



The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Hyderabad Branch of SIRC

*E-Newsletter* | October 2020 | Volume-10



Webinar on Facing the Faceless on 22<sup>nd</sup> September, 2020



Webinar on For a Solid Foundation on 23<sup>rd</sup> September, 2020



Webinar on Empowering Auditors on 24<sup>th</sup> September, 2020



Webinar on Learning Never Ends on 25<sup>th</sup> September, 2020



Webinar on Century-On a Sticky Wicket on 26<sup>th</sup> September, 2020



*Dear Professional Colleagues,*

Hope each one of you and your family members are safe.

We are pleased to inform you that the Present committee had completed 100 programmes with the programme scheduled on 26<sup>th</sup> September 2020. We celebrated the occasion and had series of Six programmes from 95 to 100 from 21<sup>st</sup> September 2020 to 26<sup>th</sup> September 2020 wherein several prominent persons and dignitaries addressed the members. The meetings saw good participation from members. I take this as an opportunity to thank all the Speakers, Central Council member Dayaniwas Sharma ji, Regional Council members and my colleagues in Managing committee, for their excellent support in conducting the programmes.

The deadlines for filing Tax Audit Reports, GST Audits etc are fast approaching and this year we are worried about meeting the deadlines. The on-going restriction on free movement of staff & articles, clients not yet ready Citing Covid 19 as a reason is putting us in a difficult position. For majority of us staff & senior article students, working in our office are taking up Examination in November 2020. These situations are not giving us the comfort in facing the challenges in finishing our works in timely manner.

We have planned a meeting on Work Life Balance and Handling stress in Present Situation by Sadguru Ramesh Ji on Saturday 3<sup>rd</sup> October 2020. Keeping in view the situation of shortage of staff with many firms we have planned for a networking session with title You+me =We ....Connect share and Grow on Wednesday 7<sup>th</sup> October 2020, a networking session amongst the members of the Branch wherein we will be requesting members who are ready to allot work as well as those who are ready to take up the work, to provide details in chat box so that the we connect the member who wants to give work with the member who is ready to do work. I request members to join and share your views and requirements in Chat box.

Keeping in view the several deadlines falling in this month end we will not be having too many programmes and the details of programmes fixed will be shared by you through SMS and Whatsapp.

I am pleased to inform you that the Branch has started conducting virtual classes for orientation, ITT, Advance ITT and MCS which will be of great help to students to take up classes without involving commuting from one place to other and finish the mandatory courses. I am also pleased to inform you that SICASA Hyderabad has elected new torch bearers in their AGM held on 30<sup>th</sup> September and has started conducting crash courses, mock examination etc.

ICAI is doing its best to ensure that the examinations in November 2020 are help as per schedule announced. It is also our duty to inform our students to follow strict discipline and ensure that ICAI is not facing any difficulty due to casual attitude of any student. On behalf of Managing committee of SIRC of ICAI I wish each and every student All the best in ensuing examination.

I request all the members to take part in the programmes of Branch and encourage us to do more for the benefits of members.

Signing off with a quote:

"Nothing is impossible. The word itself says "I' am possible

Yours Sincerely,  
**CA. Pankaj Kumar Trivedi**  
Chairman  
[chairman.hyd@icai.in](mailto:chairman.hyd@icai.in)



## Announcement

**ANNOUNCEMENT FOR EXTN. OF LAST DATE OF MEF 2020-21**

As you are aware that the Multipurpose Empanelment Form for the year 2020-21 is live at <https://meficai.org>. Considering the various requests and challenges being faced by the Members of ICAI due to Covid-19, it has been decided by Professional Development Committee to extend the last date for submission of online Multipurpose Empanelment Form along with the Declaration for the year 2020-21. It is hereby informed that last date is extended from 12th October 2020 to 23rd October 2020.

We wish to further inform that while submission of Financial Documents, there is no requirement for submitting the Financial Statements i.e. Balance Sheets and Income & Expenditure Account for the applicants who have opted for the Presumptive Taxation Scheme under Section 44ADA of Income Tax Act, 1961 and have filed their ITR accordingly for the financial year 2018-19. The option in this regard has been included in the Financial Documents Tab in MEF for the members to select. Members may refer the "Advisory" while filling Multipurpose Empanelment Form 2020-21.

The MEF Applicants can write us on the Complaint Module of MEF (available at <https://app.meficai.org/complaints>) or at [mefpdc@icai.in](mailto:mefpdc@icai.in) for any clarification, if required.

