



THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA
(SET UP BY AN ACT OF PARLIAMENT)

INTERNATIONAL

Women's
Day

8 MARCH



2022 MARCH

E-NEWSLETTER

THRISSUR BRANCH

OF SOUTHERN INDIA REGIONAL COUNCIL
OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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NEWSLETTER IN CHARGE
& SICASA COORDINATOR

CA. DIVYA DHARMARAJAN

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EDITOR'S DESK



Dear Members,

I am extremely honoured to be penning down my first ever Editorial note. I write to you in the wee hours of night when the entire household is asleep, while I relish the tranquillity of my solitude. This is that time of the day when I am able to think without any distractions, with only the chirping sound of nocturnal creatures in the background.

My heart is full of gratitude and excitement to be a part of such a vibrant team. I thank the Managing Committee Members –

- CA Ajith Kaimal : Chairman,
- CA Jeen Paul : Vice Chairman,
- CA Satheesh T G : Secretary,
- CA Paulson E M: Treasurer and
- CA Anoop V Francis: SICASA Chairman

for placing faith in me and considering me apt for this role. The previous Managing Committee has done a fantabulous job in all aspects; hence it is pertinent note that we have big shoes to fill in now.

"Forever - is composed of Nows"- (Emily Dickenson's poem)
Every small moment is happening **"Now"** and collectively adds up to a **"forever or a lifetime."** What seems so intangible and distant is being created out of our experiences at this very moment.

We, the members of the Managing Committee of the Thrissur branch of SIRC of ICAI (2022-25) hope that we can create many **"Nows"** that will last **"Forever"** in the honour of our BRANCH.

On the occasion of International Women's Day (8th March) I take this opportunity to wish our lady members a very Happy Women's Day. Society usually lauds women for being an expert "multitasker". Studies point out that the myriad activities crammed into a woman's day is likely to make her tired. So members let's take one activity/day at a time and focus more on our mental and physical wellbeing. Let us rather multitask our feelings- to be happy, be generous, be empathetic and a lot more simultaneously. This can help to spread positivity around us too...

In this edition we have an article by Dr CA Santhakumar K covering the issues posed by the Faceless Appeal Scheme and an Analysis of Union Budget Provisions by CA Mini Chandran. We also have a brief coverage of the honouring ceremony of 3 very inspiring women which was arranged by the Women's Club of Thrissur as a part of Women's Day.

I wish you all an incredibly happy reading experience! Also looking forward to constructive criticism and feedbacks!

Thank you

CA Divya Dharmarajan
Newsletter In-charge and SICASA Coordinator

CHAIRMAN'S MESSAGE



My Dear Professional Colleagues,

The New office bearers of our branch for the year 2022-23 took charge on 16th February 2022. The new office bearers are

CA AJITH KAIMAL R - Chairman
CA JEEN PAUL - Vice Chairman
CA SATHEESH T G - Secretary
CA PAULSON E M- Treasurer
CA ANOOP V FRANCIS - SICASA Chairman
CA DIVYA DHARMARAJAN – SICASA Coordinator
and Newsletter In charge

I thank all the members of the branch for electing me as a Managing Committee member and the Managing Committee members for electing me as the Chairman for the year 2022-23. I am overwhelmed with a sense of pride and at the same time responsibility towards this noble profession.

At this juncture let me congratulate the new torch bearers of ICAI at the Central Council and SIRC. In recent time we had several positive news coming in for the Thrissur branch. The first and the foremost was the conclusion of more than three-decade year old wait for a representation from Thrissur Branch in the regional committee. CA Satheesan P our very own member got elected into SIRC. The second came when he got elected to the office bearer post of SICASA Chairman of SIRC of ICAI. The third positive news that shortly came in was when our branch was declared as the the Best Branch among the Medium category branches of SIRC (Best Branch of SIRC Awards-2021) and also received accolades as the Best Branch Award for the Medium category (Best Branch of SICASA Awards-2021). I do acknowledge the contributions of the outgoing committee members role for the awards received.

