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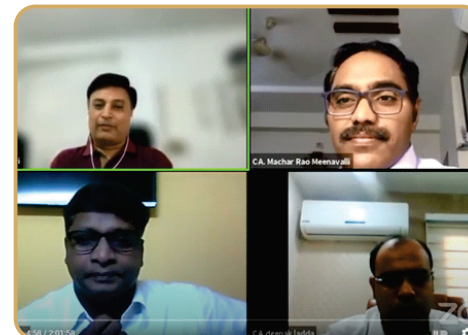
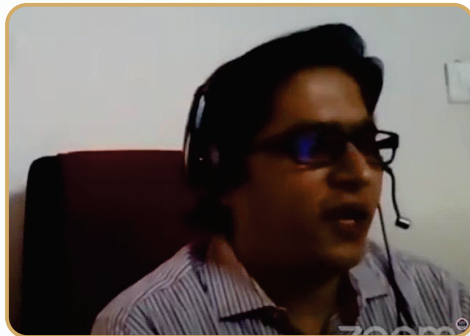
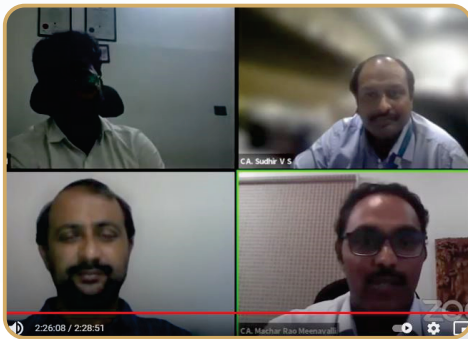
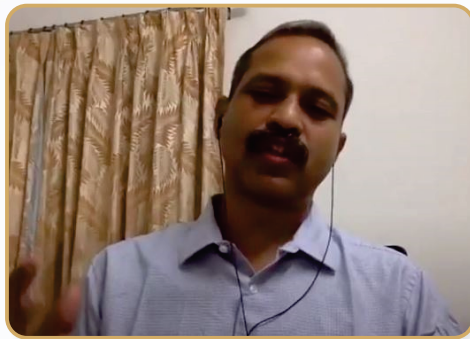
Happy Independence Day



Hyderabad Branch of SIRC E-Newsletter

Volume : 22/Issue : 13/August, 2021

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



Chairman Writes



CA. MACHAR RAO MEENAVALLI

Chairman

Dear Professional Colleagues,

I wish each one of you a Happy 75th Independence Day. I am also very happy to take this opportunity to wish you a Happy Muharram, Raksha Bandhan, Janmashtami, & Onam.

As enunciated earlier, I humbly request our professional colleagues to exercise utmost care and caution as the news relating to 3rd Wave of Covid-19 have been circulating for a while. The forthcoming months of September and October will be hectic months, as many of us will be busy with filing Income Tax returns and Tax audit reports. Let us all gear up our resources to meet these time bound assignments and ensure that the same is completed within the timelines.

In connection with Independence Day celebrations, Hyderabad Branch of SIRC has planned National flag hoisting on August 15, 2021 at Institute premises. Due to the present pandemic restrictions the event will be celebrated with a limited gathering of Managing Committee members and Branch staff.

During the month of July 2021, we conducted various programmes on FEMA, GST, Income Tax, Technology, Labour code etc... wherein we had various resource persons from different parts of the country sharing their expertise and experience on the subjects. I am happy to share that all these programmes were well received by the members. We also conducted a Two Day Virtual Programme on Internal Audit under the aegis of Internal Audit Standards Board, ICAI. The programme was well attended by CAs across the country and we had delegate participation of more than 1000 members. I sincerely thank the members for their unstinted support which has motivated us in conducting such programmes.

The Branch is also planning various programmes in the month of August 2021. We are also in discussion with various committees of ICAI HO so as to line up National level programmes. We will also be scheduling meetings on other topics. As in the past we request members to extend their full support for the programmes.



The details of Programmes are given elsewhere in the Newsletter.

59th AGM of Hyderabad Branch of SIRC of ICAI was conducted in Zoom platform on Saturday, 24th July 2021 at 11 AM. I am happy to share that, the Annual Report of Hyderabad Branch of SIRC together with the Audited accounts was received by the members at the meeting. I sincerely thank the members for attending the AGM and sharing their views.

SICASA Hyderabad conducted its AGM on July 31, 2021. As part of Student activities we are planning to conduct classes for the benefit of students.

Let me also emphasize that quality is a hallmark of professionalism and I urge all my professional brethren to maintain high standards of quality in our professional endeavours so that the flag of our profession fly high.

