

# MANAGING COMMITTEE 2022-2025



INDORE BRANCH OF CIRC OF ICAI



# NEWSLETTER

April, 2022 ▶ Price ₹ 20



# Chairman's Communique



**CA. Anand Jain**

Dear Members,

I am truly Honored with the trust and belief bestowed upon me by all the members and the newly elected Managing Committee of Indore Branch of ICAI. I may fall short of words to express my emotions and gratitude for this opportunity and responsibility given to me. Together with everyone's support, I feel confident to be able to discharge my duties and responsibilities and take the Branch to the newer Heights.

A team is like a toolset, a single tool cannot do all jobs, but together the toolset can do wonders. So let's join hands to work for betterment and Brand Building of our own Profession. I can foresee the courage and dynamism in my young and energetic team with average age of 32 Years, and I believe that they shall be able to deliver higher than what is expected.

***“We do not need magic to transform our world. We carry all of the power, we need, inside ourselves already.” – J. K. Rowling***

To further enrich professional power of our women colleagues, we started our journey with the "Back to Basics - Refreshers course for Women Members" as a part of Women's Week Celebration and for encouraging more participation of Female members, we have reduced one-time registration fees to Rs .800/-.

In the current scenario where things are moving toward technology-driven activities, we need to adapt to this change quickly and efficiently. Understanding technology and its use is a very important factor for our future practice and therefore we will be focusing on ***“NayiSoch”***. With this thought, we have installed scanner facility at branch through which background material of programs can be downloaded by members on their mobile phones only on a click.

Work sharing is going to help the new generation CAs to get work, knowledge, and experience and for the established CAs a very effective way to manage their workload. As someone rightly said, "Do good work and share it with people." In this line we shall be connecting CA Firms & CAs where

they can share work assignment with each other. Besides this we shall be bringing a concept of Workplace share as well, where CAs can share their office space as 'co-workspace' with other CAs.

The Month of April is always known for bank audits, hence to facilitate and get our members ready and updated with the current changes for Bank audit, we conducted a National Conference, **“Abhigyanam ; Thirst Towards Knowledge”** on 26-27th March 2022, where major emphasis was on bank audit and was well attended by our members.

**If you talk about it, it's a dream,  
If you envision it, it's possible,  
But if you schedule it, it's real!**

Following these words, we have planned and shared with all our members an Activity calendar of Forthcoming activities for the Month of April, and I request all members to plan their work accordingly.

Lastly, I would like to conclude by nothing that "The 'Planning & Beginning' are the most important part of the work" and A concept that has evolved in the recent past is having work-life balance which explains the ideal situation in which a professional can split time and energy between work and other activities related to social aspects. Through proper planning and time management you can easily make time for family, friends, self, spirituality, and other social activities, in addition to the effectively meeting out demands of the workplace. What you do is a matter of personal choice, but you must take care of your body and mind in best interest of yourself and your family.

**Best Wishes for the Hindu New Year & Great Success for this new Financial Year!!**

# From The Desk of Secretary



**CA. Rajat Dhanuka**

Dear Members,

I am truly honoured by the trust instilled in me by the Central Council Members, Regional Council Members and Managing Committee Members. At the outset in my very first communiqué as Secretary, I would like to mention that we have derived the strength to challenge our self and perform better at each stage from our glorious past. I am excited to work in team and will try to do best to add more gems to the crown of our Indore Branch of CIRC of ICAI.

I wish to extend all the very best and success to CA. Anand Jain as he takes up the office of Chairman of Indore Branch of CIRC of ICAI and those members who are holding officer bearer positions for the session 2022 – 2023.

This pandemic has affected our lives and has brought changes to our lifestyle. We have become more tech savvies like meeting people over internet, sharing emotions through social media and many more. Somehow, we have lost the essence of meeting people and celebrating with them. During this time, we at branch have always tried virtually to bring fruitful learning sessions with eminent speakers to foster the learning zeal of our members. With the passage of time, we at branch would now like to bring more and more interactive events with physical presence for our members. We are hopeful for new month, numerous events has been scheduled this month by branch to discuss Accounting & Audit Updates, Intellectual Property, Benami Property, Issues under GST and TDS, Taxation of Real Estate etc.

