

The Institute of Chartered Accountants of India

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Hyderabad Branch of SIRC E-Newsletter

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Dignitaries Inaugurating the Seminar on Practical Issues in GST on 22nd April, 2022 at FTCCI



Hyderabad Branch M.C Members along with Vice President, ICAI CA. Aniket Sunil Talati, Chairman, SIRC CA. China Mastan Talakayala and Council Members at Orientation program held on April 29th & 30th at Ramoji Film City, Hyderabad

Chairman Writes

Dear Professional Colleagues,

May 1st is celebrated as Labour Day Internationally and on this occasion, I take the opportunity to honour the working class across the world and appreciate their enormous contribution to the economic growth of the country. As we all know it is the working class which propels the economy to move forward.



The Orientation programme for the Newly Elected Managing Committee Members of the Branches of SIRC of ICAI was conducted on April 29 & 30, 2022 at Ramoji Film City, Hyderabad. CA. Aniket Talati, Vice President ICAI inaugurated the programme which was attended by Branch leaders from Southern Region. The meeting also witnessed the participation of Central & Regional Council Members. Hyderabad Branch of SIRC was proud to partner with SIRC of ICAI for the conduct of this prestigious event and it is profound privilege to inform that the untiring efforts to Team Hyderabad Branch of SIRC was appreciated by SIRC and all the Managing Committee Members of entire 45 branches of SIRC. I congratulate CA China Mastan Talakayala, Chairman SIRC, All Regional Council Members & SIRC Team for successful completion of 2 Days Orientation Program.

During the month of April 2022, we have organized programmes on Bank Audit, GST and BEPS, which were well received by the delegates. We have also organized a session on learning from Bank Audit for Concurrent & other Audit wherein eminent resource persons shared their expertise with respect to Bank Audits. It was a first of its kind program that the experience of past was discussed for implementation in future. I sincerely thank the faculties who have taken all efforts to ensure that the programme achieves the desired results. We are also planning similar sessions in the future and I request all to attend.

During the month of May 2022 the branch has planned a series of programmes both on Virtual and Physical mode. The first programme of the month will be on May 9, 2022 by CA. (Dr.) Abhishek Murali who will be addressing on Changes in ITR Forms & recently notified provisions to updated return of Income.

We have also lined up various other programmes on Issues in Sec 148 & 148A of IT Act 1961, LLP Act, Code of Ethics, TDS and the details are published elsewhere in this newsletter.

We at Hyderabad Branch of SIRC is also planning a Seminar on Companies Audit for the benefit of our professionals engaged in Corporate Audits. The details of the seminar will soon be hosted in www.hydicai.org. I request all the members to actively participate in the branch programmes.

On the Student front let me wish all the success for those students who are appearing in May 2022, Exams. The SICASA team has planned to conduct webinars on topics of professional relevance which will be helpful to the student community at large. SICASA Hyderabad has conducted Mock tests at all levels and the Branch Level Elocution contest was also conducted wherein students participated. SICASA Hyderabad is also gearing up to launch student centric programmes in the field of Companies Act for the month of May 2022.

It is also my sincere appeal to our professional colleagues that, let us work together to build a better future and as CAs let us march ahead as Partners in Nation Building, get ourselves equipped and updated with the latest changes happening around us by attending the programmes conducted on various topics.

Signing off with a quote:

“The only way to do great work is to love what you do”- Steve Jobs

Yours Sincerely,

CA. Deepak Ladda
Chairman
hyderabad@icai.org

CPE Programmes for the Month of May, 2022

Day, Date & Timings	Programme Details	Resource Person	CPE Hrs.	Delegate Fee	Venue
Monday 09th May,2022 06.00 PM to 8.00 PM	VCM on Key Changes in ITR Forms & Provision related to updated return of Income	Dr. CA. Abhishek Murali	2	118/-	Zoom Platform
Friday 13th May,2022 05.30 PM to 7.30 PM	Issues in Section 148 & 148A of Income Tax Act 1961 and Analysis of latest Supreme Court Judgment	CA. K. C. Devdas	2	118/-	Branch Premises
Tuesday & Wednesday 17 th & 18 th May,2022 06.00 PM to 8.00 PM	Two Days VCM on LLP Day 1- Amendments to LLP Act 2021 Day 2- Understanding the news way of E-filing for LLP-Version 3.0	CS. Pavan Kumar Bhattiprolu & CS. Rahul Jain	4	150/- Incl GST	Zoom Platform
Friday 20th May,2022 6.00 PM to 8.00 PM	Issues in Taxation of Salaries and e TDS returns	CA. Pankaj Kumar Trivedi	2	118/-	Branch Premises
Tuesday 24th May,2022 6.00 PM to 8.00 PM	Do's and Dont's in Cyber Security for CA's	Mr. Sachin Dedhia	2	Free	Zoom Platform
Thursday 26th May,2022 06.00 PM to 8.00 PM	Code of Ethics - Practical Case Studies	CA. J. Venkateswarlu	2	Free	Zoom Platform

MEMBERS

IMPORTANT ANNOUNCEMENTS

Important Message: Strict Compliance - Regarding Verification/ Clarification of documents related to incorporation of a Company or a LLP by Practicing Professionals.

The MCA has communicated to ICAI that instances have been observed where practising professionals are not carrying out Due Diligence and Verification while carrying out incorporation of Company / LLP. The Verification of documents pertaining to Directors, KMP, witness to MoA, AoA and verification of Registered Office are required to be done in strict accordance with the provisions of Law. Members may accordingly ensure strict compliance to

REQUEST TO CONTRIBUTE ARTICLES TO HYDERABAD BRANCH NEWS LETTER

Hyderabad Branch of SIRC of ICAI is seeking articles from members to be published in its monthly E-newsletter. The article can be on following topics:-

- 1) Articles on Academic Interest,
- 2) Articles on Work Life Balance,
- 3) Articles on New Age Professional Opportunities,

Please send your article to: hyderabad@icai.org,

Sd/-
Chairman
Hyderabad Branch of SIRC of ICAI

ANNOUNCEMENT

Sub: 75% Concession in Registration Course Fee for all levels of CA Courses for the wards of demised members of ICAI.

The Council of the Institute has decided to extend 75% fee concession on registration fees to the wards of demised members of ICAI effective from 1st April, 2022 for pursuing the CA Course at all levels.

The following fee needs to be paid by the above categories of students:-

Level	Registration Fees (Rs)	Concession (Rs)	Registration Fees to be Paid (Rs.)
Foundation	9000	6750	2250
Intermediate	18000	13500	4500
Final	22000	16500	5500

All other Fees except the registration fee mentioned above will have to be paid by the beneficiary student.

The eligibility criteria for granting 75% concession on registration fees would be as under:-

- (i) Student has to fill the respective Registration Forms in SSP Portal along with the requisite documents. In addition, the student has to upload the copies of following documents duly attested by any member of the Institute:-
 - (a) Death Certificate
 - (b) Membership Proof of the deceased parent, namely, Membership Card / Membership Certificate / Fee Receipt of the Membership Fees paid, or any other proof.
 - (c) Any valid Identity Proof of the deceased Member
 - (d) Declaration by student that the Annual income of family is Rupees Five Lakh or less than Rupees Five Lakh

Director

GST on Construction service - Forced 1/3rd land deduction is ultra vires –Analysis of Gujrat High Court decision and its impact

- CA. Satish Saraf & CA Venkat Prasad. P

Introduction:

The Real estate industry prone to many taxation disputes. The common reason for these disputes lies in the fact that Real estate transaction is very complex involving

3 components viz., Goods, Services and Land which are amenable to different indirect taxes by different authorities. The attempt of every authority to collect more revenue & attempt of taxpayer to minimize the tax impact created long battlefield for different facets of Indirect taxation. The very basis of levying in VAT/sales tax and Service taxes were held to be wrong which compelled the Government to make frequent amendments (+ in Constitution of India) to overcome such infirmities.

When the GST was introduced to subsume Service tax & VAT into single tax, many felt that disputes would disappear at least in the areas of very basis of taxation, valuation. However, the 3rd component i.e. Land not being subjected to GST & the way lawmakers made the GST law with many infirmities & ambiguities has given sufficient scope for continuation of such past disputes. In this article, Authors discussed one of such disputes in valuation for levy of GST on the Real estate transactions.

