

GOLDEN JUBILEE EDITION -6



## Republic Day Celebration



INDORE BRANCH OF CIRC OF ICAI



# NEWSLETTER

February, 2021 • Price ₹ 20



## Chairman's Communiqué



Respected members

First of all, Congratulations to all of us, as our Indore branch is Ranked 1st at all India level and Indore Branch of CICASA ranked 1st in student's category. In the Golden Jubilee Anniversary year of Branch, we got Gold in both members and students' categories. I would like to thank our Past President CA Manoj Fadnis ji, Central Council Member CA Kemisha Soni ji, Regional Council Members CA Nilesh Gupta Ji, CA Churchill Jain ji, Managing Committee Members, TPA Indore, RERA Association Indore, CICASA committee members, Branch staff, vendors and every member of Indore branch for their contribution in making Indore Branch No. 1 again.

Indore Branch congratulate new torch Bearer of ICAI, CA Nihar N. Jambusaria, President and CA Debashis Mitra, Vice President ICAI.

During the month of January, a mega Blood donation drive was successfully done even in these difficult conditions of Corona. My gratitude to all members and their families for taking part in blood donation camp at Branch and Manas Bhavan.

On Republic Day, we felicitated past managing committee members for their active contribution to branch & faculties of Indore branch and Branch staff for making Indore preferred destination in online students training.

As now schools & colleges are reopening and we have witnessed a very successful physical Budget day seminar after a long time, I request members to participate physically or virtually in the Sub Regional Conference with 12 hrs CPE to be held on February 13th and 14th.

At last, as my tenure as Chairman comes to end in the month of February, I would like to thank each and every member, students and staff for their extended support.

Thank you

Stay Home Stay Safe

**CA. Harsh Firoda** (Chairman)

chairman\_indore@icai.org



### MANAGING COMMITTEE

**CA. Kirti Joshi** (Vice-Chairman)

**CA. Gaurav Maheshwari** (Secretary)

**CA. Ankush Jain** (Treasurer)

**CA. Samkit Bhandari** (CICASA Chairman)

**CA. Pankaj Shah** (Imm. Past Chairman), **CA. Anand Jain** (Media & Digital Comm. Chairman)

Ex. Officio Member : **CA. Kemisha Soni** (Chairperson - ECB & WMED, ICAI)

**CA. Churchill Jain** (RCM) **CA. Nilesh Gupta** (RCM)





**CA. B.K. Jhaver**

06.02.2021

Dear Members,

Taking Baton from the very worthy previous Committee Members and with the around 400 members of our fraternity in 1991 we held Study Circle meetings with as less as even 4 members at the then TPA Hall, Opposite GPO. CPE was not mandatory and we had to go door to door to collect Seminar fees to break even. Garnering contribution from members for own building premises at Urvashi Building inaugurated at the hands of our Ex-President Shri N P Sarda in 1991, when I was the Chairman was a comforting though quite challenging task.

I am very proud of Shri Manoj Fadnis who helmed us as President of the Institute and all the worthy Central & Regional Council Members who have represented Indore. Besides I sincerely appreciate the hard work of all the past Managing Committee members and Collaborative efforts of each and every member who have been a part of this success journey. From a Small Branch it is heartening that we are today a Large Branch of around 3500 members, having one of the best ICAI Bhawan Building in India.

Fortunate to have got the opportunity to serve the Branch and my heartfelt & best wishes to our fraternity on the Golden Anniversary!

