



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

# Western India Chartered Accountants Newsletter

AUGUST 2019 Vol. 45 | No. 08

Powered by Professionalism  
Driven by Values



Dear Professional Colleagues,

With the launch of the Chandrayan 2 - India's first moon lander and rover mission, Indian Space Research Organization (ISRO) has provided a sense of pride to all 130 crore Indians. The importance attached to this mission is that ISRO along with other Indians has developed the rover independently when the foreign supplier failed to deliver it. The second Lunar mission has

been launched successfully when India is going to celebrate its 73rd Independence Day. On this special day, I take this opportunity to wish every one a Happy Independence Day.

Being independent is also an important value for Chartered Accountants while performing audit, review, or other assurance services. Chartered Accountants are required to apply the conceptual framework to identify, evaluate, and address threats to independence. Independence "of mind" and "in appearance" requires adherence to the fundamental principles of integrity and objectivity. Through my interaction with members across the Region, I understand that CA friends are experiencing shrinking of audit fees due to competitive pressure. The ICAI has prescribed the minimum recommended scale of fees to be charged. An Audit can only be transparent and independent when it is fully priced and it will only be fully priced when it is not cross-subsidized with fees from non-audit services. The Companies Act, 2013, has listed the services which cannot be carried out by Auditors. Last year, the Foreign Direct Investment policy has mandatorily stipulated appointment of "joint auditor" of the Indian investee company in case the foreign investor intends to specify a "particular auditor/audit firm having international network" for the Indian investee company and such joint auditor should not be part of the same network. CAs, whether in practice or industry, should not succumb to any circumstances which lead to a compromise on Independence even though the odds will be against it too.

We celebrated the 70th CA Day on July 1, 2019 and flag hoisting was done by CA. Dr. Niranjana Hiranandani, Joint MD, Hiranandani Group. Various events like Investors' Awareness Programs, Cleanliness Drive – Swachh Bharat Abhiyan, Marathon, Blood Donation Camps, Organ Donation Awareness, Tree Plantations, GST sessions in girls' colleges etc., were conducted across the Region as celebrations during Foundation Day Week, as per the guidelines of ICAI. Participants witnessed the talent of our own members, families and students at WIRC's flagship cultural event - JEET - 14th 'Mile Sur Mera Tumhara'. Present on the occasion was 'Miss India 2019', Suman Rao who is a CA Student and she conveyed that the CA Course helped her to win the

'Miss India' 2019' contest as it trained her to be strong and work towards and achieve success despite facing failure.

When people honour each other, trust is established that leads to synergy, interdependence, and deep respect. Both parties make decisions and choices based on what is right, what is best and what is valued most highly. Taking this forward, we organized a series of programs for Members and students over the past month.

WIRC organized a lecture meeting on 'Union Budget 2019' which was attended by a record breaking 3,200 members. We felicitated our Past President, CA Bansi S. Mehta for his dedication to the profession and for sharing his knowledge to the members of the Region on Union Budget – Direct tax proposals for more than 20 years. We celebrated International SMP Day along with 1,500 members in a panel discussion on 'Networking of Firms'. We concluded DTRC and conducted various programs which were well received by members and students.

Education is the need of the hour as it uplifts the family, society and nation as a whole. Chartered Accountancy is the best course currently in India. To achieve the objective to do career counselling of CA course to students in commerce colleges across the region, we have conducted Faculty Development Program for Career Counselling of CA Course. This has been initiated for the first time in the Region as it will help to take the Accountancy course forward for the next generation.

WIRC has escalated various issues faced by members & students of the Region to President, ICAI, CA. Prafulla Chhajed and Vice President, ICAI, CA. Atul Kumar Gupta at the All Region Chairmen Meeting held recently.

WIRC connected all the Office Bearers of the branches of the Region via video conference to discuss various issues and suggestions. This innovative way to connect all branches was well appreciated. WIRC Office Bearers visited Aurangabad Branch along with President, ICAI.

"Remember that nobody will believe in your idea as strongly as you and by extension, nobody will know what you're going through to succeed – except you." – Robert Herjavec.

