



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



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CA Sushant Gundale
Chairman

Chairman's Communication

Dear Professional Colleagues,

“A Clear Vision backed by definite plans is the way to success” hence, we have to ensure that our vision for the year 2022 is crystal clear.

I am glad to announce that during last month we have generated 24 CPE hours through live 2 days seminar.

We were blessed to start our tenure with the program of “Felicitation of Newly Qualified Chartered Accountants”. In last attempt around 32 Chartered Accountants have been cleared from Kolhapur Branch.

The Women’s Day Program proved to be energetic and informative one. Also, on the occasion of the same we have announced the Women Empowerment Committee.

As we have decided in the last month, we have completed with the seminar on stock market and with that now are going a step ahead. In this month we are starting the Study

Circle on Stock Market whose main purpose will to be share knowledge through discussion among members and students to explore the opportunities in the field of Stock Market.

There was a good response among the member and students for the Bank Audit Seminar. The Sessions were very interactive and the knowledge shared in the seminar

will surely guide the members in undertaking the bank audits in the month of April.

We are also in plan to start staff development and training program in the branch where

the staff and articles of the CA offices will be thought the relevant skills that are required for their daily routine work which in return will help the CA to increase the quality of their work.

Taking a step ahead into the technology revolution we will be launching the website of

Kolhapur branch in the coming month. The website will help members to register for there CPE programs, download the useful material and many other things.

Thank You

CA SUSHANT GUNDALE
CHAIRMAN



KOLHAPUR BRANCH OF WIRC OF ICAI

Managing Committee



CA SUSHANT GUNDALE
CHAIRMAN



CA Ashish Bhosale
VICE CHAIRMAN



CA Taslimarif Mullani
SECRETARY



CA Ashish Sevekari
TREASURER



CA Amit Hirave
WICASA CHAIRMAN



CA Nitin Hargude
MEMBER

Women's Empowerment Committee 2022-23

CA Prity Pochore
CA Saanvi Ahuja

CA Aditi Magar
CA Prajakta Joshi

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WICASA Vice-Chairman

Miss. Janhavi Jadhav
WICASA SECRETARY

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WICASA
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WICASA Treasurer

Miss. Puja Revankar
WICASA Social Media
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Editorial Team 2022-23

CA Girish Kulkarni
CA Dipesh Gundesha
CA Gangadhar Haldikar

CA Sanjay Vhanbatte
CA Ajinkya Jagoje

CA Nitin Hargude
CA Rajat Powar
CA Vaijayanta Chaugule



Kolhapur Branch of WIRC of ICAI Details of Programme Held in the Month of March, 2022

	Date		Programme Name	Topic	Students/ Members	Speakers name	Venue	CPE Hours
	From	To						
1	05-03-2022	05-03-2022	Newly Qulified CA Felicitation Programme - December, 2021	Newly Qulified CA Felicitation Programme - December, 2021	Students	-	ICAI Bhawan, Kolhapur	-
2	08-03-2022	08-03-2022	International Women's Day - 2022	1. Overall Female Representation skills, grooming & impressive personality development. 2. Spirituality- Eternal Strength for overall personality presentation amongst women"	Students & Members	1. Dr. Neeta Narke 2. Dr. Sushma Rote	ICAI Bhawan, Kolhapur	-
3	09-03-2022	23-03-2022	AICITSS - Advanced ITT	Physical KOP-ADVITT-23	Students	-	ICAI Bhawan, Kolhapur	-
4	09-03-2022	25-03-2022	ICITSS - Orientation	Physical KOP-OP-31	Students	-	ICAI Bhawan, Kolhapur	-
5	12-03-2022	13-03-2022	Technical Analysis of Share Prices in Stock Market	Day - 1st - 1) Behind the Scenes of How Stock Market Works 2) Basic Insights about Price Action Trading/Investing 3) TREND ANALYSIS in Markets 4) Importance of understanding Market Psychology and why many Traders/Investors are unable to make money. 5) Why Indicator-Based Trading gives low Accuracy? 6) Understanding Supply/Demand Zones 7) Insights into STRUCTURE READING in Markets Day - 2nd - 1) Intraday vs Swing / Positional Difference and Capital Requirements 2) Multiple Timeframe Analysis 3) Option Trading Post-mortem - Volatility and Momentum Co-relation 4) Understanding of Market Cycles - Investing Special 5) Investing Strategy that will help you to beat any FUND MANAGER 6) Understanding How to Create a rule-based Swing/Positional/ Intraday Trading System	Students, Members & Others	1. Mr. Bhushan Kanathe 2. Mr. Gaurav Rakhonde	ICAI Bhawan, Kolhapur	12 hrs
6	20-03-2022	21-03-2022	Bank Branch Audit	Day - 1st - 1) Overview of Bank Audit (Planning & Certification) 2) Audit under CBS Environment with Emphasis on Fraud Detection 3) IRAC Norms - (Nov 2021 Circular) practical issues Day - 2nd - 1) Agriculture Advances, Sensitive Accounts, Restructuring of Advances Use of IT / CBS 2) LFAR & Expectations of SCAs 3) Pannel Discussion	Members	1. CA Abhijit Sanzgiri 2. CA Nitant Trilokekar 3. CA Pankaj Tiwari 4. CA Saurabh Peshwe 5. CA Niranjan Joshi	ICAI Bhawan, Kolhapur	12 hrs



Supreme court High Court Tribunal Cases

(Compiled by CA. Ajinkya Jagoje)
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Supreme Court Decision

■ Union Bank of India v. ACIT [2022] 136 taxmann.com 155 (SC)

Issue: Whether the appellant was required by the provisions of Section 194A of the Income Tax Act 1961 to deduct tax at source on payments of interest made to the Agra Development Authority.?

HELD: Hon'ble Court, held -

- In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), - the Central Government hereby notify the following for the purposes of the said sub-clause:-
 - i. any corporation established by a Central, State or Provincial Act;
 - ii. any company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that Bank; and
 - iii. any undertaking or body, including a society registered under the Societies Registration Act, 1860 (21 of 1860), financed wholly by the Government."
- As Agra Development Authority is a statutory corporation constituted a State Act (the UP Urban Planning and Development Act, 1973), it is covered by Notification dated 22 October 1970 issued by the Central government. Agra Development Authority is "a corporation established by a Central, State or Provincial Act" and covered by clause (a) of the said Notification.

Interest payments made to Agra Development Authority are exempt from TDS u/s 194A as the Authority is a corporation established under a State Act.

■ CIT v. Sociedade De Fomento Industrial (P.) Ltd [2022] 135 taxmann.com 355 (SC)

Issue: where assessee had set up a new unit adjacent to old unit, did it amount to splitting up or reconstruction of existing unit - not eligible for exemption u/s 10B?

