



**THE KOLHAPUR BRANCH OF
WIRC OF THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA**



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Branch Address

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CA Tushar Anturkar
Chairman

Chairman's Communication

Dear Members,

Dear Members,

As we head towards the completion of the tenure of the Branch Committee for 2019-2022, I get a mixed feeling of satisfaction, gratitude, and sadness.

Satisfaction that we are completing a successful tenure in which although we had to face lot of obstacles and adversities in the form of Floods and Covid 19 pandemic, we tried our best and managed to successfully organise as many events, seminars, functions and activities as possible both physical and virtual.

Friends this pandemic has taught us that nothing is going to stop us from moving forward and that we will find out new ways and means to get things going and achieving our goals.

During the last year it was our endeavour to undertake various activities of academic, professional, social, and other interests of members and students of our branch. Keeping this in mind we arranged various events which include -

- 1.Seminars on various topics for members and Students
- 2.Events for MSMEs, Industry and Trade.
- 3.Residential Refresher Course
- 4.Program for felicitating new members and senior members
- 5.Tree plantation
- 6.Providing help during the pandemic period
- 7.Visit of Hon. President ICAI and Hon. Chairman WIRC to the Branch
- 8.Sports for members and students
- 9.Health activities including vaccination camp.
- 10.Publishing of monthly newsletter
- 11.Providing support to flood affected people
- 12.Arranging various events jointly with Ichalkaranji, Sangli and other branches of ICAI
- 13.Career Counselling Program, etc.

It was only because of the support and cooperation from all of you that we could conduct all the above activities.

The feeling of gratitude is towards all those who supported us during this journey at the Branch.

In this I would whole heartedly like to thank all my fellow committee members without whose support it was not possible to complete this journey in such a wonderful way.

I would like to thank members and students who supported in organising various seminars, by taking various responsibilities on the occasions of various events and visits, by contributing various articles for newsletter and coordination its activities, by taking active part in social activities and last but not the least by attending all the events and programs in large numbers.

Lastly, there is the feeling of sadness that we are ending this wonderful journey at the branch. It was a great pleasure in working for our Institute and the betterment of our profession for the last 3 years.

International Conference

The ICAI International Conference “Accountants Creating a Digital and Sustainable Economy” was held virtually from 20th-22nd January 2022.

More than 3000 delegates attended the event through a specially created virtual platform providing best in class experience. It was a fantastic virtual experience with real life like virtual conference hall, interaction with other delegates, virtual stalls of sponsors, gaming zone, quiz and other virtual but real life like events.

Over 80 eminent speakers both of the national as well as international eminence from government, Industry, Private sector and Accounting Profession addressed the elite gathering of members, academicians, researchers and policy makers from across the globe in more than 15 sessions.

I heartily congratulate the Conference team in arranging such a wonderful event and thank them for providing a platform for our members to get exposure to International events and practices and having interaction with delegates all over the world.



WIRC Chairman and Office Bearers Visit

WIRC Chairman, CA Manish Gadiaji visited the branch along with branch nominee CA Arpit Kabra and WIRC member CA Murtuza Kachwala on 27th January 2022. It was great honour and pleasure to have all the dignitaries at the branch and guide us on this occasion.

On the occasion of this visit we had arranged meetings with Hon. Commissioner, CGST, Kolhapur Shri Nasim Arshi and Hon. Vice-Chancellor of Shivaji University Dr. D. T. Shirke.

Both the meetings were very fruitful. Hon. Commissioner CGST acknowledged the efforts taken by our institute in guiding and training various stakeholders in understanding and implementing the GST laws. He appreciated the high standards maintained by our institute both in the academic and professional matters. He expressed his desire to arrange various sessions jointly with our branch so as to facilitate imparting of training to various stakeholders.

WIRC Chairman briefed Hon. Vice Chancellor about the TEL (Train, Earn and Learn) program being conducted by our Institute for the benefit of undergraduate students. We also discussed about collaborating with the University and colleges under it for providing benefits of the TEL program to the students studying under the University. Hon. Vice-Chancellor appreciated the program and was very much positive about having a joint venture between the Institute and the University.

Program on Understanding Bhagavad Geeta for Professional Life

We have arranged an online series of sessions jointly with Ahmedabad Branch and other 42 branch for understanding the principles laid down in Bhagavad Geeta and how to implement them in our professional and personal life. The series of lectures will be from 25-01-2022 and will continue till 16-02-2022. Most of the lectures will be between 5.30 pm to 7.30 pm on weekends so as to facilitate members in attending.

It will be a different experience in hearing to great personalities who have mastered the teachings and principles of Bhagavad Geeta and will guide us in how these principles can be applied in our day to day personal and professional life.

I request all of you to take benefit of this unique and insightful series of lectures.

Upcoming Events and Activities

In this last month of our tenure we are planning to organise various events such as -

1. Analysis of Union Budget 2022
2. Annual Full Pitch Cricket Tournament
3. Family Get together
4. Regional Residential Conference
5. Other CPE and non-CPE events

I urge all of you to actively participate in all the events in large number and take benefit of the same.

I congratulate all the newly elected Committee members for the coming tenure 2022-2025. I also give them my best wishes and hope that they will continue the activities of the branch with great responsibility, enthusiasm and energy.

I also thank the branch staff members for their wholehearted support in carrying on the activities of the branch and untiring efforts taken by them during the tenures of all the past and present committees.

I would like to express my gratitude to all the vendors and service providers who have provided best of their services to the branch and helped us in carrying out the branch activities in proper manner.

I specially thank my friend CA Subhash Pangaonkar, in being the key person in publishing this monthly newsletter and coordinating with all for the same. I also thank Manik Nadgouda for his support in designing the newsletter on regular and timely basis. Last but not the least I thank all the contributors to the newsletter for providing valuable and knowledgeable articles and educating the readers.

With these words I take leave and give my best wishes to the new committee.

Take care and be safe.