With Applauds & Sincere Wishes,

**B K Jhaver**

Chairman 1991-93



CA. S.N. Goyal

### गर्व व उत्साह का स्वर्णिम वर्ष, एक सुखद अहसास

यादों के झरोखों से देखे तो, इन्दौर सीए. शाखा की मधुर यात्रा का एक एक पड़ाव आनन्दमय व इन्दौर सीए. परिवार के पारस्परिक प्रेम, सामंजस्य व मोहब्बत का अनूठा, अनोखा व शानदार अध्याय है, इन्दौर सीए. शाखा में वर्ष 2008-09 सीए. केमिशा सोनी मेम, इन्दौर सीए. शाखा के इतिहास में पहली बार चेअरपर्सन बनी और पश्चात रीजनल काउंसिल में चेअरपर्सन बनकर सेन्ट्रल काउंसिल में इन्दौर (म.प्र.) का परचम लहराया, उन्हीं के नेतृत्व में डायमंड जुबली वर्ष (2008-09) बड़ी धूमधाम से मनाया गया, इस अवसर पर एक अखिल भारतीय कवि विराट सम्मेलन का आयोजन भी 06 दिसंबर 2008 को अभय प्रशाल, रेसकोर्स रोड, इन्दौर पर रखा गया, जिसमें पुरा अभय प्रशाल खचाखच भरा था, शहर के सीए. परिवार, विभागीय अधिकारी, सीए. बन्धु, सीए. स्टूडेंट्स, गणमान्य नागरिक उपस्थित रहे, श्री सत्यनारायण सत्तन के संचालन में देश के लब्ध प्रतिष्ठित कवि सर्व सुरेन्द्र शर्मा, नई दिल्ली, डॉ. विष्णु सक्सेना, हाथरस, नीरज विश्वामित्र पुरी, बैतुल, पंडित ओम व्यास ओम, उज्जैन, शशिकान्त शशि, देवास, श्वेता सरगम नई दिल्ली ने देर रात तक श्रोताओं को साहित्य रस में डुबाया व माहोल सीएमय हो गया, अगले दिन सभी समाचार पत्रों ने बड़ी प्रमुखता से कार्यक्रम की भव्यता की भूरी-भूरी प्रशंसा की, सचिव थे भाई असीम त्रिवेदी तथा संयोजक मैं, एसएन गोयल। उसी वर्ष मुम्बई में ताज होटल में आतंकी हमला हुआ था, कार्यक्रम में शहीदों को श्रद्धांजलि अर्पित की गई, पुरे खेल प्रशाल में आगन्तुक नागरिकों ने मोमबत्ती प्रज्वलित करके ऐ मेरे वतन के लोगों, जरा आँख में भर लो पानी गीत जो लता मंगेशकर जी के स्वर में है, से हाल में गुंजायमान कर दिया शाखा ने निरंतरता से प्रगति की, गोयल सा का कुशल मार्गदर्शन मुझे मिला, भवन की जमीन भी सर्व श्री राजेश सेलोट, अनिल गर्ग जी, शैलेन्द्रसिंह सोलंकी, मनोज फडनीस सा. के साथ प्राप्त की फिर हमारी ताई सासंद सुमित्रा महाजन के सान्निध्य में जंगल में मंगल करते हुए भूमि पूजन किया, स्व. श्री आर.एस. बंसल सा का भवन निर्माण में योगदान स्मरणीय रहेगा। हम सब सीए. बन्धु इन्दौर में एक परिवार की तरह रहते हैं, यह हमारी विशिष्ट उपलब्धि है, पहली विशाल पारिवारिक पार्टी तलावली चान्दा स्थित फार्म हाउस पर करने का गौरव भी हमारे समय की कार्यकारिणी समिति को है, सीए. इन्दौर शाखा का भवन, गार्डन, वार्षिक गतिविधियाँ, पहली कम्प्यूटर लेब, राष्ट्रीय स्तर के सेमिनार व उसमें आतिथ्य का मजा हमारी पूँजी है। सफर में आनन्द ही आनन्द रहा.... आगे यह आनन्द बना रहेगा, मेहनत रंग लायेगी।

अनन्त शुभकामनाएँ

सीए. एस.एन. गोयल,

चेयरमेन

(1999-2000)



## **RULE 86A : ANOTHER HURDLE IN SEAMLESS FLOW OF CREDIT**

### **INTRODUCTION**

Although the GST law is rather new and far from being settled, there wrongdoers were quick in finding ways to fraudulently avail Input Tax Credit ('ITC') on the basis of fake invoices and other such mediums. In order to curb the menace, the Government Departments had been exercising their powers rigorously, and rather excessively in some cases.