HELD: Hon'ble Court, held -

- The Income Tax Appellate Tribunal, by its decision dated 24 March 2011, applied the tests which have been formulated in the decision of this Court in Textile Machinery Corpn. Ltd. v. CIT [1977] 107 ITR 195. These tests which have been formulated in the decision of this Court are reproduced below :
 - i. Manufacture or production of articles yielding additional profit attributable to the new outlay of capital in a separate and distinct unit is the heart of the matter.
 - ii. The fact that an assessee by establishment of a new industrial undertaking expands his existing business which he certainly does would not on that score, deprive him of the benefit. Every new creation in business is some kind of expansion and advancement.
 - iii. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business,
 - iv. In order that the new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit.
 - v. The new unit may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business.
 - vi. The products produced by the new unit may be consumed by the assessee in his old business or may be sold in the open market. One thing is certain that the new undertaking must be an integrated unit by itself wherein articles are produced.



vii. The industrial unit set up must be new in the sense that new plants and machinery are erected for producing either the same commodities or some distinct commodities.

viii. In order to deny the benefit the new undertaking must be formed by reconstruction of the old unit which can take place only when the assets of more than 20% value of new unit are transferred to the new unit from the old unit."

- The Tribunal has noted that the new unit was fully a independent unit with a production capacity of 15 lakh tons per annum as compared to the earlier production capacity of 2 lakh tons per annum of the old unit.
- In this backdrop, the judgment of the Division Bench of the High Court of Bombay at Goa dated 22 October 2020 affirming the judgment of the Tribunal does not suffer from any error. The Special Leave Petition is accordingly dismissed.

High Court Decision

■ **Daujee Abhushan Bhandar (P.) Ltd. v. Union of India [2022] 136 taxmann.com 246 (Allahabad)**

Issue: Whether digitally signing notice would automatically amount to issuance of notice? Whether issuance of notice shall take place on the date and time when it is dispatched either electronically or through other mode? Even if it is assumed that the notice under Section 148 of the Income Tax Act was issued on 31.3.2022 and despatched on 6.4.2022 then whether the unamended provision of Section 148 or amended provision of Section 148 would apply?

- **HELD:** Hon'ble High Court, held -
- Mere digitally signing the notice is not the issuance of notice.
- The communication in electronic form has been prescribed in Rule 127 A of the Rules 1962 which provides a procedure for issuance of every notice or other document and the e-mail in electronic form/electronic mail which has to be issued from the designated e-mail address of such income tax authority. Sub-Section (1) of Section 13 of the Act 2000 provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator
- Thus, considering the provisions of Section 282 and 282 A of the Act, 1961 and the provisions of Section 13 of the Act, 2000 and meaning of the word "issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic record.
- The point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e. the assessing authority that shall the date and time of issuance of notice under section 148 read with Section 149 of the Act, 1961.
- Date of digitally issued notice is the date on which it is issued through e-mail, not the date of AO's digital signature. Since the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 6-4-2021 through e-mail, therefore, the impugned notice for AY 2013-14 under section 148 of the Act, 1961 is time barred.

Similarly - *Yuvraj Vs ITO Bhopal (Madhya Pradesh High Court) - Whether notice dated 31st March 2022 served by email on 16th April, 2022 is a valid issue of notice u/s 148 of the Income-tax Act, 1961?* The Hon'ble High Court in this case was called upon to decide as to when the notice which was electronically signed on 31st March 2021 but was issued on 16th April, 2021 by e-mail, whether it can be said to have been validly issued in view of the law prevailing after 1st April, 2021 wherein the procedure laid down u/s 148A has to be followed. The court after noting the new provisions took no time to hold that the notice was bad in law and the reassessment proceedings were quashed with liberty to the department to follow the new law and act accordingly.



■ **Perizad Zorabian Irani v. PCIT [WRIT PETITION NO.1333 OF 2021] (BOM) 9th MARCH 2022**

Issue: Order passed under Section 139(9) by Assessing Officer treating the return of income filed by assessee as invalid because according to AO, petitioner failed to get her accounts audited u/s 44AB though her gross receipts / turnover after including remuneration received from partnership firm was more than the threshold limit of Rs.50,00,000/ ?

HELD: Hon'ble Tribunal held -

- Assessee derived a sum of Rs.8,45,220 as net income from acting profession and Rs.1,01,20,191 as remuneration received as working partner from the firm M/s Zorabian Sales and Marketing.
- Contentions of assessee - Section 44AB are not applicable to the facts of the present case because: (a) the business is carried on by the partnership firm and not the assessee, (b) becoming the partner of partnership cannot be construed as carrying on business, (c) partners' remuneration cannot be construed as total sales turn over or gross receipts in business, (d) partners' remuneration does not arise out of carrying on profession, (e) partners' remuneration cannot be construed as gross receipts from profession and (f) Section 44AB is not applicable where assessee is carrying on a profession as well as business simultaneously in different field.
- In a matter which is similar to this matter at hand, where the scope of Section 44AD of the Act came up for consideration, is the judgment of **Madras High Court in Anandkumar Vs. Assistant Commissioner of Income Tax**- In that case, the assessee was an individual and a partner in some partnership firms. Admittedly, the assessee who was an individual in that case was not carrying on any business and the remuneration and interest received by the assessee from the partnership firm cannot be termed to be a turn over of the assessee (individual). The court concluded that the Revenue was right in its contention that remuneration and interest from the partnership firm cannot be treated as gross receipt of the assessee. We respectfully agree with the view expressed by the Hon'ble Madras High Court.
- In fact, in the case at hand, petitioner's case is the same that petitioner's remuneration from the partnership cannot be treated as gross receipt in profession. In the circumstances, in our view petitioner's stand that she was not required to get her accounts audited under Section 44AB, is correct

Tribunal Decision

■ **Reliance Payment Solutions Ltd. v. PCIT [2022] 136 taxmann.com 277 (Mumbai - Trib.)**

Issue: Whether when Assessing Officer did not make any observations, in assessment order, on the matter for which specific query was raised in the assessment proceedings can be treated as failure to make necessary enquiry and hence prejudicial to the interest of revenue under section 263?

HELD:

- The assessment was picked up for scrutiny assessment, and one of the reasons for selection of case for scrutiny was "depreciation claimed at higher rate". During the course of scrutiny assessment proceedings, this issue was raised, and in reply thereto, assessee submitted along with working that that the depreciation claimed by the Company is as per the rate of depreciation prescribed under the provisions of the Income-tax Act, 1961 read with Rule 5 (New Appendix I) of the Income-tax rules, 1962 and thus, there is no excess depreciation claimed by the Company.

In the assessment order, however, the Assessing Officer did not make any observations on this aspect of the matter. Principal Commissioner initiated the revision proceedings under section 263 - Company had incurred Rs.5.47 crore on Computers and software expenses of Rs.6.45 crore under the head Intangible Assets as per Companies Act Schedule. However, claimed both of these as 'Computer' under Income Tax Act. As per PCIT, the rates of depreciation can be different as per Companies Act and as per Income Tax Act, however the value of addition or classification of block of asset must not change.



- Hon'ble Tribunal rely upon **JRD Tata Trust v. DCIT [(2012) 122 taxman.com 275 (Mum)]** held -
“The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances.”
Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "without appropriate evidence", there is nothing to question the bonfides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue raised, in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".