I welcome you to the Annual Flagship Event of WIRC - 34th Regional Conference - 'AWAKE' – 'Arise With Aim of Knowledge Enrichment'.

Jai Hind!

With Best Wishes,

CA. Priti Paras Savla  
Chairperson

#### OFFICE BEARERS

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# # CA Day Celebrations Week

Foundation Day Celebration – Flag Hoisting at BKC



Mile Sur Mera Tumahara



Investor Awareness Programme



Organ Donation Awareness



Tree Plantation



Swachh Bharat Abhiyan



GST Session for Girl Students at Various Colleges in Mumbai



WIRC Marathon



Blood Donation



# AWAKE - 34th REGIONAL CONFERENCE OF WIRC

**12**  
CPE Hrs

**Arise With Aim of Knowledge Enrichment**

Powered by Professionalism  
Driven by Values

**Days & Dates** Friday, 9th August, 2019 & Saturday, 10th August, 2019

**Venue** Yogi Sabhagruh, Dadar (East), Mumbai

**Time** 09.00 a.m. to 05.30 p.m.

**Fees** ₹ 3750/- + GST 18% (For Members)

**For Enquiry Call on 022-33671421/424**

To Register Online for event visit :

**For Members :**  
<https://wirc-icai.org/EventDetailsNew.aspx?id=3703>  
**For Non Members:**  
<https://wirc-icai.org/EventDetailsNew.aspx?id=3719>

**Inclusions**

- Cloud based Accounting Software – QuickBooks
- Cloud based Office Automation and Practice Management Software – Jamku
- NIYO Global Card – Smart Solution for Forex Need
- Trolley Bag

## FLAG HOISTING CEREMONY

Chief Guest  
**CA. Prafulla Chhajed**  
*President, ICAI*

**Date: 15th August, 2019**

**Venue: ICAI Tower, BKC, Mumbai**

**Time: 9.30 A.M.**

**ICAI Tower, Bandra Kurla Complex, Mumbai**

Date & Day	Time & Fees	Topic(s)	Speaker(s)	Regional Council Members (Chief Co-ordinators)	Co-ordinators
17/08/2019 Saturday  <b>6</b> CPE Hrs	10.00 a.m. to 6.00 p.m.  ₹ 1,416/- (Incl. GST)	<b>Seminar on GST Annual Return &amp; Audit Documentation</b> <ul style="list-style-type: none"> <li>• Documents to be compiled for GST Audit</li> <li>• GST Annual Return</li> <li>• GST Audit</li> <li>• Insight on retrieving of information / details from GSTIN Portal &amp; Accounting Software for compiling details for Annual return and GST audit</li> </ul>	CA. Ashit Shah Eminent Faculty CA. Vikram Mehta * CA. Rajat Talati *	CA. Umesh Sharma 9822079900 CA. Yashwant Kasar 9822488777 CA. Manish Gadia 9820537986	CA. Viral Chheda 9833594045 CA. Mehul Gada 8080018122 CA. Gautam Mota 9594339945
06/09/2019 Friday  <b>3</b> CPE Hrs	5.00 p.m. to 8.30 p.m.  ₹ 708/- (Incl. GST)	<b>Seminar on Tax Audit</b> <ul style="list-style-type: none"> <li>• Changes in Tax Audit Report &amp; Issues, ICDS</li> <li>• Changes in Audit Reporting 3CD ICA &amp; Certification of MAT, MSME, std</li> </ul>	CA. Sanjeev Lalan  Eminent Faculty	CA. Rakesh Alshi 9819427242 CA. Arun Anandagiri 8796005669 CA. Jayesh Kala 9820010113	CA. Aniket Kulkarni 9821690559 CA. Mayur Momaya 9867952010 CA. Meenakshi Gupta 9820654322
14/09/2019 Saturday  <b>6</b> CPE Hrs	10.00 a.m. to 6.00 p.m.  ₹ 1,416/- (Incl. GST)	<b>Seminar on Valuation of Securities and Financial Assets</b> <ul style="list-style-type: none"> <li>• Introduction to Valuation, Valuation methods and valuation under different laws</li> <li>• Valuation of Intangible</li> <li>• Valuation under Companies Act, Report writing and Valuation Standards</li> <li>• Panel discussion: Valuation issues</li> </ul>	Eminent Personalities	CA. Drushti Desai 9820335923 CA. Vishal Doshi 9824059901 CA. Lalit Bajaj 9867692321	CA. Virag Shah 7043154500 CA. Harsh Dedhia 9892444121 CA. Ameet Chheda 9967564433