I would like to take the opportunity to sincerely thank all the contributors of Newsletter and a special thanks to the editorial board for releasing such an amazing newsletter.

**“I can do things you cannot, You can do things I cannot, Together we can do Great Things.”**



## MANAGING COMMITTEE

CA. Anand Jain (Chairman), CA. Atishay Khasgiwala (Vice Chairman),  
CA. Rajat Dhanuka (Secretary), CA. Amitesh Jain (Treasurer),  
CA. Swarnim Gupta (CICASA Chairman), CA. Mausam Rathi (Chairman - CPE),  
Exe. Member : CA. Samkit Bhandari, CA. Ankush Jain, CA. Jayesh Shah,  
Ex. Officio Member : CA. Kemisha Soni (CCM), CA. Kirti Joshi (RCM).

# ESIC VS MEDICLAIM: ALL YOU NEED TO KNOW

Employers and employees both are concerned about the employee safety at the workplace. ESIC comes as a statutory duty for a category of employees but still, the employers remain confused between Mediclaim and ESIC concerning cost and benefits.

ESIC – Employees State Insurance Corporation is a body set up by labour ministry of the government of India. This organization allows medical, accidental, health insurance benefits to the employees registered with the organization.

Any employer with 10 or more employees enrolled with the establishment must register under ESIC. ESIC insurance cover is extended to the employees drawing gross monthly salary of Rs. 21,000 or less.

## Applicability Of ESIC

To provide social security to the employees, employers shall extend the benefit of this scheme to the employees as the scheme is helpful especially if an employee meets with an accident while working in the organization.

Like any other insurance scheme, Employees State Insurance also has a premium. ESIC contribution is deducted from the employee's salary @ 0.75% of the gross salary and the employer also contributes a sum equal to 3.25% of the gross salary of the employee. Therefore, the highest premium burden for any employee amounts up to 158 per month which is way too lower than a Mediclaim premium.

ESIC payment is done online using the ESIC portal every month. Every employee must be registered with the ESIC portal by the employer as soon as he/she joins the organization. Needless to say, Aadhaar is mandatory.

## ESIC Vs. Mediclaim

**Sum Assured Cap:** No Sum Assured limit for expenses incurred on treatment in the case of an accident of an employee. For non-accidental cases, the family of the employee is also covered in this insurance policy after two years of continuous contribution. Mediclaim policies always have a definite sum assured after which you are not allowed to claim benefits though certain policies have top-up facilities, it enhances the premium.

**Death Benefits:** ESIC also provides a pension up to 90% of the last drawn salary in case of death or permanent disability of any employee in an accident while he is on duty. Whereas Mediclaim does not entitle an insured person to a pension in case of an accident. In case of insured employee's death his/, her family is entitled to cash compensation of Rs. 10,000 to meet funeral expenses. This facility is not available in Mediclaim policy.



CA. Pratik Bansal



**Critical illness:** Critical Illness is not covered in major insurance Mediclaim policies as well. But in ESIC, any insured person is eligible for treatment of critical illness after a contribution period of 2 years.

**Paid Sick Leave:** In case of illness or injury, if any employee must take rest and stay on leave then leave without pay will be paid by the ESIC department @ 70% of the salary up to 91 days in two consecutive benefit periods. Employees can also take benefit of treatment for minor illnesses such as fever, cold etc.

**Maternity Benefit:** If any female employee is enrolled in ESIC for a minimum of 70 days each in two consecutive contributory periods i.e. (Apr-Sep & Oct-Mar) in a year then she is eligible for a salary of 26 weeks (approximate full wages) in case of confinement and 6 weeks in case of miscarriage, during maternity leave and 12 weeks for commissioning mother and adopting mother along with cash medical benefit. This feature is also not available in the regular Mediclaim policy.