■ **Reji Easow. V. ITO [2022] 136 taxmann.com 111 (Mumbai - Trib.)**

Issue:: Whether for the purpose of exemption under section 54 - the new house should be acquired within the stipulated 2 years - for which whether 'date of agreement' or 'date of possession' is to be considered?

HELD:

- The facts are: (a) The Assessee booked the **New Residential Property on 28-5-2011**; (b) Allotment was made to the Assessee on 14-7-2011; (c) Agreement For Sale, dated 7-2-2011, was registered on 15-2-2011; (d) In December 2012, the Assessee made majority of payments by availing a mortgage/housing loan; (e) **Original Asset was sold on 21-5-2014** and the sale proceeds were utilised towards repayment of the existing mortgage/housing loan; (f) Occupancy Certificate was issued on 17-2-2016; (g) Assessee took actual **physical possession on 2-4-2016**.
- Hon'ble Tribunal held -
*On perusal of the above it can be seen that that the purchaser/Assessee is put in possession only as a licensee and to that extent the purchaser/Assessee acquires interest in the premises/flat on entering into possession. Since by that date the purchaser/Assessee has already paid entire/majority of consideration for purchase, it can be said that the Assessee has, on the date of taking such possession, purchased the property for the purpose of Section 54 of the Act as has been held by the jurisdiction **High Court in that the case of CIT v. Smt. Beena K. Jain : 217 ITR 363**. While examining the issue in respect of Section 54F of the Act the Hon'ble High Court held that **for the purpose of determining the date of purchase of new residential house the relevant date in the date when the petitioner paid the full consideration amount on the flat becoming ready for occupation and obtained possession of the flat.***

The requirement of the Section 54 is that the Assessee should purchase a residential house within the specified period and source of funds is quite irrelevant. Nowhere, it has been mentioned that the funds received as consideration from sale of original asset must be utilized for the purchase of the new residential house [ACIT v. Dr. P.S. Pasricha : [2008] 20 SOT 468 (Mumbai) (11-01-2008)]. Since the date of purchase falls within a period of 2 years from the sale of Original Asset (i.e. 21-5-2014), the Assessee is entitled to benefit under Section 54 of the Act.



■ **ITO v. Pransukhlal Mafatlal Hindu Swimming Bath & Boat Club Trust [ITA No.684/Mum/2019 ; AY 2013-14 ; dated 23/3/2021]**

Issue: Whether proviso to section 2(15) is applicable where assessee trust was in promotion of swimming and other allied sports on no profit basis but earned income by way of guest fee and learn to swim fee ?

HELD:

- Assessee-trust claimed exemption under section 11. Main object of the assessee trust was promotion of swimming and other allied sports on no profit basis. AO noticed that assessee had earned income by way of guest fee and learn to swim fee. Accordingly, AO held that assessee's activity was in the nature of business, trade or commerce and, therefore, AO disallowed exemption in view of proviso to section 2(15).
- Hon'ble Tribunal held -
Providing sports facilities to general public without restriction to any caste, creed, religion or profession squarely fall within the definition of "charitable purpose" as defined under section 2(15). Assessee was running its activities in accordance with its main object and continued to provide services to its members by collecting nominal fee. Further, assessee has deficits from its core activity of promoting swimming for all the years. The assessee's collection from its members was less than the amount spent for its objects. But, for income from investments, assessee was always incurring deficit for all the years. Further, if the object or purpose of an institution is charitable, the fact that institution collects certain charges does not alter the character of the institution. It is not necessary that it should provide something for nothing or for less than its costs or for less than the ordinary price. Accordingly, assessee was not hit by proviso to section 2(15) and, therefore, assessee was entitled for exemption under section 11.

Conclusion: Where main object or purpose of assessee's charitable trust was promotion of sports and swimming, merely because trust collected certain charges from coaching campus, same could not alter its character of being charitable.





TAXABILITY ON TRANSFER OF FSI/TDR

CA SANJAY VHANBATTE

CASE FOR OPINION

Brief Facts of the Case

The following facts have been gathered from the copy of the Supplementary Development Agreement (SDA) dated 30.12.2021 and upon discussion with you:

1. The land at ***** having area of 1500 sq. mtrs. was owned by A, B and C (Hereinafter referred to as the Land Owners) jointly purchased by them in 2005.
2. The said land was given for development vide original Development Agreement with ('DA' in short) in F Y 2015-16 where by consideration was fixed at Rs.2,00,00,000/-. This consideration included constructed area to be given to the Land owners plus some portion of consideration in money.
3. Capital Gains arising on such transfer of development rights are told to have been offered to tax by the land owners in F.Y. 2015-16 (AY 2016-17) taking the sale consideration at Rs.2,00,00,000/- as per this D.A.
4. The developers had obtained Building Construction Permission on 16.01.2015 and the Project was accordingly developed.
5. However, on account of the announcement of new Development Rules as per Unified Development Control and Promotion Regulations 2020 (UDCPR 2020) the Land owners and Developers revised the building plan with additional constructible area which was sanctioned on 06.04.2021.
6. The Project received completion certificate on 11.06.2021. Accordingly, Deed of Declaration was registered vide on 21.06.2021.
7. The additional construction was possibility made in view of the new development rules being in the offing put in the public domain by the Government of Maharashtra inviting public comments and accordingly could get completed within two months of sanction of revised plans with additional constructible area.
8. The additional constructible area arose only on account of additional FSI that became available on account of the UDCPR 2020 in which the land owners were entitled for additional constructible area.
9. It is on account of this that the land owners were entitled and were accordingly to be given specified additional constructed area. Supplementary Development Agreement ('SDA' in short) was entered into between the land owners and the Developers on 30.12.2021.
10. The Net consideration for the purpose of Stamp Duty valuation as per the SDA was worked at Rs.2,50,00,000/- the details of which are as under:



Name	Money	Value of constructed Area	Total
A	20,00,000	2,05,00,000	2,25,00,000
B and C	1,20,00,000	1,05,00,000	2,25,00,000
Total -			4,50,00,000
Less: Valuation of consideration as per original DA			2,00,00,000
Total Consideration for SDA			2,50,00,000

11. Thus the land owners have received additional consideration of Rs.2,50,00,000/- on account of SDA dtd.30.12.2021 in the form of additional constructed area coming to their share as well as consideration in the form of cash received from time to time.
12. My opinion is sought on the taxability or otherwise of this additional consideration received by the land owners of Rs.2,50,00,000/- as per the SDA dtd. 30.12.2021.
13. My attention is also drawn to the decision of Bombay High Court in the case of **CIT vs. Sambhajinagar CHS Ltd. 370 ITR 325(BOM)** in this respect where in the High Court has held that consideration received on sale of TDR arising out of change in Development Regulations is not liable to tax.