\* Subject to confirmation



### DIRECT TAX – LAW UPDATE CA. Haresh P. Kenia, CA. Deepak Lala



**Section 71, read with Section 115BBE, of the Income-tax Act, 1961 – Losses – Set off of from one head against Income from another – Clarification regarding non-allowability of Set off of losses against the deemed Income under Section 115BBE of the Income-tax Act, 1961 prior to Assessment Year 2017-18**

*Circular No. 11/2019 [F.No.225/45/2019-ITA.II], dated 19/6/2019*

With effect from 1-4-2017, sub-section (2) of section 115BBE of the Income-tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/69/69A/69B/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 115BBE(1) of the Act.

In this regard, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that in assessments prior to Assessment Year 2017-18, while some of the Assessing Officers have allowed set off of losses against the additions made by them under section(s) 68/69/69A/69B/69C/69D, in some cases, set off of losses against the additions made under section 115BBE(1) of the Act have not been allowed. As the amendment inserting the words 'or set off of any loss' is applicable with effect from 1st of April, 2017 and applies from assessment year 2017-18 onwards, conflicting views have been taken by the Assessing Officers in assessments for years prior to assessment year 2017-18. The matter has been referred to the Board so that a consistent approach is adopted by the Assessing Officers while applying provision of section 115BBE in assessments for period prior to the Assessment Year 2017-18.

The Board has examined the matter. The Circular No. 3/2017 of the Board dated 20th January, 2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in section 115BBE(2) of the Act mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE. It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set off against income referred to in section 115BBE of the Act and hence, the amendment was made *vide* the Finance Act, 2016.

Thus keeping the legislative intent behind amendment in section 115BBE(2) *vide* the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only *vide* the Finance Act 2016, w.e.f. 1/4/2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the Assessment Year 2016-17.

**Section 115UB of the Income-Tax Act, 1961 – Tax on Income of Investment Fund and its unit Holders – Clarification regarding Taxability of Income earned by a Non-Resident Investor from Off-Shore Investments Routed through an Alternate Investment Fund**

*Circular No. 14/2019 [F.No. 225/79/2019-ITA.II], dated 3/7/2019*

In the context of Alternate Investment Funds (AIFs), references have been made to the Central Board of Direct Taxes (the Board) seeking clarity regarding taxability of income from investments made by the non-resident investor through these AIFs, outside India (off-shore investment).

The incidence of tax arising from off-shore investment made by a non-resident investor through the AIFs would depend on determination of status of income of non-resident investor as per provisions of section 5(2) of the Income-tax Act, 1961 (Act). As per section 5(2) of the Act, the income of a person who is non-resident, is liable to be taxed in India if it is received or is deemed to be received in India in such year by or on behalf of such person; or accrues or arises or is deemed to accrue or arise to him in India.

Chapter XII-FB contains special provisions relating to tax on income of investment funds and income received from such funds. Under Chapter XII-FB, section 115UB of the Act ("Tax on income of investment fund and its unit holders) is the applicable provision to determine the income and tax-liability of investment funds & their investors. In this context, Investment fund" is defined in Explanation 1 of Chapter XII-FB to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992). Thus, provisions of section 115UB apply only to Category I or Category II AIFs, as defined in SEBIs regulations.

By an overriding effect over other provisions of the Act, sub-section (1) of section 115UB of the Act provides that any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him and not through the AIF.

The matter has been considered by the Board, As section 115UB(1) of the Act provides that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly, it is hereby clarified that any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor, is not taxable in India under section 5(2) of the Act.

It is further clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt loss, shall not be allowed to be set-off or carried-forward and set off against the income of the Category I or Category II AIF.

