



The Institute of Chartered Accountants of India

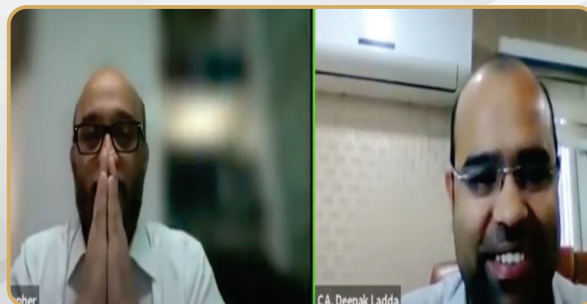
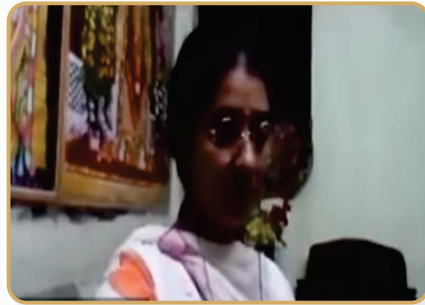
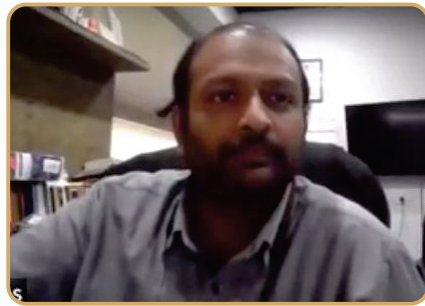
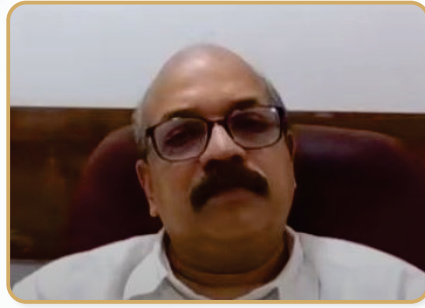
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Hyderabad Branch of SIRC E-Newsletter

Volume : 11 / issues: 2 / September, 2021

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Resource Persons at Virtual CPE Meetings of Hyderabad Branch of SIRC of ICAI



Managing Committee Writes

Dear Professional Colleagues,

We take this opportunity to wish each one of you a Happy Ganesh Chaturthi.

The months of September and October is expected to be busy months, as many of us will be busy with various reports and returns under the statute. Let us all gear up our resources to meet these time bound assignments and ensure that the same is completed within the timelines. We also urge the members to be cautious, as the threat of Covid-19 is still looming large.

Hyderabad Branch of SIRC has planned series of programmes on Tax Audit and Audit Automation in the month of September and the details of the same are also published elsewhere in the newsletter. We request all the members to participate and make the programmes a success.

During the month of August 2021, we conducted various programmes on Ind As, GST, Audit and Taxation. We also conducted a National Conference jointly with Committee for Members in Practice, ICAI, wherein the sessions were addressed by resource persons of national repute. The Conference was attended by 1155 delegates across the country.

ICAI has announced the schedule of forthcoming December Exam Schedule and the details regarding the same are also hosted in the website www.icai.org. ICAI has also given extension for old syllabus students wherein the students can attempt exams in old syllabus for the forthcoming exams. We at Hyderabad branch are always supportive of student cause and in this



connection we have extended the timings of students reading room for the benefit of students. Team Hyderabad Branch conveys its best wishes to all the students appearing in December 2021 exams.

Let me conclude by emphasizing on the fact that hard work is the stairways to success and I urge our professional brethren to work hard making use of the available opportunities and keep the flag of our profession high.

Signing off with a quote:

“Opportunity is missed by most people because it is dressed in overalls and looks like work” – Thomas Edison