In this battle between the Departments and the fraudulent wrongdoers, it was the honest taxpayer, who was being subjected to excessive, arbitrary and unnecessary difficulties in ITC availment and utilization and carrying on their business activities. Such excessive use of power by the Departments was contrary to the settled principle of law that the power granted to the tax authorities shall be used judicially and shall not result in harassment of the honest tax payers.

Even before the completion of three years of GST, the industry had witnessed various instances where the Department has exceeded their authority in the form of attachment of bank accounts, blocking of Credit Ledgers, etc.

A breakthrough in this regard had come with the judgement of the Gujarat HC in case of Alfa Enterprise vs. State of Gujarat [2019-TIOL-2335-HC-AHM-GST] wherein the HC had set aside an order of the Department attaching the bank account of an assessee and blocking their Electronic Credit Ledger. The HC had remarked that that the Departments shall exercise their power with extreme care and caution.

### **The Provision**

It seems that in order to nullify the judgement of the Gujarat HC, the Government vide Notification No.

75/2019 – CT dated 26 December 2019 had introduced Rule 86A which inter alia empowers the Department to disallow the debit of any amount from the electronic credit ledger for discharge of any liability or for claim of any refund of any unutilized amount. The said Rule can be invoked in the following cases:

- a. The Department has reasons to believe that Credit has been fraudulently availed or is ineligible;
- b. The document basis which the ITC has been availed are issued by registered person who is found non-existent or ITC has been availed without receipt of goods or services or both;
- c. The amount of tax charged on the credit availing document has not been discharged to the Government;
- d. The registered person availing credit is found non-existent;
- e. The registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed;

On perusal of the above Rule, it can be construed that the Rule empowers the Department to exercise such power at the discretion of the officer without issuing any notice granting opportunity of being heard. The said Rule also empowers the Department to block the ITC of the recipient even in case the tax charged in the invoice by the supplier is not deposited with the Government. Therefore, it becomes all the more important for the Department to exercise their power with due application of mind and basis the cogent material and facts.

### **Recent Developments**

It would be pertinent to note that recently, the Gujarat HC in the case of S. S. Industries vs. Union of India [C/SCA/8841/2020], had observed that Rule 86A is based on 'reasons to believe' and the same must have a rational connection with or relevant



bearing on the formation of the belief. It was further observed that the power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee. Accordingly, it was urged by the HC to the Revenue to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules.

Similarly, the Karnataka HC in the case of Aryan Trade Link [TS-1143-HC-2020(KAR)-NT] had directed the Revenue to pass a detailed and reasoned order as required under Rule 86A of the CGST Rules, while bearing in mind that for the purposes of Rule 86A(3) which stipulates that the blockage shall cease to have effect after the expiry of a period of 1 year from the date of blocking.

On perusal of the above, it can be understood that the Department ought to exercise the power under rule 86A on the basis of some reasonable believe which should be backed by cogent material and facts on records. In absence of the proper reasons, the action taken under Rule 86A shall become invalid and liable to be quashed.

### Constitutional Validity

It would be pertinent to note that the constitutional validity of the Rule 86A has been challenged in various jurisdictional High Courts. The relevant cases are as follows:

- ▶ Surat Mercantile Association vs. Union of India [2020-TIOL-2178-HC-AHM-GST]
- ▶ Kalpsutra Gujarat vs. The Union of India [C/SCA/10562/2020]
- ▶ Balachandra Yallappa Salabhavi vs. Assistant Commissioner of Commercial Tax [TS-840-HC-2020(KAR)-NT]

The principal arguments put forth by the writ applicant are as follows:

- a. Rule 86A is violative of principles of natural justice and Section 74 of the CGST Act as much as it allows blocking of the ITC ledger without issue of Show Cause Notice and without giving an opportunity of fair hearing;
- b. Such Rule is a draconian, arbitrary, irrational and unduly harsh provision and therefore violative of article 14 of the Constitution of India;

c. Such Rule is ultra-virus to the Section 75(4) of the CGST Act.

d. Such Rule also seeks to deny the right of appeal under section 107 of the Act.