We know that our CPE programmes and study circle meetings had been on Virtual Mode from the time the COVID pandemic started. We have been getting multiple

requests to conduct Physical programmes. Heeding the same we are moving into a hybrid mode through which members can either attend the seminars physically and those who cannot, can enjoy the same virtually. We seek the active support of our branch members to carry these out in the most effective manner possible. We are particular this year on conducting non- conventional VCM's. I do take this opportunity to invite suggestions on different topics that you need to get enlightened on.

When anybody talks about Thrissur branch what gets highlighted first are our student/academic activities which is considered one of the best in South India. We offer quality classes at an exceptionally low affordable cost to our students and we have many students who enjoy their education based on the scholarships/ minimised fee as decided and offered by the MC from time to time. As a student centric branch, we have started full-fledged physical classes along with online classes.

I would like to conclude by saying that the giants on whose shoulders we the new managing committee stand gave us the foundation which now allows us to foster and to encourage the development of our relationships with our stakeholders and members. I am confident that the Managing Committee and Office staff are the right people to lead this organisation and to determine our strategic direction. I am looking forward to my first term as Managing Committee Chairman, knowing that these are the people alongside whom I shall be working for the betterment of our branch and our profession.

We are about to reach the closure of the financial year and concluding the tireless schedules and waiting for the Bank Audit assignments. I wish all the practising members a good bank audit season. I also wish others a happy financial year end.

CA AJITH KAIMAL R
CHAIRMAN

DECODING THE FACELESS APPEAL SCHEME (PART-2)



Dr. CA. K. SANTHAKUMAR

In the first part of the article, I have covered how the scheme of faceless appeal is laid down and the attendant procedures thereto.

In this second and the concluding part, I shall touch upon the issues the new scheme poses.

1. Constitutional Validity – Natural Justice

The Hon'ble Delhi High Court in the case of **Lakshya Budhiraja v. UOI & Anr. W.P.(C) 8044 of 2020 (Del) (HC)** has issued notice on October 16, 2020, on the grounds of the Petitioner that the mechanism where the approval of the Chief Commissioner or the Director General of Income-tax is required for video conference facility is discriminatory in nature and is against the settled principles of law and in violation of the Article 14 of the Constitution of India, as it gives them the discretion to deny the same and that no person should be judged without a fair hearing in which each party is given an opportunity to respond to the evidence against them. Similarly, the Hon'ble Orissa High Court in the case of **Cuttack Tax Bar Association v. UOI W.P.(C) No. 33457 of 2020 dated March 09, 2021** has challenged the Central Government Notification for Faceless Appeal on various grounds. The matter is admitted.

2. Natural Justice – Right to Inspect Records

In the case of **Suraj Mall Mohta and Co. v. A. V. Viswanatha Sastry (1954) 26 ITR 1 (SC)**, the Hon'ble Supreme Court has ruled that assessment proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at. The assessee has a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provision of the Income-tax Act. The Supreme Court in the case **Suresh Chandra Nanhorya v. Rajendra Rajak & Ors. (2006) 7 SCC 800 (SC)** held that Natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied

unoccupied interstices of the statute unless there is a clear mandate to the contrary.

Accordingly, the Authorities are bound to follow the principle of natural justice while deciding the appeal though under the faceless scheme.

3. Natural Justice – Speaking Order

As per section 250(6) of the Act it is the duty of the Commissioner (Appeals) to state point in dispute, record the reasons and pass a speaking order.

The Hon'ble Supreme Court in the case of **Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan (2010) 9 SCC 496** and **Canara Bank v. V. K. Awasthy (2005) SC 2090** has held that non speaking orders by Tribunal as well as Commissioner (Appeals) is violative of the principles of natural justice and liable to be set aside.

Accordingly, under the faceless appeal scheme the Authorities are bound to pass the speaking order.

4. Applicability of Jurisdictional Precedents

As per the Article 227 of the Constitution of India, every High Court shall have

superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

The Hon'ble Supreme Court in the case of **East India Commercial Co Ltd v. Collector of Customs, AIR 1962 SC 1893** held that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence and they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. Therefore, where the action of the authority is contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.

Similarly, the AU is bound by the decision of the Tribunal which has jurisdiction over the appellant.

Therefore, irrespective of dynamic jurisdiction, the judicial precedents applicable to the appellant should be applied by the AU on an appellant-to-appellant basis.

