companies by another Indian Company which was taxed u/s 115O as dividend distribution tax in the hands of the distributor of dividend and that received from the foreign company which was taxable at the marginal rate. However, the manner of taxation of dividend having been changed as specified in the Memorandum as above, the provisions of Section 115BBD have also been taken away from the statute book and now all dividends received by the Indian Company be it from domestic companies or foreign companies will be taxed in an Identical manner, though in case of dividend from foreign companies, the Double Taxation avoidance agreement will have to be kept in mind of the jurisdiction/Country involved. These provisions will not apply from AY 2023-24 and thus till AY 2022-23, the provisions will continue to apply and thus the dividend received till 31st March 2022 from a foreign company will have to be dealt with under this Section and the restrictions regarding no deduction in respect of any expenditure or allowance under any of the provisions of the Act in computing the said income by way of dividend from foreign company will be applicable. Notwithstanding the provisions regarding Section 80M dealing with deduction in respect of certain inter corporate dividend may be availed if eligible.

5. **Section 14A - Expenditure incurred in relation to income not includible in total income.**

Section 14A has always been a litigated area ever since it was introduced in the Statute book by the Finance Act, 2001 w.r.e.f. 1-4-1962. The Finance Act, 2022 has sought to address an issue whether disallowance u/s 14A can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year. In this regard, the Memorandum explaining the provisions refers to CBDT Circular No 5/2014 dated 11/2/2014 to buttress the fact that disallowance u/s 14A is applicable even when the tax payer in a particular year has not earned any exempt income. However, still some courts have held otherwise and thus in order to make the intention of the legislature clearer, an explanation has been inserted in the said section to provide that the provisions of Section 14A shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year and expenditure has been incurred in relation to such income.

It is important to note that two non-obstante clause has been inserted in Section 14A- one in Section 14A(1) and another in Explanation and thus the intention is clear that the provisions of Section 14A will override all other provisions of the Act, notwithstanding that such expenditure may be held to be allowable under other provisions of the Act. One potential area of dispute in this regard can be inter corporate borrowing or lending and cross border borrowing or lending where as per the terms, interest is not charged and interest on borrowing relatable to such lending is held to be deductible u/s 36(1)(iii)/ 37 of the Act on account of commercial expediency. However, there is a possibility that Section 14A would be roped in to disallow such interest, though strictly speaking Section 14A having been enacted to deal with exempt income (particularly those exempt u/s 10 of the Act), it can be argued to be not applicable, though in cases where the interest is claimed exempt on account of Double Taxation Avoidance Agreement, the issue can become important.

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# Extended Period of Limitation: Is the Department blatantly misusing it?

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In the past few months several taxpayers have received notices from the Service Tax and the Excise Department for either short payment of taxes or claim of excess refund. Interestingly, the issuance of all such notices was barred by limitation in the usual course, so, the department invoked the extended period of limitation to issue such notices. The pertinent question here is whether the extended period of limitation was invocable at all in all such cases or the Department blatantly took shelter of the provision and arbitrarily used it to just begin the proceedings. Were the notices valid and legally sustainable? Before going into the validity of notice one should be knowing the meaning and provisions related to extended period of limitation.

Extended period to issue notice in both excise as well as service tax is invoked when there is fraud/ suppression of facts which results in loss of revenue to the government. The relevant provision in Excise Law as per section 11A(4) is reproduced as under:

*(4) Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, by the reason of-*

*(a) fraud; or*

*(b) collusion; or*

*(c) any wilful mis-statement; or*

*(d) suppression of facts; or*

*(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.*

Similar provision in Service tax law is specified in proviso to section 73(1) of Chapter V of The Finance Act, 1994 which is as follows:

*PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of –*

*(a) fraud; or*

*(b) collusion; or*

*(c) wilful mis-statement; or*

*(d) suppression of facts; or*

*(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*

*by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months, the words "five years" had been substituted.*

It is clear that the provisions contained in both the laws are exactly the same. Further, both the provisions have a prerequisite condition that there should be an intention to evade tax. In many cases it is very difficult to find out the intention of the taxpayer and in all those cases the onus will be on the department to prove that there was an intention to evade tax by suppression of facts. Moreover, financial information and data are required to be presented to various authorities under different statutes like Income tax, service tax, Central Excise and Company Law. If a taxpayer has disclosed the information to any such authority, it can not be

said that there was suppression of facts by the taxpayer. There are several court rulings in favor of the taxpayer where notice itself was quashed, in the absence of proper reasoning by the department with respect to alleged suppression of the facts.

The most important aspect to note is how should such notices be replied to, apart from the grounds taken on merit. The validity and legality of such notices must be challenged in such replies. Some of the judgments which can be cited while replying to such notices are highlighted under:

- Case of ***Continental Foundation Jt. Venture versus Commr. Of C.Ex. Chandigarh-I [2007 (216) E.L.T. 177 (S.C.)]:*** In this case the Hon'ble Supreme Court observed that the expression "suppression" has been used in the proviso to Section 11A of the Excise Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A of the Excise Act the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

- Case of ***Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise - 2005 (188) E.L.T. 149 (S.C.):*** In this case, the Hon'ble Supreme Court held that the term 'suppression' must be construed strictly. It does not mean any omission and the act must be deliberate and willful to evade payment of duty.
- Case of ***Om Sai Professional Det. & Security Ser. P. Ltd. Versus C.C.E., Guntur, [2008 (10) S.T.R. 59 (Tri. - Bang.)]:*** In this case it was held that the Department has issued the show cause notice against the appellants on the basis of Income Tax returns. Since the details were disclosed in the income tax returns of the appellant, the allegation of suppression of facts does not have legs to stand upon.

While contesting with the department on the ground of extended period of limitation, it has to be examined what was the source of the information on the basis of which department came to know that there was evasion of tax. If the source was readily available with the department then invoking the extended period of limitation does not seem justified.

**Information Exchange:**

It is well-known that the CBIC and CBDT have signed memorandums to exchange information or share data amongst themselves. This move had been taken to facilitate adjudication and improve transparency of data flow between the Revenue Departments of Government of India. This sharing of data should ideally reduce the notices invoking extended period of limitation. However, even if this does not happen, this ground of data availability with the Department can be taken at the time of filing reply to such notices, which is proof enough to substantiate that there was no suppression of facts.

**Extended Period of limitation in GST era**

In the GST regime, the provisions of demands and recovery proceedings in the case where there was suppression of facts with the intent of tax evasion is covered in section 74 of CGST Act, 2017.

Relevant extract of section 74(1) is as under:

*Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

In the GST regime, at present, the need for invoking the extended period of limitation has not yet arisen. Even then, this section is generally invoked for levying a higher amount of penalty as prescribed in the law in cases of tax evasion. The same cases as cited above, may be used to contest the higher amount of penalty and notices issued under Section 74.

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# GSTR 2A/ 2B – Force before January 2022 – through the lenses of Supreme Court in the case of Bharti Airtel

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It is well known that Section 16(2) was amended vide Section 109 of the Finance Act, 2021 which read as follows:

In Section 16 of the Central Goods and Services Tax Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:-

"(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;".

The said Section 109 was brought to force with effect from 1st January, 2022 vide Notification No. 39/2021 – Central Tax dated 21st December 2022.