**Loss of Job:** Monthly cash allowance is provided for a duration of a maximum of 24 months in case an employee incurs an involuntary loss of employment or permanent invalidity due to non-employment injury. This feature is also not available in any regular Mediclaim insurance policy.

**Cashless Benefits:** Treatment in ESIC hospitals is cashless. The only problem with this fantastic scheme is the level of facility available across India. Although in case of emergency any employee can go to a private hospital that has tie-up with ESIC & get treatment cashless. On the contrary, Mediclaim insurers have wide coverage of hospitals for cashless benefits.

## ESIC: Boon For Labourers

In New India, social security shall be given utmost importance. A worker/employee of your organization is part of your family. Imagine if he/she lands up in any medical emergency, his/her lifelong savings may go in vain, he/she may have to borrow money from the market to pay the medical bills. ESIC is a boon for employees with low salaries and who have many dependent members in the family or those working in hazardous factories or if they travel frequently during their duty.



# GST ON SECOND HAND GOODS



CA. Prakhar Jain



There are special provisions under GST which deal with valuation, exemption and rates for second hand goods. The special feature of taxation is to tax differences i.e. margin instead of allowing ITC on purchases. This branch of law has been prepared to facilitate the small dealers, who generally purchase from unregistered persons & are not able to avail ITC. But number of issues in this margin scheme of taxation need to be addressed before opting for this scheme.

## Valuation provisions for Second hand goods

As per Rule 32(5), Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

## Analysis:

Following conditions need to be satisfied for availing the benefit of Rule 32(5):

1. Margin Scheme is optional only.
2. Margin Scheme is applicable only to taxable supply.
3. Margin scheme is applicable only to goods.
4. Person availing the margin scheme must be “a person in buying and selling of second hand goods”

5. The margin scheme is applicable only to second hand goods.
6. Sale of second hand goods should be as such or after minor processing which does not change the nature of such goods
7. No input tax credit has been availed on the purchase of such goods.
8. Value of Supply= Difference between selling price and purchase price.
9. If purchase price is more than selling price, excess shall be ignored.

## What is dealing in?

In order to avail margin scheme, the person impugned must be “a person dealing in buying and selling of second hand goods”. Hence the impugned person must be a “dealer”. What is dealer is not defined in GST law.

“To dealing in selling of a thing is to traffic, to trade in selling of it, to make a business of it. A single act of selling shall not make a person a merchant. A person who buys to sell again and not one who buys to keep is one who trades, as per **State of A.P. vs HA Bakshi & Bros., AIR 1965 SC.**”

## Whether commission agent can be called a dealer?

As per **K.T. Cherian AIR 1954 Mad 959**, a commission agent brings the buyer and seller together and goods never passed into his possession. Such persons do not fall within the definition of dealer.

## What is the meaning of second hand and used goods?

### Second Hand Goods:

- (i) Second-hand things are not new and have been owned by someone else (Collins Dictionary)
- (ii) having had a previous owner; not new (English Oxford Dictionary)
- (iii) not new; having been used in the past by someone else (Cambridge English Dictionary)
- (iv) acquired after being used by another (Merriam Webster)
- (v) previously used or owned (Dictionary.com)

### Used Goods:

- (i) already owned or put to a purpose by someone else; not new (Cambridge Dictionary)
- (ii) that has endured use (Merriam Webster) It has been held in **SAMEERA TRADING COMPANY 2019 (31) G.S.T.L. 375 (A.A.R. - GST) 25-09-2019**, that a plain reading of the rule 32(5) of the CGST Rules, 2017 reveals that this rule applies only in the situation where the supplier is involved in buying and selling of second hand goods. In the instant case the applicant is dealing in the generation and sale of electricity and not in buying and selling of second hand goods. Therefore, this rule would not apply to the transaction under examination. It may be noted that “electricity” has been held to be goods by **Supreme Court in NTPC Ltd. 2002 (4) TMI 694**

## Whether a person who sells the goods possessed for reasons other than buying, can avail margin scheme?

As per **K.T. Pappamma Rowther, AIR 1954 Mad 96**, the words used in between buying and selling in the definition of 'dealer' is 'or' and not 'and'. Therefore a person will be a dealer, even he keeps on selling goods even though he does not buy any.