### DIRECT TAX – RECENT JUDGMENT CA. Paras K. Savla, CA. Hemant R. Shah



#### TRIBUNAL DECISIONS

*Adesh Foundation (Regd.) vs. Commissioner of Income-tax (Exemptions), Chandigarh 105 taxmann.com 13 (Amritsar Trib.) [18/3/2019]*

Section 80G approval cannot be denied simply because there may be possibility of misuse of donations:

- It is reported many a times that CIT Exemptions denies the approval on the ground which are beyond the objectives of the IT Act.
- Similarly, registration u/s. 12AA and approval u/s. 80G is also denied for the reason that it could be misused if registration or approval is granted.



- This decision speaks about the scope of the powers of CIT while working on such application. It is expressly concluded that section 80G approval couldn't be denied just because there may be possibility of misuse of donations.
- Merely because assessee charitable educational institution was prosperous and failed to state as to why there was need for donations and it failed to submit list of proposed donors, approval under section 80(5)(vi) could not be denied merely upon possibility of misuse of donations.

## INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni



**Gemological Institute of America, Inc vs. Addl. Commissioner of IT (IT), Range -2(3) [ TS- 356-ITAT-2019(Mum)] dated 21st June, 2019**

### Facts

- The assessee company, resident of USA, was engaged in the business of diamond grading and preparation of diamond dossiers.
- The assessee had set-up a subsidiary in India 'GIA India Laboratory Private Limited' ('GIA India') which sent stones for grading through service agreement to other entities of the GIA Group across the globe, including the assessee.
- The assessee declared income as 'Instructor Fee' earned from GIA India and filed its return with the plea to be taxed in accordance with the provisions of India-USA DTAA.
- AO added 50% of the gem grading fees and considered GIA India as assessee's PE, to the total income of the assessee, which was held to be taxable in India.
- Aggrieved, the assessee appealed before Mumbai ITAT.

### Issue

Whether the subsidiary of the assessee i.e., GIA India be construed as its PE in India?

### Held

- ITAT noted that there was no joint venture arrangement between the assessee and GIA India as it entered into agreements with clients, bearing all risks including credit risk, client facing risks, risk of damage during transit and also during the time when the articles were at assessee's facilities.
- Relying on the Delhi HC ruling in case of E-funds IT Solutions, ITAT held that a subsidiary could not be regarded as a 'fixed place PE' of the parent company on the ground of a close association between the Indian subsidiary and the foreign taxpayer.
- ITAT further noted that in case of the assessee, since the 'grading services' were rendered outside India and none of the employees/personnel of the assessee had visited India, service PE was not triggered.
- ITAT held that GIA India could not be regarded as 'agency PE' of the assessee in India, as it was not acting on behalf of the assessee but was an independent/ separate legal entity, engaged in rendering grading services and did not have any authority to conclude contracts on behalf of the assessee.
- ITAT opined that AO erred in invoking section 9 and Article 5 of DTAA to establish that assessee had PE in India.
- ITAT thus ruled in favour of the assessee.

**Rackspace US Inc vs. Dy. Commissioner of IT (IT), 4 (1) (1) [TS- 398-ITAT 2019 (Mum)] dated 29th May, 2019**

### Facts

- The assessee company, tax resident in USA, having no PE in India, was engaged in provision of public cloud hosting and dedicated/ managed hosting of services to Indian customers and claimed it to be business income not taxable in India.
- AO held that income from such services was taxable in India as royalty and fee for technical services.
- Assessee filed its objections before the DRP, however the same was quashed.
- Aggrieved, the assessee appealed before Mumbai ITAT.

### Issue

Whether the income earned by the assessee for rendering cloud hosting services to Indian customers, constitute Royalty or FTS under Article 12 of India – USA DTAA ?