The said amendment has a big impact which has brought legal force into GSTR 2A/ 2B for the first time.

Further, to operate the said provision, the much controversial Rule 36(4) has been amended as follows: "In the Central Goods and Services Tax Rules, 2017, —

(i) in rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

— (4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60."

So, with effect from 1st January 2022, it has now become mandatory along with other conditions of admissibility of Input Tax Credit (ITC) that the invoice or debit note must appear in GSTR 2B of the recipient for availing Input Tax Credit (ITC) after furnishing of the said invoice or debit note in the GSTR 1 by the supplier.

By virtue of the said amendments, the position following 1st January 2022 is clear enough, but what about the position prior to such date. Was there any mandate or legal force in GSTR 2A or GSTR 2B and what could be the intent of law regarding the amendment of returns in subsequent returns since there is no provision in GST law regarding amendment or revision of original returns as such. Certain answers were found by looking through the lenses of the landmark judgement of the Honorable Apex Court in the matter of *Union of India vs BHARTI AIRTEL PVT LTD & ORS Civil Appeal arising out of SLP (C) No 8654 of 2020 – [28-10-2021].* In this article, I am making a humble attempt to understand what this judgement of the Honorable Supreme Court is and what the Court said. This decision of the Supreme Court came in the matter of appeal filed by the Department against the Order of the Delhi High Court dated 05.05.2020 where the Department appeal was allowed. Honorable Delhi High Court passed that Order in May 2020 reading down the Circular No.

26/26/2017 GST dated 29.12.2017 (especially Paragraph 4 of the Circular) to the extent that it restricted the rectification of Form GSTR-3B in respect of the same period in which error occurred to be read down - Assessee permitted to rectify Form GSTR-3B for period to which the error related to.

Let us understand some specific facts involved in the Bharti Airtel case for better understanding of it. Bharti Airtel had claimed a refund of Rs 923 crores i.e., relevant period from July, 2017 to September, 2017 based on the plea for acceptance of rectified GSTR 3B for the same period. Here the main issue was that the company had filed the GSTR 3B for July 2017 on 0n 31.08.2017, August 2017 on 20.09.2017 and September 2017 on 16.10.2017 by short claiming Input Tax Credit of Rs 923 crores than what should have been availed by them as contended. Due to the short claim, the company paid their out tax liability in cash for this amount, which was not required to be paid if the credit of Rs 923 crores would have been availed by them.

Later the Company realized that there was surplus amount in the electronic credit ledger account of the company due to the availment of Input Tax Credit in later months due to non-functionality of GSTR 2A before September 2018. They claimed (Para 12) that in order to calculate the Output Tax liability and the claim of Input Tax Credit during the period July 2017 to September 2017, there was no official mechanism to check the authenticity of data so as to claim ITC for the relevant period against the transactions effected by it with its suppliers. The company framed a case pleading that an inbuilt mechanism was guaranteed by the common electronic portal to be put in place by the Competent Authority under the 2017 Act. However, during the initial period, after introduction of the common electronic portal, it had several deficiencies and was not geared up to follow the specified regime of auto populated data as predicated in Sections 37 and 38 of the 2017 Act. They claimed that it is only after Form GSTR2A became operational in September 2018, it is stated that the company realized that it had sufficient amount in the ITC ledger account (electronic credit ledger) during the relevant period. Further, due to non-functionality of GSTR2A, they had to discharge its Output Tax liability by depositing/paying in cash. They were of the view that had Form GSTR2A been functional, there would have been no need for the company to pay the amount in cash, rather they could have utilized the ITC account (electronic credit ledger) for payment of corresponding Output tax liability. For that reason, the company urged that if it was allowed to rectify Form GSTR3B for the same period, so as to avail ITC for the relevant period in terms of Circular dated 01.09.2017, the amount paid by it in cash towards the Output tax liability would get credited to its electronic cash ledger account and could be refunded to the company. However, the impugned Circular dated 29.12.2017 comes in the way of doing so. Rather the company wanted to avail of the dispensation specified in the Circular No. 7/7/2017 dated 1.9.2017 for the period July to September 2017 (Refer Para 10 to 12 of the Supreme Court Judgement)

This Circular of September 2017 had earlier clarified that errors committed while filing GSTR 3B may be rectified while filing **Form GSTR 1 and Form GSTR 2 of the same month** and the system will automatically reconcile the data submitted in Form GSTR 3B with GSTR 1 and GSTR 2 and variations if any will be taken care by the portal. But since the time period for filing of GSTR 2 and GSTR 3 for the month of July 2017 to March 2018 was to be worked out by a special Committee, the system based reconciliations as per earlier Circular of September 2017 could be operationalised after that only, the Circular was kept in abeyance till such time and Circular of December 2017 was issued on this note.

The Honorable Delhi High Court had held that it was not disputed that the facility of Form GSTR- 2A was not available prior to 2018 and, as such, for the months of July 2017 to September 2017 the scheme as envisaged under the CGST Act was not implemented. The respondents before the Delhi High Court had also acknowledged that there could be errors in Form GSTR-2A which may need correction by the parties and have, in fact, the law as it was initially, permitted the rectification, clearly reinforcing the stand of the company. Therefore, the only remedy that can enable the company to enjoy the benefit of the seamless utilization of the input tax credit is by way of rectification of its return i.e. GSTR-3B. The Court held that each case would have to turn on its own facts and as and when a situation is brought to the Court's notice, The Honorable Court would have to test the legality of the provision at that stage. Merely if there is any fanciful or absurd outcome in a given situation, it does not mean that the Petitioner should not be given the benefit of rectification if the same is genuine. The correction mechanism is critical to sustaining successful implementation of GST. And thus in light of the above, the rectification of the return for that very month to which it relates is imperative and, accordingly, the Honorable Court read down para 4 of the impugned Circular No. 26/26/2017-GST, dated 29-12-2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred. The company was permitted to rectify the Form GSTR-3B for the period to which the error relates, i.e., the relevant period from July, 2017 to September, 2017 and Department was directed that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made

therein and give effect to the same once verified.

The Department was aggrieved by the said Order mainly because, the circular of December 2017 provided for the rectification of mistakes pertaining to earlier tax period in any subsequent tax period and **therefore, changes have to be incorporated in the return for the tax period in which the error is noted and not in the period in which the error occurred.**

Thus, appeal was filed before Honorable Supreme Court and the Honorable Supreme Court allowed the appeal and set aside the Order of Delhi High Court. The Apex Court held that the challenge to the Circular of December 2017 was unsustainable and found it consistent with the provisions of the Act and Rules of GST. The Apex Court categorically held that there is no necessity of reading down paragraph 4 of the Circular and the rectification of the return for July to September 2017 in the original period could not be allowed. The Court went in detail to state that assessee cannot be allowed to unilaterally carry out rectification of his returns submitted electronically which would affect the obligations and liabilities of other stakeholders because of the cascading effect in electronic records (Para 48)

Whereas, on a very strong note that Court also said under Para 46 of the judgement that the cardinal aspect of statutory obligation which has been fastened upon the registered person is to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules. These are primary documents and source material on the basis of which self-assessment is done by the registered person including about his eligibility and entitlement to get ITC and of Output tax liability.