Legal Background:

Before GST, the VAT is used to be levied on the sale of goods in Construction activity while service tax is levied on the service component (Labour). The 3rd element is liable for Stamp duty. Both Service tax & VAT laws has made provisions to identify its respective components and if not ascertainable, option was given to the taxpayer for paying tax at Composite rate. For example, Service tax provisions says that identify the labour component of the transaction and pay service tax at full rate. If not ascertainable, opt for fixed abatement/deduction of 70% and pay service tax on 30% of total amount. Similar provisions were there under VAT laws also. Thus, pre-GST laws have always gives chance for ascertaining the actual value of taxable event and if not ascertainable then only asked for payment at deemed value after prescribed deductions.

After GST, the first 2 components are subsumed into single tax (GST) and the 3rd component (Land) is continued to be liable for Stamp duty & kept out of GST. This required the lawmakers to provide mechanism to tax only the 2 out of 3 components. For this, the Government vide Notification No.11/2017-CT(R) dated 28.06.2017 as amended provided that non-taxing component (land) is 1/3rd of total amount charged thereby fixing that land value in real estate transaction is 1/3rd irrespective of actual value available or identifiable.

It is a known fact that the land value may not be the same across the country as the same depends on various factors viz., location, Socio & Economic and it is dynamic. There would be huge variation in the land cost between Metro cities, Towns and Rural areas while the construction cost may not vary much in any of the places.

Deeming 1/3rd of the total amount charged as land value would lead to levy of GST on the land value in many cases though the sale of land is neither supply of good nor supply of services as per SI No.05 of Schedule-III. Whereas, in the non-metros the construction service would not get completely taxed.

Following illustration gives a bird's eye picture of the issue involved in claiming the deemed deduction towards land

Sl. No.	City	Guesstimate Cost of Construction per SFT (A)	Guesstimate unit sale price per SFT including land value (B)	Average value of land (C=B-A)	% of land value (C/B*100)
1	Ooty	1,500	2,000	500	25.00
2	Hyderabad	2,375	5,000	2,625	52.50
3	Bangalore	2,500	7,500	5,000	66.67
4	New Delhi	2,750	12,000	9,250	77.08
5	Mumbai	3,125	20,000	16,875	84.38

Challenging this anomaly, Writs Petition were filed before various High Courts. Recently, the Hon'ble High Court of Gujarat has examined the issue in the case of *Munjaal Manishbhai Bhatt Vs UOI 2022-TIOL-663-HC-AHM-GST* and held as follows

Decision:

- The GST has to be paid on actual price paid or payable for the services rendered. When the actual price is available, then tax has to be imposed on such actual value only. In the instant case, when the actual value of land is ascertainable, the deeming fiction of 1/3rd of total agreement value towards land is clearly contrary to the provisions and scheme of the CGST Act and therefore ultra-vires the statutory provisions.
- Deeming fiction can be applied only where actual value is not ascertainable which is not the case in present case. While holding so, the High Court has relied on *Gannon Dunkerley and Co. v/s State of Rajasthan (1993) 1 SCC 364*, *Wipro Limited Vs UOI 2015 (319) ELT 177 (SC)*;
- The deeming fiction has not made any distinction between a flat and bungalow. While a flat would have number of floors and the transfer would only be undivided share in land, the same deduction which is available on supply of flats is made available on supply of bungalows without any regard to the vast different factual aspects. Such deeming fiction which leads to arbitrary and discriminatory consequences is violative of Article 14 of the Constitution of India which guarantees equality to all and also frowns upon arbitrariness in law.
- Due to arbitrary deeming fiction by way of delegated legislation (by way of Notification), the measure of tax imposed has no nexus with the charge of tax which is on supply of construction service. It is well established that the measure of tax should have nexus with the charge of tax.
- The prescription under Section 15(5) of the CGST Act has to be by rules and not by notification. While holding so, the High Court has relied on Delhi High Court decision in case of *Suresh Kumar Bansal Vs UOI - 2016 (43) S.T.R - Del HC*.
- Be that as it may, wherever a delegated legislation is challenged as being ultra-vires the provisions of the CGST Act as well as violating Article 14 of the Constitution of India, the same cannot be defended merely on the ground that the Government had competence to issue such delegated piece of legislation. Even if it is

presumed that the Government had the competence to fix a deemed value for supplies, the same can be definitely held to be ultra-vires when it is found to be arbitrary and contrary to the scheme of the statute.