Opinion

Based on the above facts, I proceed to give my opinion as under:

1. I have perused the SDA dtd. 30.12.2021 where from the factual position has been borne out as discussed above. I have not been provided with the original D.A. The facts that have been mentioned in SDA have been accordingly taken to be having been mentioned in the DA.
2. It appears to me that the SDA dtd. 30.12.2021 has been executed (which is after the date of completion certificate dtd.11.06.2021 and registration of Deed of Declaration dtd. 21.06.2021) solely to bring on record the ownership entitlement of additional area being given to the land owners. I am given to understand that, the additional area or for that matter the additional consideration has arisen to the land owners on account of the new UDCPR 2020 announced by the Government of Maharashtra, where by the constructible area under the project increased substantially and the land owners got their proportionate share therein accordingly.
3. Therefore, a clear case is made out to the effect that the additional consideration (either in the form of additional constructed area or in the form of consideration in money) has come to the land owners solely on account of change in the Development Regulations in 2020.
4. It is an established canon in the taxation of Capital Gains under the income tax law that for computation of capital gains, two elements are essential-
 - Sale Consideration

AND

 - Cost of Acquisition

If either of the element is missing in the transaction, the computation mechanism fails and such transaction falls out of the purview of capital gains taxation with no tax liability.

5. The Supreme Court way back in 1981, in the case of **CIT vs B.C. Srinivasa Shetty 128 ITR 294 (SC)** asserted the above legal proposition while dealing with a case of sale of self-generated goodwill where there was no cost of acquisition for goodwill sold and hence the Supreme Court held that sale consideration on sale of such goodwill cannot be taxed as capital gain.



6. This view was further reiterated by the Supreme Court in **CIT vs D.P Sandhu Bros. Chembur P Ltd or Union of India vs. Cadell Weaving Mills Co. Pvt Ltd (2005) 273 ITR 1 (SC)** where the issue in hand was taxability as capital gains on sale/surrender of tenancy rights. The court held the consideration received on surrender of tenancy rights to be not taxable since such tenancy rights did not have cost of acquisition because of which the computation mechanism of capital gain failed.
7. Taking cognizance of these ruling by the Supreme Court, the Government amended Section 55 from time to time where by intangible assets like goodwill, tenancy rights, loom permits, other commercial rights etc., which have no cost of acquisition have now been deemed to have 'NIL' cost of acquisition and therefore, with this deeming fiction, the computation of Capital Gain becoming possible, the gains are now taxable as per the amendments to section 55.
8. Interestingly, so far, the amendment to section 55 is limited one and does not cover other intangible assets such as FSI or TDR which are not having any cost of acquisition. This being the case the established legal position by the Supreme Court- that- Sale Consideration arising out of capital assets which does not have any cost of acquisition cannot be brought to tax under capital gains- still equally holds goods for such FSI or TDR not having any independent or separate cost of acquisition of its own.
- a) This exactly is the factual position in the decision of Bombay High court in CIT vs Sambhaginagar CHS (supra). The Society had transferred TDR acquired on account of promulgation DCR, 1991 for Greater Mumbai, gain on which was held to be not taxable by Bombay High Court following the ratio of the decision of the Supreme Court in the case of B.C. Srinivasa Setty (supra) .
- b) The Mumbai ITAT had been consistently holding this view which is in favour of the assessee stating that gain on transfer of FSI/TDR which is self-acquired having no cost of acquisition is not taxable. Useful reference can be made to the following cases decided by Mumbai ITAT:
- i. Land Breez CHS Ltd vs. ITO 21 ITR (Trib) 467 (Mum)
 - ii. ACIT vs. IGE India Ltd 22 ITR (Trib) 365 (MCM)
 - iii. Maheshwar Prakas-2 CHS Ltd vs. ITO 313 ITR (AT) 103(MCM)
 - iv. New Shailaja CHS Ltd vs ITO 18 DTR (Trib) 385 (Bom)
 - v. ITO vs Lotia Court CHS Ltd 12 DIR (Trib) 396 (MUM)
- c) In a very recent case 35 Batliboi Ltd vs ITO (2021) TS-410-ITAT 2021 (MUM) once again the Mumbai ITAT has reaffirmed the above proposition albeit in an altogether different scenario. In this case the assessee company sold its land and super structure thereon in January 2013 for Rs.11.14 Crores. The land along with the super structure was purchased by the company way back in 1967. In between, the DCR in the city of Coimbatore had changed on account of which the company became entitled for additional FSI of 0.8. The company claimed that out of Rs.11.14 crore consideration received by it for sale of the land and superstructure thereon, a sum of Rs.4,76,25,000/- pertains to the portion of additional FSI of 0.8(supported the claim by valuer's report) which it became entitled to on account of new DCR. The company further claimed such sum of Rs.4,76,25,000 to be not taxable as capital gain since it relates to the additional FSI of 0.8 for which there is no cost of acquisition and hence capital gain mechanism does not work. The ITAT upheld this contention of the assessee.
- d) In view of the forgoing discussion I am of the opinion that the additional consideration received by the land owners through SDA being on account of additional FSI/TDR/Constructible Area acquired by them on account of new UDCPR 2020 is not liable to tax since there is no cost of acquisition in the hands of land owners in this respect. The ratio laid down by the Supreme Court in the case of B.C Srinivasa Setty (Supra) and so followed by Bombay High Court in Sambhaginagar CHS Ltd (Supra) squarely applies to the case of the land owners.
- e) An important aspect, I wish to bring to the notice of the querist. As discussed herein before the total consideration for the Development Rights has been valued (for Stamp Duty Purposes) at Rs.4,50,00,000/- as on 30.12.2021 of which Rs.2.00 Crore are reduced being the consideration for original DA. It may be noted that the difference of Rs.2,50,00,000/- does not entirely pertain to the valuation of additional area coming to land owners. It also includes increase in the stamp duty valuation of the constructed area share of land owners as per the original D.A. This increase in the Stamp Duty Valuation of the share of land owners of the original area cannot be the quantum of any dispute, in any case whatsoever. Hence the opinion.





Compliance Calendar for April 2022

CA Prasanna Kamble of Kunte & Chaugule

Sr.No	Particulars	Due Date
1	GSTR-7 (For the month of Mar, 2022)	10-Apr-22
2	GSTR-8 (For the month of Mar, 2022)	10-Apr-22
3	GSTR-1 (For the month of Mar,2022)	11-Apr-22
4	GSTR-6 (For the month of Mar, 2022)	13-Apr-22
5	GSTR-1 (For Jan-Mar 2022)	13-Apr-22
6	CMP-08 (For Jan-Mar 2022)	18-Apr-22
7	GSTR-5 (For the month of Mar, 2022)	20-Apr-22
8	GSTR-5A (For the month of Mar, 2022)	20-Apr-22
9	GSTR-3B (For the month of Mar,2022)	20-Apr-22
10	GSTR-3B (For Jan-Mar 2022)	22/04/2022 & 24/04/2022
11	GSTR-4 (2021-22)	30-Apr-22
12	Due date for deposit of Tax deducted by an office of the government for the month of March, 2022. However, all sum deducted by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production	7-Apr-22
13	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of February, 2022	14-Apr-22
14	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of February, 2022	14-Apr-22
15	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of February, 2022	14-Apr-22
16	Due date for payment of Provident Fund, ESI contribution for employers who have paid wages to their employees for March 2022.	15-Apr-22
17	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending March, 2022	15-Apr-22
18	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of March, 2022	15-Apr-22
19	Due date of PF filing return for month of March 2022.	25-Apr-22
20	Due date for payment of PT for the month of March where tax liability is more than Rs.1,00,000/-. (Monthly)	30-Apr-22
21	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of March, 2022	30-Apr-22