### Held

- ITAT noted that as per section 9(1) (vi), royalty is taxable in India if the payer is an Indian resident, except where the royalty is payable in respect of a right, property, information or service used for the payer's business outside India or for earning income outside India.
- ITAT further noted that the assessee's customers only availed hosting services and did not use, possess or control the equipment used for providing hosting services.
- ITAT noted that there was no PE of the assessee in India and hence, no income could be taxed in India in term of Indo-US DTAA.
- Relying on ruling in case of American Chemical Society, ITAT held that the retrospective amendment in the royalty definition under the Act did not impact the definition of 'royalties' in the India-USA Tax Treaty.
- ITAT concluded that since the income from cloud hosting was erroneously held as royalty, the income from cloud hosting services could not be taxed as fee for technical services
- ITAT thus ruled in favour of the assessee.

## FEMA

CA. Manoj Shah, CA. Sudha G. Bhushan,  
CA. Mitesh Majithia



**Annual Return on Foreign Liabilities and Assets reporting by Indian Companies**

**A. P. (DIR Series) Circular No. 37 dated June 28, 2019**

All Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, are required to file the annual return on Foreign Liabilities and Assets (FLA) in the soft form duly filled-in, validated and sent by e-mail to the Reserve Bank by July 15 of every year.

With objective to enhance the security level in data submission and further improve the data quality, the present email-based reporting system for submission of the FLA return has been replaced by the web-based system online reporting portal. It would facilitate data submission by eligible entities (including



the alternative investment funds (AIF) registered with the Securities and Exchange Board of India (SEBI) as also the reporting of foreign investment in the form of capital/profit share contribution received/transferred in case of LLPs and investment by persons resident outside India in an investment vehicle and as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017.

Following are the main features of the revised Foreign Liabilities and Assets Information Reporting (FLAIR) system:

- Reserve Bank would provide a web-portal interface <https://flair.rbi.org.in> to the reporting entities for submitting "User Registration Form" (containing entity identification and business user details, where LLPs and AIFs will no longer be required to use dummy CIN). The successful registration on web-portal will enable users to generate RBI-provided login-name and password for using FLA submission gateway and would include system-driven validation checks on submitted data.
- The form will seek investor-wise direct investment and other financial details on fiscal year basis as hitherto; where all reporting entities are required to provide information on FATS related variables (it was mandatory only for subsidiary companies earlier). In addition, the revised form seeks information on first year of receipt of FDI/ODI and disinvestment.
- Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.
- Data can be revised, if required, and the information submitted can be viewed / downloaded.
- Entities can submit FLA information for earlier year/s after receiving RBI confirmation on their request email.
- The existing mechanism of email-based submission of FLA forms will be discontinued.

The due date for filing of FLA return for 2018-19 has been extended by RBI from 15th July to 31st July.

**TRANSFER PRICING**  
CA. Bhavesh Dedhia, CA. Bhavya Goyal,  
CA. Shazia Khatri



## Case Law Update

**A. T. Kearney India Pvt. Ltd. vs. ACIT [TS-593-ITAT-2019(Del)-TP]**

The assessee had made a voluntary transfer pricing adjustment and thereafter claimed a deduction of the same under Section 10A of the Act while filing the return of income. The Assessing Officer ('AO') was of the opinion that *suo motu* transfer pricing adjustment could not be included as part of the 'total turnover' of the undertaking and resultantly could also not form part of deduction under Section 10A of the Act. Apart from this, the Transfer Pricing Officer ('TPO') also made a transfer pricing adjustment with respect to interest on delayed receivables by applying the SBI prime lending rate. The DRP upholding the approach of the AO observed that *suo motu* adjustment in the computation of income represented a notional figure and not the real income of the assessee and accordingly could not be considered as being 'derived from' activity of IT enabled services eligible for deduction under Section 10A of the Act.

DRP also upheld the transfer pricing adjustment in respect of interest on delayed payment of receivables.

The ITAT relying on the Bangalore ITAT ruling in case of I-Gate Global Solutions Ltd. upheld by Hon'ble Karnataka High Court in ITA 453/2008, observed that the assessee was entitled to deduction under Section 10A of the Act on *suo motu* transfer pricing adjustment and the provisions of Section 92C(4) of the Act were not attracted. The ITAT noted that the first proviso to Section 92C(4) of the Act is applicable only to situations where adjustment to the ALP is made by the AO/TPO / DRP. ITAT further observed that "If the legislative intent was to treat the adjustments made by the Assessing Officer at par with the voluntary adjustment made by the assessee, the legislative intent would have been expressed in different words." ITAT rejected department's reliance on Mumbai Tribunal ruling in case of Deloitte Consulting [(2012) 22 taxmann.com 107 (Mumbai)], in view of Karnataka High Court decision and observed that non-jurisdictional High Court decision is binding on ITAT in absence of contrary decision by jurisdictional High Court.