5. Compromising The Independence And Judicial Autonomy – Review Of Draft Order

The Hon'ble Bombay High Court had quashed this offending part of the central action plan in order to preserve the independence of the Commissioner of Income Tax (appeals) in the case of **Chamber of Tax Consultants v. CBDT** [2019] 416 ITR 21 (Bom)(HC). The review of draft order by another AU is compromising of the quasi-judicial functions of the Commissioner (Appeals).

6. Clarification on Ex-Parte Orders – To Be Passed On Merit

The scheme does not envisage an incidence of ex-parte hearing. The Hon'ble High Court of Bombay in the case of **CIT v. Premkumar Arjundas Luthra (HUF)** [2017] 297 CTR 614 (Bom) (HC) held that Commissioner (Appeals) is required to apply his mind to all issues which arise from impugned order before him whether or not same had been raised by appellant before him. The law does not empower Commissioner (Appeals) to dismiss appeal for non-prosecution.

7. Fragmentation of Quasi-Judicial Powers – Power to Stay Demand

The decision of the Hon'ble Bombay High Court in case of **UTI Mutual Fund v. Income-tax Officer** [2012] 345 ITR 71 (Bom)(HC), **KEC International Ltd. v. B.R. Balakrishnan and others** 251 ITR 158 (Bom) (HC), and **Coca Cola India P. Ltd. vs. ACIT** (2006) 285 ITR 419 (Bom) (HC) have held that that there is no memorandum or legislative sanction mandating a pre deposit of 20 percent of the demand for a stay on demand and directed the Department to follow the guidelines prescribed in these decisions viz. Merit of the case, financial position of the appellant, high pitch assessment etc.

Evaluation of these parameters were the function of the Commissioner (Appeals) before whom the appeal is pending. Now, the Scheme has not envisaged the provisions pertaining to a stay of demand. This creates a fragmentation of functions and also does not uphold the spirit of faceless appeals.

8. No Specific Provision for Early Hearing

The Scheme has not laid down any procedure for an appellant to apply for an early hearing. However, the

Commissioner (Appeals) has the inherent power to give an early hearing due to urgency of the matter. In an appropriate case the appellant can make an application for an early hearing of the appeal. In case the application is rejected or not responded the appellant can approach the High Court by filing Writ Petition. It is desired that the CBDT throws some clarification with respect to an application for early hearing vis-à-vis the Scheme.

9. Clarification on Signing Authority

The Scheme states that NFAC will pass the final appeal order and communicate such order to: the Appellant, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as per section 250(7) of the Act; and NeAC or AO for such action as may be required under the Act.

The Scheme is silent about the signing authority of the Order. Ideally, the same should be done by the Commissioner having jurisdiction over the appellant.

10. Clarification on Sanction For Initiation Of Prosecution

Section 279 of the Act deals with power to sanction the prosecution. Section 279(1) of the Act also refers to the Commissioner (Appeals) as a sanctioning authority. The Income-tax department's manual deals with various guidelines to be followed before launching prosecution proceedings. According to the same, The Assessing Officer based on the records of the assessee sends the proposal to the respective Commissioner. The Commissioner issues the show cause notice to the assessee. If Commissioner is satisfied with the reply of the assessee he may not grant sanction to the Assessing Officer to file complaint before the Court, and vice versa. There is no clarity with respect to the powers of the AU or NFAC to issue a Notice to the assessee on the basis of reasons recorded by the assessment unit or NeAC.

Further, when a matter is contested before the Magistrate Court the accused may request for summoning of witness i.e., who has launched the prosecution. Under the faceless assessment/appeals scheme, it is still unclear how the provisions of Code of Criminal Procedure, 1973, will be complied with. The Board needs to provide some clarity on this subject as the traditional hierarchy is no longer in place.