Chairman and Vice-Chairman,  
Professional Development Committee

**OBITUARY**

S.No.	Name of the Member	Date of Demise
1	CA. VIKRAM SISODIA	14th February, 2020
2	CA. OM PRAKASH BAJAJ	4th April, 2020
3	CA. MPC SEKHAR RAO	6th July, 2020
4	CA. BALAKOTESWARA RAO	7th July, 2020
5	CA. DEVINENI SEETHARAMAIAH	19th July, 2020
6	CA. KATTA SRINIVASA RAO	9th August, 2020
7	CA. MADHUSUDAN MANTRI	26th August, 2020
8	CA. NUKALA VENKATARAM	11th October, 2020

Members who have passed away since February 14, 2020 at Hyderabad and which were collected through known sources. Hyderabad Branch of SIRC pays its Shraddhaanjali to the Departed Souls and pray that let the almighty give strength to their families to bear the loss.



## ANNOUNCEMENT

### **Sub: Provisional Registration in Foundation Course of the Institute of Chartered Accountants of India (ICAI) after passing Class X Examination.**

The Competent Authority has conveyed its approval on the ICAI proposal for amending the Regulations 25E, 25F & 28F of Chartered Accountants Regulations, 1988 which now enables candidate to provisionally register in the Foundation Course of the Institute of Chartered Accountants of India (ICAI) after passing Class X examinations.

The following are the salient features of the notification:-

- Students after passing Class 10<sup>th</sup> examination conducted by an examining body constituted by law in India or an examination recognised by the Central Government or the State Government as equivalent thereto, may provisionally register in Foundation Course of ICAI.
- Eligibility Criteria for appearing in Foundation Examination is as under:-
  - (a) Student has to register with the Board of Studies of the Institute on or before 1st day of January or 1<sup>st</sup> day of July for the examination to be held in the months of May/June or November/December respectively. In other words, 4 months study period is required before appearing in Foundation Examination.
  - (b) Student should have appeared in the Senior Secondary (10+2) Examination conducted by an examining body constituted by law in India or an examination recognised by the Central Government (or the State Government) as equivalent thereto (for the purpose of admission to graduation course)

Candidates may note that there is no change in the Registration Fee. For Registration, students may visit <https://eservices.icai.org/>

For further clarification, read FAQs at <https://www.icai.org/post/faqs-provisional-admission-to-foundation-course>

**Director  
Board of Studies, ICAI**



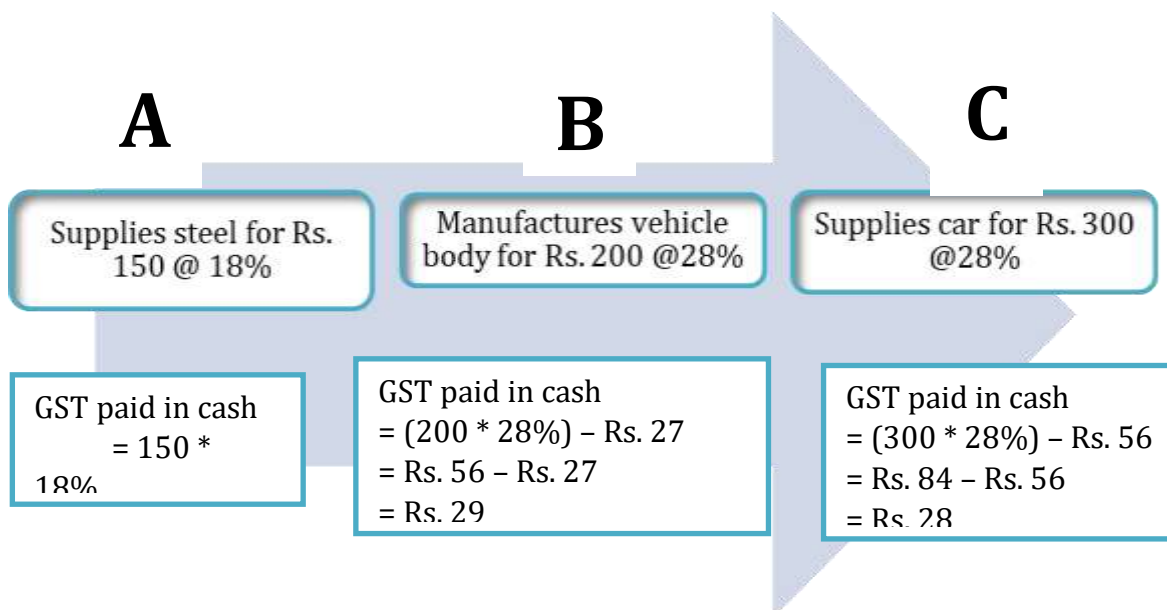
## Refund under Inverted duty structure

### Legislature – Government – Judiciary

Authored by CA Satish Saraf & CA Vekata Prasad. P

#### Introduction:

The fundamental principle of GST laws worldwide is that it is a multi-stage tax and tax on value addition, with final consumer alone ultimately bearing the tax. This is ensured by allowing the facility of input credit across the supply chain wherein the tax paid on the previous stage would be given as credit in the hands of the purchaser (popularly known as 'Input tax credit' or ITC). For example, Steel supplied by 'A' is used to manufacture the body of the vehicle by 'B' which is in turn used to manufacture a car by 'C'. The GST rate on steel is 18%, the vehicle body is 28%, and the car is 28%. The ITC flow is depicted below:



The net effect of ITC facility is that the value addition only gets taxed at each stage in the form of the tax payment in cash.

Instead of the above example of the car, if the example of a tractor is considered and if, tractor attracts GST rate of 12% then 'D', a supplier of tractors will supply the tractor at ₹ 300 (value of supply) + ₹ 36 (GST@ 12% on ₹.300) to the ultimate consumer, 'D', the supplier of the tractor would have availed input tax credit of ₹ 56 (tax paid to 'B', the supplier of the vehicle body). This ITC would be used to pay GST on tractors of ₹ 36. In such a case, there will be an accumulation of ITC of ₹.20 (₹ 56 -36) to C. This is arising due to fact that the GST rate on inward supplies i.e. tractor body is higher (being 28%) than the GST rate on outward supplies of Tractors (being 12%). The consequence that follows is that Rs.20 remains unutilised and keeps on accumulating with no use for taxpayer except showing it as an asset, which runs contrary to the very tenet of GST being





consumption tax (namely, only tax in the entire chain is the tax charged to end customer and in the entire supply chain there should not be any sticking or unabsorbed ITC). To mitigate this anomaly, GST law provides for refund of accumulated & unutilised excess ITC.

In this background, Section 54(3) of the CGST Act, 2017 is enacted to provide a refund of the unutilized ITC when the tax rate on inputs being higher than the output. The conjoint reading of Section 54(3), ibid along with associated definitions thereto, all kinds of ITC is refundable irrespective of the category (be it inputs, input services or capital goods). However, the contrary to such clear & unambiguous position, the Rule 89(5) of the CGST Rules, 2017 limits the refund only to the inputs ITC and do not allow the refund of ITC on input services and capital goods. The initial framed Rule 89(5), ibid allowed the refund of ITC on the input services but the rule was retrospectively amended<sup>1</sup> w.e.f. 01.07.2017 to limit the refund of ITC on the inputs alone. The adverse implications of Rule 89(5), ibid is explained with an example:

Inverted duty turnover: Rs.100 lakhs and liable for GST @12%

Total tax payable is 12Lakhs

ITC on inputs: Rs. 15 lakhs

ITC on input services: Rs. 2 lakhs

ITC on capital goods: Rs. 5 lakhs

S.N	Scenario	Eligible Refund (in Rs.)
1	All categories of ITC are taken for a refund (Inputs, input services) – as per the plain wording of section 54(3), ibid	10 lakhs (22-12)
2	Only inputs ITC is taken for refund calculation [as per the formula given u/r. 89(5)]	3 Lakhs (15-12)
3	Refund restricted (1-2)	7 Lakhs

As seen from the comparison above, the rule limiting the refund thereby not fully implementing the mandate of section 54(3) that unutilized ITC shall be refunded.

Recently, there are two HC decisions expressing different opinions. The Hon'ble High Court of Gujarat in case of VKC Footsteps India Pvt. Ltd vs. UOI 2020 (7) TMI 726 acknowledging the above anomaly held that Rule 89(5), ibid is ultra vires the provisions of section 54(3), ibid and read down the Rule 89(5), ibid to the extent it restricts the refund of input services ITC. In other words, it was held the full unutilized ITC is refundable (Sl. No. 1 in the above table). Contrary to the Gujarat HC decision, the Hon'ble HC of Madras in case of Transtonnelstroy Afcons JV Vs UOI 2020-TIOL-1599-HC-MAD-GST upheld the Rule 89(5), ibid thus, agreed with the department that only unutilized ITC portion of input materials is refundable (Sl. No. 1 in the above table).

Which HC decision to follow – Gujarat or Madras?

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<sup>1</sup> Notification No. 26/2018 – Central Tax dated 13.06.2018



The HC decision binds all authorities located in that state. As a result, the taxpayers registered in the state of Gujarat can claim refund of the full unutilised ITC while the taxpayers located in the state of Tamilanadu would not. The persons who has registration in both states would be getting different treatment. However, how far the revenue department implements the HC decision which favours the Taxpayer is also another practical challenge that may arise.