With regard second issue of notional interest on delayed receipt, ITAT remanded the matter to the file of TPO duly appreciating following arguments of assessee - (a) Assessee has allowed 90 days credit period whereas the adjustment was based on credit period of 30 days; (b) TP adjustment, if any has to be made on net outstanding receivables after adjusting the payables; and (c) adjustment should be made on LIBOR plus basis point instead of SBI prime lending rate plus basis point.

## Budget 2019 changes in Transfer Pricing

### I. Country by Country reporting

Section 286 is proposed to be amended to clarify that the accounting year in case of the alternate reporting entity of an international group shall be the one applicable to its parent entity.

### II. Advance Pricing Agreement

It is proposed to amend section 92CD(3) to substitute the words "pass an order modifying the total income" in place of "proceed to assess or reassess or recompute the total income". This would mean that in cases where assessment or reassessment has already been completed, the role of the AO shall be restricted to give effect to the modified return of income filed pursuant to the APA and not to assess/reassess the total income of the assessee.

### III. Secondary Adjustment

Secondary adjustment' means actual allocation of profits consistent with the primary Transfer Pricing adjustment by way of a constructive transaction or a secondary transaction.

To address some of the concerns such as interest imputation till perpetuity etc of the taxpayers, the following amendments are proposed:

- It is proposed to substitute "and" with "or" so as to clarify that the conditions of threshold of INR one crore and of the primary adjustment made upto AY 2016-17 are alternate conditions and not cumulative.
- Optional one-time tax: An option is now available to the taxpayer to pay a one-time additional tax @ 18% (plus surcharge of 12%) on the un-repatriated amount. Neither any credit shall be allowed in respect of the amount of such tax nor deduction shall be allowed under any other provision of the Act in respect of amount on which the tax is paid. Where the taxpayer exercises this option, interest imputation on the said amount will cease on the date of



payment of the additional tax. It is also proposed that where this additional one-time tax is paid, the assessee shall not be required to make secondary adjustment under sub-section (1) of section 92CE of the Act.

3. Single AE Repatriation to suffice: It is now proposed that the excess money may now be repatriated from any of the AEs (and not necessarily all of the AEs), which is not resident in India where primary adjustment pertains to international transactions with multiple AEs.

## GOODS AND SERVICES TAX CA. Rajiv Luthia



**CBIC vide Notification No. 26/2019 – CT dated 28th June, 2019** has extended the time limit for furnishing Form GSTR 7 (Return by person required to deduct TDS) for month of October, 2018 to July, 2019 till 31st August, 2019.

**CBIC vide Notification No. 27/2019 – CT dated 28th June, 2019** notified 31st October, 2019 as due date for filing Form GSTR 1 (Details of outward supplies) for quarter July to September, 2019 for person having aggregate turnover up to ₹ 1.5 crore in preceding financial year or current financial year.

**CBIC vide Notification No. 28/2019 – CT dated 28th June, 2019** notified 11th day of succeeding month as due date for filing Form GSTR 1 (Details of outward supplies) for months July, 2019 to September, 2019 for person having aggregate turnover of ₹ 1.5 crore or more in preceding financial year or current financial year.

**CBIC vide Notification No. 29/2019 – CT dated 28th June, 2019** provide that the return in FORM GSTR 3B for month of July, 2019 to September, 2019 shall furnish electronically through common portal on or before 20th day of month succeeding such month.

**CBIC vide Notification No. 30/2019 – CT dated 28th June, 2019** provides that the person supplying online information & data base access or retrieval service from a place outside India to a person in India, other than a registered person shall not furnish Annual return in Form GSTR 9 & reconciliation statement in Form GSTR 9C.