11. Lack Of Opportunity For Representation – Additional Ground & Additional Evidence

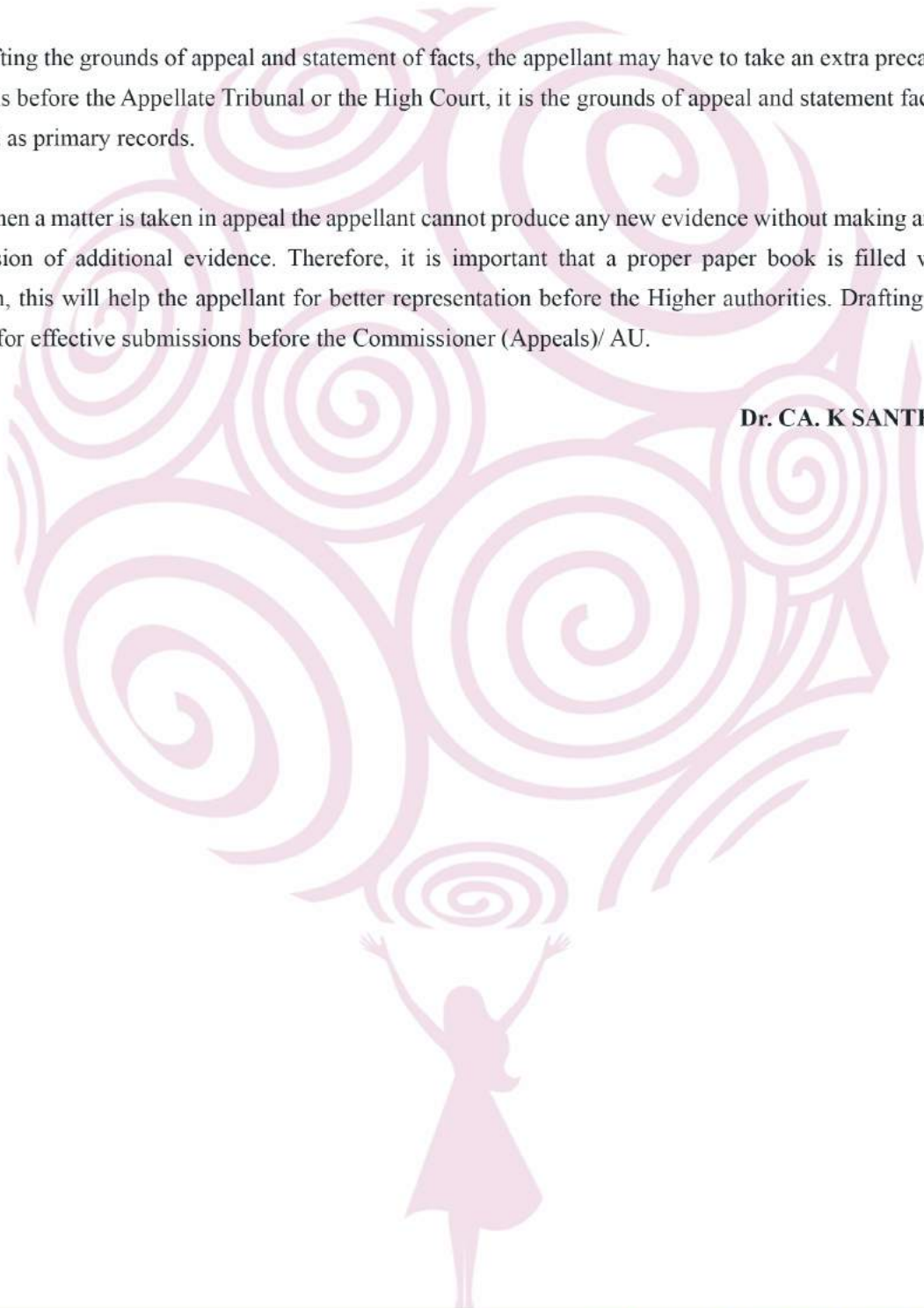
The report of NeAC or AO on the admissibility or rejection of additional ground/evidence is to be shared with NFAC and with appeal Unit. Only after receipt of such report, appeal unit may admit or reject the additional evidence/ additional grounds furnished/filed before it.

There is no provision for the Appellant or its representative to rebut the adverse report if any made by the NeAC or AO. This is a violation of principles of Natural justice, Audi Alteram Partem i.e., no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

While drafting the grounds of appeal and statement of facts, the appellant may have to take an extra precaution. When an appeal is before the Appellate Tribunal or the High Court, it is the grounds of appeal and statement facts which are considered as primary records.