However in the present Rule 32(5), the words used are “and” and not “or”, in between buying and selling, therefore a person who sells without buying



the same cannot be covered by margin scheme.

For example, if railway or transporter sells unclaimed goods not bought by them, they cannot be covered by margin scheme.

## Whether sale of repossessed goods from defaulting borrower by the bank falls under margin scheme?

As per **proviso to Rule 32(5)**,

“Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.”

Hence proviso to Rule 32(5) provides the purchase value of goods only when defaulting buyer is not registered. Hence a deemed purchase value has been provided. The issue arises that what value may be adopted as purchase value where defaulting borrower is registered person. However still broader question is whether at all such repossession is covered by the scope of Rule 32(5).

It has been held in **Indo Mercantile Bank Ltd. [1959] 36 ITR 1 (SC)**, that Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. Further it has been held in **Dileep Kumar Singh [2015] 4 SCC 421**, “.....to expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso.....”.

Since the repossession is not purchase of goods by the borrowing bank, hence the proviso laying down the manner in which purchase value may be calculated by the borrowing bank may be rendered otiose by the Courts. Hence in the opinion of author, both in cases of registered and unregistered

persons, there is no point in awarding discriminatory treatment amongst registered and unregistered person. To say that “purchase” in Rule 32(5) should be read to include “repossession” in case of registered person is expanding the scope of proviso beyond enactment and is contrary to the pronouncements of apexcourt, hence Rule 32(5) may not be opted by the banks in case of repossessed goods.

### What is the taxability of old and used vehicles?

As per **Not. no.8/2018, dtd. 25-01-2018**, value of old and used vehicles shall be worked out as under:

- (i) In case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961(43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and
- (ii) In any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such good. Tax rates to be applied on difference are as per mentioned in Notification.

### Analysis of Notification 8/2018

1. It may be noted this concession is available under exemption available u/s 11 and is not part of optional margin scheme under Rule 32(5).
2. Further this exemption notification shall apply not only where ITC is not availed under GST but also where CENVAT credit/vat is not availed under existing laws. Where VAT/CENVAT credit/ITC has

been availed, then tax at full rate has to be paid on full value of supply.

3. Till 01-07-2020, another similar rate **Not. 37/2017** issued u/s 9 was also operative but that was only applicable:

- a. In case of lease Motor Vehicles purchased and leased before 01-07-2017,
- b. In case of sale of motor vehicle, purchased before 01-07-2017, provided ITC/CENVAT/Vat not claimed at the time of purchase.

The tax computed under 37/2017 was subject to Maximum tax under 8/2018. For vehicles purchased post 01-07-2017, 8/2018 is applicable but 37/2017 is not applicable.

4. Apart from exemption available in NN 8/2018, exemption from compensation cess is available on all old and used motor vehicles, if ITC/CENVAT credit/VAT has not been availed on such vehicle. **[Not. 1/2018 dated 25-01-2018]**

5. Impact of this notification on old and used vehicle can be assessed as under

Segment	Engine Capacity	Tax rate Pre-GST	Tax rate Post-GST
Small Cars	Less than 1200 cc	28%	18%
Mid -Size Cars	1200 to 1500 cc	39%	18%
Luxury Cars	Above 1500 cc	42%	28%
SUVs	Above 1500 cc	45%	28%
Electric Vehicles	N.A.	20.5%	12%

**Conclusion:** The applicability of Rule 32(5) is in synchronization with principal of taxing value additions only. The cascading effect of taxes due to purchase from the unregistered person cannot be completely done away but is sought to be mitigated to some extent. However in the time to come, a mammoth litigation is expected on this branch of law.