Regards

CA Tushar Anturkar

Chairman

02-02-2022



KOLHAPUR BRANCH OF WIRC OF ICAI

Managing Committee



CA TUSHAR ANTURKAR
CHAIRMAN



CA SUSHANT GUNDALE
VICE CHAIRMAN
WICASA CHAIRMAN



CA CHETAN OSWAL
SECRETARY



CA AMIT SHINDE
TREASURER



CA ANIL CHIKODI
IMMEDIATE PAST CHAIRMAN

Editorial Team

CA Girish Kulkarni
CA Dipesh Gundesha
CA Gangadhar Haldikar

CA Sanjay Vhanbatte
CA Ajinkya Jagoje
CA Subhash Pangaonkar

CA Nitin Hargude
CA Rajat Powar
CA Vaijayanta Chaugule



Kolhapur Branch of WIRC of ICAI

Details of Programme Held in the Month of January, 2022

	Date		Programme Name	Topic	Students/ Members	Speakers name	Venue	CPE Hours
	From	To						
1	10-01-2022	25-01-2022	ICITSS - ITT	Physical KOP-ITT-127	Students	-	ICAI Bhawan, Kolhapur	-
2	25-01-2022	16-02-2022	Understanding Bhagavad Gita organised jointly with Ahmadabad and with 42 other branches of ICAI	1. Achieving overall Excellence and Success in life 2. Leadership and Relationship with Employees 3. Balancing Family Life and Work 4. Importance of Good Health in Success 5. Wealth Creation 6. What matters most for the Leadership in New Normal Employees and/or Competition? 7. Reducing gap between Being Human and Being Divine	Members & Students	1. CA Chetan Dalal 2. Ms. Jaya Row 3. CA (Dr) Nilesh Suchak 4. CA Jay Chhaira 5. Mr Bhagirath Marchant 6. Pujoyashree Bhupendrabhai Pandya Ji	Online Platform	-
3	26-01-2022	26-01-2022	Republic Day	Flag Hosting	Members & Students	-	ICAI Bhawan, Kolhapur	NIL
4	26-01-2022	26-01-2022	Bullet Se Book Tak - Interview with CA Dharamveer Singh Ex-Indian Neavy Officer organised by Satara with Kolhapur and 9 other Branches of WICASA of WIRC of ICAI	Interview with CA Dharamveer Singh	Members & Students	CA Dharamveer Singh	Online Platform	NIL
5	27-01-2022	27-01-2022	WIRC Chairman visit to the Kolhapur Branch with the office bearers	1. Visit to GST Office, Kolhapur 2. Visit to Shivaji University, Kolhapur 3. Meeting with Managing Committee Members, Kolhapur Branch 4. Meeting with Members of WICASA Of Kolhapur Branch	Members & Students	1. CA Manish Gadia 2. CA Arpit Kabra 3. CA Murtuza Kachwala	ICAI Bhawan, Kolhapur	NIL
6	27-01-2022	27-01-2022	Seminar on Panel Discussion on "Changes in ITC availment w.e.f. 01/01/2022"	Changes in ITC availment w.e.f. 01/01/2022	Members & Students	1. CA Girish Kulkarni 2. CA Gangadhar Haldikar	ICAI Bhawan, Kolhapur	2

Activity photos on page no.28 to 32





Income Tax Update

Circulars and Notifications

(Compiled by CA. Ajinkya Jagoje)
(Email - ajinkya.jagoje@abmlp.com)

■ GUIDELINES UNDER SECTION 10(10D)- taxation of ULIP

CIRCULAR NO. 2 OF 2022 [F. NO.370142 /61/2021-TPL], DATED 19-1-2022

The Finance Act, 2021 amended clause (10D) of section 10 of the Act by inserting fourth to seventh provisos. Fourth proviso provides that, with effect from 1-2-2021, the sum received under a Unit Linked Insurance Policy (ULIP), issued on or after 1-2-2021, shall not be exempt under the said clause if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs. 2,50,000. Further, fifth proviso provides that if premium is payable for more than one ULIP, issued on or after 1-2-2021, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed Rs. 2,50,000 for any of the previous years during the term of any of those policies. Sixth proviso provides that the fourth and fifth provisos shall not apply in case of sum received on death of the person.

• Situation 1

Where no consideration is received, or assessee claims no exemption on the sum received

a) Sum is received from one ULIP only.

Example - Mr Raj has ULIP A satisfying all the conditions of section 10(10D), except the conditions provided by Fourth and Fifth Proviso. Determine the exemption on maturity in the previous year 2031-32, assuming he did not receive any consideration under any other ULIPs in any previous years.

ULIP	A
Date of policy	01-04-2021
Quarterly premium paid during 2021-22	Rs.65,000
Annual premium paid from 2022-23 and onwards	Rs.2,00,000
Sum assured	Rs.20,00,000
Consideration received on 01-11-20123 on maturity	Rs.22,00,000

Though the annual premium does not exceed the prescribed limit of Rs. 2.5 lakh, but the aggregate of quarterly payment premium during the first year exceeded Rs. 2.50 lakhs. Thus, the fourth proviso is attracted, and no exemption would be available as the premium payable exceeded Rs. 2.50 lakhs in any year during the policy term. Thus, the consideration received on maturity will not be exempt under section 10(10D).

b) Sum is received from more than one ULIPs

Example - Mr Raj has multiple ULIPs satisfying all the conditions of section 10(10D), except the conditions provided by Fourth and Fifth Proviso. Determine the exemption on maturity in the previous year 2031-32, assuming he did not receive any consideration under any other ULIPs in previous years.

ULIP	A	B	C	D
Date of policy	01-04-2021	01-04-2021	01-04-2021	01-04-2021
Annual premium (X)	Rs. 1,00,000	Rs. 1,50,000	Rs. 2,00,000	Rs. 3,00,000
Tenure of policy (Y)	10 years	10 years	10 years	10 years
Sum assured	Rs. 20,00,000	Rs. 20,00,000	Rs. 30,00,000	Rs. 30,00,000
Consideration received on 01-04-2031 on maturity (Z)	Rs. 22,00,000	Rs. 30,00,000	Rs. 34,00,000	Rs. 40,00,000



Yield (Z-X*Y)	12,00,000	15,00,000	14,00,000	10,00,000
Eligible for exemption	Yes	Yes	Yes	No
Exemption to be claimed	Yes	Yes	No	-

Since Mr Raj has invested in multiple policies issued on or after 01-04-2021, and the aggregate of premiums payable in any year during such policies term exceed Rs. 2,50,000 the fifth proviso will apply. Accordingly, the exemption shall be allowed only for those low premium ULIPs, whose aggregate premium does not exceed the threshold limit of Rs. 2.5 lakh.

ULIP D is not eligible for exemption since its annual premium exceeds the threshold limit of Rs. 2.5 lakh.

Out of the remaining ULIPs A, B and C, the exemption can be claimed only for those ULIPs whose aggregate premium during any year does not exceed Rs. 2,50,000. He should choose those policies for the exemption that gives him maximum benefit. In this exercise, two factors should be considered: the yield of the policy and the policies that can exhaust the full limit of Rs. 2,50,000.

(a) As the yield of ULIP B is maximum (Rs. 15 lakhs), this should be considered for exemption.

(b) The annual premium of ULIP B is Rs. 1,50,000, so the next policy should be one having maximum yield but premium of that should not exceed Rs. 1,00,000.

(c) The next high yield policy is ULIP C (Rs. 14 lakhs) but it cannot be considered as its annual premium is Rs. 2,00,000. So he will have to choose ULIP A for the exemption.

