

INCOMETAX

AUDIT

METHODS

ECONOMY

GST

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MANAGEMENT

PLANNING



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

AHMEDABAD BRANCH OF
WIRC OF ICAI

eNews Letter

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Chairman Message

Dear Members,

On behalf of Ahmedabad Branch Team I wish all of you a very happy and prosperous new Financial Year. We as Chartered Accountants have conventionally and legally embraced the First day of April as our new year. This financial year will bring new challenges and opportunities for all of us in the form of GST Audit, RERA Audit, E-assessments of income tax, etc. Team Ahmedabad Branch will ensure that the members of Ahmedabad are updated in all these respects.



March ending pressure was at its peak this time because of the time barring return filing dates for two assessment years. Even after this acute pressure of year ending, the members of Ahmedabad Branch continued in their endeavor to support all the activities of the Branch. The month began with Holi celebration which was organized by us after many years. Women's day celebrations continued for three days and culminated with a one day conference. The opening remarks by Chief Guest Ms. Neelam Rani, RPO, Ahmedabad were simply path breaking and were well appreciated by all present at the conference. Branch organized four conferences on the flavor of the season being Bank Branch Audit. The technological and the operational / legal aspects of bank branch audit were covered in its totality by all the learned faculties. A half day seminar on Real Estate - Affordable Housing Projects was organized which covered the direct tax, indirect tax and other compliances of such projects.

The erstwhile successful GST Study course is now revamped and Advance GST Study Course was held during the month with latest updates. Other educational events include GST Seminars, Direct tax seminars, etc.

Interactive sessions with Income tax officials such as PCCIT - Gujarat, DGIT System - New Delhi, CIT (CPC - TDS), etc were the hallmark for the month because all the sessions were held for solving / intimating the various issues faced by the members. CGST and SGST officials also had discussions regarding the pending GST refunds for exporters, the details of which were duly shared with all the members for their benefit.



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It's that time of the year when we need to update and upgrade ourselves for the upcoming financial year. We will have to plan the entire year's activities for our offices. Gone are the days when CAs had timelines or important due dates for few months. Now every month has an important due date coming up. Let's all be ready for such professional commitments in a manner that no unnecessary pressure is created on our physical health or personal life and we still accomplish all the tasks before the timelines.

With this I wish all of you to Stay Healthy & Stay Fit.

Warm Regards,
CA. Nirav R Choksi
Chairman

Editorial



Dear Members,

With the Income Tax assessment becoming "Jurisdiction-less Assessment", GST gradually moving towards a "Good and Simple Tax", various changes taking place in the Companies Act and other allied laws, tough banking norms being introduced, India moving towards digital economy and so many new reforms lined up, the business is not going to function the same way as before! **Welcome to the new financial year 2018-19!!**

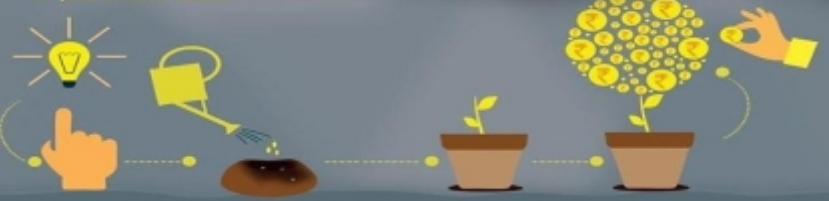
After receiving a wonderful response to the March edition of our Newsletter, it gives me immense pleasure to share the April edition with a special focus on the new financial year.

I would like to take this opportunity to sincerely thank all the contributors for sending the updates and sparing their precious time for the cause of the profession. In order to make the newsletter more resourceful, we need your support by way of contribution of updates, useful suggestions, etc. I would request you to send your contributions on the topics of Direct Taxes, GST, Corporate Law, Information technology, FEMA, Indian & World economy and other interesting topics. Kindly email your contributions, achievements etc. on ahmedabad@icai.org. The editorial team will publish the best contribution at its own discretion. I extend my sincere gratitude to the Editorial team for their hard work to publish this newsletter in time.

Lets get set for an exciting new financial year. Hope you all have a very enriching and successful year ahead!

Happy Reading!