# GST ON NGO AND CHARITABLE TRUST

The GST has impacted the industry as well as the non-profit entity. The GST is not totally exempt on these entities but there are few special exemption provided to these entities as discussed. The rest all activities are chargeable to GST if they are not covered in other exemption entry or are not considered as GST levy able transaction according to consideration for services or quid pro quo.

An entity registered under section 12AA of the Income tax act, 1961 act by way of charitable activities. Where GST is exempt in case of following charitable services:-

## 1. Public Health

Care or counselling;-

- (i) Person is ill or with severe physical or mental disability.
- (ii) Person is affected by AIDS or HIV
- (iii) Person is cured as he is addicted to narcotic drugs and alcohol.

## 2. Public awareness

Activities of public awareness which includes preventive health, family planning or prevention of HIV infection.

## 3. Yoga and meditation camp

The providing of services by trust in form of **yoga, spirituality or religion** is exempt. Any fees charged for entrance or as a service are exempt in GST. If there is any separate program for it and fees include lodging, boarding and incidental charges then the whole amount is exempt provided the main objective is providing religion, spirituality or yoga.

## 4. Training or coaching in recreational activities related to sports, art and culture

If any charitable trust registered under section 12AA of the income tax act is providing recreational activities related to any sport in form of training or coaching in sport is exempt. It also includes dance, music, painting,

sculpture making, literary activities and theatre of any schools, tradition or language or any of the sports.

## 5. Educational and skill development programs

The educational and skill development programs related to abandoned, orphaned, homeless children, physically or mentally abused prisoner, or person above age of 65 years above residing from rural areas are exempt. Rest activities can be exempt if they are covered under definition of educational institution.

## 6. Preservation of environment including watershed, forests and wildlife is exempt activities

## 7. Hospital Activities by Trust

The health care services are exempt in GST as provided by clinical establishment an authorized medical practitioner or paramedics of religious and charitable trust.

## 8. Renting activities by them

Renting activities of precincts of religious place meant for general public by charitable and religious trust registered under section 12AA of the income tax act 1961 or trust or institution registered under section 10(23)(v) of the income tax act. The precincts are the assets owned and include the buildings that reside within the outer boundary of the trust place.

- (i) Renting of rooms where charges are less than 1,000
- (ii) Renting of premises, community halls, open area where charges are less than 10,000 per day.
- (iii) Renting of space or shops for business where charges are 10,000 or more per month.



CA. Nilesh Sodani







# INCOME TAX LATEST CASE LAWS

**1. SUPREME COURT OF INDIA in case of M.M. Aqua Technologies Ltd. v. Commissioner of Income Tax, Delhi-III dated 11.08.2021[2021] 129 taxmann.com 145 (SC)-** Assessee, claimed deduction under section 43B based on issue of debentures in lieu of interest accrued and payable to financial institutions which was disallowed by Assessing Officer but allowed by Commissioner (Appeals) and said order was confirmed by Tribunal. High Court based on Explanation 3C to section 43B disallowed deduction under section 43B and held that to claim deduction under section 43B, actual payment is essential and any interest which had been converted into loan or borrowing could not be deemed to have been actually paid.

**2. HIGH COURT OF GUJARAT in case of Kottex Industries (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle 1(1)(2), Gujarat dated 06.08.2021[2021] 129 taxmann.com 151 (Gujarat)-**Where assessee company received share application money from several companies and Assessing Officer issued a reopening notice against assessee on ground that an information was received from investigation wing that companies from which share application money was received by assessee were shell/paper concerns, since during investigation it was established that no business was carried on at registered addresses of these companies and same were actually residential premises, impugned reopening was justified.

**3. SUPREME COURT OF INDIA in case of Commissioner of Income Tax (Exemptions), Kolkata v. Batanagar Education Research Trust dated 02.08.2021[2021] 129 taxmann.com 30 (SC)-**Where answers given to questionnaire by Managing Trustee of assessee-Trust showed that donations were received by way of cheques out of which substantial money was ploughed back or returned to donors in cash and thus registration conferred upon it under sections 12AA and 80G was completely being misused by Trust, Income-tax authorities were right and justified in cancelling registration under sections 12AA and 80G to Trust.