Further, when a matter is taken in appeal the appellant cannot produce any new evidence without making an application for admission of additional evidence. Therefore, it is important that a proper paper book is filled with detailed submission, this will help the appellant for better representation before the Higher authorities. Drafting skill is very important for effective submissions before the Commissioner (Appeals)/ AU.

Dr. CA. K SANTHAKUMAR



HUMPTY DUMPTY

BUDGET 2022



CA. MINI CHANDRAN

Non-alignment in section 43CA/50C vs 194IA in the Budgetary Provisions

The Finance Bill, 2022 proposes to amend section 194IA with a view to remove inconsistency in the provisions of section 194IA and section 43CA/50C.

1. First take

Section 43CA/50C deems the stamp value as per registration authorities to be the sale consideration in case the actual sale consideration on transfer of land or building or both happens to be lower than the same. Section 43CA covers business income arising from real estate business and section 50C covers capital gains arising on transfer of immovable property, both being analogous sections.

If assessee disputes that the actual consideration being lower than stamp value is the fair value of the property, then the assessing officer shall refer the case to valuation cell within the department calling for a verification of the same.

If we recollect there was a ruckus raised that the department invoked section 43CA/50C disregarding even smallest variations between the actual sale consideration vs the stamp value thereby seeking/invoking departmental valuation provisions.

Taking into account this anomaly and an element of practicality on account of frivolous cases being triggered Finance Act, 2020 w.e.f 1-4-2021 increased the tolerance limit of 5% to 10% whereby the difference of 10% (either ways) between the actual sale consideration and stamp value would be acceptable for such transactions under section 43CA/50C for the purposes of computing business income as well as capital gains. The provision of increasing the tolerance limit of 10% from 5% has been judicially held to be retrospective in nature on the reasoning that it was an ameliorative provision to mitigate hardship of assesses. So is the provision imposing limit of 5% as well to be read right from the inception of section 50C/43CA.

Besides above, to enable assesses in real estate business, liquidate piled up of inventory of residential units; section 43CA inserted a further provision via Finance Act, 2021 (Covid relief act) w.r.e.f 1-4-2021 specifying a tolerance of 20% from the stamp value if the transfer of residential units happened between 12-11-2020 to 30-6-2021 (post Covid lock down period) for first allotment of residential units with consideration of each unit not exceeding Rs. 2 crores.

In cases where the date of sale is different to the date of registration of the agreement, the stamp value on date of agreement for may be taken as the value of consideration under both sections 43CA/50C.

2. Current TDS provisions

TDS provisions under section 194IA warrant 1% TDS deduction on sale of immovable property upon payment to a resident transferor based on the sale consideration exceeding Rs. 50 lakhs.

If the sale consideration is less than Rs. 50 lakhs then no TDS deduction will be required. The value of actual consideration will form the basis of the TDS deduction.

Similar separate TDS provisions don't exist for non-residents. Rather under section 195 a non-resident transferor needs to go apply for a lower tax deduction certificate on his property sale to avail lower TDS rates instead of flat 20% on the sale consideration.

This is how provisions stand as on date.

3. Budgetary amendment proposed

The Finance Bill, 2022 amends section 194IA by aligning the aspect of stamp value as the value of consideration even for TDS if the actual consideration happens to be lower. In case the stamp value and the actual consideration both are lower than Rs. 50 lakhs then TDS obligations will not arise. On the contrary if either of this exceeds Rs. 50 lakhs and that being the stamp value along exceeding more than Rs. 50 lakhs instead of the actual consideration still being lower than Rs. 50 lakhs then also the obligation

to do TDS will remain henceforth w.e.f 1-4-2022.

Memorandum explaining the provisions of the Bill state that this is being done to align stamp valuation into the provisions of section 194IA.

It is quite likely that non-residents applying for lower tax deduction certificate will also get exposed to similar provisions as per the budget thru departmental internal processes under the Act. Anyways TDS is only a protective assessment in such cases of non-residents.

4. The flaw

It is trite to say that TDS provisions are only one way to recover taxes and there is always an element of approximation on the same given the fact that property sale has various aspects like sale consideration, cost of sale, indexation etc. in its computation. Bereft these on protective assessment basis, a 1% value is fixed as the consideration for the TDS.