Sr.No	Particulars	Due Date
22	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of March, 2022	30-Apr-22
23	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of March, 2022	30-Apr-22
24	Due date for deposit of Tax deducted by an assessee other than an office of the Government for the month of March, 2022	30-Apr-22
25	Due date for e-filing of a declaration in Form No. 61 containing particulars of Form No. 60 received during the period October 1, 2021 to March 31, 2022	30-Apr-22
26	Due date for uploading declarations received from recipients in Form. 15G/15H during the quarter ending March, 2022	30-Apr-22
27	Due date for deposit of TDS for the period January 2022 to March 2022 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H	30-Apr-22

Notes:-As per MCA Notification dated 31/03/2022 following dates extended

1. Applicability of using accounting software having Audit trail has been now deferred and now shall be applicable from financial year commencing on or after 01-04-2023
2. Due date of CSR-2 for FY 2020-21 extended to 31-May-2022



Checklist for the activities to be done for closing the FY 2021-22 in March 2022

CA Pradeep Patankar
CA, Dip IFR (ACCA, London)

Well, It's the end of Financial Year 2021-22. There are few activities to be carried out in order to compliance with GST laws before we go to Financial Year 2022-23.

I have compiled a list of certain important activities for closure of Financial Year 2021-22:

A. Reporting to Correct Outward Supplies:

1. Prepare and reconcile the turnover as reported in GSTR 1/GSTR 3B with books of accounts for FY 2021-22. Also, check that it has been classified under correct HSN/ SAC code and correct GST rate has been levied on the same. Further, any outward supplies of FY 2021-22 shown in a period of April to September 2022 should be captured properly for proper disclosure in GSTR 9 & GSTR 9C of FY 2021-22.
2. Compile and reconcile the amount of taxes paid in GSTR 1 and GSTR 3B filed during the FY 2021-22 with books of accounts and pay the tax if there is any shortfall vide filing DRC 03 to avoid the litigation and penalty.
3. Prepare the reconciliation of E-way bills generated during the FY 2021-22 with tax invoices reported in GSTR 1 and give prior intimation to the department in case of any deficiency.
4. In case of compulsory generation of e-invoices, check & reconcile whether all the tax invoices for B2B supplies have been duly reported on dedicated e-Invoice portal and IRN generated with QR code and digitally signed. If not, then kindly report the same on e-invoice portal and take the necessary action in subsequent month's GSTR 1. Further, pls prepare reconciliation with e-invoices with IRN viz. e-way bills generated viz. reported or furnished in GSTR 1.
5. Check whether all the invoices raised during the FY 2021-22 have been properly reported in GSTR 1 and taxes have been paid thereon in GSTR 3B. In case, any kind of amendment required viz. GSTIN, Invoice Number, Invoice Date, Taxable Value, taxes, B2C to B2B, etc., needs to be done, then the same has to be done before the date of filing of GSTR-1 for the month of September 2022, following the end of FY 2021-22.
6. Check whether the GST paid on advances received in FY 2021-22 towards the supply of services made or agreed to be made has been properly adjusted in GSTR 1 and GSTR 3B.
7. Check the tax compliances in case of supply of business assets during the FY 2021-22 on which ITC has been availed.
8. In case of material sent for job work, check whether the same has been returned within the time limit prescribed (Inputs - 1 year and Capital goods - 3 years) and the same has been duly reported in ITC 04.
9. Check whether the goods sent on approval basis has been either returned within 6 months or sold on issuance of tax invoices.

B. Availment of legitimate Input Tax Credit for the FY 2021-22

1. Prepare the yearly reconciliation of ITC booked in books and ITC availed in GSTR 3B during the FY 2021-22 and availed in the subsequent month's GSTR 3B till Due date of filing GSTR 3B for September 2022 and reconcile the same with GSTR 2A/2B.
2. Follow up with suppliers to furnish/report transactions in their GSTR 1 with payment of taxes in GSTR 3B in case stated transactions is not populated in your GSTR 2A/2B.
3. Identify the ineligible ITC (Blocked credit/ ITC on exempt supplies) already availed in GSTR 3B of the FY 2021-22 and reverse/pay the same along with interest thereon @18% to avoid the litigation and demand of interest & penalty in future. Further, note that no interest & penalty leviable on reversal of wrongly availed credit but not utilised.



4. Prepare and Review that any payment to suppliers is not pending beyond 180 days from the date of issuance of supplier's invoice. If such ITC is availed without making payment within 180 days from date of issuance of invoice, then said ITC needs to be reversed along with interest @ 18%. Further, re-avail such ITC in subsequent month's GSTR-3B if payment has been made without any time limit (i.e., even post-filing of GSTR 3B for September 2022 as the time limit for availing ITC u/s 16(4) of CGST Act is not applicable in the case of re-availment of input tax credit).
5. In case of purchases made from any composition supplier, ITC is not available and should not be booked in books as well as availed in GSTR 3B. If done, then, reverse the same in books as well as in return.
6. Compile & reconcile ITC auto populated in GSTR 2A/ GSTR 2B for full FY 2021-22 and for the period April to September 2022 (relevant for FY 2021-22) and identify the suppliers whose registration has been either cancelled or suspended for any reasons during the FY 2021-22 for your onward needful actions.
7. In compiled data of GSTR 2A/2B, check status of date of filing of GSTR-1 and GSTR 3B of the suppliers to know whether your suppliers are tax compliant or not as your ITC has been made totally dependent on the compliances done by the suppliers.
8. Check for the transactions covered under reverse charge mechanism (RCM) either from registered suppliers or unregistered suppliers and make the payment of tax under RCM as per time of supply provisions and claim ITC if not done earlier. Also, raise the self-invoice in case of specified goods or services covered under RCM, received from unregistered person.