**4. HIGH COURT OF BOMBAY in case of Piramal Enterprises Limited v. Addl./Jt./DY./Asstt. Commissioner of Income Tax/Income Tax Officer, Delhi dated 30.07.2021[2021] 129 taxmann.com 18 (Bombay)-** 'Faceless Assessment' commences vide its sub-section (1) with a non-obstante clause and compulsively requires assessment under sections 143(3) and 144 shall be by prescribed procedure contained in sub-section (1) of section 144B in cases referred to in sub-section (2) thereof. Faceless assessment not made in accordance with procedure laid down under section 144B would be non est.

**5. IN THE ITAT MUMBAI BENCH 'F' Assistant Commissioner of Income Tax - Circle-16(1), Mumbai v. Farah Khan dated 29.07.2021[2021] 129 taxmann.com 61 (Mumbai - Trib.)-**Where assessee, a professional choreographer, produced photographs and a video recording of office and residence to prove that a clearly demarcated part of premises was used as office by her, deduction of interest on loan, depreciation on office premises and furniture and fixture relating to office premises to be allowed.

**6. HIGH COURT OF MADRAS in case of Karti P. Chidambaram v. Additional Commissioner of Income Tax, Central Range - 2, Chennai dated 28.07.2021[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 & 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.

**7. SC OF INDIA in case of C.V Ravi v. Income-tax Officer dated 26.07.2021[2021] 129 taxmann.com 44 (SC)-** LP dismissed against High Court ruling that where assessee took loan from an entity, however, failed to produce any confirmation from such entity or produce its owner in person for cross-examination and also failed to produce any document to establish identity of such creditor or genuineness of alleged loan transaction, impugned addition made under sec. 68 in respect of such loan amount was justified.

# CRITICAL ANALYSIS OF SEC. 68 OF IT ACT, 1961 AND IT'S ALLIED CASE LAWS



CA. Pushp Kumar Sahu

**INTRODUCTION:** Why Section 68 was introduced under Income Tax Act, 1961. There was a great need and importance for introducing the provisions of section 68 under the income tax act, 1961 to safeguard and protect the interest of revenue, as assessee was engaged in harmful tax practices to evade tax in the form of fake cash credit entries in the books of account, after introduction of this section many amendments have been taken place from time to time to enhance its applicability and to curb the menace and unearthing of Black Money , Accommodation Entries, Cash Credit Entries etc.

Assessee used to hide its Income or suppress income by diverting its cash receipts and showing it as “Unsecured Loan” or in any other form in the books of accounts, thereby avoiding payment of tax on business receipts. It is a tax evasion device or tool used by large number of assessee across the nation to evade tax and thereby resulting in tax revenue loss to the Government of India.

To curb such malpractices and tax evasion tactics, section 68 came into light with timely amendments in it,

**SECTION 68.** Where any sum is found credited in the book of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

[**Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:**Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital

company as referred to in clause (23FB) of section 10].

Let us understand this section critically and in easy way;

**1. Applicability:** This Section is only applicable and can only be invoked when assessee is maintaining books of account and there is any sum which is found credited in the books of an assessee maintained for any previous year and assessee offers no explanation with regard to such cash credits or explanation offered by assessee was not satisfactory, then assessee will be held guilty under this section and thereby as a result, provisions of this section will trigger. All credit entries appearing in the books of accounts of the assessee are covered under this section.

**Reliance can be placed Smt. Shanta Devi vs. CIT [1988] 171 ITR 532 (Punjab & Haryana High Court).** In the abovementioned Case Law, it was held that on perusal of section 68 of the act shows that in relation to the expression 'Books' the emphasis is on the word 'assessee' meaning thereby that such books have to be the books of the assessee himself and not of any other assessee.