Accordingly, the consideration received on maturity of ULIP A and B shall be eligible for exemption under section 10(10D).

• Situation 2

Where an exemption is claimed for consideration received from ULIP in any previous year -

a) Sum is received from one ULIP only.

Example Mr Raj has the following ULIPs satisfying all the conditions of section 10(10D), except the conditions provided in Fourth and Fifth Proviso. Determine the exemption on maturity in the previous year 2032-33, assuming he received consideration on maturity of ULIP A in the previous year 2031-32.

ULIP	A	A
Date of policy	01-04-2021	01-04-2021
Annual premium	Rs.1,00,000	Rs.1,50,000
Sum assured	Rs.20,00,000	Rs.20,00,000
Consideration received on 01-04-2031 on maturity	Rs.28,00,000	-
Consideration received on 01-11-2032 on maturity	-	Rs.30,00,000

The sum received on ULIP A would be eligible for exemption as the annual premium of ULIP A does not exceed Rs. 2.5 lakh. As aggregate premium payable for ULIPs A and B does not exceed Rs. 2.5 lakh in any term of the policy, ULIP B shall also be eligible for exemption under section 10(10D).

Suppose in the above example, the annual premium for ULIP B is Rs. 2,00,000. In that case, the sum received from ULIP B shall not be eligible for exemption as the amount of premium payable on ULIP B and ULIP A exceeded the threshold limit of Rs. 2.5 lakhs. There is no concept of a draft order in the new appeal scheme. The Commissioner (Appeals) shall prepare an appeal order and send it to National Faceless Appeal Centre (NFAC) after signing the same digitally. After that, the NFAC shall communicate such order to the appellant.

b) Sum is received from more than one ULIPs

Example - Mr Raj has the following ULIPs satisfying all the conditions of section 10(10D), except the conditions provided in Fourth and Fifth Proviso. Determine the exemption on maturity in the previous year 2032-33, assuming he claimed exemption on consideration received on the maturity of ULIP A in the previous year 2031-32.



ULIP	A	B	C	D
Date of policy	01-04-2021	01-04-2022	01-04-2023	01-04-2023
Annual premium (X)	Rs. 1,00,000	Rs.50,000	Rs. 1,00,000	Rs. 2,00,000
Tenure of policy (Y)	10 years	10 years	10 years	10 years
Sum assured	Rs. 20,00,000	Rs. 10,00,000	Rs. 15,00,000	Rs. 20,00,000
Consideration received on 01-04-2031 on maturity (Z1)	Rs. 22,00,000	-	-	-
Consideration received on 01-04-2032 on maturity (Z2)	-	Rs. 20,00,000	Rs. 15,00,000	Rs. 30,00,000
Yield (Z2+Z2-X*Y)	Rs. 12,00,000	Rs. 15,00,000	Rs. 5,00,000	Rs. 10,00,000

All the policies shall be eligible for the exemption because the annual premium for each policy does not exceed Rs. 2.5 lakhs in any year. However, as the aggregate premium of all policies exceeds Rs. 2.5 lakhs in any year (in this case, it exceeded in the previous year 2023-24 and onwards) the exemption shall be allowed only with respect to those ULIPs, whose aggregate premium does not exceed the threshold limit of Rs. 2.5 lakhs. Since he has already claimed exemption for ULIP A, its annual premium shall also be considered while computing the limit of Rs. 2.5 lakhs.

Out of the remaining ULIPs B, C and D, the exemption can be claimed only for those ULIPs whose aggregate premium, including premium payable on old ULIPs (ULIP A) during any year, does not exceed Rs. 2,50,000.

The annual premium of the old ULIP was Rs. 1,00,000. Thus, he should choose those policies whose aggregate annual premium is Rs. 1,50,000 and give him maximum benefit. In this exercise, two factors should be considered: the yield of the policy and the policies that can exhaust the full limit of Rs. 2,50,000.

(a) As the yield of ULIP B is maximum (Rs. 15 lakhs), this should be considered for exemption.

(b) The annual premium of ULIP B is Rs. 50,000, so the next policy should be one whose premium does not exceed Rs. 1,00,000.

(c) He cannot choose ULIP D because its annual premium is Rs. 2,00,000. So he will have to choose ULIP C.

Accordingly, the consideration received on maturity of ULIP B and C shall be eligible for exemption under section 10(10D).

■ NOTIFICATION G.S.R. 24(E) [NO. 8/2022/F.NO.370142/61/2021-TPL], DATED 18-1-2022

Rule 8AD prescribing manner to compute capital gains for section 45(1B)- ULIPs

Sum received from high premium ULIPs for the first time

If the assessee has received the sum from high premium ULIPs for the first time, then the capital gains shall be calculated in the following manner:

Particulars	Amount
Amount received for the first time from ULIP	xxx
Add: Amount allocated by way of bonus on such policy	xxx
Less: Aggregate of premium paid during the term of the policy till the date of receipt of the amount	(xxx)
Capital Gains	xxx



Sum received from high premium ULIPs for the second time and subsequently

If the sum received from high premium ULIPs isn't the sum received for the first time, then the capital gains shall be calculated in the following manner:

Particulars	Amount
Amount received from such ULIP	xxx
Add: Amount allocated by way of bonus on such policy	xxx
Less: Amount received from the same policy and considered while computing capital gains in earlier previous years	(xxx)
Less: Aggregate of premium paid during the term of the policy till the date of receipt of the amount	(xxx)
Less: Premium already considered for calculation of taxable amount in earlier previous year	(xxx)
Capital Gains	xxx





High Court Tribunal Cases

High Court Decision

■ PCIT v. Agson Global (P.) Ltd. [2022] 134 taxmann.com 256 (Delhi)

Issue: Whether if assessee-company routes its own accounted money back to itself as share capital/premium is taxable under section 68?

HELD: Hon'ble High Court, held -

- Addition u/s 68 is not attracted when assessee-company routes its own accounted money back to itself, through other entities, as share capital/premium especially when the same is done through banking channels. AO cannot make any additions under section 68 where assessee-company loans its funds to other entities which then invest it back in assessee company as share capital unless the funds so routed back are assessee-company's unaccounted money. Routing of assessee-company's duly accounted money back to itself may violate other laws, but that does not attract section 68.
- As long as there was no material on record which established that unaccounted money (i.e., income generated which was not recorded in the books of account) had been funnelled in the form of investment by way of share capital/share premium, it could not be made the basis for making addition under Section 68 of the Act.
- The first proviso, which was inserted by Finance Act, 2012 in the context of share application money, share capital, share premium or any other amount by whatever name called, engrafted a deeming section as to when the explanation would be considered satisfactory. Pertinently, motivation of the assessee in routing its own money (which was given to the investor entities in the form of loan, etc.) as an investment in share capital/share premium has not been adverted to therein.
- It may well be that the assessee, by wrongly padding his accounts, has violated other Statutes but that by itself cannot be the reason to make addition under section 68 of the Act.