Signing off with a quote:

“Quality is Everyone's Responsibility” – W. Edwards Deming

Yours Sincerely,

CA. Machar Rao Meenavalli
Chairman
chairman.hyd@icai.in



VIRTUAL CPE PROGRAMMES FOR THE MONTH OF AUGUST, 2021

Day & Date	Timings	Topic	Resource Person	CPE	Free
Tuesday 10th August, 21	6 PM to 8 PM	IND AS 115 – Revenue from Contracts with Customers	CA. Naga Durga Sudhakar	2 hrs.	Free
Monday 16th August, 21	6 PM to 8 PM	5 Day Advanced Course on GST- Practical Scenario GST on JDA & Real Estate	CA. V Prasanna Krishnan	10 hrs.	Rs 700/- Plus GST
Tuesday 17th August, 21	6 PM to 8 PM	5 Day Advanced Course on GST- Practical Scenario ITC ProvisionS Eligibility, 2A,2B, legal Position & Practical Challenges	Adv. Vaitheeswaran	10 hrs.	Rs 700/- Plus GST
Wednesday 18th August, 21	6 PM to 8 PM	5 Day Advanced Course on GST- Practical Scenario Important AAR & Landmark Judgements in GST	CA. Sudhir V S	10 hrs.	Rs 700/- Plus GST
Thursday 19th August, 21	6 PM to 8 PM	5 Day Advanced Course on GST- Practical Scenario GST Issues in M&A	CA. Jatin Christopher	10 hrs.	Rs 700/- Plus GST
Friday 20th August, 21	6 PM to 8 PM	5 Day Advanced Course on GST- Practical Scenario Critical issues in GST Refunds for Exporters and SEZ	CA. Anil Kumar Bezawada	10 hrs.	Rs 700/- Plus GST
Saturday 21st August, 21	5 PM to 8 PM	Issues and Developments in Audit and Taxation due to Impact of COVID-19	CA. Hegde Nandkishore Chidamber & CA. Chandrika Sridhar	3 hrs	Free
Friday to Sunday 27th to 29th August, 21		Virtual National Conference			



Understanding of “reasons to believe” while in Search Operation under GST

CA Satish Saraf &
CA Venkat Prasad. P

Introduction:

It is a general belief in the business community and legal professionals that on many occasions the executive travels beyond legal powers in several aspects and more so in tax revenue aspects.

Couple of months back, the media was flooded with news quoting the observations made by the Hon'ble Supreme Court on April 6, 2021, while hearing the matter of M/s Radha Krishan Industries v State of Himachal Pradesh & Ors. related to attachment of bank accounts under GST, related to allegations of fake invoices, that the purpose of the GST Act is lost by the manner in which tax law is enforced in our country.

“The Parliament had aimed to give the GST a citizen-friendly tax structure. But, the purpose of the Act is lost by the manner of enforcement in our country, Justice DY Chandrachud observed.” - April 07, 2021 (CNBCTV18.COM)

“The Supreme Court on Tuesday (6th April 2021) slammed the manner in which the Goods and Services Tax was being enforced by tax authorities and observed that the taxman cannot see all businesses as being fraudulent.” – April 07, 2021 (CNBCTV18.COM)

“The Parliament had intended the GST to be a citizen-friendly tax structure. The purpose of the Act is lost by the manner in which tax law is enforced in our country”, observed Justice DY Chandrachud on Tuesday. The bench of Justices Chandrachud and M. R. Shah were dealing with contours of the power of provisional attachment of property, including bank accounts - 6 April 2021, [LIVE LAW.COM](#)

One such incident is dealt with by Hon'ble Delhi High Court, re R. J. Trading Co., dated 20th July, 2021 vide WP (c) No. 4847/2021.

Evasion is rampant in trade of Goods and Services and thus executive always keeps an eye on this aspect and thus legislature empowers the executive to carryout Audit, adjudication, Inspection, Search & Seizure to mitigate the revenue loss to the exchequer. GST laws are no exception to this. In GST laws enshrined several sections to empower the executive to deal with this aspect.



The law makers want the exchequer to get revenue, however, they do not expect the executive to work at his whims and fancies. The Law has itself clearly specified who can do, when to do, how to do and what to do and there are certain safeguards provided to ensure that the powers are not misused.

Before we venture into further discussion of the topic, it is important to know the substantive provision relating to Inspection, search and seizure being dealt by Section 67 of the Central & State GST Acts, full text of sub-section 1 and 2 of this section are provided as annexure as ready reference.