For the taxpayers registered in other states, an attempt can be made to take the benefit of Gujarat HC. Certainly, the tax officers may not prefer to follow the Gujarat HC and choose to follow Madras HC. Hence the battle continues and may have to approach the Jurisdictional HC and ask similar relief.

Meanwhile, if either Hon'ble SC or Government extends the relief, they are benefited.

The suggested course of action:

It is quite obvious that that the matter would go to the Hon'ble Supreme Court, the Authors strongly believe that Gujarat HC decision confirms to the letter & spirit of the GST law and the law in vogue is unambiguous to allow the refund of input services & capital goods ITC. In this background, the suggested course of action is tabulated below:

S.N	Status	The suggested course of action 2
1	Refund is yet to be applied	Take total ITC including input services and capital goods while making the refund
2	Refund applied but pending for the process	Request the department to issue deficiency memo & file fresh application adding the total ITC while arriving the eligible refund
3	Refund applied considering the inputs ITC alone and it was processed	File another application covering the input services & Capital goods ITC under 'any other category'. The readers may note that there is no bar on making an application for the same period twice
4	Refund applied considering all types of ITC and it was processed denying the component of input services & Capital goods ITC	File appeal against the rejection portion

It is also suggested to make representation to the GST council and Government to amend Rule 89(5), ibid to make it in line with the intentions of the lawmakers.

In case any member of our branch need clarity on any matter / issue / provision of GST, please email to us at [hyderabad@icai.org](mailto:hyderabad@icai.org) / [ramkumar@icai.in](mailto:ramkumar@icai.in); so that we can request the Paper writer to prepare the article on that subject, which will help the members at large.



## **Survey, Search and Seizure Update**

Authored by : CA. Hari Agarwal

### **1. Penalty under section 271(1)(c)---*Concealment or furnishing of inaccurate particulars---Discrepancy found during survey resulting in surrender by assessee---AO accepted declared income without any disturbance***

Rajendra Shringi v. DCIT ITA No. 1087/JP/2019

Conclusion: Even if some discrepancies were found during survey resulting in surrender of income by assessee and once assessee had declared said income in return of income filed under section 139(1), then penalty could not be levied on surmises, conjectures and possibilities that assessee would not have disclosed the income but for survey. Accordingly, penalty levied by AO in respect of amount of Rs. 3 crore was not sustainable. As regards penalty levied by the AO in respect of addition of Rs. 10,000 on account of non-disclosure of rental income, it was a clear case of concealment of particulars of his income, therefore, penalty levied by AO to the extent of addition of Rs. 10,000 was upheld.

During the course of survey proceedings, a diary was impounded containing certain entries against names of certain persons. In the statement recorded under section 133A, assessee surrendered the said income of Rs. 3 crore as recorded in diary on account of advances to certain persons. In the return of income assessee declared said income and offered to tax. The AO has not disturbed the income returned by the assessee so far as Rs. 3 crore was concerned. AO made addition of Rs. 10,000 on account of short declaration of rental income. Question arises for consideration was when assessee had declared said income of Rs. 3 crore in the return of income filed under section 139(1) and the AO had not disturbed returned income to that extent, then whether it would amount to concealment of particulars of income or furnishing of inaccurate particulars of income so as to attract penalty under section 271(1)(c). Held: Even if some discrepancies were found during survey resulting in surrender of income by assessee and once assessee had declared said income in return of income filed under section 139(1) then penalty could not be levied on surmises, conjectures and possibilities that assessee would not have disclosed the income but for survey. Accordingly, penalty levied by AO in respect of amount of Rs. 3 crore was not sustainable. As regards penalty levied by the AO in respect of addition of Rs. 10,000 on account of non-disclosure of rental income, it was a clear case of concealment of particulars of his income, therefore, penalty levied by AO to the extent of addition of Rs. 10,000 was upheld.

Decision: Partly in assessee's favour.

### **2. Assessment under section 153A---Computation of undisclosed income---Addition under section 69 only on basis of screen shot of journal entry taken from tally data in pen-drive and its copy**

Conclusion: Neither during search nor during assessment proceedings, any material was found to show that the amount contained in the journal entry was paid by the assessee firm to anyone at any time only on the basis of journal entry, section 69 could not, therefore, be invoked.