With Warm Regards ,
Team Hyderabad Branch of SIRC



VIRTUAL CPE PROGRAMMES FOR THE MONTH OF SEPTEMBER, 2021

Day & Date	Timings	Topic	Resource Person	CPE	Free
Wednesday 08th Sep 2021	5 PM to 8 PM	Latest Amendments in Income Tax Act relevant for Tax Audit	CA. Gururaj Acharya	3 hrs.	Free
Thursday 09th Sep 2021	5 PM to 8 PM	Taxation of Intermediary Services under GST	CA. Manindar K	3 hrs.	Free
Wednesday 15th Sep 2021	5 PM to 8 PM	Clause by Clause Analysis of Form 3CD for the AY 2021-22	CA. Rajendra Prasad T	10 hrs.	Free
Thursday 23rd Sep 2021	6 PM to 8 PM	3 Days VCM on Automation of Audit in SMP's	CA. Premnath D, CA. Vijay Srinivas K CA. Saran Kumar U Mr . Alok Daga	6 hrs.	Free
Friday 24th Sep 2021	6 PM to 8 PM				
Saturday 25th Sep 2021	6 PM to 8 PM				



Principles for Show Cause Notice

CA Satish Saraf &
CA Venkat Prasad. P

The principles to be followed in issuing a show cause notice are neither provided in any statute nor one can find all the principles at one place. Particularly in fiscal laws, whoever issue show cause notices, are following any principles for issuing show cause notices, especially when issued by the executive is a big question in the minds of every one is, to protect the interest of revenue or otherwise? In many cases because of non-adhering by the executive has to certain principles, business community & practitioners will try to extrapolate the short comings in the show cause notice and try to come out of the situation. This has been addressed by non-other than Hon'ble apex court of the country, way back in 2010, but even today the situation has not changed to better.

Justice G. S. Singhvi & Justice Asok Kumar Ganguly of Supreme Court of India in the case of Oryx Fisheries Private Limited vs Union of India & Ors on 29 October, 2010, have referred the Judgement of the same court in the case of Kranti Associates Private Limited Vs. Masood Ahmed Khan & Ors on 8 September, 2010, which was also delivered by the same judges. In Kranti Associates case these two judges have reviewed more than 30 previous judgements of Supreme Court, other courts and including English cases and codified the principles for issue of Show Cause Notice. Therefore, I want everyone to enlighten themselves by knowing, understanding the judgements (supra).

Principles for Show Cause Notice:

The following are the “Principles” laid down by the Apex Court in the judgements supra for issue of Show Cause Notice by any authority such as Judicial, quasi-Judicial & Administrative.

- A. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- B. A quasi-judicial authority must record reasons in support of its conclusions.
- C. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- D. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.



- E. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- F. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- G. Reasons facilitate the process of judicial review by superior Courts.
- H. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- I. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- J. Insistence on reason is a requirement for both judicial accountability and transparency.
- K. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- L. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- M. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).



- N. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anya vs. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- O. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Apart from the above principles, the authority / office issuing show cause notice must follow the principles of natural justice which are enshrined in the jurisprudence, towards the delivery of justice.

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Survey, Search and Seizure Update

CA. Hari Agarwal &
CA. Vivek Agarwal

1. HC directed AO to allow 'Karti P. Chidambaram' to cross-examine persons who have given statement against him Karti P. Chidambaram v. Additional Commissioner of Income Tax, Central Range - 2, Chennai [2021] 129 taxmann.com 36 (Madras)

Assessing Authority is bound to afford reasonable opportunity, enabling petitioners/ assesseees to defend their case in manner prescribed. Where assessment had been issued under section 153C in case of assessee, however, directions issued by Court to afford opportunities to assesseees had not been complied with by Assessing Authority before passing final assessment order, matters were to be remanded back to Assessing Authority for fresh consideration and for providing reasonable opportunity to assesseees and thereafter pass order of assessment(s) on merits and in accordance with law. Further, opportunity to cross-examine persons, who had given statement against assesseees was also to be provided.

2. Sec. 115BBE not applicable on income surrendered by assessee if AO didn't find unexplained credit in books: ITAT Bajaj Sons Ltd. v. Deputy Commissioner of Income-tax, Central Circle-III, Ludhiana [2021] 128 taxmann.com 406 (Chandigarh - Trib.)