In GST laws, the legislature has empowered “appropriate authorities” aka “Proper Officer” to initiate actions, when the trading and business community has secreted the goods and records. However, the legislature has imposed a restriction on the “Proper Officer” when exercising such powers by way of “Reasons to Believe” as a prerequisite. Though this “Reasons to Believe” need not be required to share with the person who is being searched or whose goods, records, books or things are being seized, and the “Reasons to Believe” are to be recorded and which subject to Judicial Review, if the question is raised by the person who is being searched or inspected.

The term “Reasons to Believe” is qualitative and cannot be quantitative i.e., it cannot be measured with mathematical precision. The existence of the desired situation / facts / circumstances is to form a reasonable to believe is important consideration. The belief is to be based on personal judgement which should be based on circumstances of each case, and not to depend upon the judgement of others even it is being directed by other higher officers of the same department or Ministry.

The Executive has on many occasions failed to understand what is meant by “Reasons to Believe” and acted beyond the law, whereby courts observed the existence or non-existence of “reason to believe”. The present matter is such an Order by the Hon'ble Delhi High Court referred above.

The High Court of Delhi in the case of “R. J. Trading Co Vs. Commissioner of Central Tax, Delhi North”, vide Writ Petition No: 4847/2021, Dt: 20-07-2021 observed that:

In the opinion of High Court, the authorization is proper, and considered as improper with respect to seizure made at the premises and prohibition order of stock. Apart from that directed to return the documents seized and set aside the prohibition order made by the officer.



The question of secreted is examined when everything is recorded in books of accounts, all documents are kept open at business premises. In such circumstances, the “secreted” is a big question to be answered by the department. The routine and regular comments recorded in panchanama as useful for investigation and that the information/data/documents are secreted is big issue to be examined on case-to-case basis.

It can be concluded ratio laid down with the above HC order that ***“the officers concerned should bear in mind that the search and seizure power conferred upon them, is an intrusive power, which needs to be wielded with utmost care and caution. The legislature has, therefore, consciously ring-fenced this power by inserting the controlling provision, i.e., “reasons to believe”.***

Therefore, it is clear that whenever a client of us approaches us and informs about “Search and Seizure”, we must understand and analyze the following issue

- a) Whether the officer who empowered the search and seizure is a “Proper Officer” as envisaged by the legislature?
- b) Whether any goods are secreted are unearthed by the department or they are conducting a routine search just because some information is passed on by other person/department etc.,
- c) Evaluate whether the search and seizure are conducted based on “Reasons to Believe” is exist or not.
- d) It is to be kept in mind that if the department is initiating proceedings based on the records, documents, books and things available in the customary business premises, then conducting of search and seizure are to be challenged as against the law.
- e) It is the duty of the taxable person to check whether the same is valid under the law or not, and this is the area where we professionals can help

I conclude therefore, the relevant section the matter is very clear that the executive cannot use the search and seizure powers at their whims and fancies and this power has to be exercised carefully and sparingly i.e., judiciously; The reasons for forming an opinion is necessary to be recorded. Before exercising the power, the duties associated with the power are to be duly fulfilled. The search and seizure is a last resort to find the evidences after conclusion drawn. The search and seizure should not be conducted to form an opinion while making a search.



Reason to be believe should be based on the facts of each proceeding and not based assumptions, presumptions and suspicions. For forming an opinion and a reason to believe, the information should be on hand and that too correct one. It should not be on surmises. It is to be formed judiciously. It is not based on the direction given by another person or department. It is to be recorded for the purpose of judicial review.

Annexure

Section 67 of the CGST Act, 2017:

Power of inspection, search and seizure:

1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

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



Survey, Search and Seizure Update

CA. Hari Agarwal &
CA. Vivek Agarwal

1. Notice can't be issued to bank to seize accounts if assessee already deposited 20% of demand

Siolim Urban Co-op. Credit Society. Ltd. vs. Commissioner of Income Tax (Appeal) Goa [2021] 127 taxmann.com 812 (Bombay)