The stand of the Department before Delhi High Court was that the plea of the company was not reasonable because it was made on a tone as if the Act does not provide for rectification at all, whereas, the Circular No. 26/26/2017-GST, dated 29-12-2017 clarifies the same, and is aligned with the provisions of the statute, Section 37, 38 and Section 39. In this regard, it is to be noted that GST, being an indirect tax is levied along the entire supply chain. The tax paid on outward supplies entitles the recipient of such supplies to avail ITC for the same. Thus, if changes made to particulars furnished by the supplier are allowed to be reflected in the relevant previous tax period (Form GSTR-3B for which return has already been filed), it would require modification of the particulars furnished in Form GSTR-3B (of such earlier tax period) by the recipient. For example- if the supplier reduces tax liability for an earlier tax period (for which Form GSTR-3B has already been filed), this would require modification of the recipient's Form GSTR-3B (which has already been filed) by way of commensurate reduction in ITC availed by him. This would enhance the compliance burden for the recipient. Another complexity would arise if such recipient is an exporter and claims refund of unutilized ITC under Section 54(3) of CGST Act, 2017 read with Rule 89(4) of CGST Rules, 2017. In cases where refund has already been sanctioned and disbursed, the reduction of available ITC by recipient would make it a fit case for erroneous refund, thereby inviting demand under Section 73 of the CGST Act, 2017. Thus, in order to ward of such complexities, the impugned circular and the provisions provide for rectification of GSTR-3B in the period subsequent to when the error etc. is noticed by an assessee and not for the period to which such error etc. pertains to.

After understanding the vital facts and issue involved in the said case, how and what was decided by the Apex Court deserves discussion and, in this regard, the more pertinent question that arises is how does this judgment affect the process of amendment of returns and availment of ITC by the taxpayers? Has it decided some very important issues which have been bothering the stakeholders at large?

**There is no doubt that the idea floated by the Press Release dated 18.10.2018 that Form GSTR2A is only a facilitating measure for taking an informed decision while doing such self-assessment has been here affirmed by the Honorable Apex Court.** The Supreme Court has now held that **non-performance or non-operability of Form GSTR 2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self-assessment in Form GSTR 3B manually on electronic platform.** The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigor to the returns filed by the registered person in Form GSTR3B. The said view taken by the Court has emphasized and laid two major principles:

a. The hue and cry to allow rectification of return as such in the same period has been in a way put to rest by Honorable Supreme Court.

b. The legal force of GSTR 2A for considering ITC as eligible which was not getting established has been now in a way eliminated fully. The Press Release dated 18.102.2018 had clarified under Para 4 that **the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM**

**GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.**

The press release was not being given enough weightage by the Department as we are all aware that notices for mismatch between GSTR 2A vs GSTR 3B periodically are being continuously issued to taxpayers in terms of proceedings under Section 61 and Section 65 as such. However, instructions for reversal of missing credit of GSTR 2A appear to have lost ground and the Press Release of October 2018 appears to have gained legal force after collecting and the views of the Honorable Apex Court in this landmark judgement.

This judgement besides deciding the basic issue of eligibility of refund claimed by Bharti Airtel has framed a lot of principles and given us a lot of insight into the aspect of amendment/ rectification of returns and the essence of the spirit of self-assessment read with the other relevant provisions, like Section 37 for outward supplies and Section 38 for Input Tax Credit admissibility. This judgement has grounded the fact that the responsibility for determining the admissible credit for availment in returns in upon the taxpayer and the provision or non-provision of such information on the portal is not relevant for this purpose. The books of accounts which the taxpayer himself prepares is the basis for determining the output liability and the input credit available under self-assessment regime. The Court has resounded that the rectification/ amendment, wherever required deserves to be done as per the Circular dated 29 December 2017.

Though offbeat, we may touch upon a few issues for academic understanding of the subject as a whole that the Honorable Court has not gone into three major issues, and has not discussed or decided the issue (i) Whether the retrospective amendment of Rule 61(5) for making GSTR 3B a return in terms of Section 39 is legally tenable or not? (ii) Whether there is any time limit for rectification/ amendment in subsequent month GSTR 3B in light of the findings under this judgement of the Honorable Supreme Court; and (iii) Whether the time limit under Section 16(4) is legally tenable and if yes, how it shall be applied and understood? These issues whenever decided in future will need to be read in harmony with this judgement in light of the arguments in those cases, so to say.

Last but not the least, the final point of discussion remains that what should be the way forward for taxpayers especially with regard to admissibility of ITC prior to the period January 2022. What should we follow, GSTR 2A? GSTR 2B? Books of accounts? Table 8A of GSTR 9A?

We all know that the lack of legal standing of GSTR 2A while deciding admissibility of ITC is not unknown to Revenue, which is why Section 16(2)(aa) has been inserted vide the recent Finance Act and is notified to be effective from 1st January 2022. Rule 36(4) has also been amended suitably from this date only. The pre amendment nuances of Rule 36(4) are well known to all of us. We are aware that the Rule 36(4) never had legal standing due to parent Section 43A not being made effective till date for obvious reasons and the said Rule was challenged before a number of High Courts across the country. The cushion of 20% / 10% and 5% for availing ITC against what was appearing in GSTR 2B was provided in the said Rule only to instil a habit of hygiene in the taxpayers who are part of the value addition ITC chain. GSTR 2A as we all know never had legal standing before the date on which the Section 16(2) (aa) got notified, i.e., 01.01.2022 and was a facilitating tool for self-policing and scrutiny as such.

Thus, it may not be wrong to conclude that the admissibility of ITC undoubtedly remains subject to the provisions of Section 16 and the availment has to be done in sync with other relevant provisions under Section 18 to 21. The availment as per the provisions would need to be done under the books of accounts and claimed under GSTR 3B accordingly. Here, another analogy regarding ways and methods of proving the admissibility under Section 16(2)(c) may also be drawn and may be considered as crucial by all stakeholders. Though it is not important that the invoice appears in GSTR 2A, but it may be imperative to ensure that the supplier should have filed GSTR 3B for the respective period for claiming the ITC. Nonetheless, GST being a good and simple tax, so to say, Section 16(2)(c) has its own pitfalls and lashes to offer to the stakeholders.

To keep it short and sweet, on the final note, considering the patterns of administration and the legal position holding the field, a rational way of deciding the way ahead for attending to scrutiny, audit and assessment proceedings, may be that if all conditions of Section 16 (as enforceable at different times) are satisfied, the taxpayers having high differences in GSTR 2A/ 2B vs books of accounts, ITC as per books of accounts may be availed. Notices and litigation that arises will have to be suitably handled in legal manner in such cases. However, if differences are few/ small, it may be wise to follow GSTR 2B even for earlier periods, in compliance of Rule 36(4) to avoid notices and proceedings which have its own pains and costs. All said and done, the line of caution is that the risk of availing ITC in cases where supplier has not filed GSTR 3B at all, may however, not be taken and before filing annual return such erring suppliers should be identified and necessary corrective action may be implemented.