■ P.CIT v. Orchid Griha Nirman (P.) Ltd. [2022] 134 taxmann.com 281 (Calcutta)

Issue: Whether Land(held as inventory) brought in by partner & credited by firm to his capital A/c at its cost to him, is taxable u/s 45(3), if firm revalues it subsequently?

HELD: Hon'ble High Court, held -

- No tax is attracted u/s 45(3) or otherwise, where partners bring in land which is held by partners as inventory as their capital contribution and amount is recorded as capital contribution at its cost to the partners and later on the inventory of land is converted into fixed asset and revalued in order to justify the huge bank loan obtained on the security of the land.
- Such revaluation is not a colourable device and no capital gains arises to firm from it, nor to the partners under section 45(3).
- Section 45(3) envisages full value of consideration of capital asset brought in by partner, at the amount at which it is recorded in firm's books by credit to partner's capital account. Section 45(3) does not envisage substituting this with any other value.
- Its subsequent revaluation by firm is notional profit and attracts no tax in firm's hands nor in partners' hands.



- Question of taxability in partner's hands arises only when any withdrawal is made by partners after the revaluation.

Note: *Conversion of inventory into capital asset is taxable under section 28(via) of the Act with effect from Assessment Year 2019-20. This case pertains to prior assessment year.*

■ **Manoj Jain v. Union of India. [2022] 134 taxmann.com 173 (Calcutta)**

Issue: Whether Reassessment notices issued on or after 1-4-2021 should be within the new 3 years time-limit & should also comply with the procedure in new section 148A.?

● **HELD: Hon'ble High Court, held:**

Reassessment notices issued on or after 1-4-2021 should be within the new 3 years time-limit & should comply with the procedure in new section 148A even if it pertained to past assessment years. Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are ultra vires the Relaxation Act, 2020 and are therefore bad in law and null to the extent that the same extend the applicability of the "provisions of Section 148, Section 149 and Section 151 of the Act, as the case may be, as they stood as on the 31st March, 2021, before the commencement of the Finance Act, 2021" to the period beyond 31st March, 2021.

Tribunal Decision

■ **Godha Realtors (P.) Ltd vs. ACIT [2022] 135 taxmann.com 24 (Bangalore - Trib.)**

Issue: Whether mere agreement to sell immovable property without possession to buyer, is "transfer" u/s 2(47)?

HELD:

- Hon'ble Tribunal relied upon Ushaben Jayantilal Sodhan v. ITO [2018](407 ITR 276)(Guj) wherein in the context of section 54 the hon'ble HC held -
"17. In our opinion, the answer has to be in the negative. As discussed earlier, the agreement to sale an immovable property is in the nature of bilateral contract between the seller and the buyer. Under such agreement, the seller agrees to transfer the title in the property to the buyer, upon the buyer performing his part of the obligations, mainly, revolving around the payment of sale consideration on agreed terms. Such agreement to sale, however, has to culminate into a registered sale deed, so as to transfer the title of property in question from the seller to the buyer. There may be multiple reasons why such eventuality may never arise and these reasons could be entirely different from the seller refusing to perform his part of the obligations arising out of the contract or for some such reason, the transaction running into legal controversies. Some of the imaginable reasons could be the inability of the seller to clear the title of the property due to which the contract may be frustrated or rescinded with mutual consent or the refusal or inability of the purchaser to pay the sale consideration"
- *In the above Case Guj HC also distinguished judgment of the Supreme Court in case of Sanjeev Lal, wherein Hon'ble SC observed that in normal circumstances, by executing an agreement to sale of an immovable property, a right in personam is created in favour of the transferer. The Court also noted that the sale deed could not be executed for the reason that the assessee had been prevented from dealing with the residential house by an order of the competent Court. The Court, in view of such peculiar facts of the case and looking to the definition of "transfer" u/s. 2(47) of the Act, was of the view that the assessee was entitled to relief u/s. 54 of the Act, which otherwise in normal circumstances, such question had to be answered in the negative.*
- Following the the Guj. HC decision Tribunal held without possession agreement to sale doesn't tantamount to 'transfer'.



■ Tushar Hukumchand Mehta. ITA No.172/PUN/2018, “A” BENCH, PUNE (Pune- Trib.)

Issue: whether amount forfeited by Industrial Areas Development Board, being 20% of the initial deposit as a result of cancellation of the allotment of land, for not comply with the terms of allotment, can be treated as Revenue expenditure ?

HELD:

- The appellant acquired a plot of land from Karnataka Industrial Areas Development Board, Dharwad under the leasecum-sale agreement for the purpose of setting up of a new plant. It also made an initial deposit of Rs.13,51,028/-. However, due to some reasons, the appellant give-up the idea of starting new plant at Dharwad. The Karnataka Industrial Areas Development Board vide letter dated 08th August, 2012 cancelled the allotment of land and forfeited 20% of the initial deposit i.e. Rs.4,50,361/-. The claim for deduction of Rs.4,50,361/- as ‘revenue expenditure’ was made and the same was denied
- It is submitted before ITAT that the advance was made during the normal course of business and, therefore, forfeiture of the deposits should be allowed.
- Hon’ble Tribunal relying upon, decisions of the Hon’ble Karnataka High Court in the case of CIT vs. Tyco Electronics Corpn. India (P.) Ltd., 22 taxmann.com 267 (Karnataka) and the Hon’ble Madras High Court in the case of Tamilnadu Magnesite Ltd. vs. ACIT, 95 taxmann.com 239 (Madras) held that the initial deposit for acquisition of plot was made by the assessee during the normal course of business. As a result of forfeiture of deposit on surrender of the land, there is no creation of any new asset, the expenditure incurred towards acquisition of land would be considered as ‘revenue in nature’.

■ Nashik Road Nagari Sahkari Patsanstha Limited. ITA No.1700/PUN/2017, “B” BENCH, PUNE (Pune- Trib.)- 27-12-2021

Issue: whether interest earned on deposits with Nationalised Bank are eligible for deduction under section 80P(2)(a)(I) ?