CA. Harit Dhariwal
Chairman, Newsletter Committee



Income Tax Updates

(Contributed by **CA. Mohit Tibrewal**)

1. **CBDT issued instruction no. F.NO. DGIT(VIG)/HQ/SI/Appeals/2017-18/9959 dated 08.03.2018, Subject :- Irregularities in Appellate Orders. Synopsis are as under:-**

- CBDT reiterated that appellate order that is to be passed by CIT(Administrative)/CCIT as regards to the matters within their purview under different sections of the Income Tax Act should be passed within 15 days of the last Hearing.
- Further, the order must be immediately dispatch either by registered post or through notice server without waiting for the appellant to file application in this regard. Delay in uploading of appeal order on ITBA or violation of the instruction regarding dispatch of appeal order give rise to suspicious about backdating of orders and/or malafide intent on the part of the officer/officials concerned.
- In addition to the above, CBDT noticed many technical and legal lapses during inspection of CIT (Appeals). For instance in some cases the Assessing Officer made additions towards unsecured loans and/or share application money after detailed inquires and bringing clear facts on record. But CIT (Appeals) gave relief primarily on

legal grounds without considering the facts on record and without making further inquiry. CBDT asked CIT (Appeal) to use the powers judiciously while passing the appellate order.

- Further, the Chief Commissioners were asked to conduct regular inspection of the CIT (Appeals) working under them and failure to keep watch on the quality and quantity of orders would be viewed adversely by the CBDT.

2. **CBDT issued instruction no. F.NO.225/53/2018/ITA.II dated 28.03.2018, Subject :- Processing of returns under section 143(1) of the Income Tax Act which are pushed to the Assessing Officer by the CPC. Highlights are as under:-**

- From A.Y. 2017-18, discretion of Assessing Officer in processing of returns under scrutiny has been completely removed and therefore all returns are to be processed as per the provisions of the section 143(1) of the Act.
- To avoid any arbitrariness, the returns of A.Y. 2017-18 and onwards which are pushed by CPC to the Assessing Officer for processing, as far as possible, shall be handled in a chronological

International Taxation

(Contributed by **CA. Mohit Balani**)

JUDICIAL PRONOUNCEMENTS

1. **DCIT Vs. Exedy India Ltd. [2018] 91 taxmann.com 289 (Mumbai - Trib.)**

- Proviso to section 92C(2) with regards to ± 5 percent range is applicable to arm's length price and not arm's length profitability.

2. **ACIT Vs M/s Areva T & D India Limited in ITA No. 2079 & 2090 /chny/2014 - Chennai Tribunal**

- Testing fees paid by assessee (an Indian company) to Netherlands company, not "Fees for Technical

Services" under India-Netherlands DTAA since the knowledge of testing was not made available to the assessee.

3. **Conexant Systems (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-1(2), Hyderabad - [2018] 91 taxmann.com 308 (Hyderabad - Trib.)**

- A company which earned revenue from licensing of products, was not comparable to software development service providers.



4. Nokia India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 13(1), New Delhi - [2018] 91 taxmann.com 288 (Delhi - Trib.)

- Where assessee had claimed a working capital adjustment and on same set of facts and in same business model assessee had been provided working capital adjustments in preceding assessment years, it was incumbent upon TPO to compute working capital adjustment in respect of comparables vis-a-vis assessee

5. T-3 Energy Services India (P.) Ltd. Vs. JCIT -[2018] 91 taxmann.com 334 (Pune - Trib.)

- Once nature of expenses has been accepted by TPO, Assessing Officer cannot sit in judgment of TPO since

under relevant provisions, order passed by TPO is binding upon Assessing Officer; Assessing Officer at best could have invoked provisions of Act per se but cannot question nature of expenditure

6. Tooltech Global Engineering (P.) Ltd. Vs. Assistant Commissioner of Income-tax, Circle-7, Pune - [2018] 91 taxmann.com 357 (Bombay)

- Where loans and advances were given by assessee to its AE, it would be an international transaction hit by provisions of Chapter X of Act as in terms of Explanation to section 92B, loans/advances to AE is an international transaction and, thus, interest on such loan/advance has to be reworked to determine ALP

Accounting, Auditing & Company Law Updates

(Contributed by CA. Chintan Patel)

1. Companies (Indian Accounting Standards) Amendment Rules, 2018

The MCA has notified the Companies (Indian Accounting Standards) Amendment Rules, 2018. Among other matter, the rules include ***Ind AS 115 Revenue from Contracts with Customers, Appendix D to Ind AS 115 Service Concession Arrangements and Appendix B to Ind AS 21, Foreign Currency Transactions and Advance Consideration (corresponding to IFRIC 22)***. Ind AS 11 Construction Contracts and Ind AS 18 Revenue will be omitted. These rules will come **into force from 1 April 2018.**

http://www.mca.gov.in/Ministry/pdf/INDAsEngRule2018_29032018.pdf

2. Standard on Auditing (SA) 299 (Revised) Joint Audit of Financial Statements

The Auditing and Assurance Standards Board of ICAI has issued Standard on Auditing (SA) 299 (Revised) Joint Audit of Financial Statements. This Standard on Auditing is **effective for audits of financial statements for periods beginning on or after 1 April 2018.**

<https://resource.cdn.icai.org/49490aasb39206.pdf>

3. Amendment to Notification of Non Applicability of AS 22 Accounting of Taxes on Income or Ind AS 12 Income Taxes to a Government Company

MCA vide notification S.O. 529(E) dated 5 February 2018 had directed that the provisions of AS 22 Accounting of Taxes on Income or Ind AS 12 Income Taxes relating to deferred tax asset or deferred tax liability will **not apply, for seven years with effect from the 1 April 2017 to specified Government companies.** The MCA has further amended the above notification to remove the time limit of seven years.