C. Other Important Activities

1. Important step to be taken by the exporters before the beginning of FY 2022-23: Apply for Letter of Undertaking (LUT) in Form GST RFD 11 for FY 2022-23 to continue export of goods/services or supplies to SEZ without payment of GST from 01st April 2022.
2. Time limit to avail option to opt out from the QRMP Scheme: Taxpayers having Turnover below Rs 5 Crores shall have an option to select the frequency of GST return filing for FY 2022-23 till 30th April 2022. So, if the taxpayers have opted for Jan - Mar 2022 and want to continue monthly filing of returns from FY 2022-23, they need to act by 30th April 2022.
3. Time limit for availing ITC pertaining to the FY coming to an end: Avail the ITC pertaining to FY 2021-22 till the due date of filing of GSTR-3B u/s 39 of CGST Act for the month of September following the end of FY 2021-22 or the date of filing of annual return for FY 2021-22 whichever is earlier. Hence, prepare reconciliation of ITC for FY 2021-22 is availed in FY 2021-22 and in the period April to September 2022 for proper disclosure in GSTR 9 & GSTR 9C of FY 2021-22.
4. Time limit for issuance of credit notes under GST for FY 2021-22: Credit Notes for supplies made during the FY 2021-22 can be raised by the due date of filing of GSTR-3B u/s 39 of CGST Act for the month of September following the end of FY 2021-22 or the date of filing of annual return for FY 2021-22 whichever is earlier. Hence, capture CN details of FY 2021-22 is shown in FY 2021-22 and in the period April to September 2022 for proper disclosure in GSTR 9 & GSTR 9C of FY 2021-22.
5. Check the tax has been correctly calculated and paid under RCM in case of import of Services, sitting fees paid to directors, GTA, Security Services, rent a Cab, Advocate fees, etc.
6. Reconcile GST TDS/TCS credit reconciliation with e-Cash Ledger on GST portal and books of accounts for FY 2021-22.
7. Reconciliation of E-Credit ledger with books of accounts for FY 2021-22.



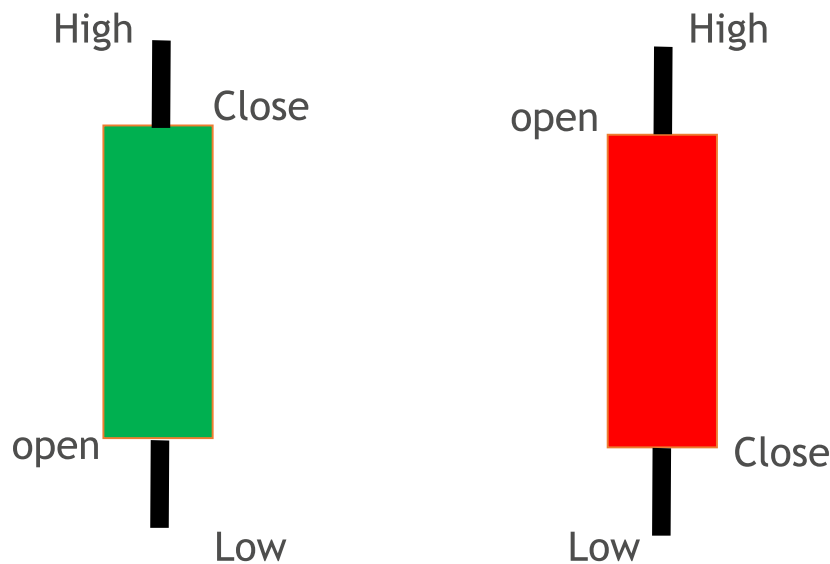


Charting Techniques

CA Onkar Rashinkar

Chart is nothing but a Graphical representation of how price moves within given time interval. This graphical representation of price in chart format help traders as well as investors to take exact entry or exit. There are various Types of charts like Candlestick Chart, Bar Chart, Line Chart, Renko Chart, Point & Figure chart, Kagi chart etc. but the most frequently used chart types are **Candlestick Chart, Bar Chart, Line Chart and Point and Figure chart.**

1. Candlestick Chart



This is the most widely used chart type. It includes colour combination to identify the candle. **Green** colour indicates bullish momentum and **Red** colour indicates the bearish momentum. This chart has four points which creates a particular candle and these points are **Open, High, Low and Close**. All these points collectively create a candle. In case of bullish candle, which is Green in colour, **Open** is always below the **Close** whereas in case of bearish candle **Close** is always below the **Open** point. Line below and above open & close is known as **Wick** or **Shadow** which indicates the price range from low to high point. High and Low is not necessarily to be shown by wick or shadow because sometimes candle's close/open can also be high or low point.

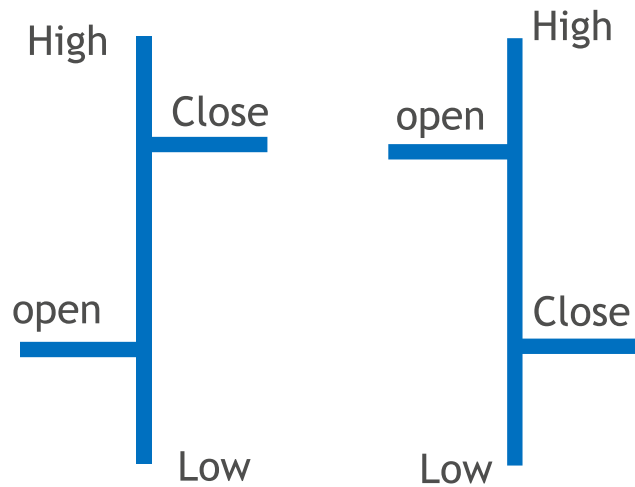
Candlestick chart is very old and traditional chart type. Such charts are very useful to identify the trend in the market because of its colour combination of bullish and bearish momentum. Candlestick patterns are firstly used in Japan for rice trading and that's why candlesticks are known as Japanese Candlestick Chart.

Candlestick Chart of Nifty 50





2. Bar Charts



Earlier the open and close prices were not available. So Bar Charts were used to plot High and Low on a chart, which indicates price movement during the given time interval. Bar charts are nothing but vertical representation of a price from low to high. It has the same characteristic as Candlestick except colour. Most bar charts are black in colour. Now a days we can use different colour to plot bar charts. Bar chart indicates Open, High, Low and Close (OHLC) price of the stock within a given timeframe.

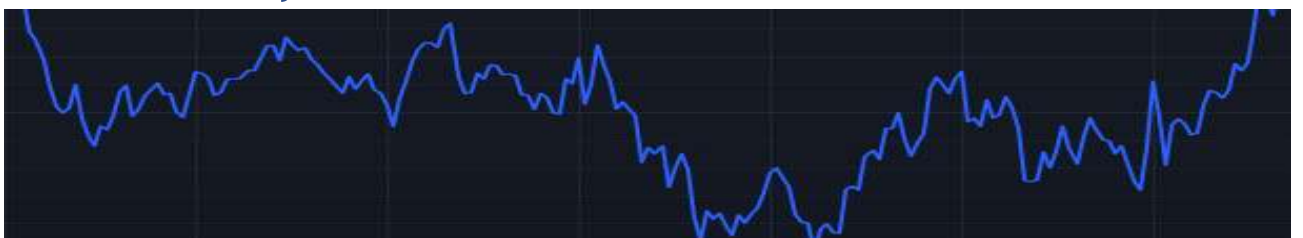
Bar Chart of Nifty 50



3. Line Chart

Line chart is most widely used chart type for long term analysis. Line chart is formulated by a connecting line through the closing prices of the stock within given time interval. Line chart is also known as a noise reduction chart as it eliminates Open, High and Low prices of an the stock. It shows a clear picture as how the stock moves with given time frame. Because of its simplicity, traders can identify pattern. Line chart can easily help us to identify support and resistance on a visual level. Due to its simplicity, Line charts are very ideal for the beginner.