Where director of assessee-company surrendered a certain sum during search, and Assessing Officer treated said sum as income from unexplained sources and invoked provisions of section 115BBE and charged tax at a higher rate, since Assessing Officer had not pointed out any unexplained credit in books of account, provisions of sections 68, 69, 69A, 69B, 69C and 69D were not attracted on surrendered amount and aforesaid surrender not being covered under provisions of sections 68, 69, 69A, 69B, 69C and 69D, provisions of section 115BBE were not attracted

3. ARSHAD ISPAT & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. (2021) 62 CCH 0375 BangTrib

Search and seizure—Assessment in case of other person—Recording of finding by AO—A and E are partnership firms—Assessments in all cases have been completed by A.O. u/s 143(3) r.w.s. 153C—Revenue carried out search and seizure operation u/s 132 in case of B—In connection therewith, premises of A & E and B were also searched—Assessing officer of "searched person" and "other persons, being assesseees herein" came to be one and same person—A.O. completed assessment in hands of above said assesseees—Held, Assessing



officer is same for searched person and also assessee herein, being "Other persons"—Assessing officer has recorded fact of conducting of search in premises of assessee herein and seizure of certain documents—However, search in premises of assessee is on basis of warrant issued in name of B—Hence assessee herein are "Other persons", as referred to in sec.153C—In none of satisfaction notes, AO has recorded a finding that seized documents "belong to" assessee—AO must be conscious and satisfied that documents seized/recovered from searched person belonged to other person—Hence, it is duty of AO to apply his mind and should consciously and mandatorily state in satisfaction note that seized documents belong to "other person"—Without recording such a satisfaction, it cannot be presumed that seized materials belong to "other persons", in which case AO could not have initiated proceedings against "other persons" u/s 153C—Initiation of proceedings u/s 153C in instant cases is bad in law — Assessee appeals allowed.

4. HC remanded matter back as assessment order was passed by AO in gross violation of principles of natural justice Vetrivel Minerals v. Assistant Commissioner of Income Tax, Central Circle-2, Madurai [2021] 129 taxmann.com 126 (Madras)

Where assessment orders passed in case of assessee under section 153A, pursuant to search operation were passed in gross violation of principles of natural justice as revenue had not given all panchnamas to assessee, copies of all materials seized which were used for framing assessment had not been supplied to assessee, no opportunity for cross examination had been provided and section 65B of Evidence Act had not been complied with before admitting electronic evidence, matter was to be remanded back to Assessing Officer for adjudication afresh.

5. ITAT can grant extension of stay of demand beyond 365 days in deserving cases; SC dismissed SLP Principal Commissioner of Income-tax v. Honda Motorcycle and Scooter India (P.) Ltd. [2021] 129 taxmann.com 94 (SC) SLP dismissed against High Court's ruling that where delay in disposal of appeal is not attributable to assessee in any manner, Tribunal can grant extension of stay of demand beyond 365 days in deserving cases.

Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Power of (Power to grant stay) - Assessment year 2012-13 - High Court by impugned order held that where delay in disposal of appeal is not attributable to assessee in any manner, Tribunal can grant extension of stay of demand beyond 365 days in deserving cases - Whether Special Leave Petition filed against impugned order was to be dismissed - Held yes [Para 1] [In favour of assessee]



6. PRINCIPAL COMMISSIONER OF INCOME TAX vs. SILEMANKHAN AND MAHABOOBKHAN (2021) 111 CCH 0195 APHC

Penalty—Penalty payable on undisclosed income—Issue arose is whether ITAT is right in holding that penalty cannot be invoked u/s.271AAB in a case where partner of assessee firm admitted unaccounted income u/s. 132(4) during search, wherein assessee firm was covered by survey operation u/s.133A as consequent to search operation—Held, Penalty under provision may be imposed only when search has been initiated against assessee—Admittedly, in present case, search was conducted under Section 132 in group cases of K and not against respondent-assessee—Pursuant to such search, survey operation under Section 133A was conducted and notice was issued under Section 153C on assessee, whereupon latter submitted return of income admitting additional income—Tribunal referring to proposition of law that no penalty under Section 271AAB be imposed when search under Section 132 has not been conducted against assessee as appearing from consistent view taken by various benches of Tribunal—Unequivocal legal position appearing from aforesaid discussion is that no penalty under Section 271AAB may be imposed where search under Section 132 has not been conducted against assessee—It is admitted no search under Section 132 had been conducted in premises of assessee-firm—On other hand, in course of search under Section 132A against K statements of partners of firm were recorded and pursuant thereto notice under Section 153C was issued upon assessee-firm—When return of income is filed in response to notice under Section 153C by a person other than the person who has not been searched in execution of warrant under Section 132 penalty under Section 271AAB cannot be imposed—Notice under Section 153C is incidental to search proceedings under Section 132 thereof and cannot be a foundation to impose penalty on assessee who has not been searched—In view of such fact, there is no perversity or illegality in finding of Tribunal—Revenue's appeal dismissed.