<http://egazette.nic.in/WriteReadData/2018/184447.pdf>

4. Deferment of Ind AS implementation for Schedule Commercial Banks

In its Statement on Developmental and Regulatory Policies, the RBI has mentioned that Scheduled Commercial Banks (SCBs), excluding Regional Rural Banks (RRBs), were required to implement Indian Accounting Standards (Ind AS) from April 1, 2018.

However, necessary legislative amendments – to make the format of financial statements, prescribed in the Third Schedule to Banking Regulation Act 1949, compatible with accounts under Ind AS – are under consideration of the Government. In view of this, as also the level of preparedness of many banks, it has been decided **to defer implementation of Ind AS by one year.**

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=43574

5. Ind AS Transition Facilitation Group (ITFG) issues bulletin 15

The ITFG has considered various applicability and implementation issues received from members. The ITFG, after due deliberations, issued clarifications on **ten Ind AS issues through its bulletin 15.**

<https://resource.cdn.icai.org/49554indas39277.pdf>

6. Educational Material on Indian Accounting Standard (Ind AS) 103, Business Combinations

The Ind AS Implementation Group issued Educational Material on Indian Accounting Standard (Ind AS) 103, Business Combinations. This educational material contains a summary of **Ind AS 103 discussing the key requirements of the Standard and the Frequently Asked Questions covering the issues** that are expected to be encountered frequently while implementing Ind AS 103, Business Combinations.

<https://resource.cdn.icai.org/49531indas39251.pdf>

7. Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018

The MCA has notified Companies (Filing of Documents and Forms in Extensible Business Reporting

Language) Amendment Rules, 2018 **clarifying the mode of filling financial statements.** They shall come into force on the date of their publication in the Official Gazette.

<http://egazette.nic.in/WriteReadData/2018/183599.pdf>

8. NFRA related provisions

The MCA has appointed 21 March 2018 as the date on which the provisions of subsection (3) and subsection (11) of Section 132 Constitution of NFRA of the Companies, Act 2013 will come into force.

http://www.mca.gov.in/Ministry/pdf/commencementNotification2103_21032018.pdf

The MCA has notified the *National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018*. They will come into force on the date of their publication in the Official Gazette.

<http://egazette.nic.in/WriteReadData/2018/184019.pdf>

9. Study on Compliance of Financial Reporting Requirements-Volume III

The Financial Reporting Review Board (FRRB) of the ICAI has issued Study on Compliance of Financial Reporting Requirements-Volume III. The third volume contains FRRB observations finalized between March 2011 and January 2017. **This compilation includes observations on various non-compliances with applicable statutes, Accounting Standards, Standard on Auditing, CARO, Companies Act etc.**

<https://resource.cdn.icai.org/49152frrb32877.pdf>



GST Updates

(Contributed by **CA. Monish S. Shah**)

Important Judgment

- 1) In *SamajParivartanaSamudaya&Ors. V/s State of Karnataka &Ors.* (2017) 10 TMI 255 (Supreme Court), on question of whether lessee can claim input tax credit under CGST Act, 2017 in case of an e-auction transaction, it was held that the GST payable on the sale value of the mineral purchased in the e-auction shall be paid by the buyer directly to the lessee and the lessee would be responsible for all compliances as may be required under Act. The Monitoring Committee was directed to prepare appropriate proforma and also take steps for carrying proper Tax Identification Number of the respective lessees on the invoices as may be required. It was further directed that the GST payable on the sale value of the mineral purchased in the e-auction shall be paid by the buyer directly to the lessee and the lessee would be responsible for all compliances as may be required under Act.
- 2) In *Commercial Tax Officer v. Madhu M.B.* (2017) 85 taxmann.com 172 (Kerala), it was held that whereas the statutory provisions in relation to search, seizure, detention and release thereof is provided under section 129 of CGST Act, 2017, the Department cannot deviate from the said provisions in order to pass an order which is against such provisions contained in the Act.
- 3) In *J K Mittal & Company v. Union of India & Ors* (2017) 63 GST 138; 83 taxmann.com 281 (Delhi), it was held that as of date, there is no clarity on whether all legal services (not restricted to representational services) provided by legal practitioners and firms would be governed by the reverse charge mechanism. If in fact all legal services are to be governed by the reverse charge mechanism then there would be no purpose in requiring legal practitioners and law firms to compulsorily get registered under the CGST, IGST and/or DGST Acts. Those seeking voluntary registration would anyway avail of the facility under Section 25 (3) of the CGST Act (and the corresponding provision of the other two statutes). There is therefore prima facie merit in the contention of Mr Mittal that the legal practitioners are under a genuine doubt whether they require to get themselves registered under the