As far as blocking of ITC on suppliers' default, it would be pertinent to note that in absence of any mechanism to determine that whether the supplier has paid the tax to the Government, the ITC to the buyer shall not be denied. Rule 86A fails to create distinction between the fraudulent buyers and suppliers with the genuine one. Therefore, to that extent such Rule may be considered as in violative of the Article 14 of the constitution of India.

### Conclusion

The HCs has rightly held that the power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee. Even in the Pre-GST regime, the Government had issued guidelines and had also laid down a procedure for provisional attachment to protect the interest of the revenue in certain cases.

Therefore, it is expected by the Government would provide certain guidelines for invocation of Rule 86A so that such provisions are not misused by the Department. The Government further ought to note that the trade and industry would rather welcome other measures to curb tax evasions, such as e-invoicing, etc. instead of introducing provisions such as Rule 86A, which is nothing but a road-block in the pathway of seamless flow of credit.



**CA. GANESH KUMAR**



**CA. ANKIT KARANPURIA**





# Corporate Governance

## The Next Level

The word which has created the buzz around the corporate world now days seems to be a combination of two small letters but has a very wide and overarching impact on the Companies, Stakeholders, society and consumers.

Corporate Governance the word about which all of us have heard and are used to it in our day to day professional life seems to be tricky now days. Going by the literal sense it means a system of rules, practices and processes by which a firm is directed and controlled for ensuring the accountability, fairness and transparency.

Corporate governance refers to the skeleton by which businesses are operated, and regulated. It involves establishing a synergy between the board of directors, management and investors for efficient functioning of an organization that can produce a long-term value

The core theme of Corporate Governance is that Governance and Management should be considered as two parts of any business entity irrespective of its nature, size or Industry in which it operates. There are six layers of corporate governance in our system, including the company, management, company board, credit rating agencies, auditors and the regulators.

If these two dimensions are not separated then Governance issues start creeping in the organisation. Non governance is exactly like the tremors of earthquake whose effect is most destructive when reaches the top most layer of the earth, similarly when Governance issues are not handled wisely at the top level of the organisation the organisation breaks down.

Another vital part about the corporate governance which is must to highlight here is that it is difficult for the auditors or any external agency to pre-empt Corporate Governance issues in the organisation.

We as auditors focus primarily on the Financial aspects of businesses and the relevant degree of internal controls present in the organisation so as to give a reasonable accuracy to the stakeholders to the Financial Statements,

now need to focus on Governance issues within the organisation as apart from having non-financial and social impacts it also comes with Regulatory and financial impacts.

Governance practices in the organisation needs to be monitored on a continuous basis by the auditors with a sceptical view point. Against the backdrop of rising violations in governance norms. The challenge in India is that most of the companies talk about corporate governance & compliance, but the reality is different.

A lot in the Corporate Governance depends on the intent, integrity and transparency in the operations which the Management intends in the organisation as governance has a wide and pervasive effect.

The collapse of the two big NBFC's, voting rights issues in one of the top airlines in India and violations of corporate governance principles in top 2 private banks in India have put the roles of frontline corporate-governance under the scanner of regulators.

Considering the scale and frequency of corporate governance mishaps, efficacious 'firefighting' appears to be the need of the hour. Some of the major corporate governance norms in India include enhanced role of independent directors, audit committee and nomination and remuneration committee and periodical and event-based disclosures to the regulatory authorities.

Though ignoring the corporate governance culture in the organisation it may achieve the quick gains, but Good governance is the bedrock of successful and long-lasting businesses. A good corporate practice in the organisation also enables the organisation to achieve better financial and operations results.

Though one cannot deny the fact that India's complex regulatory environment, voluntary adherence to corporate governance and expanding the reach of corporate purpose has become challenging, however regular education and awareness program should be a





part of the development and learning calendar of the organisation. Further, the changing economic outlook requires companies to rethink their corporate governance program by inducting all stakeholders, including third-party and agents, into a 360-degree governance model.