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# Watchdogs or Bloodhounds – Role of the auditor in fraud detection and fraud reporting

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Auditors have a unique responsibility towards stakeholders who may rely on an audit report while taking various crucial decisions. The *'Report of the independent review into the quality and effectiveness of audit'* by Sir Donald Brydon challenges the role of auditor to make it more informative and relevant for broader group of stakeholders. The Report includes a package of recommendations aimed at raising the prominence and transparency of fraud prevention and detection by directors and auditors. As per the report, Auditors are required to undergo initial and ongoing periodic training in forensic accounting and fraud awareness to improve the probability of detection of large scale frauds during financial audits.

In the current environment, auditors need to revisit how audits are conducted in order to detect large scale frauds. Some progress has already been made in this direction including use of data analytics for anti-fraud controls testing, using electronic confirmations for audit evidence wherever possible, developing fraud risk assessment framework, mandating annual fraud training, and requiring the use of forensic specialists in the high risk audits,

The investors, business community and other stakeholders rely to a great extent on financial statements audited by statutory auditors. Whenever a high-profile fraud is detected or reported, the familiar cry is 'where were the auditors? Why were the auditors unable to detect and report fraud despite multiple checks and introduction of statutory regulations and reporting requirements? The regulators, as well as stakeholders, pose questions to auditors and in many cases, this leads to investigations on auditors without first understanding the exact role and responsibility of auditors in financial reporting or fraud detection. General stakeholder expectation is that auditors should perform audits with 'zero defects'; whereas in contrast, the role of auditors is to perform audit procedures to express an opinion i.e., to provide reasonable assurance on the financial statements and not absolute assurance.

*The objective of this article is to high-light the role played by the statutory auditor in fraud reporting and fraud detection. The consideration of fraud in financial reporting and the auditor's responsibility to report on fraud has always been an integral part of an audit of financial statements carried out in accordance with the Standards on Auditing (SAs) issued by the Institute of Chartered Accountants of India (ICAI). SA 240 deals with the auditor's responsibilities relating to fraud in the audit of financial statements. SA 240 requires the auditor to consider fraud a risk that could cause a material misstatement in the financial statements and plan and perform such procedures that mitigate the risk of material misstatement due to fraud.*

Although the auditor plays an important role in detecting material fraud, it is important for the stakeholders to understand that the prevention and detection of fraud within an entity is primarily the responsibility of

management under the oversight of those charged with the governance. Acknowledgement of this responsibility, and how it has been fulfilled, should be more evident from the entity's corporate reporting. A statutory auditor is the one who is responsible to report that financial statements are **true and fair**. His role is said to be that of a watch dog and not a blood hound.

Here it is important to distinguish between a financial auditor and a forensic accountant. A forensic accountant is a professional accountant who

- uses knowledge of accounting, business models and operating procedures for conducting an investigation.
- applies knowledge and expertise about fraud concepts, to the critical assessment of documents, records and facts.
- conducts interviews to obtain and corroborate facts or information.
- assists in the determination of the fraud modus operandi, players involved and consequential impact or loss.

While it is generally understood that a financial auditor is supposed to act like a watchdog, a forensic accountant is required to act like a bloodhound. Famous for its strong instinct to hunt rather than kill, the bloodhound relies heavily on its senses, especially on its profound ability to discern scents. A forensic accountant is expected to lift the veil, look behind the facade and not accept data and records presented to him at face value. He is expected to look for red flags or outliers in the data/records and follow through till he obtains relevant evidence either to prove or disprove allegations.

**IAASB issued a discussion paper on Fraud and Going Concern in an Audit of Financial Statements** wherein there is an emphasis on a continuing "expectation gap," or in general terms, a difference between what users expect from the auditor and the financial statement audit, and the reality of what an audit is. Regardless of the inherent limitations of an audit, the expectation gap, which is intensified when companies collapse without warning signals, is one element that detracts from the public's confidence and trust in the financial reporting system.

**Auditor's responsibility under SA 240 The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements**

As per **SA 240,** the primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management. The auditor is required to maintain an attitude of professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist. However, due to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements will not be detected. Hence, the auditor's responsibility to report on fraud will not absolve the Board or Audit Committee of its responsibilities.

With this view, in the *Companies Act, 2013*, section 143(12) was introduced with effect from 1 April 2014. This section requires statutory auditors to report to the Central Government about fraud/suspected fraud committed against the company by officers or employees of the company. With the introduction of this section, the Central Government has mandated the support of auditors in bringing greater transparency and discipline to the corporate world to protect interests of the shareholders and also the public, at large.

The auditor is required to issue an opinion and provide a reasonable assurance (not an absolute assurance) that the financial statements provide a true and fair view. Further, as per SA 700, the auditor is also required to identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for their opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

**Reporting under section 143(12) of the Companies Act, 2013**

Under section 143(12) of the *Companies Act, 2013*, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

In the 2013 Act, the meaning of fraud has been considered in two specific sections viz. section 143(10), where the SAs specified by the ICAI are deemed to be the Auditing Standards for purposes of the Act, which, inter alia, defines fraud, and in section 447, where punishment for fraud has been prescribed.

With regard to the above, rule 13 of the Companies (Audit and Auditors) Rules, 2014 provides that in case the auditor has sufficient reason to believe that an offence involving fraud is being or has been committed against the company, by officers or employees of the company, he shall report the matter to the Central Government immediately but not

later than sixty days of his knowledge and such report shall be in the form of a statement as specified in Form ADT - 4. Reporting by the statutory auditor to Central Government is required for fraud which involves/is expected to involve individually an amount of INR 1 crore or above.

**Frauds by third parties such as vendors and customers**

It may be noted that section 143(12) includes only fraud by officers or employees of the company and does not include fraud by third parties such as vendors and customers. However, necessary audit procedures should be followed in accordance with SA 240 for such frauds.

**Fraud noted in the course of providing non-attest services**

An auditor may be engaged to provide certain non-attest services which are not prohibited under section 144 of the Act. It may be possible that the auditor, when providing such non-attest services may become aware of a fraud that is being or has been committed in the company by its officers or employees. It would be appropriate to report such frauds under section 143(12) if the auditor uses or intends to use the information that is obtained in the course of performing such attest or non-attest services when performing the audit under the 2013 Act.

**Reporting of fraud under Companies (Auditor's Report) Order, 2020**

The requirements similar to section 143(12) of the 2013 Act were not prescribed in the *Companies Act, 1956*. Even the reporting under the erstwhile Companies (Auditor's Report) Order, 2003 required the auditors to report to the members on any fraud on or by the company that had been noticed or reported during the year.

CARO 2016 requires the auditor to report as to **whether any fraud on the company by its officers or employees has been noticed or reported during the year**; if yes, the nature and the amount involved is to be indicated. The scope of the auditor's inquiry under this clause is restricted to frauds 'noticed or reported' during the year.

CARO 2020 requires auditor to report **whether any fraud by the company or any fraud on the company has been noticed or reported during the year,** if yes, the nature and the amount involved is to be indicated.