➤ Thereby, the paragraph 2 of Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017 and the parallel State tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable.

➤ The specific price agreed for land sale in the agreements between the parties is sufficient to avail the deduction of actual land value in place of deemed 1/3rd.

➤ Wherever the revenue department doubts the correctness of the land value or Construction activity value, the valuation rules inter alia Rule 30 & 31 of CGST Rules, 2017 can be resorted to curb tax avoidances, if any on account of artificial inflation of land value in the agreements.

Implications of the judgement:

- a. As per the above decision, the actual value of land can be claimed as deduction where ever it is available
- b. If the land value is not ascertainable, the value of construction with the aid of valuation rules can be adopted for payment of GST. Rule 30 of CGST Rules, 2017 provides for cost +10% valuation.
- c. There cannot be a sale in respect of construction undertaken prior to agreement with the buyer and the factum of supply would be initiated only once the agreement is entered into between the supplier and recipient for consideration.

Course of action:

The Revenue department may appeal before Hon'ble SC & chance for retrospective amendment is not ruled out. In this background, the following are suggested:

- a. For File a refund application for the excess taxes paid in previous year. If it was passed onto customer, customer can directly file for refund or else return the excess tax to the customer and claim refund by the Builder.
- b. Launch protest of paying GST on deemed 1/3rd deduction instead of actuals and claim refund of the same when the issue is finally settled by Supreme Court or time limit to make demand is over.
- c. It is advised to have a specific clause specifying the value of land in the agreements entered with the customers for justifying the deduction while such value shall marry with the combination of construction cost, profit margins & final sale price.
- d. Submit a representation to the GST council for implementation of this decision
- e. File a Writ Petition before the Jurisdictional High Court wherever feasible.

The Government qua GST council shall act in True spirit of GST law (avoidance of cascading effect) and allow the deduction of actual value of land more so when the State Government prescribes the minimum land prices of every area & collect stamp duty thereon. The very same State governments shall not escape stating that actual value deduction may lead to disputes or tax avoidance etc.,

(For queries/feedback: ss@ssnc.in, venkataprasad@hiregange.com)

Survey, Search and Seizure Update

CA. Hari Agarwal & CA. Vivek Agarwal

1. Declaration of undisclosed income to “buy peace” does not renders an assessee immunity from initiation and levy of penalty

Mohit Gupta - [2022] 134 taxmann.com 219 (Article)

The legislature has intentionally drafted the provisions relating to Search and Survey in the statute book of Income Tax Act, 1961 with the target of unearthing the undisclosed income of any person in form of any money, bullion, jewellery or other valuable article or thing.

Under the Income Tax Act, 1961 penalty is to be levied on the amount of "tax sought to be evaded" in respect of the concealment of particulars of income or furnishing inaccurate particulars of the income. Nevertheless, in case of SEARCH penalty is also levied in respect of "Undisclosed Income" too.

The penalty provisions are being regularly strengthened. Counter to this the immunity provisions inbuilt the sections levying the penalty are being made fully non-operative or non-practicable.

2. Delhi HC deletes sec. 68 additions made by just relying upon enquiries made by Investigation Wing [2022] 135 taxmann.com 362 (Delhi)

Where a search and seizure operation was carried out in case of ‘RD’ group and certain incriminating documents belonging to assessee-company were seized and, proceedings under section 153C were initiated against assessee and Assessing Officer treated amount received from companies in guise of allotments of shares as unexplained cash credit, since Assessing Officer had used extensive enquiries made by Investigating Wing as basis for making section 68 addition in hands of assessee and no seized material or statement had been relied upon by Assessing Officer while making said, addition was to be deleted

3. Notice is said to be issued on date when e-mail is sent & not on date when e-mail is received: HC

Malavika Enterprises v. Central Board of Direct Taxes - [2022] 137 taxmann.com 398 (Madras)

The assessee filed a writ-petition challenging the date of issuance of the notice under section 148 of the Income-tax Act. In the case of the assessee, notice was issued vide email on 31/03/2021 at 6:42

PM but serve upon the assessee on 01/04/2021 at 2:00 AM. Thus, the assessee contended that notice issued after 31/03/2021 under old provisions of Section 148 was liable to be set aside.