**2. Onus to prove:** The burden lies on the assessee to prove that any sum which is found credited in books was a genuine transaction; nature and source of such entry should be proved by assessee, otherwise it would be treated as income of the assessee. But Assessee was not required to prove “**Source of Source**”, means assessee was not required to prove the source of income of the person from whom he has received the amount. The only thing which assessee was required to do is to prove the genuineness of the transactions as well as the creditworthiness of the person providing credit along with documentary evidences, it is not the business of the assessee to find out the source of money of the person providing loan or any other credit in any form. Once assessee furnishes sufficient documents and explanations, it is on the onus of department to verify the same and act accordingly.

**3. Taxability:** Unexplained Cash Credits are chargeable to tax u/s 115BBE of the Income Tax Act, 1961 at the rate of 60% plus surcharge plus Cess that comes to overall 78% that too without deduction of any expenses. The real and main purpose of introducing this provision is to charge the tax at higher rates than the normal rates, so that assessee would avoid concealing and hiding its income. The logic behind increasing tax rate from 30% to 60% was to make sure assessee who is hiding and concealing its income will not be treated at par with other tax payers i.e. both disclosed and undisclosed income will be taxed at roughly 30%, to penalise the tax evaders, tax rate was increased.

# RECENT JUDICIAL DECISIONS – GOODS AND SERVICE TAX



**1. Technical glitches on GST Portal – HC allows filing of GST TRAN-1 {Tvl. Innovative Motors Vs The Goods and Service Tax Council (Madras High Court)}** – This Writ Petition has been filed by the petitioner to direct the respondents to reopen the GST Portal and to allow access to the portal to enable us to file Form GST TRAN – 1. Petitioner submit that denial of legitimate claim by restricting the petitioner from filing TRAN -1 is highly unjustified and against the principles of natural justice.

## **Held by HC**

The requirement for an assessee to establish technical difficulty as expressed in Circular dated 03.04.2018, is reiterated in the provision. I am however, unable to understand as to how the assessee would have anticipated this requirement in order that it collects proof by way of screen shots and otherwise establish the factum of technical glitches. Though Goods and Service Tax has been introduced to streamline multiple revenue enactments, the mass litigation that Rule 117 has generated, has defeated the very object and purpose of the enactment. Transition, by itself, does not vest any right in the assessee. It is only utilisation of credit that does, and such utilisation is subject to verification and assessment by an Assessing Officer. It is thus vital that the distinction between transition of a credit and utilisation of such credit after verification by an officer is taken note of in the proper perspective.

The exchange of communications between 12.02.2019 to 26.03.2019 reveal that the petitioner has been diligent in making efforts to open the portal and upload the forms. In the light of the above, the respondents are directed to do the needful forthwith to enable the petitioner to upload the requisite forms.

**2. Section 13(8)(b) are not violative of Article 14 and Article 19(1)(g) of the Constitution of India and do not suffer from extra-territorial jurisdiction {021-TIOL-1297-HC-MUM-GST} Dharmendra M Jani Vs. UOI, 09/06/2021** – Applicant contention was that Export of services (as understood in the ordinary common parlance) are treated as inter-state supplies. However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is

outside India, the place of supply has been treated as the location of the supplier i.e., in India, the said provision runs contrary to the scheme of the CGST Act as well as the IGST Act by Hence Section 13(8)(b) is ultra vires the IGST Act besides being unconstitutional.

Court held that The power to stipulate the place of supply as contained in Sections 13 (8)(b) of the IGST Act is pursuant to the provisions of Article 269A (5) read with Article 246A and Article 286 of the Constitution and hence is constitutionally valid and is a fiscal legislation within the domain of the parliament. The petitioner's supply is admittedly the same is supply in the course of inter-state trade or commerce pursuant to the provisions of Section 7 of IGST Act. The provisions are not violative of Article 14 and Article 19(1)(g) of the Constitution of India and do not suffer from extra-territorial jurisdiction.