Under this clause, the responsibilities of the auditor have been widened by removing the words "officers or employees". This clause requires the auditor to report whether any fraud has been noticed or reported either on the company or by the company during the year and is not limited to frauds by the officers or employees of the company. If any fraud is noticed/reported, the auditor is required to state the amount involved and the nature of fraud. This clause does not require the auditor to discover such frauds on the company and by the company. The scope of auditor's inquiry under this clause is restricted to frauds 'noticed or reported' during the year. The use of the words "noticed or reported" indicates that the management of the company should have the knowledge about the frauds on the company, or by the company that have occurred during the period covered by the auditor's report. It may be noted that reporting under this clause does not relieve the auditor from his responsibility to consider fraud and error in an audit of financial statements. In other words, irrespective of the auditor's comments under this clause, the auditor is also required to comply with the requirements of SA 240, "The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements".

The auditor is required to report separately on the nature and amount involved for (i) fraud on the company (ii) fraud by the company. Further, the auditor should consider the frauds noticed or reported while performing audit. Although fraud is a broad legal concept, the auditor is concerned with fraudulent acts that cause a material misstatement in the financial statements. Misstatement of the financial statements may not be the objective of some frauds. Auditors do not make legal determinations of whether fraud has occurred. Fraud involving one or more members of management or those charged with governance is referred to as "management fraud"; fraud involving only employees including officers of the entity is referred to as "employee fraud". In either case, there may be collusion with third parties outside the entity. In fact, generally speaking, "management fraud" can be construed as "fraud by the company" while fraud committed by the employees or third parties may be termed as "fraud on the company".

It might also be noted that CARO 2020 provides specific reporting responsibilities relating to whistleblowing complaints. There have been several instances where companies have brushed aside whistle-blower complaints and refrained from disclosing them to shareholders. The auditor will be required to consider all such whistle-blower complaints now while determining his audit procedures

and issuing opinion on the financial statements. ICAI's guidance note on CARO 2020 provides guidance on audit procedures and reporting aspects.

**Responsibility for Compliance with Laws and Regulations**

Non-compliance with laws and regulations (NOCLAR) comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties: (a) A client; (b) Those charged with governance of a client; (c) Management of a client; or (d) Other individuals working for or under the direction of a client.

In the course of providing a professional service to a client or carrying out professional activities for an employer, a professional accountant may come across an instance of NOCLAR or suspected NOCLAR committed or about to be committed by the client or the employer, or by those charged with governance, management or employees of the client or employer. Recognising that such a situation can often be a difficult and stressful one for the professional accountant and accepting that he has a prima facie ethical responsibility not to turn a blind eye to the matter, the Code of Ethics has incorporated this feature to help guide the professional accountant in dealing with the situation and in deciding how best to serve the public interest in these circumstances. The ICAI, in its Code of Ethics, has introduced new guidance for NOCLAR via section 360 for members in practice and section 260 for members in employment. The provisions regarding NOCLAR are applicable only to listed entities and will be applicable and effective from 1st April 2022.

**Disclosure of initiation of forensic audit of listed entities – Amendment in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

SEBI amended SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR') which were effective from October 8, 2020 companies to make disclosures to stock exchanges in case of initiation of forensic audit (by whatever name called), other than those initiated by regulatory/enforcement agencies (without application of any materiality guidelines). Such disclosures include (a) the fact of initiation of forensic audit (by whatever name called) along-with name of entity, initiating the forensic audit and reasons for the same, if available and (b) final forensic audit report (other than for forensic audit initiated by regulatory/enforcement agencies), on receipt by the listed entity, along with comments of the management, if any.

SEBI issued FAQs to clarify that forensic audits refer to those audits, (by whatever name called), which are initiated with the objective of detecting any misstatement in financials, misappropriation/siphoning or diversion of funds. It does not seek to cover disclosure of audit of matters such as product quality control practices, manufacturing practices, recruitment practices, supply chain process including procurement and matters that would not require any revision to the financial statements disclosed by the listed entity.

The auditors should take make inquiries from the management about such forensic audits and also need to review the disclosures made by the company under the above regulations.

**Use of forensic specialist on audits**

Forensic specialists can provide increased insight into the fraud risks of an entity and can also assist with the development of procedures to respond to fraud risks. However, the effectiveness of using forensic specialists must be considered in the context of the objectives of each financial statement audit and the nature and circumstances of the specific engagement. Due to the expertise of forensic specialists to respond to specific instances of identified or suspected fraud, the auditor should determine whether a forensic specialist should be involved to assist in determining the implications of any such instance for the audit, which could include non-material frauds unless they are clearly inconsequential. In the UK, Sir Donald Brydon's review of audit has suggested that forensic skills and fraud awareness should be part of the formal qualifications and continuing professional development for all auditors.

**Audit Vs. Forensics investigations**

Also, it is important to understand that the objective of financial auditing is to express opinion as to 'true and fair' presentation. Forensic investigation determines correctness of specific accounts or whether any fraud has taken place. The techniques used in the financial auditing are more of 'substantive' and 'compliance' procedures. The techniques used in the forensic investigation are analysis of past trend and substantive or 'in depth' checking of selected transactions. Whenever the financial auditor has adverse

findings, he expresses the qualified opinion with/without quantification. The forensic accountants are normally expected to quantify the damages and identify the people (internal or external) involved in the fraud scheme.

**Increased use of technology in audits and focus on key risk areas**

The increasing use of technology and new tools in audit have the potential to enable the auditor to analyze large volumes of structured and unstructured data related to the financial information of entities. Such tools may allow auditors to test even 100 percent of a company's transactions instead of only a sample of the population. Many of the audit firms using data analytics and tools are of the view that it has enhanced the audit by automating time-consuming tasks which are more manual and routine in nature. For example, through the use of artificial intelligence, robotic systems could interface with an entity's systems to transfer and compile data automatically, something earlier done manually by a junior team member. Further use of artificial intelligence techniques and robotic process automation have helped to enhance the audit by automating time-consuming tasks which are more manual and routine in nature. This gives auditor more time to focus on key risk areas and plan the audit procedures accordingly.

**Key takeaways for an auditor**

The increased reporting requirements are well-intentioned to ensure that such matters are brought to the attention of the government/regulatory authorities. However, the construct of the rules makes these reporting requirements very challenging. For instance, the auditor is required to comment not only on confirmed frauds but also on the suspected frauds. In many instances where fraud or suspected fraud exists, the auditor may struggle to have adequate or timely information to comply with these reporting requirements.

Also, it is important to note some of the key factors which might help us understand reasons for failure of audits to detect large scale/long duration frauds, which are summarised as below:

- Perceptions about promoter or management. Auditor should exercise his/her professional judgement while conducting fraud risk assessment procedures.
- No independent review and approval for transactions related to promoters/ CEO.
- Significant transactions with related parties or special purpose entities not in the ordinary course of business or where those entities are not audited or are audited by another firm.
- Significant, unusual, or highly complex transactions, especially those close to the period end that pose difficult "substance over form" questions
    - Ineffective communication, implementation, support, or enforcement of the entity's values or ethical standards by management or the communication of inappropriate values or ethical standards.
    - Formal or informal restrictions on the auditor that inappropriately limit access to people or information or the ability to communicate effectively with the Board of Directors or Audit Committee.