HELD:

- AO denied the deduction of interest earned on the investment made with Bank of Baroda treating it under the head ‘income from other sources’ not as ‘income from business’, as it is not a ‘business income’ derived from the activity of lending money to its members
- ITAT Held that -
 - a. The money which is not immediately required for the purpose of lending to the members is deposited with Bank of Baroda in the form of Fixed Deposit.
 - b. The Hon’ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Cooperative Federation of Housing Building Societies Ltd. 11 taxmann.com 448, the Hon’ble Gujarat High Court in the case of State Bank of India Vs. CIT 389 ITR 578 (Guj.), the Hon’ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT 50 taxmann.com 278, the Hon’ble Punjab & Haryana High Court in the case of CIT Vs. Punjab State Cooperative Agricultural Development Bank Ltd. 389 ITR 68 and the Hon’ble Kolkata High Court in the case of CIT Vs. Southern Eastern Employees Cooperative Credit Society Ltd. 390 ITR 524 took a view that the income arising on the surplus invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, not eligible for exemption u/s.80P(2)(a)(i) of the Act.
 - c. the Hon’ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (2015) 230 taxmann 309 (Kar.) and the Hon’ble Telangana and Hon’ble Andhra Pradesh High Court in the case of Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR took a view that such interest income is attributable to the activities of the society and, therefore, eligible for exemption u/s.80P(2)(a)(i) of the Act.
 - d. The Coordinate Bench of Pune Benches in the case of M/s. Ratnatray Gramin Bigar Sheti Sah. Pat Sanstha Maryadit Vs. ITO (ITA Nos.559/560/PUN/2018, dated 11-12-2018) has taken view in favour of the assessee following the judgment of Hon’ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra)



- Hon'ble Tribunal relying upon, decisions of the Hon'ble Karnataka High Court allowed the claim of assessee.

■ **New Vijay Co-operative Housing Society Ltd. ITA NO.358/MUM/2021, “B” BENCH, Mumbai (Mum- Trib.)- 17-12-2021**

Issue: whether interest earned on deposits with Co-operative Bank are eligible for deduction under section 80P(2)(d)?

HELD:

- In the return of income the assessee claimed aforesaid income as exempt under section 80P(2)(d) of the Act. The Assessing Officer accepted the assessee's claim of exemption. Thereafter, the PCIT invoked revisional jurisdiction and issued notice u/s 263 of the Act. the PCIT rejected the contentions of assessee solely on the ground that in view of provisions of section 80P(4) of the Act the assessee is not eligible to claim deduction in respect of interest income earned from Co-operative Banks.
- ITAT Held that -
 - a. A bare perusal of the sub-section (4) of section 80P reveals that sub-section inserted by the Finance Act 2007 w.e.f. 01/04/2007 excludes Co-operative Banks other than primary agricultural credit society or a primary co-operative agricultural and rural development bank for the benefit of exemption u/s 80P of the Act.
 - b. In the present case it is the Housing Co-operative society which is seeking benefit of exemption u/s 80P(2)(d) in respect of interest income earned from Co-operative Bank. It is not the Co-operative Bank which is seeking the benefit of exemption u/s 80P of the Act.
 - c. The Co-operative Bank in the present case is the payer of interest and not the recipient.
 - d. The Interest income has accrued to Co-operative Housing society and section 80P(4) of the Act does not preclude it from the benefits of exemption u/s. 80P of the Act.

Similarly, **Rena Sahakari Sakhar Karkhana Ltd ITA No.1249//PUN/2018 “B” BENCH, PUNE (Pune- Trib.)- 07-01-2022** Held that -

- a. though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.
- b. There are conflicting non-judicial decision(s) - In favour Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj). Against Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn).
- c. Therefore, as per Hon'ble Bom HC in case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom) where there is a conflict between the decisions of non-judicial High Court's, then a view which is in favour of the assessee is to be preferred.





Due Dates for Feb 2022

Co-Authors: CA Prasanna Kamble and Shrushti Menkudle of Kunte & Chaugule

Sr.No	Particulars	Due Date
1	Due date for deposit of Tax deducted/collected for the month of January, 2022	07-02-2022
2	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of December, 2021	14-02-2022
3	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of December, 2021	14-02-2022
4	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of December, 2021	14-02-2022
5	Audit report under section 44AB for the assessment year 2021-22 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E	15-02-2022
6	Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of a corporate-assessee or non-corporate assessee (who was required to submit his/its return of income on October 31, 2021)	15-02-2022
7	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2021	15-02-2022
8	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2022 has been paid without the production of a challan	15-02-2022
9	GSTR-7 for the month of January-2022	10-02-2022
10	GSTR-8 for the month of January-2022	10-02-2022
11	GSTR-1 for the month of January-2022	11-02-2022
12	IFF (Optional) for the month of January-2022	13-02-2022
13	GSTR-6 for the month of January-2022	13-02-2022
14	GSTR-3B for the month of January-2022	20-02-2022
15	GSTR-5 for the month of January-2022	20-02-2022
16	GSTR-5A for the month of January-2022	20-02-2022
17	GSTR-9-Annual Return for the FY-2020-21	28-02-2022
18	GSTR-9C Reconciliation Statement for the FY-2020-21	28-02-2022



Virtual Digital Assets: New Dawn in Taxability

Co- Authors: CA Vaibhav Chaugule and
Sakshi Patil of Kunte & Chaugule.

Introduction:

- In India, there were no specific guidelines on the taxation of crypto-currency and similar digital assets in the Income-Tax Act, 1961 till introduction of The Finance Bill, 2022.
- Depending on the volume of the transactions taxpayer used to classify it as Business income or Capital gain income.
- But however The Finance Bill, 2022 has proposed few new provisions to levy tax on Virtual Digital Assets transactions which shall be applicable with effect from 01.04.2023 i.e. F.Y. 2022-23.

Provisions proposed by The Finance Bill, 2022:

New definition in section 2 of the Income-tax Act vide clause 47A, has been inserted to define “virtual digital asset” (herein after referred to as VDA) which majorly mean: -

(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically.

(b) a non-fungible token or any other token of similar nature, by whatever name called;

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

The proposed definition is wide enough to include within its meaning the crypto currency, NFT (Non-fungible tokens) and also the income earned form emerging concepts like metaverse, whether the asset is held or income is earned in India or not.

Key Considerations for Computation of Income:

[Please note that the Authors have drawn an analogy from Section 115BB (winnings from a game, lotteries, puzzles, gambling, betting) for which special rate of tax of 30% is been levied.]

Sr.No	Particulars	Comments
1	Head of Income	Like winnings from a game, lotteries, puzzles, gambling, betting are taxed under the head Income from other source, we may conclude that the VDA's should also be taxed under the head of Income from other source.
2	Tax rate	Flat rate of 30% has been proposed under newly inserted section 115BBH.
3	Surcharge	Surcharge will be levied at applicable rates.