three statutes. In the circumstances, the Court directed that no coercive action be taken against any lawyer or law firms for non-compliance with any legal requirement under the CGST Act, the IGST Act or the DGST Act (Delhi GST) till a clarification is issued by the Central Government and the GNCTD and till further orders in that regard by the Court. The court clarified that any lawyer or law firm that has been registered under the CGST Act, or the IGST Act or the DGST Act from 1st July, 2017 onwards will not be denied the benefit of such clarification as and when it is issued

- 4) 2017(9)TMI749-GAUHATI HIGH COURT *Kumar Traders And Company Versus State of Assam Seizure - powers of the police team / Bureau of Investigation for Economic Offences (BIEO) under GST - areca nuts - the BIEO team suspected that the areca nuts stored in the go down, were of Burmese origin and were smuggled through Mizoram border and was stored in the Guwahati go down, for onward transportation to other parts of the country - Assam Goods & Service Tax Act, 2017 - Held that: - The stored areca nuts were neither stolen nor were kept in suspicious circumstances. At best, tax is payable for dealing in areca nuts but that would be in the domain of the Finance & Taxation Department. The submissions made by the Addl. Advocate General and the Asstt. Solicitor General reflect that the BI (EO) team may have acted beyond their jurisdiction. Therefore, the learned Govt. Advocate has prayed for and is granted three weeks' time to file counter affidavit. In the interim, to facilitate the petitioners to carry on their legitimate business and taking note of the fact that rate of tax is @2.5% for areca nuts, under the Assam Goods & Service Tax Act, 2017 and they are to pay further 2.5% tax to the Central Govt. coffer, subject to the petitioners' furnishing Bank guarantee for Rs. 30 lakh towards the estimated tax, to the Commissioner of State Tax, the seized goods should be released to the custody of the petitioners. No. - W.P. (C) No. 4785 OF 2017*

Resolution of Stuck TRAN-1 and filing of GSTR-3B

- 1 A large number of taxpayers could not complete the process of TRAN-1 filing either at the stage of original or revised filing as they could not digitally authenticate



the TRAN-1s due to IT related glitches. As a result, a large number of such TRAN-1s are stuck in the system. GSTN shall identify such taxpayers who could not file TRAN-1 on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete TRAN-1 procedure (original or revised) of filing them on or before 27.12.2017 due to IT-glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of TRAN 1 is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing TRAN-1.

- 2 The taxpayer shall not be allowed to amend the amount of credit in TRAN-1 during this process vis-à-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed. If needed, GSTN may request field formations of Centre and State to collect additional document/ data etc. or verify the same to identify taxpayers who should be allowed this procedure.
- 3 GSTN shall communicate directly with the taxpayers in this regard and submit a final report to GIC about the number of TRAN-1s filed and submitted through this process.
- 4 The taxpayers shall complete the process of filing of TRAN 1 stuck due to IT glitches, as discussed above, by 30th April 2018 and the process of completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by 31st May 2018.

ISSUES OF LUT

1. Whether acknowledgment along with related documents are to be manually submitted to the Department?

Once the LUT is online submitted there is no need as per the Act or Rules to submit the Application Manually. However the technical glitches of the system are well known and thus the application made online are right now not being pushed to the Jurisdiction Officer. However, Circular No. 40/14/2018-GST, Exporters to file LUT in FORM GST RFD-11 on the portal only. LUT will be deemed to be accepted as soon as ARN is generated. No documents need to be physically submitted to the jurisdictional office.

2. Whether LUT is to be furnished online despite the fact that earlier manual LUT period has not expired??

It may happen that validity of LUT furnished in the past has not yet expired. Online system of furnishing LUT asks the registered person to select the year for which LUT is furnished. Hence a confusion is created as to whether such persons are required to furnish LUT online w.e.f. 01.04.2018 despite the fact that earlier validity period has not expired. It is further clarified in the Rules that LUT is only valid for financial year and so those whose LUT has not expired in our view should also get it renewed. On Renewal the old LUT will either cancel/revoke.