## GST-ADVANCE RULINGS CA. C. B. Thakar, CA. Jinal Maru



The Maharashtra Goods and Services Tax Act, 2017

### Circulars

The Commissioner of Goods and Services Tax, Maharashtra State, has issued Circular bearing No. 39T of 2019 dated 5/7/2019 by which certain Circulars issued by CBIC in relation to certain provisions of Goods and Services Tax Law, procedures to be followed, methodology to be adopted, are explained.

**Case: Sanofi India Ltd [2019-TIOL-182-AAR-GST (Maharashtra)]**

Held that the applicants are not entitled to ITC of GST paid on expenses incurred towards promotional schemes - Shubh Labh Loyalty programme and goods given as "brand reminders" to its distributors, wholesalers, doctors etc., since, the distribution of promotional articles to the customers (distributors, wholesalers, doctors etc.) is free and hence, it is nothing but gift and ITC on gifts is not allowed as per of section 17(5) of CGST Act, 2017.

## Case: Daimler Financial Services India Pvt. Ltd. [2019-TIOL-212- AAR-Tamil Nadu]

The interest subvention / interest subsidy received by applicant from any other person other than their customer (i.e. who obtains loan) shall be leviable to GST and not exempt under entry 28 of notification 9/2017 –IGST (Rate). The said interest subvention is a consideration for agreeing to provide loans at lower interest rate to the customers of a car dealer & hence taxable supply. The interest subvention paid by Mercedes Benz in the instant case to applicants is to ensure higher and assured standard of services to the clients of applicant who are also the buyers of MB India's vehicles.

## CO-OPERATIVE HOUSING SOCIETIES CA. Ramesh Prabhu, CA. Mukul Varma



- (1) A separate Chapter XIII-B in MCS Act, 1960 has been introduced for Co-operative Housing Societies. The CHS chapter contains sections 154B, 154B-1 to 154B-31. The necessary amendments have been passed in last session of Assembly concluded in July, 2019 which is replacing in entirety the Ordinance dated 9th March, 2019.
- (2) Co-operative Department has published the revised Co-operative Audit Manual in June, 2019. Now all the audits of the cooperatives societies need to be done as per Revised Audit Manual. This manual provides for 15 types of audit report as against the earlier 35 types of reports.
- (3) GR of Govt of Maharashtra: No. Misc. 0918/Pra. Kra.109/13-S dated 3rd July, 2019 issued u/s. 79A of MCS Act, 1960 guiding authorized officers/Administrators to carry out the working within the period of their appointment.
- (4) GR of Govt of Maharashtra No. SaGruYo 2018/Pra. Kra. 85/14-S, dated 4th July, 2019 issued u/s. 79A of the MCS Act, 1960 revised directions on Redevelopment of Housing societies mandating 51% consent and creating the website for transparency.

## MAHARERA CA. Ashwin Shah, CA. Vyomesh Pathak



Judicial Pronouncement by RERA Appellate Tribunal

**Rising City Ghatkopar Association vs. Rare Townships Pvt. Ltd.**

### Issue Before Tribunal

1. Complainant raised various grounds before MahaRERA Authority during complaint proceedings u/s. 31 of RERDA, 2016.
2. Authority looked into some of the grounds and relief sought and some grounds and relief were not looked into by the Authority.
3. Rule 6(2) (a) & (c) of The Maharashtra Real Estate (Regulation & Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeal etc.) Rules, 2017 requires Authority to
  - a. Issue Notice of hearing along with particulars of alleged contravention to the Respondent.
  - b. On date of hearing Authority to explain Respondent or his AR contraventions alleged to have been committed.



4. In the instant case, there was no whisper about some of the grounds and relief sought at the Authority level.
5. Thus, these grounds and relief were sought for hearing before Appellate Tribunal for the first time as the same not heard before Authority.