The legislature has missed considering the tolerance limit as per section 43CA/50C under the provisions of section 194IA, the result being assessee's will have to cough up the tax as per the stamp duty and then take it up in the assessment/return even if there is even a small variation to stamp value. The registration of the property may happen at a different time and the law under section 43CA/50C also says the stamp value on date of registration of the agreement might be taken as the stamp value for the purposes of section 43CA/50C in case the date of sale is different. This aspect is missed in the budgetary provisions of section 194IA. Buyers of property will also need to check the onerous responsibility of stamp value prior to doing TDS as well unnecessarily complicating the provision. As to section 43CA/50C existing, they are anti-evasion provisions to catch variations on stamp value being more than actual sale consideration without an underlying logic upon sale of property. They need not necessarily be aligned with TDS provisions where simplicity is what is required.

Simplification of taxes is a conscious exercise to be done after considering a 360-degree review of any provision which is getting amended. This has been missed while drafting this provision. In all earnest hope, it is better if this provision is recast even if it were to be aligned in a more logical manner to fit the tolerance limits and the carve outs of section 43CA/50C as well prior to the Bill becoming an Act.

Levy of interest for delayed payment of tax in the GST portal

One way Interest Calculator in GSTR-3B, is it justified?

Goods and Service Tax network (GSTN) is the backbone of Goods and Service Taxes, which is the interface between the taxpayers and the government of tax compliance. The entire process of GST is online, starting from registration to the filing of returns, assessments, adjudication and appeals.

The State Goods and Services Tax department is switching over to the GST Network (GSTN) back office system from Tuesday (March 1).

Finance Minister K. N. Balagopal on Monday inaugurated the migration to the common GSTN platform from the National Informatics Centre (NIC)-developed software so far used by the State.

The Government cites, "the migration to the Model-2 Back Office Software will help avoid delays in adapting the State-level tax mechanism to decisions taken by the Centre and the GST Council, ensure transparency in accounting and plug leaks in tax revenues. In the initial days of the GST, Kerala and some other States had used the NIC software, which was advanced for its time. But during the course of time, GSTN has developed its own system and upgraded it. It is now better that the Centre and States are on a compatible platform, especially since the IT backbone is the most important part of GST,"

Ready access to data is a major advantage of the new system. The State department will also have access to an extensive management information system (MIS) and GSTN's business intelligence and fraud analytics (BIFA). But how far it is helpful to the Taxpayer is yet to be cracked.

Recently GSTN has released the interest calculator functionality in monthly tax payment Form GSTR-3B to facilitate taxpayers in doing self-assessment. This functionality will assist taxpayers in calculating the interest applicable for delayed payment of tax. Taxpayers will have to verify and discharge the correct interest liability as per law, as payment of interest is a statutory compliance. Yes, of course we appreciate the move of government to provide this facility in the direction of further further reducing the compliance burden of

but it is one side of the coin. Similar facility should be provided to the taxpayers in case of refunds. It has been observed that the refunds are not at all owed timely to the taxpayers and if the refunds are given, the interest for delayed payment of refund by the department is not allowed to the taxpayers.

Relevant Provision

Pursuant to Section 50 of the CGST Act, 2017 interest is payable for delayed payment of GST. The interest computed by the GST portal has been developed as per provisions of Section 50 of the CGST Act, 2017.

The interest applicable will be auto-populated in the Table -5.1 of the GSTR-3B of the next tax period. The facility would be similar to the collection of Late fees for GSTR-3B, filed after the due date, posted in the next periods GSTR-3B. This functionality will inform the taxpayers about the manner of system computed interest for each tax head and hence will assist the tax payers in doing correct computation of interest for the tax liability of any past period declared in the GSTR-3B for the current tax period.

Interest Calculator

Consequently, interest liability for respect of supplies made during the tax present tax period and declared in the GSTR-3B for this period will be calculated on that portion of the tax, which is paid by debiting the electronic cash ledger, i.e., tax paid in cash. With respect to the liability pertaining to the previous tax periods and paid in later GSTR-3B, the interest will be computed for the entire liability, whether paid by debiting the electronic cash ledger or electronic credit ledger.

The system will not stop the users from changing the system computed interest values.

However, the system will warn the taxpayers on downward editing of the interest values in any tax head. On downward editing of values, the concerned cell will become Red and the system computed value will also be shown during mouse hovering to caution the taxpayer from making a mistake.