Export Supplies Wrongly Shown in 3B and Refund Issue

Attaching the clarification as this problem will solve many refund issues

Export Supplies has been declared as domestic supplies in GSTR 3B:

- (a) It is also observed that some of the exporters have provided correct details in Table 6A of GSTR 1 but while filling GSTR-3B, particulars of exports have been furnished incorrectly by not declaring the entire export data in Table 3.1(b) of GSTR-3B, meant for data concerning exports. In these cases, the data relating to Table 3.1(b) has been shown in Table 3.1(a) or in other words export supplies have been shown under domestic supplies.
- (b) For cases where validation failure is due to above reason, it has been decided that wherever it is not possible to compute the correct value of 3.1(b) using system/logic, the GST field officers need to be deputed in the Custom Houses in order to specifically scrutinize the returns and seek necessary clarification from the exporters wherever necessary.
- © In such cases the exporters have filed details of export suppliers in domestic supplies i.e. instead of providing details under Table 3.1(b), the exporters have filed in other Tables like 3.1(a) or 3.1(d). The GST officers would reconcile the data submitted by exporters in GSTR1 and GSTR 3B so as to enable those cases to be processed further.



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- (d) The officers would compare the aggregate data of interstate supplies declared in Table 4, 5, 6A and 7B along with amendments, if any declared in Table 9, 10 and 11 of FORM GSTR-1 with the aggregate data of interstate supplies declared in Table 3.1(a), 3.1(b) and 3.1(d) of FORM GSTR-3B. Thereafter, if the aggregate values get matched, then the officer would calculate the notional value of Table 3.1(b) on the basis of reconciliation.
- (e) The notional value of Table 3.1(b) so arrived after calculation at (d) above should be equal or greater than IGST amount declared in Table 6A of GSTR 1. While reconciling the data, the officer shall also take into account the amount of IGST paid as shown under Table 6.1 of GSTR 3B. In no case, the notional values of IGST in Table 3.1 shall exceed the value of IGST paid as shown in Table 6.1 of GSTR3B. The purpose of the above check is to ascertain whether details pertaining to export supplies are actually filed under domestic supplies or not.
- (f) Only in cases where it can be established that the mistake is only on account of feeding details as discussed above, the officer may send the reconciled data to Customs System for further processing.

Advance Authority Ruling

Kerala GST Advance Ruling Authority held in the proceeding u/s98 in case of M/s. Caltech Polymers Pvt Ltd. Dated 26/03/2018 that GST is chargeable on canteen charges recovered from employees even though the activity is per se was carried out in terms of compliance of Factories Act. It clarified that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of "outward Supply" as defined in 2(83) of the Act of 2017 and therefore is taxable Supply

VAT Updates

- 1) This is to inform you that due date of filing Financial / annual Return and certification (Audit) in form 205 B – C and Form No 217A Respectively for the period 01-04-2017 to 30-06-2017 is extended up to 30th April 2018 (for one Month) . We are thankful to hon.CCT, Sp. CCT, Addl. CCT, J.C Legal and Staff of commissionerate .Official Public circular will be issued on Monday, 9th April 2018 as Hon. CCT is out of town from 4th April 2018 to 8th April 2018 due to GST work and upcoming GST Council Meeting
- 2) GSL/GST/Rule-138(14)/B.11 dated 28/03/2018 the commissioner notifies the whole territory of Gujarat for which no E-way bill will be required to be generated when the movement of goods is for intrastate purpose till further notified on the basis of timelines as per the decision of GST Council
- 3) GHN-33 VAT 2018 –S5(2)(56) Th dated 08/03/2018 notifies sales of Aviation Turbine Fuel to a Twin Engine Aircraft having seating of 9 to 80 which cater to unserved and underserved airport are being exempted from tax exceeding 1% on filling of the form attached to that annexure duly signed by authorized signatory of such airlines. The airports thus covered are Bhavnagar, Porbandar, Bhuj, Keshod, Kandla, Deesa, Amreli, Mehsana, Mandvi, Jamnagar, and Surat.
- 4) Notification No. GSL/GST/Rule-138(14)/B.12 dated 11.04.2018 Notifies the date from which E-Way Bill Rules shall come into force from 15th April 2018 for Intrastate Movement of Goods for listed 19 items only.List of 19 items
 - All kinds of edible oils
 - All kinds of taxable Oil seeds
 - All kinds of oil cakes
 - Iron and Steel
 - Ferrous and non-ferrous metal and scrap thereof
 - ceramic tiles
 - Brass parts and Brass items
 - Processed tobacco and products thereof
 - Cigarette, Gutkha and pan Masala
 - All types of Yarns
 - All types of Plywood, Block Board, Decorative and laminated Sheets
 - Coal including coke in all its Forms
 - Timber and Timber Products
 - Cement
 - Marble and Granite
 - Kota stone
 - Naphtha
 - Light Diesel Oil
 - Tea (in leaf or powder form)