**Bottom line**

The risk of fraud has increased in recent times. Frauds are being committed in new forms and with innovative methods. In cases of well concealed fraud, it can take more than a normal audit to identify red flags and detect frauds. Auditing is an important independent check, but it must be recognized that it is one of the checks check. There is an increase in expectations from auditors for the detection and reporting of frauds. Further there are severe penal provisions if an auditor is not compliant within the statutory timelines. Auditors who understand various types of fraud and relative rates of their occurrence will be more likely to recognise any red flags and be better prepared to detect large scale frauds.

It is important to recognise that a financial statement audit is broader in scope and not forensic in nature and as a result, not as effective as a separate forensic investigation engagement given that forensic specialists are typically accustomed to a scope of procedures that is often narrowly focused on specific alerts or allegations. Where any red flags are discovered as part of audit procedures (which also include recommended procedures to identify fraud related red flags) then auditors should recommend that the Board undertakes an independent forensic investigation to get to the bottom of the potential issue and take appropriate actions based on the outcome of the investigation. Auditor's responsibility to report on the fraud and adequacy of the forensic investigation procedures performed runs concurrently.

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**Disclaimer:** *The views expressed in this note constitute the personal views of the authors and the authors alone. They do not represent the views and opinions of the author's employers, supervisors, nor do they represent the view of organisations, businesses or institutions the authors are, or have been a part of.*

* * * * *

# Professional Opportunities in Forensic Accounting and Auditing

**CA Puneet Grewal**
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Occupational and financial statement frauds have seen regular coverage in financial press and media. With globalization of business, the opportunities and incentives to commit fraud have increased manifold. In a recent survey conducted by Deloitte[1], 80.31% respondents felt that fraud in the corporate world will increase significantly in next two years. The survey further points out that the top three frauds experienced by organizations in the last two years include diversion/theft of funds, bribery and corruption, and frauds relating to regulatory non-compliances. According to Association of Certified Fraud Examiners' "Report to the Nations on Occupational Fraud and Abuse 2022", an organization losses 5% of its revenue to fraud(s), which, if applied to Gross World Product would mean potential loss of $4.7 trillion to fraud every year.

### Forensic Accounting vs. Auditing

Forensic Accounting bears divergence from auditing inasmuch as auditing has its main focus on and about forming an opinion on the financial statements. Forensic accounting is much more comprehensive and intricate and has its focus on fully understanding a specific issue or related issues. Forensic accounting is more extensive than fraud examination considering the former includes litigation support which may be in the form of reports to the court or representation by a forensic accountant as an expert witness. However, not all investigations end up in litigation, as a significant percentage of cases are settled outside the court. In such a case, the client may use the report of the forensic accountant to confront the fraud perpetrator.

For example, a forensic accountant may be called upon to trace assets of a defaulting creditor to ascertain whether the creditor is genuinely unable to repay the debt or has fraudulently hidden/parked its assets in new entities. If the report indicates assets stripping, then the same can form basis for filing a case against the creditor. Therefore, it is important for the forensic accountant to collect and maintain all the evidences supporting the allegation regarding asset stripping in a way that they are legally tenable in the court of law. Another important point here is the source of evidence. Any evidence collected from an illegal source cannot be presented before a court of law, henceforth necessitating caution on the part of professionals performing forensic assignments.

### Role of Chartered Accountants in Forensic Accounting

Chartered Accountants generally lead the forensic accounting practices of big accounting firms as they have the requisite knowledge and investigative mindset required to solve complex financial frauds. They may be supported by a team of MBAs, Lawyers, Economists and Computer forensic experts. All such professionals work together as a team, bringing in their own set of special skills.

To narrate a case study, in a case of employee-vendor collusion fraud, it was suspected that a particular vendor is being favored and handed out large IT projects to execute. Company removed its existing vendor despite the user departments being satisfied with its services. Following several rounds of interviews with the employees across various user departments, it

was elicited that the head of the IT department advocated the suspected vendor and made the company remove its established vendor. Laptop of the IT head was imaged with the help of a computer forensic expert. From the analysis of data stored in his laptop, it could be ascertained that he was taking kickback(s) from this vendor. The analysis even went to the extent of disclosing the fact that he maintained an excel sheet which consisted of his share of kickback(s) from the vendor. This corroborative evidence along with other evidence could then be used to initiate consequences against the said employee in form of filing a criminal complaint and/or remove him from employment.

Therefore, Chartered Accountant firms looking to build their forensic practice must understand that a team of people with different skills may be required to perform a forensic service for a client.

Chartered Accountants in practice handle clients with businesses in varied sectors of the economy and are well-versed with the type of frauds an organization is most likely to confront or resort to depending upon the sector a client operates in. The types of frauds can be broadly classified into financial statement manipulations, bribery and corruption including procurement fraud, asset misappropriation including theft of funds, regulatory non-compliance, money laundering, cyber fraud and identity theft, and intellectual property fraud. All these frauds have an impact on financial statements. For example, if an organization pays bribe to a public official in cash and does not record the same in the books of accounts, it may have to create a cash pool either with itself or third-party vendors for making such like illegal payments, which thereby leads to manipulation of books of accounts. Chartered Accountants are well-versed to detect such methods of falsification of books.

**Suggested approach for advancement in forensic practice**

CA firms in India are yet to capitalize on the potential of forensic practice. Till recent times, they have remained focused on statutory or internal auditing. Some have considered forensic accounting as an extension of internal auditing and covered fraud assignments as a part of internal audit assignments. There is a need to first recognize forensic accounting practice as a separate service line. The areas in which firms can look to build forensic practice are:

1. Fraud Investigations; corporate fraud including financial statement manipulations
2. Dispute Advisory; assisting lawyers in computation of losses
3. Corporate Intelligence; background checks and due-diligence
4. Divorce Settlements; assisting clients in settlement claims
5. Asset investigations and recovery; asset tracing and possible recovery avenues

Some of the guidelines that can be adapted by firms willing to offer forensic service are as follows:

1. Invest in technology as financial crimes have moved beyond traditional ways of committing frauds.
2. Build a team of specialists in areas such as IT, data analytics, computer forensics, etc.
3. Know which segment of clients you can attract. There is no shortage of work. Ideally focus on SMCs and government entities as for them cost of service is equally important. Once you have built credibility and gained experience you can seek to compete with bigger accounting firms.

[1] Deloitte India Corporate Fraud Perception Survey Edition IV, December 2020

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**"We are responsible for what we are, and whatever we wish ourselves to be, we have the power to make ourselves. If what we are now has been the result of our own past actions, it certainly follows that whatever we wish to be in the future can be produced by our present actions; so we have to know how to act."**

**– Swami Vivekananda**

# GST Compliance Calendar and High Court Judgement

Compiled by **CA Swapnil Jain**
FCA, RV(IBBI), IP (IBBI)
swapniljain88@gmail.com

## *GST Compliance Calendar*

| Due Date | Return/Form | Category of Persons | Period |
|---|---|---|---|
| 1-Feb-2022 till 30-April-2022 | Opt-in / opt-out for QRMP Scheme | Persons having AT up to 5 Cr in PY | Apr-June 2022 |
| 1- Apr-2022 | | E-invoicing to be mandatory for taxpayers having turnover more than Rs.20 crores w.e.f. 01/04/2022 | Apr-June 2022 |
| 10- Apr-2022 | GSTR-7 | TDS Deductors | March 2022 |
| | GSTR-8 | TCS Collectors | March 2022 |
| 11- Apr-2022 | GSTR-1 | Monthly Taxpayers (AT> 5cr or opted to file monthly returns) | March 2022 |
| 13-Apr-2022 | GSTR-6 | Input Service Distributors | March 2022 |
| | GSTR 1 | QRMP Taxpayers | Jan-March 2022 |
| 20-Apr-2022 | GSTR 3B | Monthly Taxpayers (AT> 5cr or opted to file monthly returns) | March 2022 |
| | GSTR 5 | Non Resident taxable Person | March 2022 |
| | GSTR 5A | NRI, providing online information and database access or retrieval services to non-taxable person in India | March 2022 |
| 22-Apr-2022 | GSTR 3B | Taxpayers under QRMP Scheme Category 1 States | Jan-March 2022 |
| 24-Apr-2022 | GSTR 3B | Taxpayers under QRMP Scheme Category 2 States | Jan-March 2022 |

*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.