The Madras High Court ruled that section 282 stipulates the manner of service of notice and Section 282A prescribes the form of issuance of such notice, i.e., signed and issued in paper form or communicated in electronic form. Further, Rule 127A of the Income Tax Rules, 1962 states the authentication of notices and other documents.

The assessee raised the issue about the receipt of the notice on the day after 31/03/2021 without explaining that the requirement of provisions is for the issuance of notice and not of the receipt of the notice.

Further, the assessee could not bring any fact on record to show that notice under Section 148 was not issued by the electronic mode, i.e., by email, on 31.3.2021 and, that too, when the fact regarding the digital signature of the authority could not be disputed.

Accordingly, it was not a case where a notice under Section 148 was issued on or after 01/04/2021, rather it was issued before the date aforesaid. Thus, the same was to be held as legally valid.

4. CBDT issues revised norms for constitution of Committee to deal taxpayer's grievance from high pitched assessments

Instruction F.no. 225/101/2021-ITA-II, dated 23-04-2022

The Central Board of Direct Taxes (CBDT) vide Instruction No.17/2015 dated 09-11-2015 had constituted 'Local Committees to deal with Taxpayer's Grievances from High-Pitched Scrutiny Assessment' (Local Committees) in each Pr. CCIT region. The purpose of the local Committees' constitution was to deal with Taxpayers' grievances expeditiously.

Considering the launch of the Faceless Assessment regime, the CBDT has issued revised instructions for the constitution and functioning of Local Committees. The following are a few key points of the revised instructions:

Constitution of Local Committees:

Local Committees are required to be constituted in each Pr. CCIT region across the country, including the Pr.CCIT (Exemption) and Pr.CCIT (International Taxation). Adequate publicity shall be given for filing of grievance petitions regarding High-Pitch Scrutiny Assessments.

Receipt of Grievances:

NaFAC will receive grievances through dedicated e-mail ID: samadhan.faceless.assessment@incometax.gov.in. For a non-faceless assessment regime, grievances will be received by the office of Pr. CCIT concerned, physically or through e-mail. All such grievances shall be forwarded to Local Committees.

Action to be taken by Local Committees:

On receipt of grievance, Local Committees would examine:

- a. Is there a prima facie case of High-Pitched Assessment, non-observance of principle of natural justice, non-application of mind or gross negligence of Assessing Officer/Assessment Unit?
- b. Whether any sound reason or logic does not back the additions made in order?
- c. Whether the provisions of the law have grossly been misinterpreted or obvious and well-established facts on records have been outrightly ignored?

The Local Committee may call for the relevant assessment records to peruse from the Jurisdictional Pr. CIT concerned.

Disclaimer : The views and opinions expressed or implied in the Hyderabad Branch of SIRC of ICAI E-Newsletter are those of the authors and do not necessarily reflect those of Hyderabad Branch of SIRC of ICAI

CPE Meetings – Resource Persons



CA. Radhika Verma



CA. Sriram K



CA. Satish Saraf



CA. Venkat Prasad . P



CA. Vivek Raju Pakalapati



CA. Vijay Totapally, CA. D.V. Jankinath & CA. V Jawahar

Central Council Members of ICAI from Hyderabad



CA. Dayaniwas Sharma



CA. Muppala Sridhar

Southern India Regional Council Members of ICAI from Hyderabad



CA. China Masthan Talakayala
Chairman, SIRC of ICAI



CA. Naresh Chandra Gelli
Secretary, SIRC of ICAI



CA. Chengal Reddy . R
Member, SIRC of ICAI



CA. Mandava Sunil Kumar
Member, SIRC of ICAI

Managing Committee Members of Hyderabad Branch of SIRC of ICAI 2022-23



CA. Deepak Ladda
Chairman



CA. Satish Kumar Mylavarapu
Vice Chairman



CA. Ponugoti Ravi Sankara Reddy
Secretary



CA. Giridhari Lal Toshniwal
Treasurer



CA. Chandra Babu M
CHAIRMAN SICASA



CA. Uppalapati Saran Kumar
CO-CHAIRMAN SICASA



CA. Rajambal MS
Member



CA. Chinna Sita Rami Reddy A
Member



CA. Rama Rao Karumanchi
Member