Important VAT Judgments

- 1) In the case of M/s. Ritu Traders SA No 1083 of 2013 decided on 20/07/2016 reported at 2016 GSTB page 321 which deliberates that Input Tax Credit is held admissible though the tax invoice was not included in form 201A submitted by the vendor
- 2) In the High Court of Gujarat in the case of Reliance Industries Ltd v/s State of Gujarat dated 16/03/2018 assessment order were passed on the basis of laid down by Hon., Gujarat High court in the case of State of Gujarat v/s Reliance Industries Ltd. [2013] 58 VST 376(Guj) Such judgment was subsequently reversed by Hon. Supreme Court in the same case of 2017 (12) Scale 75. On the basis of subsequent judgment of Hon. Supreme Court the Assessment Orders were sought to be taken in revision u/s 75 of GVAT Act, 2003 beyond the statutory period of limitation of 3yrs. The revision notices were challenged by filing writ petition before Hon. Guj. High Court, where in they allowed the petitions quashing and setting aside the revision

notices on ground that they were issued beyond the stipulated period of 3 years

- 3) In the Supreme Court of India Civil Appeal No 357-367 of 2018 in Maya Appliances (P) Ltd. V/s Addl. Commissioner of Commercial it was held that the liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The expression "the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as such discount" is not happily worded.

Taxable turnover is turnover net of deductions. All trade discounts are allowable as permissible deductions. In computing the taxable turnover for the relevant years, the appellant would be entitled to a deduction of the trade discount – appeal allowed – decided in favour of appellant

FEMA Updates

[Contributed by **CA. Mehul Talera**]

Compounding of offence under FEMA

1. General, Meaning and source provisions

Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under. The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a) for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted Contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank. Further, in terms of the proviso to rule 8 (2) of Foreign Exchange

(Compounding Proceedings) Rules, 2000 inserted vide GOI notification dated February 20, 2017, if the Enforcement Directorate is of the view that the compounding proceeding relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, being sensitive contraventions, such cases will not be compounded by the Reserve Bank.

2. Compounding petition

The application in the prescribed format along with necessary documents and a demand draft for Rs. 5000/- (Rupees five thousand only) drawn in favour of the "Reserve Bank of India" should be sent to the Reserve Bank of India while sending the request for compounding.

Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is



issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

When a person is made aware of the contravention of the provisions of FEMA 1999 by the Reserve Bank or any other statutory authority or the auditors or by any other means, she/he may apply for compounding. One can also make an application for compounding, suo moto on becoming aware of the contravention

3. Gist of offences which may be compounded generally

- Delay in reporting inward remittance for issue of shares.
- Delay in filing form FC(GPR) after issue of shares
- Delay in issue of shares/refund of share application money
- Violation of pricing guidelines for issue of shares.
- Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause etc
- Issue of shares without approval of RBI or FIPB
- Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident
- Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident
- Transfer of shares by Investee Company in the absence of certified form FC-TRS
- Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA)
- Violation of pricing guidelines for issue/transfer of shares
- Issue of ineligible instruments
- Issue of shares without approval of RBI or Government
- Receiving investment in India from non-resident or taking on record transfer of shares by Investee Company
- Contraventions relating to acquisition and transfer of immovable property outside India

- Contraventions relating to acquisition and transfer of immovable property in India
- Contraventions relating to establishment in India of Branch office, Liaison Office or project office

4. Disposal of compounding petition

The compounding process is completed within 180 days from the date of receipt of the application complete in all aspects, by the Reserve Bank. Whether contravention under the Foreign Exchange Management Act (FEMA) is to be treated as technical and/ or minor or serious would be decided by the Reserve Bank on the merits of the case. The application will be disposed of keeping in view the procedure notified in this regard. Persons who have contravened the provisions of FEMA should not take upon themselves suo moto, or on the basis of external advice to decide whether a particular contravention is technical or minor in nature and, hence, no compounding application need be submitted to the Reserve Bank. If such applications for compounding are not made, the person concerned shall expose himself/herself to such action under the provisions of FEMA as the authorities may deem appropriate. The persons concerned should, therefore, in their own interest submit their applications for compounding of contravention under FEMA to the Reserve Bank at the earliest opportunity.

Whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice; (ii) whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

5. Appearance for Compounding

It is not mandatory to attend the personal hearing. In case a person opts not to attend the personal hearing he may indicate his preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority. It may be noted that appearing for or opting out of the personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order.