Section 226, read with section 220, of the Income-tax Act, 1961 - Collection and recovery of tax - Other modes of recovery - Assessment year 2017-18 - Assessee deposited 20 per cent of assessed amount before Commissioner (Appeals) to secure interim relief in respect of assessment for assessment year 2014-15 - Later, appeal for said assessment year was allowed by Commissioner (Appeals) - Assessing Officer once again passed an assessment order on same issue for relevant assessment year which was contrary to order made by Commissioner (Appeals) for assessment year 2014-15 and demand was made to pay tax - Assessee filed appeal before Commissioner (Appeals) - In meanwhile Assessing Officer issued notice to bank to seize accounts of assessee and remit demand amount to revenue - Whether since revenue already had amount earlier deposited by assessee with Commissioner (Appeals) in relation to assessment year 2014-15 which corresponded to more than 20 per cent of demand amount for relevant assessment year, issuance of impugned notice to assessee's bank to recover demand amount was not justified - Held, yes - Whether said amount was to be treated as deposit in appeal challenging assessment order for assessment year 2017-18 and revenue was to be directed to refund amount recovered from bank account of assessee - Held, yes [Paras 13, 14 and 15][In favour of assessee]

2. Madras HC set aside non-speaking order of AO directing assessee to pay 20% of demand immediately

Queen Agencies vs. Assistant Commissioner of Income Tax, (Circle-1) [2021] 128 taxmann.com 107 (Madras)



2. Madras HC set aside non-speaking order of AO directing assessee to pay 20% of demand immediately

Queen Agencies vs. Assistant Commissioner of Income Tax, (Circle-1) [2021] 128 taxmann.com 107 (Madras)

Section 220 of the Income-tax Act, 1961 - Collection and recovery of tax - When tax payable and when assessee deemed in default (Stay) - Assessment years 2015-16 and 2016-17 - Against order of assessment, assessee filed appeal before Commissioner (Appeals) - During pendency of appeal, assessee filed an application before Assessing Officer for stay of recovery of demand under section 220(6) - Assessing Officer holding assessee to be in default directed it to pay 20 percent of demand immediately for stay and informed assessee that in event of non-compliance, necessary follow up action would be taken - Assessee contended that Assessing Officer while passing said order should have exercised his power to stay recovery of dues by not treating assessee in default - Further, impugned order was vulnerable in view of its non-speaking nature - Whether while considering an application under section 220(6), Assessing Officer should consider all relevant factors having a bearing on demand raised and communicate his decision in form of a speaking order - Held, yes - Whether since Assessing Officer had passed a non-speaking order, same was to be set aside and matter was to be remanded back to him - Held, yes [Paras 10 and 13] [Matter remanded]

3. HARBHAJAN KAUR VS. Deputy Commissioner of Income Tax (2021) 62 CCH 0343 ChdTrib

Search and seizure—Undisclosed household expenses—A search action u/s 132 had taken place in case of one S at his residential premises during course of which certain documents relating to his mother assessee, were found and seized—On basis of same, jurisdiction u/s 153C was assumed—Orders were passed and solitary addition made in all cases pertained to that on account of undisclosed household expenses—CIT(A) restricted addition—Held, in order of AO there is no mention of any incriminating material relating to household expenses to have come in his possession to show that same were being incurred from undisclosed sources—Except for fact that son of assessee stated that household expenses were taken care of by his mother, assessee, and fact that nature of certain expenses incurred were brought to light as being incurred on children's education, servants, cars maintained etc., nothing else finds mention in order of AO or even CIT(A), showing that household expenses were incurred by assessee way beyond her disclosed sources—AO has deduced from facts before him that assessee's family has a certain lifestyle which is not justified by expenses stated to have been incurred by it and accordingly estimated household expenses from undisclosed sources as



accordingly estimated household expenses from undisclosed sources as being to extent of Rs 25,000/- per month—There is no mention as to how he arrived at conclusion of undisclosed expenses being to tune of Rs.25,000/- per month, which fact is affirmed by CIT(A) also when he states that there was no basis for estimation made by AO—Son of assessee, searched person, had given details of various household expenses and justified source of same ,giving details and source of payments of various expenses, but there is no mention in orders of authorities below as to how expenses stated to have been incurred did not justify lifestyle of assessee—It is but evident that there was no incriminating material pertaining to and justifying addition made in present case—Assessee's appeal allowed

4.ACIT VS. Sur Buildcon Pvt.Ltd (ATAT Delhi)

The A.O.,by failing to confront the assessee with the evidence he had gathered u/s 142(2) Act, has, therefore, erroneously skipped the mandatory intermediary step prescribed u/s 142(3) of the Act. Thus, when the A.O. has directly gone on to pass the Assessment Orders u/s 147/143(3) of the Act to make the impugned additions u/s 68, the same is in direct violation of the procedure of enquiry prescribed in the Statute that inherently encompasses the Principle(s) of Natural Justice.

5. Ahmed Shareef vs. Deputy Commissioner of Income Tax, Central Circle-1, Mangalore [2021] 128 taxmann.com 202 (Bangalore - Trib.)