Refund mechanism under GST

Pursuant to Section 54 of the CGST Act, 2017, GST refund is a process in which, registered taxpayers could claim excess amount if they paid more than the GST

liability. They can claim after submitting a refund application with the necessary details in the GST portal and the same shall be processed electronically.

It is pertinent to note here that the cash flow and working capital requirements of every registered taxpayer could be adversely affected if a refund is delayed. As a result, one of the intentions to implement GST is to ensure that the refund process is smoother so that the taxpayers do not face issues due to delays. Therefore, a proper refund mechanism is necessary for effective tax administration, as trade is facilitated via the release of blocked finances for modernization, expansion, and working capital requirements of a business.

Non clarity of time limits specified under law

As per the provisions under GST, in case of a refund other than a cash ledger refund, the officer is required to issue an acknowledgement within 15 days of filing the application if he is satisfied that the application is complete in all respects and where the officer is satisfied that the whole or part of amount claimed as refund is refundable, he is required to issue order within 60 days from the date of application complete in all respects.

In case where deficiencies are noticed, the proper officer shall issue deficiency memos. Further there are no timelines specified under the law for issuing deficiency memo.

However, practically, these timelines are not being adhered to, and neither acknowledgement nor deficiency are being issued in certain refund applications for more than a year. Thus, the very purpose of introducing the timelines, i.e., faster refunds, is way far to achieve. Further, the Government has to come again and again with some special drives for closing a larger number of pending refund cases due to such lacunae of law.

During refund proceedings, the proper officer has to issue a deficiency memo if any correction is required to be made by the taxpayer. The said clarification or additional information can be obtained through a notice issued via GST Portal. However, multiple notices are being sent directly on the mail IDs of taxpayer seeking multiple clarifications through various letters.

However, there is no update on the portal, and the status quo of the application remains the same as pending. As per legal provisions, once the officer issues deficiency memo, fresh refund application needs to be filed.

There is no provision in GST that allows to rectify the deficiencies specified by the officer. In some cases of refund like inverted duty structure, filing a fresh application is a tedious and time consuming task that leads to delay in refund and also creates a lack of confidence amongst taxpayers. There is no statutory time limit for grant and payment of refund by the tax authorities.

The Government should come up with proper and speedy mechanism for payment of refund along with interest where the payment of refund is delayed to taxpayers.

Proposed substitution of Section 38 in GST Act,2017

In regard to proposed changes in GST Law most important change is substitution of Section 38 under CGST ACT. Presently, Section 38 relates to Furnishing details of inward supplies in return which never came into effect.

Purpose of the Section was empowering recipient of goods to change the details furnished by the supplier through GSTR-2. Now proposed Section Communication of details of Inward supplies and Input Tax Credit-the objective of the proposed change is to do away with two way communication process in return filing. Effect of this would be communication of details of Inward Supplies and Input Tax credit to recipient of goods or services through an auto generated statement which would be generated on the basis of details filed by supplier u/s 37. At present similar details are generated in the Form of GSTR-2A and GSTR-2B. Through the proposed Section vide statement generated, the recipient of goods or services shall get the following two details:

- 1.Details of inward supplies on which ITC may be claimed and
- 2.Details of inward supplies on which ITC cannot be claimed wholly or partly.

Effect of the proposed Section 38 on claim of ITC by the recipient:

As the effect of the proposed change, recipient of supplier shall be wholly dependent on tax compliances done by supplier for claiming ITC. At present, recipient of supply gets the details of inward supply and ITC on the basis of which can be claimed. Now he will also get the details of supplies on which ITC cannot be claimed wholly or partly.

Through Finance Act,2021 Clause (aa) after Section 16(2)(a) was inserted which recently came into force from 01/01/2022 vide Notification No.39/2021-CT.Through this change ,fifth condition for claim of ITC is made effective which is that supplier has mentioned details of Invoice and debit note in GSTR-1 or IFF and same has been communicated to recipient of such invoice or Debit note, which means unless the ITC gets auto populated in GSTR 2B, as per amended Rule 36(4)(b) credit cannot be claimed. Now further a sixth condition has been proposed in budget. Clause (ba) has been inserted after Section 16(2)(b). The newly proposed clause read as “the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted”. Accordingly, the claim of ITC is restricted to the amount available as per Section 38.