On the basis of data contained in the electronic media and the loose papers, AO inferred that assessee had made undisclosed investment in purchase of land and accordingly, he had made additions in all the three years on account of undisclosed investment in land invoking section 69 which had been the subject-matter of dispute before the CIT(A) who had granted relief to RA and his brother KA, both of whom were partners in the assessee firm. In course of verification made with





regular books of account, it was found by AO that the seized material was not covered in the regular books of the assessee firm. In the query letter, the AO referred to a screenshot of a balance sheet as on 31-3-2010 drawn in the name of M/s. Aarti Colonizer Company ('ACC') wherein the closing stock was reflected at Rs. 15,53,99,615 which was taken from the tally data in pen-drive. Held: The journal entry dt. 4-9-2007 was only an accounting entry passed for introducing the land as capital contribution by the partners who purchased the lands and therefore, this cannot be considered as evidence of investment. A perusal of the journal entry dated 4-9-2007, which had been one of the basis for addition, shows that through this journal entry, the lands was purchased by the two persons named in the journal entry and was being introduced as their capital contribution in the partnership firm. Since these journal entries have been relied upon by the AO, it had remained undisputed that the lands were not purchased by the assessee but by the two persons as named in the journal entry. As rightly contended by the assessee, that all the lands, except one, described in the assessment order on page Nos. 2 and 3, were purchased prior to formation of the assessee-firm. There was yet another convincing reason that in all the three years under appeal, there were no sales effected by the assessee firm and the business of the assessee firm had not even started, which was also evidenced by the profit & loss account of the three years. When the source of income/revenue for the assessee was missing in the sense that the business had not even started during all the three years and since during search, nothing was found to establish that the assessee had any undisclosed income from any other source, the discretion vested in the AO should have been exercised in favour of the assessee and the addition should not have been made. AO had not made any enquiry, whatsoever, from different vendors of the lands and not even from the two persons named in the journal entry, who, as per the journal entry, introduced their lands as capital contribution in the partnership firm. For making addition under section 69, there had to be some material establishing actual investment and therefore, it was not justified to invoke the said section merely on the basis of inference.

3. Where High Court upheld Tribunal's order setting aside addition made by AO under section 153A on ground that said addition was not based on any incriminating material found during course of search, SLP filed against said order was to be dismissed due to low tax effect

[2020] 119 taxmann.com 348 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income-tax, Delhi 2

v.

Bluebird Software (P.) Ltd.\*

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Condition precedent) - Assessment year 2005-06 - Pursuant to search carried out in case of assessee, a notice under section 153A(1) was issued - In course of assessment, Assessing Officer made certain addition to assessee's income - Tribunal noted that assessment for assessment year in question had already been completed on date of search - Moreover, addition made by Assessing Officer was not based on any incriminating material found during course of search - Tribunal thus set aside addition made by Assessing Officer - High Court upheld Tribunal's order - Revenue filed SLP but later on sought to withdraw SLP filed due to low tax effect - Whether, revenue's SLP was to be dismissed as withdrawn - Held, yes [Para 3] [In favour of assessee]

4. Find at itatonline.org

.Summary Of Key Findings And Recommendations In The CAG's Performance Audit Report On Income Tax Search And Seizure Assessments (Report No.14 Of 2020)



The Comptroller and Auditor General of India (CAG) conducted a performance audit on search and seizure assessments of the Income Tax Department. The report has several interesting insights and makes valuable recommendations. CA Mohit Gupta has summarized the key points of the report in a succinct and clear manner.

Key observations of the Performance Audit report on Income Tax Search and Seizure Assessments:-

The Income Tax Department did not centralise all cases in respect of certain groups for assessments due to which issues relating to the assessee's pointed out in Appraisal Report could not be addressed.

76.5 per cent of additions made in search assessments did not stand the test of judicial scrutiny in appeals at the level of CIT (A)/ITAT. There were cases where sustainability of additions made in the assessment orders was nil at appellate stage.

Assessing Officers did not take uniform stand in making additions on account of bogus purchases, accommodation entries and in adoption of figures of assessed income/revised income. The additions were made arbitrarily either on lump sum amount basis or different percentage ranging from five per cent to 50 per cent under similar circumstances without proper justification. There were cases of non-compliance of CBDT's instructions/orders. Provisions related to levy of penalty, allowances of deductions/expenses/set off and carry forward of losses/ MAT etc. were not followed correctly.

There was a delay ranging from one month to 14 months in handing over of Appraisal Report along with seized material to the AO.

Verification of source/genuineness of the transaction pointed out in Appraisal Report was not done and undisclosed income recommended in the Appraisal Report was not added. Coordination with other wings of ITD to resolve the issues pointed out in Appraisal report was not there. Useful information was not shared by ITD with other government agencies/authorities or vice versa either directly or through REIC

Action Notes based on comprehensive and methodical examination of seized material, were not prepared by the AO.

Separate Narrative Reports were not prepared and sent to the Member (Investigations).