## Held

- a. Appellate Tribunal held that these grounds and relief which are sought for the first time for hearing before Tribunal cannot be allowed relying upon Hon'ble Supreme Court in the case of *Gauri Shankar vs. Hindustan Trust Pvt. Ltd. & Ors.* (1973 – 2 SCC 127) AND Hon'ble Gauhati High Court in the case of *Krishna Datta vs. Keshab Chandra Sidhya & Ors.* (2015- 3 GLR 571).
  - b. The matter was remanded to Adjudication Officer to decide the matter afresh in the interest of justice.
- (1) Gujarat RERA has made it compulsory for the CAs to quote UDIN in all the certificates issued under RERA.
  - (2) Gujarat RERA *vide* Guidance 1 for Form-3 CA Certificate dated 9th July, 2019 has laid down the Disclosure of Project Loan and Lender details & Unit Encumbrance Reporting. This is available on [www.gujrera.gujarat.gov.in](http://www.gujrera.gujarat.gov.in).
  - (3) MahaRE Appellate Tribunal in the appeal in Complaint No. SGI 0000672 in Complaint No. SCI 0000691, by majority held that if the land area does not exceed 500 sq. meters and if the units are more than 8, the project does not require registration.

## INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Viral Doshi



### Introduction

In what could be one of the most prominent judgments under the Insolvency and Bankruptcy Code, 2016 ('the Code'), several interesting points have been adjudged by the National Company Law Appellate Tribunal (NCLAT) in its order in the case of *Standard Chartered Bank vs. Satish Kumar Gupta, RP of Essar Steel Ltd. & Ors.* with regards to multiple appeals, dated 4th July 2019, which can potentially set precedents for ongoing and upcoming insolvency resolution processes under the Code.

The Resolution Plan as was submitted by Arcelor Mittal, for Essar Steel Limited (Corporate Debtor) was originally admitted by NCLT, Ahmedabad on 8th March 2019. The same was challenged on multiple grounds before NCLAT.

Through this article, I have endeavoured to throw some light on several of these highlighted issues and provide the readers a gist of the relevance that the order holds.

### Adjudged issues of importance

In its 116 pager order, NCLAT has addressed the contentions of several parties and has provided clarity on the following aspects:

1. **All Financial Creditors to be treated at par** – On the question of whether the distribution of amount proposed in the Resolution Plan is discriminatory, it was held that the distribution of amount cannot differ on the basis of varied classification of Financial Creditors under sub-heads such as 'secured' and 'unsecured'. No such discrimination shall be acceptable and the amount of distribution shall be solely based on the proportion of debt due. Post this order, this is the main controversial issue as to who decides on

allocation of Resolution amount, Financial creditors or Resolution Applicant and the distinction between Secured/unsecured/financial and operational creditors. (various stake holders).

2. **Eligibility of the Resolution Applicant** – Eligibility of ArcelorMittal was challenged by the Promoter of Corporate Debtor, MR. Prashant Ruia. Arcelor Mittal India Pvt. Ltd. is a 'Successful Resolution Applicant' and the question of its eligibility in terms of section 29A of the Code has been sufficiently resolved in light of the order passed by the Hon'ble Supreme Court and could not be reopened before the NCLAT. Bringing an already addressed and well settled issue before the NCLAT is a sheer waste of time of the judiciary.
3. **Resolution Plan vis-à-vis authority of CoC** – Interestingly, NCLAT held that the role of deciding the manner of distribution of amount to the creditors is that of the Resolution Applicant alone, or the Adjudication Authority, if found discriminatory, and shall not rest with the Committee of Creditors, (being interested party) which is only responsible to check the feasibility and viability of the Resolution Plan. This issue is proposed to be reconsidered in the hearing before Supreme Court on 22nd July 2019, in response to multiple appeals which have been filed against the order of NCLAT by several stakeholders.

For more details on updates, visit [www.wirc-icai.org](http://www.wirc-icai.org)

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Printed and published by Shri Abhay Nath Tiwari, Dy. Secretary on behalf of Western India Regional Council of The Institute of Chartered Accountants of India and printed at Finesse Graphics & Prints (Pvt) Ltd., 309, Parvati Industrial Estate, Sunmill Compound, Lower Parel, Mumbai – 400 013 and published at Western India Regional Council of the Institute of Chartered Accountants of India, ICAI Tower, Plot No. C-40, G Block, Opp. MCA Academy, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra East, Mumbai - 400051.

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