The applicant may authorize through proper written authority for appearing legal expert/consultant on behalf.

6. Order of Compounding

The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the amount imposed. Compounding orders passed on or after June 1, 2016 are published on the RBI's website.

The sum payable for compounding should be paid within 15 days from the date of the order by way of a demand draft drawn on "Reserve Bank of India" and payable at the Regional office which has issued the

compounding order. In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the Directorate of Enforcement for necessary action.

On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority. There cannot be a second adjudication by any authority on the contravention compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention compounded.

7. Appeal against Compounding orders

As compounding is based on voluntary admissions and disclosures, there is no provision under the Compounding Rules for an appeal against the order of the Compounding Authority or for a request for reduction of amount compounded or extension of period for payment of the amount imposed.

Lets excel in excel !

(Contributed by **CA. Hemlata Dewnani**)

HOW TO USE CONDITIONAL FORMATTING IN AUDIT

Normally we have a large size data in raw form. It would be extremely difficult to see patterns, trends and as a Auditor Queries also just from examining the raw information. Similar to charts and sparklines, conditional formatting provides another way to visualize data and make worksheets easier to understand.

Conditional formatting allows you to automatically apply formatting—such as colors, icons, and data bars—to one or more cells based on the cell value. To do this, you'll need to create a conditional formatting rule. For example, a conditional formatting rule might be: If the value is More than 10000 in cash ledger (Required as per **section**

40(A)(3) of Income Tax Act, 1961 to disallow the same) color the cell red. By applying this rule, you'd be able to quickly see which cells contain values More than 10000 After this you have to apply filter by colour through Data → Filter → Filter by colour and choose the red colour from it. That's it now you can have cash expenses more than 10000 in a day at one place highlighted with red colour i.e Query sheet for cash expenses more than 10000 a day.

In our example, we have a cash book containing cash expenses and income data, and we'd like to see Expenses greater than 10000, so we'll create a conditional formatting rule for any cells containing a value higher than 10000.



From the Hometab, click the Conditional Formatting command. A drop-down menu will appear. Hover the mouse over the desired conditional formatting type, then select the desired rule from the menu that appears. In our example, we want to highlight cells that are greater than 10000. A dialog box will appear. Enter the desired value(s) into the blank field. In our example, we'll enter 10000 as our value.

Select a formatting style from the drop-down menu or can go with Custom format also (to be prepared as per our specific requirements). In our example, we'll choose Light red Fill with Dark Red Text, then click OK. The conditional formatting will be applied to the selected cells. In our example, it's easy to see which Cash expenses more than 10000.

You can apply multiple conditional formatting rules to a cell range or worksheet, allowing you to visualize different trends and patterns in your data.

Actually we want to Highlight something from a large size data with specific conditions, rules or values. So it gives options such as

1) Numerical conditions

For this we can use Greater than (10000 cash limit as explained in detail, less than (scrap value in Fixed

Assets to stop Depreciation working if it reached at that level), between (To find income tax slabs applicable) and equal to (Specific rule) etc

2) Related To Text

We can use Text that contains

3) For Dates

We can use a date occurring as a Due date **reminder**. In this suppose we want to have **reminder** of 07/05/2018 as Tds deposit date for April 2018 than we have to select next week in contains and Formatting style as per choice. Then it will get Highlighted before a week

4) Duplicate values

The most important and useful tool used to know data **Duplication** errors. For e.g. we can use this on cheque numbers issued to the client or sales invoice number in sales register etc.

Now if we want to remove it then follow the steps :

If you want to remove the formatting from whole sheet or specific area then Home → Conditional Formatting → Clear rules → select the option from the list. If you have applied Multiple formattings then go with Manage rules option you will get all rules list in which you can edit or delete individual rules as per requirement.

Motivational Story

(Contributed by CA. Neelo Porwal)

The Struggles in Life

Once upon a time, a man found a butterfly that was starting to hatch from its cocoon. He sat down and watched the butterfly for hours as it struggled to force itself through a tiny hole. Then, it suddenly stopped making progress and looked like it was stuck.

Therefore, the man decided to help the butterfly out. He took a pair of scissors and cut off the remaining bit of the cocoon. The butterfly then emerged easily, although it had a swollen body and small, shriveled wings.

The man thought nothing of it, and he sat there waiting for the wings to enlarge to support the butterfly. However, that never happened. The butterfly spent the rest of its life unable to fly, crawling around with small wings and a swollen body.

Despite the man's kind heart, he didn't understand that the restricting cocoon and the struggle needed by the butterfly to get itself through the small hole were God's way of forcing fluid from the body of the butterfly into its wings to prepare itself for flying once it was free.