4	Rebate u/s 87A	Rebate u/s 87A will be available if Total Income is below Rs 5 Lakhs.
5	Basic Exemption Limit	Benefit of Basic Exemption Limit will not be available.
6	Section 115BAC	Benefit of new tax regime will not be applicable as the income is taxed at flat rate.
7	Relief u/s 90 to 91	Relief of double taxation u/s 90 to 91 will be allowed where income from VDA is earned out of India and tax has been paid/ deducted on such income.
8	Deductions under Ch. VI A	Benefit of deductions under Ch. VI A will not be allowed.
9	Deduction for related expenses.	Only cost of acquisition is allowed as deduction. Any other expenditure or allowances will not be allowed as deductible expenditure.
10	New TDS provisions	<ul style="list-style-type: none"> • Insertion of new section 194S for TDS on Payment for transfer of Virtual Digital Asset with effect from 01.07.2022. • Any person responsible for paying to a resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon.
11	Losses from VDA transactions.	<ul style="list-style-type: none"> • No deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the income. • No set off of loss from transfer of the virtual digital asset computed shall be allowed against income computed under any other provision of this Act to the assessee and such loss shall not be allowed to be carried forward to succeeding assessment years.
12	Gift	<ul style="list-style-type: none"> • It is proposed to include “virtual digital asset” within the meaning of the expression “property” for purpose of section 56(2)(x). • Accordingly, Gift of VDA will be taxable in the hands of recipient





Key Budget Highlights 2022

A budget for Gati Shakti, Mission Shakti, Naari Shakti and Drone Shakti

*Co-Authors: CA Vaijayanta Chaugule and
CA Vaibhav Chaugule of Kunte & Chaugule*

1. There has been No change in tax slab rates under the normal tax regime or alternative tax regime, standard deduction and deduction for interest on housing loans in the recent Budget.
2. **Allowing taxpayers to file updated return within 2 years for correcting errors:**
 - Tax payer allowed to file updated return of income within 24 months from end of the relevant assessment year on payment of additional tax
 - If updated return filed within 12 months - additional tax payable at the rate of 25% of aggregate of tax and interest payable
 - If updated return filed in the subsequent 12 months - additional tax at the rate of 50% of aggregate of tax and interest payable
 - Option to file an updated return of income cannot be availed by taxpayers in certain circumstances.
3. **Increasing tax deduction limit on employer's contribution to NPS account of state government employees**

To provide equal treatment to both central and state government employees, it is proposed to increase the tax deduction limit from 10% to 14% on employer's contribution to the NPS account of state government employees as well.
4. **Extending period of incorporation of eligible startups for providing tax incentives:**

Profit-linked tax exemption for eligible start ups extended by another year - start ups incorporated upto 31 March 2023 will now be eligible
5. **Tax relief to persons with disability**
 - Section 80DD of the Income Tax Act provides for a deduction for residents for maintenance of disabled dependents.
 - Relief for persons with disabled dependents is available as a deduction of such amounts invested in annuity providing schemes, and is limited to Rs.75,000/- or Rs.1,25,000/- per annum depending on severity of the disability.
 - However, currently such deduction is available only if the annuity or the lump-sum is receivable after the death of the subscriber.
 - This has been relaxed to extend the deduction even if such sum is received during the life-time of the subscriber on attaining the age of 60 years, provided the payment to the scheme has been discontinued.
6. **Reducing Alternate Minimum Tax Rate and Surcharge for Cooperatives.**
 - It is proposed to reduce alternate minimum tax rate and surcharge for Cooperatives to provide them with a level playing field with companies.
 - Currently, cooperative societies are required to pay Alternate Minimum Tax at the rate of 18.5%. It is proposed to reduce this rate to 15%.
 - It is also proposed to reduce the surcharge on co-operative societies from present 12 per cent to 7 per cent for those having total income of more than ₹1 crore and up to ₹ 10 crore.
7. **Income from transfer of virtual assets to be taxed at 30%**
 - Any income from virtual digital assets is taxable at 30%;
 - There will be no deduction with exception of cost of acquisition



- TDS applicable beyond a specified monetary threshold
- Gift of virtual currencies taxable in the hands of recipient
- 1% tax to be deducted from the payment of consideration to a resident person on transfer of virtual digital asset.

8. Better litigation management to avoid repetitive appeals

- Revenue authorities can now defer filing an appeal before the High Court and Tribunal if an identical question of law is pending before the jurisdictional High Court or the Supreme Court including in case of another taxpayer
- Application for deferral to be filed only on receipt of acceptance from the taxpayer
- This amendment is applicable from 1 April 2022

5. Any Surcharge or Cess on Income and Profits not allowable as business expenditure

Earlier, the court rulings differentiated between income tax and education cess on income tax and in absence of a specific disallowance for 'education cess', courts had taken a view beneficial for taxpayers. In order to nullify the effect of such Court rulings and considering such rulings against the intention of law, a clarificatory amendment has been introduced in income tax law, providing that any surcharge or education cess on income tax shall not be allowed as business expenditure.

This amendment will take effect respectively from 1st April 2005 and will accordingly apply in relation to the assessment year 2005-06 and subsequent assessment years.

10. 15% cap on surcharge on long term capital gains applicable to all capital assets

Surcharge on long term capital gains on all types of assets will be capped at 15%. This benefit was earlier available only for listed equity shares and mutual fund units.

11. Covid-19 related income tax reliefs

- Relief measures were announced via press statement on 25 June 2021 towards medical treatment expenditure and compensation received by family members in relation to death of an individual.
- These measures have now been introduced in the Act with effect from Assessment Year 2020-21 to provide clarity on various aspects.
- Compensation received only within 12 months from the death of an individual eligible for exemption.

Other Highlights:

- In case of an AOP consisting of only companies as members, the rate of surcharge shall not exceed 15%.
- No set off of loss to be allowed against undisclosed income discovered during search
- Person giving loan or borrowing to assessee is required to explain source of income in his hands
- Provisions relating to assessment and reassessment have been rationalized.
- Various differences between the exemption under section 10(23C) and section 11/12 have been removed by extending the provisions relating to accumulation of income, filing of Return, maintenance of books of accounts, accreted income, etc. to such institution claiming exemption under section 10(23C).
- Assessee can approach AO to get the refund of TDS which he claims that it was not required to be deducted from payment made to non-residents.
- No deduction to be allowed for any expenditure under Section 37(1) if acceptance of corresponding benefit or perquisite is in violation of any law governing conduct of recipient.
- Section 14A disallowance shall be made even if exempt income has not accrued or arisen or has not been received during the previous year
- No deduction to be allowed under section 43B on conversion of outstanding interest liability into debentures.
- Penalty under section 271AAE to be levied on trusted Institutions if income is applied for benefit of a specified person.
- The provisions of Bonus stripping shall also apply to securities and units of business trusts and Alternative Investment Funds (AIFs).
- Penalty under Section 272A on failure to comply with statutory requirements is increased from Rs.100/- to Rs.500/- per day.