## *High Court Judgement*

| **Citation:** | **2022 (3) TMI 908** |
|---|---|
| **In the matter of:** | M/S New Nalbandh Traders Versus State of Gujarat & 2 Other (S) |
| **Name of the Authority:** | Gujarat High Court |
| **Relevant Section/ Rule:** | Rule 86A of CGST Rules |
| **Matter in Dispute:** | Blocking of input tax credit |
| **Judgement of the Authority:** | The provisions made in rule 86A would require the Competent Authority to first satisfy itself, on the basis of objective material, that there are reasons to believe that credit of input tax available in ECL has been fraudulently or wrongly utilised. Secondly it has to record these reasons in writing before the order of disallowing debit of requisite amount to the ECL or requisite refund of unutilised credit, is passed. |

| Citation: | 2022 (3) TMI 908 |
|---|---|
| | It can be said that there is a specific mechanism for reversing the credit in the case of a discrepancy in the ITC availed by the recipient, against the output liability of the supplier. However, the ITC reversal mechanism, as laid down in section 41 read with Rules, is kept in abeyance. The facility to furnish GSTR – 2 and GSTR – 3 Forms is also not available. Accordingly, there is no system-based matching of the ITC being carried out presently, and till the time such provisions are given effect, the recipients shall be eligible to claim ITC provisionally on the basis of the invoice issued by customer. |

| Citation: | 2022 (3) TMI 490 |
|---|---|
| **In the matter of:** | M/S. V.R.S. Traders Versus Assistant Commissioner (State Taxes) Poonamallee Assessment Circle Varadharajapuram, Chennai |
| **Name of the Authority:** | Madras High Court |
| **Relevant Section/ Rule:** | Section 74 of the CGST Act |
| **Matter in Dispute:** | Validity of assessment order passed when DRC 01A has been issued to the taxpayer, but DRC 01 has not been issued |
| **Judgement of the Authority:** | Section 74(1) notice is an independent notice to be issued in DRC-01, whereas the notice under Section 74(5) was to be issued in DRC- 01A. Herein the case in hand, admittedly DRC-01A was issued, thereafter straightaway the respondent revenue proceeded to pass the impugned assessment order.<br>Notice under Section 74(1) of the Act, which is also mandatory to be issued before passing the impugned order of assessment, has not been issued in this case. In the absence of any such notice, the proceedings, which is culminated in the order of assessment, which is impugned herein, is, no doubt, vitiated. |

* * * * *

**"Kosha Moolo Danda", Chanakya wrote in first chapter of Arthashastra; this means 'revenue is the backbone of administration'. This verse in the Devanagari script is also part of the official logo of the income tax department of India. Arthashastra, written in the ancient holy language of Sanskrit, is considered the first ever book on public finance, public administration and fiscal laws in human history. The book widely covers many types of taxes in detail, including general sales tax, defence tax, import and export duties, toll tax, transaction tax, and royalty, etc.**

**The basic principle of Chanakya's taxation doctrine was that the purpose of taxation must be to strengthen government to ensure public welfare and national development. According to him, the public must not be exploited by imposing heavy taxes more than one's ability to pay. In this regard, Chanakya, in a very smart way, quoted the example of the honey bee, saying that: "Governments should collect taxes like a honeybee, which sucks just the right amount of honey from the flower without causing any harm."**

# How to Deal with Worry

**Ms. Neha Jain**
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*Do not worry excessively about the future. If you have done everything that has to be done, the future will take care of itself."***– Master Choa Kok Sui**

Worry is a cycle of repetitive, negative thought that is often difficult to stop, but not everyone knows that it is also a type of energy. This means it can be transferred from a person to another person or from a place to people occupying it.

If you find yourself becoming a victim of your worries, below are few tips !

### *Change Your Perspective*

Sometimes we have this unrealistic expectation that everything should be perfect. But life is life!

Full of ups and downs, happy times, and challenges.

*"Life is governed by cycles, by change. Sometimes you are up. Sometimes you are down."* **– Master Choa Kok Sui**

The purpose of life is evolution and therefore challenges are inevitable. They often happen to teach us lessons and help us strengthen our spiritual muscles. Worry typically does not prevent a negative outcome, but potentially makes it worse. Far worse.

So, if we change our perspective and accept life as it is with open arms, instead of worrying excessively we will start to enjoy it.

### *Focus on Solutions*

When we are afraid of an outcome, we tend to worry about it and keep imagining the worst possible scenario. Based on the Law of Attraction, what we meditate on, we attract. Therefore, worrying not only doesn't help, but also attract what we are afraid of.

Instead of meditating on your worries, start focusing on the solutions. Decide on a few simple actions you will take if the feared scenario happens. This can help you keep negative consequences to a minimum.

### *Ask Yourself, What the Worst Thing Is*

One of the techniques that can help you deal with your worries is to think about the worst thing that can happen in relation to your fears. Then, ask yourself, does this matter in a week, in a month, in a year, and in 5 years from now.

In most of the cases you will notice that what you are worrying about does not matter in a few months or years' time. And most of the time our fears and worries are based on imagination than based on reality so there is no need to make a fuss about it.

### *Generate - Good Karma*

*"The Law of Karma is not fatalistic. It gives you the ability to create your future."* **– Master Choa Kok Sui**

Understanding and harnessing the Law of Karma, we can create the future we wish to have. For anything to happen, we need to be entitled. "It is in giving, that we receive." Therefore, instead of worrying about future, we need to plant the right seeds, to harvest the desirable fruits.

Start with services, charity work, helping others and tithing, we attract a future filled with good health, happiness, prosperity and spirituality.

### *Disintegrate It*

Worry is a type of energy and therefore it can be disintegrated!

Using sciences like Pranic Healing we can disintegrate worry and re-program our subconscious mind not to follow this vicious cycle. By purifying our system, removing worry and normalizing the chakras we can experience happiness and inner peace.

### *Breathe it Out*

Pranic Breathing is composed of simple breathing techniques that purify the aura and increase our energy level. Helps to purify the Solar Plexus chakra, increase our energy level and make us feel more peaceful.

By doing deep abdominal breathing the Solar Plexus chakra gets purified. The clouds of lower emotions such as fear and worry get expelled out of our system and as a result we find ourselves feeling more peaceful. It also helps to increase our energy level that leads to better health.