Moral of the story: Our struggles in life help to develop our strengths. Without struggles, we never grow and get stronger, so it's important for us to tackle challenges on our own, and not rely on help from others all the time. Someone's kindness may help you survive but to prosper you need to put in your own hardwork, perseverance, sacrifices, learning, loyalty and patience.

Never Fear Good Struggles – They Come When You're Doing The Right Things!



Forth coming Events

S. N.	Date	Name of the Seminar, Lecture Meeting, Etc.	Venue	Program Details	Fees	CPE
1	Saturday, 21st April, 2018	Seminar on Income Tax	Fire & Flames, 4th Floor, Apha One Mall, Opp. Vastrapur Lake, Vastrapur, Ahmedabad	https://icaiahmedabad.com/register.php?id=MTAzMA==	Rs. 200/- + GST for Members Gyansetu Study Circle Members 2018 – 2019 Rs. 1500/- + 18 % GST for Members	3
2	Saturday, 21st April, 2018	Lecture Meeting on Gst	Shantinath Hall, ICAI Bhawan, 123 Sardar Patel Colony, Naranpura, Ahmedabad	https://icaiahmedabad.com/register.php?id=MTAzNw==	Rs. 150/- + 18% GST	2
3	Friday, 27th April, 2018 to Saturday, 5th May 2018	Summer Cricket Carnival	M.K. Farm and Shantam	https://icaiahmedabad.com/event.php?id=MTAzOQ==	As per circular	-
4	Saturday, 28th April, 2018	Study Group on Forensic Accounting & Fraud Detection	Shantinath Hall, ICAI Bhawan, 123 Sardar Patel Colony, Naranpura, Ahmedabad	https://icaiahmedabad.com/event.php?id=MTAzNA==	Rs. 1200/- + 18 % GST per member	Propose 20
5	Saturday, 28th April, 2018	Workshop on Digital & Social Media-The New Found Tool For Business Success	Shantinath Hall, ICAI Bhawan, 123 Sardar Patel Colony, Naranpura, Ahmedabad	https://icaiahmedabad.com/event.php?id=MTA0MA==	Rs. 150/- + 18% GST Only for Women CAs	2
6	Saturday, 28th April, 2018	Lecture Meeting on Crypto Currency	Shantinath Hall, ICAI Bhawan, 123 Sardar Patel Colony, Naranpura, Ahmedabad	https://icaiahmedabad.com/event.php?id=MTA0NA==	Rs. 150/- + 18% GST	2
7	Saturday, 12th May, 2018	Certificate Course on Concurrent Audit Of	Banks Details to be confirmed later	https://icaiahmedabad.com/event.php?id=MTAzOA==	For Members of ICAI (other than Young Members Rs. 12,500 per participant + 18% GST For Young Members* of ICAI Rs. 10,000 per participant + 18% GST	30



AHMEDABAD BRANCH OF WIRC OF ICAI

AUDIT



Holi Celebration on 02.03.2018



Lecture Meeting on Derivative Transaction on 05.03.2018



Open House on Income Tax at GCCI on 07.03.2018



Womens day Celebrations - Aerobics Dance to Express on 08.03.2018



Seminar on Bank Branch Audit on 08.03.2018



Orientation Programme for Newly Qualified Chartered Accountants on 09.03.2018



Seminar on GST - Exports under GST (Incl. Refunds) on 10.03.2018



Seminar on Bank Branch Audit on 16.03.2018



Seminar on Real Estate-Affordable Housing Projects on 17.03.2018



Lecture Meeting on GST on 24.03.2018



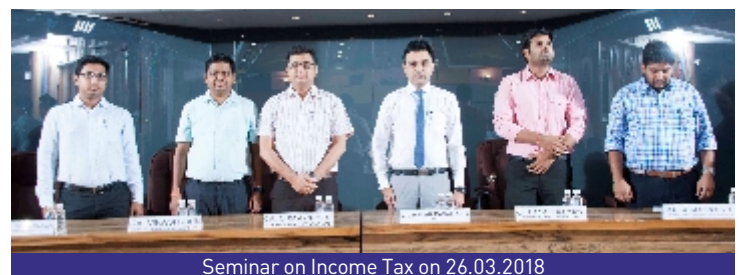
Open House on Income Tax on 21.03.2018



Bank Branch Seminar The Technological Aspects on 23.03.2018



BITCOIN on 25.03.2018



Seminar on Income Tax on 26.03.2018



Seminar on Bank Branch Audit on 29.03.2018



AHMEDABAD BRANCH OF WIRC OF ICAI



GST Series on 19-22, 26, 28 & 29.03.2018



Womens Day Celebration on 10.03.2018

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