Top 13 'GST-Take-Away' from Union Budget 2022-23

Girish Kamalakant Kulkarni
[C.A., LL.B. Gen]



Introduction: Finance Minister Nirmala Sitharaman dispensed the Union Budget 2022-23 in Parliament on February 01, 2022 which received mixed rejoinders from people across the nation. In five big infrastructure projects, the government has proposed lengthening highways in the country by 25,000 kms, awarding Rs 60,000 cr. to the Nal-se-Jal scheme, Five river link projects across various states, supplementary Rs. 48,000 cr. in the PM housing scheme, and fostering infrastructure development in the North East which can be contemplated as welcoming steps.

The Finance Minister also set forth the auction of 5G spectrum in 2022; proposed emplacement of 75 digital banking units in 75 districts; announced a national program for mental health, worsened by the Covid-19 pandemic; and brought virtual currencies like crypto currency and non-fungible tokens under the tax net which are some of the other few major decisions.

About Indirect taxes, 'Union Budget' as such does not play a major role considering the mechanism of GST Council which proposes the required changes from time to time without waiting an entire year. Still there are some important proposed amendments with explanation and analysis of it affecting GST provisions.



1. ITC not to be availed if it is in restricted category of GSTR-2B Source

Reference in Finance Bill 2022: Clause 99 (a)(I)

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Section 16(2)

New Clause: Clause (ba) has been inserted

Amendment:

“(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;”

Implications: This is a new condition which is to be satisfied for availment of input tax credit. In GSTR-2B, if the ITC appears in restricted category, the same cannot be availed by the registered person. Cases where the ITC can be restricted under GSTR-2B has been discussed in clause 103 below.

2. Reference to Section 43A removed from the conditions for availment of ITC Source

Reference in Finance Bill 2022: Clause 99 (a)(ii) of the Finance Bill, 2022.

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Clause (c) of Sub section 2 of Section 16

Provision before Amendment

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply

Provision before Amendment

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply

Implication: Section 43A is part of the CGST Act 2017 but has not been notified till date. This provision had been enacted when the new GST returns were in the pipeline. However, the idea of the new returns was scrapped. Therefore, Section 43A is now proposed to be removed from the GST law. Consequently, the reference to Section 43A would also be removed from the conditions for availment of ITC.

3. Extension of due date of availment of ITC to 30th November

Reference in Finance Bill 2022: Clause 99 (b)

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Sub section 4 of Section 16 of the CGST Act, 2017

Provision before Amendment

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the “due date of furnishing of the return under section 39 for the month of September” following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provision after Amendment

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the “thirtieth day of November” following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Implications: Earlier, the due date of availment of Input tax credit for any financial year was provided as the due date of furnishing of the return under section 39 for the month of September i.e. 20th October in case of monthly return filers and 22nd/ 24th October in case of quarterly return filers. The due date of availing ITC is now proposed to be extended up to 30th November.



This means that in case of forward charge, ITC can only be availed if it appears in GSTR-2B up to the month of October and not afterwards. This way matching can be completed in GSTR-3B for the month of October (or earlier month) which can in turn be filed up to 30th November. If ITC is taken in any GSTR-3B which is filed after 30th November, the same may be subject to litigation.

4. Cancellation of registration due to non-filing of returns for a shorter time period:

Reference in Finance Bill 2022: Clause 100

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Clause (b) and (c) to Section 29(2)

Provision before amendment

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods;

(c) any registered person, other than a person specified in clause (b), has not furnished returns for “a continuous period of six months”;

Provision after Amendment

(b) a person paying tax under section 10 has not furnished “the return for a financial year beyond three months from the due date of furnishing the said return”

(c) any registered person, other than a person specified in clause (b), has not furnished returns for “such continuous tax period as may be prescribed”

Implications:

Composition Taxpayer: Currently, the registration can be cancelled for a composition taxpayer if they do not furnish their return for three consecutive tax periods. It may be noted that the return for composition taxpayers has now become annual instead of quarterly. Therefore, the proposed criteria for cancellation of registration are that GSTR-4 has not been filed for three months from the due date of furnishing such return.

Normal Taxpayer: Currently, the registration can be cancelled for a normal taxpayer if they do not furnish their return for six consecutive months. The proposed criteria for cancellation of registration is that the returns have not been filed for the prescribed period (which is likely to be less than six months)

5. Cases where ITC can be restricted in GSTR-2B

Reference in Finance Bill 2022: Clause 103

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Section 38

Provision before amendment

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a non resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.



(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed. (5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Provision after amendment

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an autogenerated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of--

- (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and
- (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,--
 - (i) by any registered person within such period of taking registration as may be prescribed; or (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or
 - (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or
 - (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
 - (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
 - (vi) by such other class of persons as may be prescribed.”

Implications: The entire Section 38 of the CGST Act 2017 has been substituted. The earlier provides for matching of ITC through two-way communication and furnishing of GSTR-2. The following is the summary of the new Section 38:

1. Details of GSTR-1 filed / IFF furnished by the supplier would be available to the recipient in such form (GSTR-2B) and manner, and subject to conditions and restrictions as prescribed.
2. GSTR-2B will consist of two parts - ITC available and ITC not available to the recipient.
3. The following may be the reasons for classifying the ITC as 'Not available' as per GSTR-2B in the hands of the recipient:
 - a. Inward supply is received from a supplier having new registration (upto the prescribed time period)
 - b. Supplier has defaulted in payment of tax and the default has continued for the prescribed time period
 - c. Tax paid in GSTR-3B is lower than the output tax shown in GSTR-1 by the prescribed limit
 - d. Inward supply is received from a supplier who has taken more ITC in GSTR-2B than in GSTR-3B by the prescribed limit
 - e. Supplier has paid higher proportion of taxes from his electronic credit ledger than what is allowed as per law
 - f. Other Notified persons



6. GSTR-3B to be filed only when GSTR-1 of the said period has been filed

Reference in Finance Bill 2022: Clause 104

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Sub section 10 of Section 39

Provision before Amendment

A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

Provision after Amendment:

A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under subsection (1) of section 37 for the said tax period.

Implication:

In the GST law, it would be provided that furnishing of GSTR-3B for a particular period would not be allowed if GSTR-1 for that tax period has not been filed. By notification, the Government may allow certain category of registered person to furnish their GSTR-3B even if the GSTR-3B for the earlier period or GSTR-1 for that tax period has not been filed.

7. Reversal of ITC with interest if the supplier does not pay the taxes and re-availment thereof

Reference in Finance Bill 2022: Clause 105

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Section 41

Provision before amendment

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

Provision after Amendment

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

Implication:

Section 41 of the CGST Act 2017 provided for provisional credit till the two way matching of ITC was made. Now that the two way matching provisions have been removed, there will not be any requirement of providing provisional input tax credit. Availment in the electronic credit ledger would be considered as final credit itself. Currently, it has been provided that self-assessed tax output tax (and not the Department assessed liability) could only be paid through such provisional credit. Now that provisional credit is no longer required, this clause is also proposed to be removed. Without any dispute, the Department liability can be paid through the electronic credit ledger now. If the tax has not been paid by the supplier, the recipient would be liable to reverse his input tax credit along with interest. When the said payment is made by the supplier on a later date, the recipient would be able to re-avail the credit in the prescribed manner.