Therefore, when you feel worried, just sit relaxed and practice 5 to 7 cycles of Deep Breathing!

**Prana World**

* * * * *

**There is a great difference between worry and concern. A worried person sees a problem, and a concerned person solves the problem."**

**– Harold Stephen**

# ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

*(Registered under the Societies Registration Act, 1860)*

**An ISO 9001 : 2015 Certified Organisation**

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**GSTIN : 19AAATA7029F1ZV**

Work is Worship
ESTD. 1960

2 pcs Pass Port Colour Photograph

## 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 : _____
4. Academic and/or Professional Qualifications : _____
5. Occupation : _____
6. Name of the Concern with which associated : _____
7. GSTIN : _____
8. Designation : _____
9. CA/CS/ICWAI Membership No. : _____
10. Blood Group : _____ (Self) _____ (Spouse)
11. Date of Marriage : _____ Name of Spouse _____
12. Office Address : _____
13. Resident Address : _____
14. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
    Mobile : _____ E-mail : _____
15. Address where Circular etc. should be sent : ☐ Office ☐ Residence

I am/We are sending herewith Rs. _____ (Rupees _____ )
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards ☐ Life Membership ☐ General Membership.

Place : _____
Date : _____

*Signature of the Applicant*

**Proposed By :** Name : _____
ACAE Membership No. : _____ Signature : _____

**Seconded By :** Name : _____
ACAE Membership No. : _____ Signature : _____

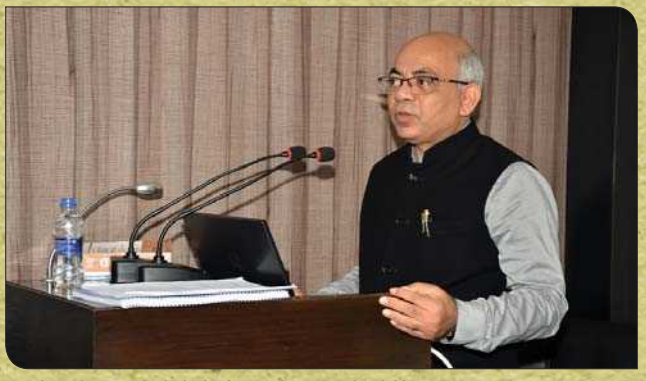
**NOTES :**
1. *Fee for Life Membership Rs. 11,800/- (for individuals only) (inclusive of GST)*
2. *Fee for General Membership :*
   a) *Annual Subscription Rs. 8850/- and Admission fees Rs. 8850/- (For Firm and Body Corporate) (inclusive of GST)*
   b) *Annual Subscription Rs. 1770/- and Admission fees Rs. 1770/- (for individual) (inclusive of GST)*
   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****.*

# ACAE ALBUM ...

**Live Telecast of Union Budget - 2022 with Panel Discussion on Direct Tax on Tuesday, 1st February, 2022 at ACAE, Emami Conference Hall**


(L-R) On the dais, Panelist CA S S Gupta along with President-ACAE, CA Vivek Agarwal and General Secretary-ACAE, CA Sumit Binani in Live Telecast of Union Budget -2022 with Panel Discussion on Direct Tax.

**Lecture Meeting on Critical Analysis of Reemt Changes including Budgetary Changes in GST (Clause by Clause Analysis) on Tuesday, 8th February, 2022 at ACAE, Emami Conference Hall**



Speaker Advocate Shailesh Sheth, Mumbai giving his deliberations

**Felicitation Ceremony organised by EIRC of ICAI on Wednesday, 16th February, 2022 at Raasmanch. Swabhumi, Kolkata**

ACAE Chartered Accountants' Study Circle - EIRC felicitating CA (Dr.) Debashis Mitra, President, ICAI and CA Aniket S Talati, Vice President, ICAI in the Felicitation Ceremony organised by EIRC of ICAI.

**Felicitation of CA (Dr.) Debashis Mitra on being elected the President (2022-23) of ICAI at The Lalit Great Eastern Kolkata on Thursday, 17th February, 2022**

Past Presidents of ACAE, CA Sanjay Bhattacharya, CA Swapan Bhattacharyya and President, CA Vivek Agarwal presenting a memento to CA (Dr.) Debashis Mitra, President (2022-2023) of ICAI.

**Lecture Meeting on Tricky points in dealing with Department's Inquiry/ Investigation etc. in GST on Friday, 25th February, 2022 at ACAE, Emami Conference Hall**


(L-R) On the dais, Speaker Senior Advocate (CA) J K Mittal, Supreme Court of India, New Delhi, CA Shivani Shah, Chairman-GST/Indirect Tax Sub-Committee and CA Shubham Khaita, Co-Chairman, GST/Indirect Tax Sub-Committee.

**CACL - 2022 A Flagship Sporting Event of ACAE - Indoor Cricket Tournament held on Saturday & Sunday, 5th & 6th March, 2022 at The Space Circle, Kolkata**

Three finals amongst teams were played under different categories - Gold, Silver and Bronze. ACAE won Silver.

**International Women's Day - Panel Discussion on Women : Breaking the Glass Ceiling held on Tuesday, 8th March, 2022 at ACAE, Emami Conference Hall**

(L-R) On the dais, Panelists Ms. Sambi Mitra, Advocate Professor; Ms. Kavita Agarwal, Entrepreneur; (Moderator) Ms. Shivani Shah, World Champion, Kettlebell Sports; Ms. Srishti Nadhani, Influencer; and Dr. Pragati Singhal, MBBS, MS.

**International Women's Day - Panel Discussion on Women : Breaking the Glass Ceiling held on Tuesday, 8th March, 2022 at ACAE, Emami Conference Hall**

Group Photograph

**Merchants' Chamber of Commerce & Industry in association with ACAE organised Special Session on Demystifying the Saga of Valuation - New age Companies, Start-ups, Goodwill on Monday, 14th March, 2022 at MCCI Conference Hall**


(L-R) CA Vivek Agarwal, President-ACAE, Address by Chief Guest Mr. Rammohan Bhave, CA, CMA, CS, LLB, Holder of Record in Limca Book of Records, Dr. CS. Adv. Mamta Binani, Chairperson, Council on Legal & Corporate Governance, MCCI , CS S M Gupta, President,- NCLT Kolkata Bar Association and CA Sumit Binani, General Secretary-ACAE.

**Holi Doljatra Get-together organised by EIRC of ICAI in association with Study Circles of EIRC on Wednesday, 16th March, 2022 at Hindusthan Club, Kolkata**

(L-R) CA Tarun Kr Gupta, Mrs. Renu Chatrath, CA Indu Chatrath, CA S S Gupta, CA Shivani Shah and CA Vivek Agarwal.

**Career After Family Enterprise (CAFE) organised Women's Career Expo on Tuesday, 29th March, 2022 at Taj Bengal, Kolkata. ACAE has partnered with CAFE for this unique event giving advisory on Start Ups**


A session in progress - "Leading the Change with Communities" with the founder of CAFE - Ms. Kavita Agarwal.

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https://www.youtube.com/c/AcaeKolkata

https://www.linkedin.com/company/acaekolkata

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# ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES


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