FEMA -NRI TRANSACTIONS – PART II

CA. G Murali Krishna

In continuation of our previous article on subject matter, let us now discuss about provisions governing acquisition and transfer of immovable properties in India by NRIs / OCIs.

II. Transactions in the form of acquisition / transfer of immovable properties in India

Transactions involving acquisition and transfer of immovable properties in India by non-residents are governed by Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ('NDI Rules') which were issued by Govt of India vide gazette Notification No. S.O.3732(E) dated October 17, 2019. The said NDI Rules replaced erstwhile Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 issued by RBI.

Along with these Regulations, such transactions are also governed by Master Direction No. 12/2015-16 on Acquisition and Transfer of Immovable Property under FEMA, dated January 1, 2016, which generally consolidates all the instructions and circulars issued by Reserve Bank time to time.

1.Acquisition of Immovable Property in India by NRI or OCI

a) An NRI or an OCI may acquire immovable property in India other than agricultural land/ farmhouse/ plantation property either by purchase or in the form of a gift. Such gift can be from any person resident in India or an NRI or an OCI, who is a relative as per section 2(77) of Companies Act, 2013.

b) An NRI or an OCI may acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (i) in accordance with the extant provisions of the foreign exchange law in force or (ii) from a person resident in India. It may be noted that restriction on acquisition of immovable property in the form of agricultural land / farmhouse / plantation property is not applicable acquisition in the form of inheritance.



c) Spouse of an NRI or an OCI, who is a person resident outside India other than an NRI or an OCI, can acquire one immovable property in India (other than agricultural land / farm house / plantation property) jointly with his / her NRI or OCI spouse, subject to condition that their marriage has been registered and subsisted for a continuous period of two years or more immediately preceding the acquisition of such property and such non-resident spouse is otherwise not prohibited for acquisition

2. Transfer of Immovable Property in India by NRI or OCI:

a) An NRI or an OCI may transfer, without prior approval of RBI, any immovable property in India to a person resident in India or transfer any immovable property other than agricultural land/ farmhouse/ plantation property to an NRI or an OCI.

b) It implies that an NRI or an OCI can transfer their immovable properties to either a person resident in India or another NRI or OCI but cannot be to any other person resident outside India.

c) It further implies that immovable property being agricultural land/farmhouse/ plantation property acquired through inheritance by an NRI or an OCI cannot be transferred to another NRI or an OCI but can be transferred only to a person resident in India.

d) Though prior approval of RBI is not required for transfer of immovable properties, repatriation of proceeds is subject to conditions which are discussed in subsequent details.

3. Manner of Payment for Acquisition / Transfer:

a) In case of acquisition, the consideration, if any, shall be made from (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

b) No payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted as stated above.

c) The consideration shall be paid directly to the Seller bank account and not to route it through any other person (including his relatives)

d) Payment of applicable taxes and other duties/levies in India



4. Other Points

- a) Subject to directions issued by RBI, an AD Bank may create a charge on an immovable property in India in favour of an overseas lender or security trustee, to secure any loan or borrowing availed under External Commercial Borrowing (ECB) Regulations.
- b) Subject to directions issued by RBI, an AD Bank may create a charge on an immovable property in India owned by an NRI or an OCI in favour of an overseas lender towards a loan availed by the company outside India in which such NRI or OCI is a director.
- c) An NRI or an OCI can repatriate out of India of sale proceeds of immovable property in India, other than agricultural land / farmhouse / plantation property, provided the property was acquired by seller in accordance with extant FEMA regulations and amount for acquisition was paid in foreign exchange received through banking channels or out of funds held in FCNR or NRE accounts. However, in case of residential properties, the repatriation is restricted to not more than two such properties.
- d) Sale proceeds of agricultural land / farmhouse / plantation property can be repatriated only with prior approval of RBI.
- e) In the event of failure of repayment of ECB availed by a person resident in India, concerned AD Banker may permit the overseas lender or security trustee, in whose favour a charge on immovable property was created, to sell such property only to a person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of said loan and not any other loan.
- f) Transfer of immovable property and repatriation of proceeds thereof is subject to payment of applicable taxes and other duties/levies in India.

See you next month in the last part of our discussions. Happy reading!

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