Line Chart of Nifty 50





4. Point and Figure Charts :

Unlike Candlestick, Bar and Line charts, Point and Figure chart is more complex type of chart. This chart is used to identify reversal in the trend of an underlying. It is a noiseless chart as it does not contain Open, Close, High and Low of a price for a given time. It is generally used to identify trend reversal for long term trend. For plotting Point and Figure Charts, we need to first decide **Box Size** and **Reversal criteria**. Box size can be any number like 0.5, 1, 2, 50, 100 etc. The Reversal criteria is the number of boxes required to be retraced to record price in next column in opposite direction. It drops off passage of time.

Generally **X**'s and **O**'s are used to plot Point and figure chart where X indicates rising prices and O indicates falling prices. The box size in the P&F chart can be set based on the price of underlying as well as on the basis of investor's preference

Point and Figure Chart of Nifty 50





MCA Audit Trail

CA Nitin P Hargude.

The whole world is moving towards transparent economy so as India. The Ministry of Corporate Affairs has introduced new rule which mandates the use of accounting software that has an audit trail (edit log) feature to record all transactions and track any changes made to the same, with auditors tasked with the responsibility to review and control the same from 1st April 2022. As per the latest amendment, the audit trail feature should create an edit log for any changes made on transactions and record the date of each change being made and cannot be disabled. This would enable businesses to track all financial activities while helping to maintain transparency and detecting fraud. It would maintain an edit log of any changes made pertaining to various financial transactions, thereby improving business accuracy. This new amendment will surely help to trace and stop unauthorized changes and prevent fraud.

What the notification says?

Every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

The Ministry of Corporate Affairs ("MCA"), in its continuing drive to improve transparency and bolster integrity of financial reporting has amended the Companies (Accounts) Rules, 2014 ("Accounts Rules") requiring companies to ensure that the accounting software used to maintain books of accounts has the following features and attributes: recording audit trails for each & every transaction; logging the edits made to the book of accounts along with the date when such an edit was made; and ensuring that the audit trail cannot be disabled.

The Companies (Audit and Auditor) Rules, 2014 ("Audit Rules") have been correspondingly modified wherein auditors are now required to report, as part of the auditor's report, as to whether, the accounting software used by the company being audited has the feature of recording audit trail (edit logs), the audit trail feature was operational throughout the financial year and had not been "tampered" with and such audit trails have been retained for the period as statutorily prescribed.

The MCA has notified that the aforesaid amendments will be effective from April 1, 2022, which implies that the accounting software employed by companies will need to be compliant with the Accounts Rules from FYB 2022-23.

What is Audit Trail?

An audit trail (also called audit log) is a security-relevant chronological record, set of records, and/or destination and source of records that provide documentary evidence of the sequence of activities that have affected at any time a specific operation, procedure, event, or device. The purpose of audit trails is to reduce fraud, material errors, and unauthorized use and enhance internal controls and data security. In brief an audit trail is a detailed, chronological record whereby accounting records, project details, or other financial data are tracked and traced.

What is maintenance of Books of accounts under Companies Act, 2013

Section 2(13) "books of account" includes records maintained in respect of

- all sums of money received and expended
- the assets and liabilities
- all sales and purchases of goods and services
- items of cost as may be prescribed u/s 148 as required under Cost Audit As per Section 128(1), every company must prepare and keep its books of accounts and other relevant books, financial statements, and papers at its registered office. As per the second proviso of Section 128(1), all the companies may keep its books of account or other such relevant paper and books in electronic mode or as prescribed in Rule 3 of Companies (Accounts) Rules, 2014.



What is accounting Software?

Accounting software describes a type of application software that records and processes accounting transactions within functional modules such as accounts payable, accounts receivable, journal, general ledger, payroll, and trial balance. It may be developed in-house by the organization using it, may be purchased from a third party, or may be a combination of a third-party application software package with local modifications.

Prerequisite of Audit Trail in Accounting Software

- The accounting software that the company is using should have the capability to track each and every change made in transactions
- It should be able to capture the dates and timelines when such changes were made
- Further, it needs to ensure that the audit trail (edit log) cannot be disabled
- The edit log facility is required to be operated throughout the year and can't be tampered with
- The audit trail (edit log) is required to be preserved according to the requirement of the record retention
- The rule also mandates CAs to certify whether the accounting software being used is compliant or not.

How Audit Trail affects Books of accounts

An audit trail is important because it's used to verify and validate financial, software, and business transactions by tracking selected user activities or accounting financial statement amounts back to the transaction, event source, and data access used to create or modify a record. An audit trail helps businesses detect unauthorized use, errors, and fraud. Having an audit trail not only helps you track down transactions, but also lets auditors and other personnel find and verify activities. Audit trails make the audit process quicker and easier for everyone involved. And, they make preparing for an audit less stressful. For example, an auditor might see an unusual transaction in your books and question its accuracy. With an audit trail, auditors can look at supporting documentation (e.g., invoice) to determine whether or not the transaction is valid.

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Defects in Tax Invoice - Whether Curable?

CA Dipesh Fulchand Gundesha

Introduction :

The simplest definition of an invoice is that it is a document or commercial instrument issued by a seller to a buyer to record the transaction between them. It identifies both the trading parties, and lists, describes, and quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms. Although in common parlance, such document is referred to as “Bill” or “Invoice”, Section 31 of CGST Act mandates a registered person, supplying taxable goods/services to issue “Tax Invoice” within the specified time. Further, the contents of “Tax Invoice” are prescribed in rule 46. This rule prescribes 18 items that should be mentioned on the tax invoice.

Tax invoice further gains importance in section 16(2) where conditions for availing Input Tax Credit are mentioned. As per clause (a) of section 16, possession of tax Invoice is a must to claim Input Tax Credit. Further rule 36(2) states that Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document. Thus, it is very important to verify whether an invoice based on which ITC is to be claimed is a valid Tax Invoice or not.

Defects in Tax Invoice :

Many times, it is seen that the selling party issues Tax Invoice which is not in conformity with rule 46. For instance, HSN Codes are not mentioned or “whether tax is payable on reverse charge basis or not” is not mentioned or Invoices are not signed. In some cases, the words “Tax Invoice” themselves are not mentioned in the document. In the initial years, it was seen that many parties have used Bill books that were printed in earlier VAT regimes and made manual corrections on such invoices to use the same in the GST regime. The question before us is whether possession of such faulty purchase bills affects our eligibility to claim ITC as per section 16?

Proviso to rule 36(2) comes to our rescue in such a case. Said proviso reads as under

“Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, the total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.”