8. Removal of clauses for two-way communication of ITC mismatches and that of new returns:

Reference in Finance Bill 2022: Clause 106

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Section 42, 43 and 43A

Implications:

The GST law had prescribed for two-way communication process between the supplier and recipient through GSTR-1, 1A, 2A and 2. Such two-way communication could never be brought into force by the government. Consequently, the Government proposes to remove Section 42 and 43 wherein such communication process was provided.

Section 43A is part of the CGST Act 2017 but has not been notified till date. This provision had been enacted when the new GST returns were in the pipeline. However, the idea of the new returns was scrapped. Therefore, Section 43A is now proposed to be removed from the GST law.

9. Removal of reference to Section 38 for GST Practitioners

Reference in Finance Bill 2022: Clause 108

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Sub-section (2) of Section 48

Provision before amendment

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 [and to perform such other functions] in such manner as may be prescribed.

Provision after amendment

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37 and the return under section 39 or section 44 or Section 45 [and to perform such other functions] in such manner as may be prescribed.

Implication:

In the provisions for GST practitioners, the reference to GSTR-2 (Section 38) has been removed. This is because Section 38 itself has been completely modified to remove any two-way communication process and no return is to be filed under the said provision.

10. Restriction for utilizing the amount available in electronic credit ledger.

Reference in Finance Bill 2022: Clause 109

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Sub section 2 and 4 of section 49

Provision before amendment

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 “or section 43A”], to be maintained in such manner as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

Provision after amendment

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41] to be maintained in such manner as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions “and restrictions” and within such time as may be prescribed.



Implication:

Section 49(4) is being amended so as to provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger. Under the said provisions, Rule 86A of the CGST Rules 2017 can directly fall. This may also be the enabling provisions for providing further restrictions in the utilization of balance in the electronic credit ledger.

11. Transfer of balance in electronic cash ledger between two distinct persons with same PAN.

Reference in Finance Bill 2022: Clause 109 ©

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Sub section 10 of Section 49

Provision before amendment

(10) "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act."

Provision after amendment

(10) "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,--

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, subsection (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register."

Implication

Section 49(10) has been amended to allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person. This means that ITC may be transferred within various branches of an entity have separate GSTIN but the same PAN

12. Interest of 18% only on ITC wrongly availed and utilized.

Reference in Finance Bill 2022: Clause 110

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Section 50(3)

Provision before amendment

A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Provision after Amendment

"Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed."

**Implication:**

Currently, Section 50(3) provides for interest in case of excess claim of ITC or reduction of output tax liability which arises subject to the two way communication process of matching through GSTR 1, 1A, 2 and 2A (section 42 and 43). Since, the two way communication process was never made effective, interest under Section 50(3) has also been altered. Now, interest would be applicable only upon ITC wrongly availed and utilized due to any reason and not only due to the matching concept. This is a welcome move as it will put to rest those disputes wherein the Department had been charging interest for mere availment of ITC without its utilization. If the balance is present in the electronic credit ledger after its availment, no interest can be charged on it. This amendment is proposed to be notified with effect from 1st July 2017. Further, Interest rate under Section 50(3) of CGST Act, 2017 as per Notification No. 13/2017-Central Tax dated 28th June 2017 is currently 24%. Now, it is proposed to get the interest rate down to 18% with retrospective effect.

13. Refund from electronic cash ledger not through GSTR-3B but through prescribed manner.

Reference in Finance Bill 2022: Clause 112(a)

Effective Date of Amendment: to be notified by the government.

Affected Provision of the CGST Act, 2017: Proviso to Section 54(1)

Provision before amendment

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in “the return furnished under section 39 in such” manner as may be prescribed.

Provision after amendment

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in “such form and” manner as may be prescribed.

Implication:

It is proposed that refund of any balance in electronic cash ledger cannot be claimed in GSTR-3B. The said refund shall be claimed in such form and manner as would be prescribed. It should be noted that currently there is no mechanism to claim refund of electronic cash ledger via GSTR-3B, hence making it a redundant provision in the Act.

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Disclaimer: The views expressed in the compendium write-up are purely those of writer and expressed in mere academic parlance. This should not be construed as legal opinion or consultancy

Bibliography: The contents of the compendium are collection of views from various Courts & Tribunal Judgements, AAR-AAAR pronouncements, Online News Channels' Articles and other Online Published Articles including circulated through the social media platforms compiled for the benefit of reader.

Kolhapur Branch of WIRC of ICAI Activity for the month of January, 2022



Kolhapur Branch Chairman
CA Tushar Anturkar while
unfurling the National Flag



Members and students
attending Flag Unfurling Ceremony



At Unfurling Ceremony -
Managing Committee Members
of Kolhapur Branch of WIRC Of ICAI



Existing Managing Committee Members
with Upcoming Managing Committee Members



CA Manish Gadia WIRC Chairman while Felicitating Shri Nasim Arshi CGST Commissioner, Kolhapur

CA Manish Gadia WIRC Chairman while Presenting WIRC Reference Manual to Shri Nasim Arshi CGST Commissioner, Kolhapur.



CA Manish Gadia WIRC Chairman while Felicitating Vice Chancellor of Shivaji University Dr D. T. Shirke

CA Manish Gadia WIRC Chairman while Presenting WIRC Reference Manual to Vice Chancellor of Shivaji University Dr D T Shirke



Group Photo with Vice Chancellor of Shivaji University



At Shivaji University



Felicitation of WIRC Chairman CA Manish Gadia by CA Tushar Anturkar



Felicitation of WIRC Secretary CA Arpit Kabra by CA Sushant Gundale



Felicitation of WIRC RCM CA Murtuza Kachwala By CA Anil Chikodi



Chairman of Kolhapur Branch delivering the Opening remarks



CA Murtuza Kachwala while addressing to members of Kolhapur Branch



CA Arpit Kabra while addressing to members of Kolhapur Branch



CA Manish Gadia while addressing to members of Kolhapur Branch



WIRC Office bearers with existing and upcoming Managing committee Members



CA Alok Shah while Welcoming the Guests speakers of seminar



Felicitation of Speaker CA Gangadhar Haldikar



Felicitation of Speaker CA Girish Kulkarni



Discussion by CA Girish Kulkarni on the Seminar topic



Discussion by CA Gangadhar Haldikar on the Seminar topic



CA Ashish Sevekari while delivering the vote of thanks