**3. Detention of goods merely for infraction of the procedural rules is without jurisdiction as detention and confiscation are the consequences of such movement of goods where there is an intention to evade payment of taxes – {Ravi Parameswaran Pillai, Proprietor M/s Devi Chemicals vs. The Assistant State Tax Officer, State Goods and Service Tax Department Kerala and Assistant Commissioner (Assessment), Special Circle, Thiruvananthapuram} [ 2018 (2) TMI 1296- Kerala High Court].**

**4. Goods / services can be exported without payment of IGST by filing LUT even though bond is not furnished as the requirement for filing bond for export of goods/services is done away by way of rescinding the circular which specified such requirement – {Aphro Ecommerce Solutions Pvt. Ltd. Versus Union of India & Others} [2017 (11) TMI 731 – Delhi High Court].**

**5. The adjudication proceedings on the goods detained / seized should be completed expeditiously as the GST Law and Rules made thereunder itself provides mechanism for adjudication of such cases as well as for provisional release of goods – {M/S Anappuram Steels Private Limited vs. The Commissioner State Goods And Service Tax Department Thiruvananthapuram and the Secretary Government of Kerala, Taxes Department, Thiruvananthapuram} [2018 (2) TMI 1622 – Kerala High Court].**



APRIL 2022

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# Program Schedule

INDORE BRANCH OF CIRC OF ICAI

**2nd April**

4 pm to 6 pm  
2 CPE Hrs.

**Accounting and Audit Updates Including CARO 2020 & Sch III Amendments**

Speaker : **CA. Vikram Gupte**

**3rd April**

4pm to 6 pm  
2 CPE Hrs.

**Professional Ethics & Overview of Ind-AS**

**Eminent Speakers**

**4th April**

9 am to 6 pm

**Convocation of Newly Qualified Chartered Accountants**

**9th April**

4 pm to 6 pm  
2 CPE Hrs.

**Seminar on Intellectual Property**

Speaker : **Adv. Amit Dubey**

**15th April**

3 pm to 6 pm

**Seminar on Anti-money Laundering Law and its Interplay with Black Money Act, Benami Law, Companies Act and Income Tax Act**

Speaker : **CA. Ashwini Taneja**

**16th April**

4 pm to 6 pm  
2 CPE Hrs.

**Critical Issues on TDS / TCS Including International Transactions**

Speaker : **CA. Rajesh Mehta**

**23rd April**

4 pm to 6 pm  
2 CPE Hrs.

**Critical Issues Under GST**

Speaker : **CA. Palkesh Asawa**

**30th April**

10 am to 5 pm  
6 CPE Hrs.

**Full Day Seminar on Taxation of Real Estate Transactions**

**Eminent Speakers**

Single Time Registration Scheme Apply as applicable



CA. Aseem Trivedi



CA. Vikram Gupte



CA. Swapnil Bansal



CA. Palkesh Asawa



CA. Yash Khandelwal



CA. Muneet Kakani



CA. Arpit Mundra



CA. Ankit Karanpuria



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26 -27 March, 2022





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**HON'BLE SHRI  
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Cabinet Minister of Civil Aviation



Felicitation of NCLT Member on  
Inaugural of NCLT Bench in Indore



Felicitation of New Managing Committee  
of Indore Branch by TPA



VCM on Different Practical  
Aspects and Facts of Sec. 148 of IT Act  
by CA. Kapil Goel



## WOMEN'S WEEK CELEBRATION



Registration, Returns & Payments & Audit by Tax Authorities (11.03.2022)  
Speaker : **CA. Arpit Mundhra**



Critical issues of Capital Gains & House property (14.03.2022)  
Speaker : **CA. Prajakta Mondhe**



Fundamentals of Business Taxation (14.03.2022)  
Speaker : **CA. Deepak Maheshwari**



Compliance under Companies Act (15.03.2022)  
Speaker : **CA. Prateek Tripathi**



Basics of Faceless Assessment & Appeals (16.03.2022)  
Speaker : **CA. Shalini Mehta**



Supply in levy of Goods & Service Tax (09.03.2022)  
Speaker : **CA. Yash Khandelwal**

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