Thus, in cases, where the taxpayer is in possession of an Invoice that is not in conformity with the requirements of rule 46, he can take shelter of the proviso to rule 36(2) and claim ITC, provided such document has minimum requirements as per this proviso. But in cases where tax is duly paid by the supplier, but invoice does not fulfill, minimum requirements, further deliberation is required to decide on credit eligibility which is discussed in later part of the article.

E-Invoice Scenario :

Sub-rule 4 was introduced in rule 48 by Central Goods and Services Tax (Eighth Amendment) Rules, 2019 to enable the mandatory issue of E- Invoices by notified Taxpayers. The Government of India made E-invoicing compulsory for taxpayers having turnover greater than 500 Cr for the first time w.e.f. 1st October 2020 vide N/No. 61/2020 - CT dated 30th July. Further, this limit was reduced to 100 crores, then to 50 crores and now it will be 20 crores w.e.f. 01st April 2022. Thus taxpayers having turnover above the prescribed limit should mandatorily issue tax Invoice with Invoice Reference Number generated electronically i.e. E-Invoice as per rule 48(4).



Now an interesting question that comes before us is, whether failure on part of the eligible supplier to issue an E-Invoice i.e. issues regular invoice instead of E-invoice, affects the eligibility of the recipient to claim ITC? Whether such recipient can take shelter of the proviso to rule 36(2) in such as case, as discussed above?

Rule 48(4) which mandates the issue of the invoice is followed by sub-rule 5 which reads

” Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.”

This rule specifically mentions that if E-Invoice is not issued, then the document issued in that case would not be considered to be an invoice. Once it is not an invoice under rule 46, then the primary condition of section 16(2)(a) to avail ITC is not complied with. Proviso to Rule 36(2) provides concession to the contents of the Invoice and not for Invoice simpliciter. The intention behind rule 48(5) seems to mandate the raising of E-Invoice strictly.

ITC - Whether conditions are substantive or directive??

So, the question that merits our consideration is whether the requirement of mentioning these particulars or issuing invoice in specified manner is substantive in nature or not?

The Hon'ble Supreme Court, in *ALD Automotive Pvt. Ltd. v. CTO*, considered the constitutional vires of Section 19(11) of Tamil Nadu Value Added Tax Act, 2006, which provided for a time limit to avail credit, on the ground of being arbitrary and violative of Article 19(1)(g) of Constitution of India. The Court held that the time limit provided in Section 19(11) is a condition for availment of ITC which has to be strictly construed. It further observed that the use of word 'shall' indicates that ITC cannot be claimed beyond prescribed time and it is mandatory in nature, and accordingly, the assessing authority does not have the power to dilute this mandatory requirement.

In the abovementioned judgment, the Court also emphasized the principle of strict interpretation in taxing statutes. It held that a taxing statute has to be strictly construed. Nothing is to be read in, nothing is to be implied and language used in taxing statute had to be looked into fairly. The benefits envisaged in the taxing statute have to be extended as per the restrictions and conditions envisaged therein.

Hence, it can be said that condition provided under Rule 36(2) or for that matter under rule 48(5) are substantive and non-mentioning of the particulars prescribed under rule 46, subject to the proviso to Rule 36(2), or not following specified procedure in rule 48(4) will disentitle a person from availing ITC. Also, the long judicial battle regarding nature of ITC itself, i.e. whether ITC is a right of the assessee or a mere concession provided by the Government for the benefit of the assessee also needs to be considered. If ITC is a right, conditions can be construed to directory and if a concession, conditions can be said to be mandatory. Honorable Supreme Court has time and again upheld that ITC is a concession and is subject to conditions, provisions and rules under the statute in which they exist.

However, various courts have also repeatedly upheld the fact that ITC, cannot be denied on mere technical considerations. The Hon'ble Gujarat High Court, in *Vimal Enterprise v. Union of India*, held that, “Once the object for which a provision is enacted is satisfied, merely venial or technical breach by itself should not permit the authorities to adopt a stand which frustrates the object for which the entire scheme of Modvat has been framed. The endeavour must be to ensure that the scheme is made effective and not frustrated...”

Also The Hon'ble Punjab and Haryana High Court, in *Avdesh Tracks Pvt. Ltd. v. State of Punjab*, has held that: “The only discrepancy, on the basis of which input tax credit is sought to be denied to the appellant is that the invoice did not contain the words “input tax credit is available to a person against this copy”. The opinion expressed by the authorities is that it is a mandatory condition, which cannot be ignored. Mere non-mentioning thereof is fatal. In our view, the opinion expressed is contrary to the law laid down by this court as these types of technical defects in the invoices cannot be fatal for grant of input tax credit to the claimant...”



Conclusion-

From the above analysis, it may be concluded that conditions of Rule 36(2) & rule 45(4) read with rule 45(5), must interpreted strictly, as it is a substantive provision. However, considering the above jurisprudence on the subject-matter and its consequence on the applicability of Rule 36(2) & rule 45(5), it is arguable that the invoice particulars should not be construed strictly so as to disentitle ITC if it is curable and tax has been paid to the government and all other conditions have been satisfied. Also, at least for now, there is no time limit on the E-Invoicing portal, to generate E-Invoice and such invoices can be generated for any previous date. Hence in cases where a Normal Invoice is issued instead of an E-Invoice, the supplier can rectify the defect by converting a normal invoice into E-Invoice.

Furthermore there is no reliable mechanism available to the recipient to check whether the supplier is eligible for E-Invoicing or not. So, in the case where the supplier is required to issue E-Invoice, fails to do so, and issues a normal invoice, the recipient has no means to check whether such an Invoice is valid or not. Thus, if we interpret that failure on part of the supplier to issue an e-invoice vitiates the right of the recipient to avail ITC, then the recipient is cast with the obligation which is impossible for him to comply and doctrine of impossibility may come into the picture. Also, the GST portal allows uploading such invoices which are not generated electronically in GSTR-1 by the eligible supplier. Hence such invoices are duly communicated to the recipient in their GSTR 2A/2B. Although the appearance of invoice in GSTR2A/2B does not make credit valid, unless proper controls are implemented by the GST portal in this regard, ideally recipient should not be punished for no fault on his part.

Thus in cases where entitlement of ITC is questioned based on these technical requirements; jurisprudence discussed above along with doctrine of impossibility can be used as defense.

Note- Article has only discussed implications of defects in Tax invoice from recipient point of view. Supplier may also expose himself to penalties of Section 122 and 129 as per provisions of Act.

[2018] 99 taxmann.com 202/70 GST 751(SC)

2005 taxmann.com 118 (Guj)

2016 (342) E.L.T. 513 (Punj & Har).





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



Felicitation of Newly Qualified CA Members

Rangoli Competition held on Women's Day



Mehendi Competition held on Women's Day



Addressing Dr. Sushma Rote on the occasion of Women's Day Programme

Addressing Dr. Neetta Narrake on the occasion of Women's Day Programme



Women Empowerment Committee



Seminar On Technical Analysis of Share pricing

Day 1 - Seminar conducted on Bank Branch Audit



Day 2 - Seminar conducted on Bank Branch Audit