Is the proposed Section 38 justified?

It is the responsibility of the Government to make sure correct enforcement of Law and order in the country. Through proposed Law it seems that Government wants to fix the responsibility on recipient of supplies to make sure that its supplier is tax compliant. A person can either do business or keep an eye on his supplier. In past there has been many Supreme Court /High Court decisions where it has been held that once the registered person has done all the compliances on his part, ITC cannot be denied for the mistake of supplier.

The Government is trying to unsettle the settled the position of Law.

Instead of taking recourse to the settled case laws in the Finance Act, the Government has played a punitive role also questioning the justice of the tax obligers.

CA. MINI CHANDRAN

“SALUTING THE LADIES WHO HAVE TURNED IMPOSSIBLE TO POSSIBLE”

ON ACCOUNT OF INTERNATIONAL WOMEN’S DAY , THE WOMEN’S
CLUB OF THRISSUR BRANCH OF SIRC ALONG WITH THRISSUR
BRANCH OF SIRC OF ICAI HONORED 3 WOMEN OF
EXTRAORDINARY CALIBRE AND PROWESS.



PROF. DR BHANUMATHI P- FOUNDER AND SECRETARY FOR MENTALLY
HANDICAPPED ADULTS (AMHA), KARYATTUKARA , THRISSUR – AN
EXEMPLARY ROLE MODEL WHO DEVOTED HER LIFE
WORKING FOR THE WELFARE OF POOR AND
MENTALLY CHALLENGED ADULTS.

“SALUTING THE LADIES WHO HAVE TURNED IMPOSSIBLE TO POSSIBLE”

ON ACCOUNT OF INTERNATIONAL WOMEN’S DAY , THE WOMEN’S CLUB OF THRISSUR BRANCH OF SIRC ALONG WITH THRISSUR BRANCH OF SIRC OF ICAI HONORED 3 WOMEN OF EXTRAORDINARY CALIBRE AND PROWESS.



PADMA SHRI RECIPIENT – DR SOSAMMA IYPE – A DISTINGUISHED VETERINARIAN WHO DEDICATED HER LIFE FOR THE CONSERVATION OF THE ALMOST EXTINCT VENCHUR CATTLE BREED.

“SALUTING THE LADIES WHO HAVE TURNED IMPOSSIBLE TO POSSIBLE”

ON ACCOUNT OF INTERNATIONAL WOMEN’S DAY , THE WOMEN’S CLUB OF THRISSUR BRANCH OF SIRC ALONG WITH THRISSUR BRANCH OF SIRC OF ICAI HONORED 3 WOMEN OF EXTRAORDINARY CALIBRE AND PROWESS.



SMT. GEETHA SALEESH – A VISUALLY IMPAIRED ENTREPRENEUR
WHO HAS BEEN A GUIDING LIGHT TO MANY TO PURSUE
ONE’S DREAMS DESPITE FACING CHALLENGES.

Glimpses

FEB 22



04.02.2022

WEBINAR ON "UNION BUDGET 2022"

SPEAKERS: CA. VENUGOPAL C GOVIND ,KOCHI. DR. CA.ABHISHEK MURALI ,CHENNAI.
PROF. DR. V K VIJAYAKUMAR, THRISSUR.



08.02.2022

VCM ON BUDGET 2022 – CLAUSE BY CLAUSE ANALYSIS OF DIRECT TAX PROPOSALS
SPEAKER : CA. V RAMNATH, COIMBATORE

Glimpses

FEB 22



09.02.2022

VCM ON BUDGET 2022 – INDIRECT TAX PROPOSALS

SPEAKER: CA. TONY M P (THRISSUR)



24.02.2022 INSTALLATION OF NEW OFFICE BEARERS 2022-23,
CHIEF GUEST- CA.RAJENDRA KUMAR P. CENTRAL COUNCIL MEMBER,
GUEST OF HONOUR CA. CHINA MASTHAN THALAKAYALA (CHAIRMAN , SIRC OF ICAI),
CA. SATHEESAN P (CHAIRMAN SICASA, SIRC OF ICAI)



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