I. Where AO made addition on account of difference in value of land owned by assessee as shown by it in its books of account and report of Valuation Officer, since such difference was less than 15 per cent, impugned addition made by AO only on basis of report of Valuation Officer was to be deleted.

Section 69 of the Income-tax Act, 1961 - Unexplained investment (Immovable property) - Assessment years 2014-15 and 2016-17 - Assessee constructed a house property declaring total cost of certain amount - value of land on which same was constructed as per balance sheet was Rs. 43.12 lakhs - Assessee availed bank loan for construction of this house - Assessing Officer noted that assessee had furnished valuation report from Registered Valuer who had determined value of land at much higher amount - Accordingly, he made addition on account of such differential amount - Assessee contended that variation between value of property declared in books of account of assessee and valuation mentioned in registered valuer's report was less than 15 per cent which could be ignored - It was noted that valuation report was made after long gap from purchase of property by assessee - During this period, there was a steep rise in value of land and valuation report of DVO also included inflation



land and valuation report of DVO also included inflation cost - Further, land was registered with State authorities wherein they accepted valuation declared by assessee and same was not disputed by Sub-Registrar of concerned State Government Office - Whether Assessing Officer could not make addition only on basis of valuation mentioned in DVO report when such difference was less than 15 per cent as compared to valuation declared in books of account - Held, yes [Para 4] [In favour of assessee]

II. Where AO made certain independent addition to assessee's income based on seized material found during survey in addition to income voluntarily declared by assessee in its statement recorded under section 132(4), since there could not be addition on account of voluntary disclosure made by assessee, income declared by assessee in his statement was to be set off out of undisclosed income computed by AO.

Section 153A of the Income-tax Act, 1961 - Search and seizure - Assessment in case of (Illustrations) - Assessment years 2014-15 and 2016-17 - Pursuant to a survey conducted upon assessee, a notice under section 153A was issued against assessee - Assessee filed its return of income declaring specific undisclosed income under section 132(4) with regard to incriminating seized material found during survey - Assessing Officer made certain independent addition of income based on seized material found during survey in addition to income voluntarily declared by assessee in statement recorded under section 132(4) - Whether there could not be addition on account of voluntary disclosure made by assessee - Held, yes - Whether, hence, it was appropriate to set off of income declared by assessee in his statement out of undisclosed income computed by Assessing Officer - Held, yes [Para 6] [In favour of assessee]

III. Interest under section 234A is chargeable from date of expiry of notice period given to assessee under section 153A pursuant to survey upon it to date of completing assessment under section 153A read with section 143(3)

Section 234A, read with section 234B, of the Income-tax Act, 1961 - Interest, chargeable as (Section 234A) - Assessment years 2014-15 and 2016-17 - Whether interest under section 234A is chargeable from date of expiry of notice period given to assessee under section 153A pursuant to survey upon it to date of completing assessment under section 153A read with section 143(3) - Held, yes [Paras 8.3 and 8.4] [In favour of assessee]



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.

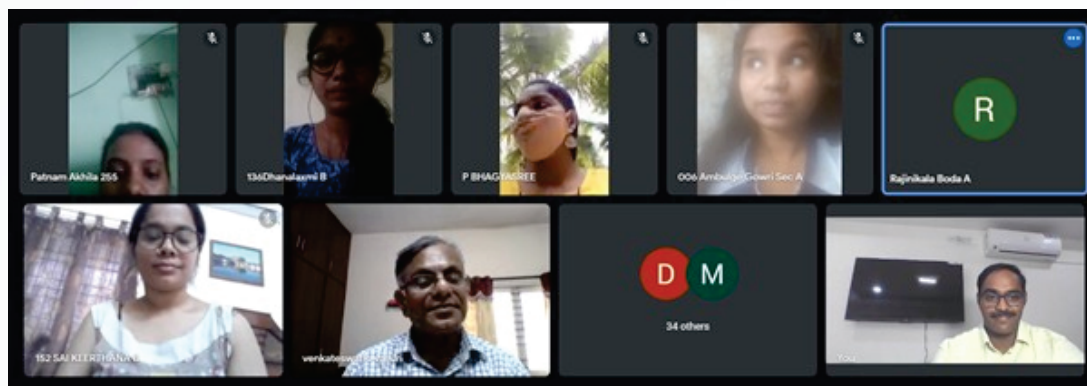
f) Transfer of immovable property and repatriation of proceeds thereof is subject to payment of applicable taxes and other duties/levies in India.

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

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Virtual Career Counselling Programme by Hyderabad Branch of SIRC



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