The Corporate governance practice is same as the values and ethics an individual learns throughout the life, it cannot be inculcated in few days, weeks or months. A strong corporate culture is required to act as a catalyst for effective and continuous adaptation governance practices in the organisation.

The recommendations of the Kotak Committee on corporate governance are a positive stride in this area which primarily talks about:-

### 1. Composition and Role of the Board:

The Committee was of the view that the board of directors as a whole is responsible to all stakeholders for meeting the requisite standards of corporate governance in a company thus following recommendations were made.

#### a. Minimum and Maximum Number of Directors on a Board :

This required the top 1000 listed entities by market capitalization to have a minimum number of 6 (six) directors instead of the present requirement for 3 directors on the board in public limited companies.

#### b. Gender Diversity on the board:-

The Companies Act and the SEBI LODR requires at least one women director on the board of listed entities, however the committee recommended to have at least one independent woman director in the top 500 listed entities.

#### c. Separation of Key positions:

The Committee recommended that all listed companies with more than 40% public shareholding should separate the roles of chairperson and MD/CEO

2. Board Committees.
3. Monitoring Group Entities and Related Parties.
4. Accounting and Audit related matters.
5. Disclosures and Transparency

However the same has been deferred by SEBI upto 1st April, 2022, but once applicable this will definitely prove as a big milestone for in the area of corporate governance.

The Companies Auditor Report Order 2020 to be applicable from 1st April 2021 highlights the effort made by the government towards the inculcating good governance in the organisation.

Given that India has often been at the receiving end of negative international opinion as a country with “**strong laws and weak enforcement**”, the focus by the Government to improve enforcement (both real and perception) is a clear step towards improving India's rankings in the rule of law metrics.

The rapid increase in enforcement activity coupled with greater individual criminal and financial liability, makes it clear to implement the corporate governance to the Next level. The focus the large corporate houses has been shifted from “**Profit Oriented**” approach to the “**Governance**” approach.

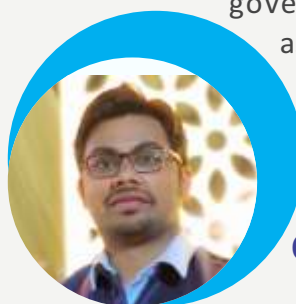
**The few indicators for an auditor to test the effectiveness of corporate governance in organisation can be:-**

1. Compliance of Statutory obligations as applicable to the entity.
2. Compliance of Standards on financial reporting
3. Integrity of Board of Directors and Management
4. Adaptation of Risk mitigation practices
5. Enhancement in shareholders' value
6. Better image of the entity during economic downturns
7. Organisational efficiency

The Covid 19 pandemic has further make us believe that companies with good governance and those which can innovate to adapt in current situation have not only survived but also prospered.

At last to conclude “Good governance practices must be effectively implemented and enforced preferably by self-regulation and voluntary adoption of ethical code of business conduct and if necessary through relevant regulatory laws and rules framed by Government or its agencies such as SEBI, RBI.

Thus being the professional, the Auditors can drive the organisation towards effective implementation of good governance practices by providing assurance and consultancy services to lead it towards strategic, tactical and operational efficiency.



**CA. YASH NAGAR**





# INTRODUCTION OF A NEW LEG IN CORPORATE INSOLVENCY- PRE-PACKAGED INSOLVENCY



CA. NEHA FIRODA

In October 2020, a report was submitted by the Sub-committee of the Insolvency and Law Committee on Pre-packaged Insolvency Resolution Process through the Ministry of Corporate Affairs.

A pre-pack or pre-packaged deal is a kind of restructuring plan which is agreed to by the debtor and its creditors prior to the insolvency filing and then sanctioned by the court on an expedited basis. The incumbent management typically retains control until the final agreement is agreed upon. The informality of the process is aimed at a faster resolution of distressed firms.

Pre-packaged Insolvency is proposed to be introduced as an alternative to the current Insolvency law and will be a precursor to the current CIRP process and further Liquidation.

#### Key Takeaways:

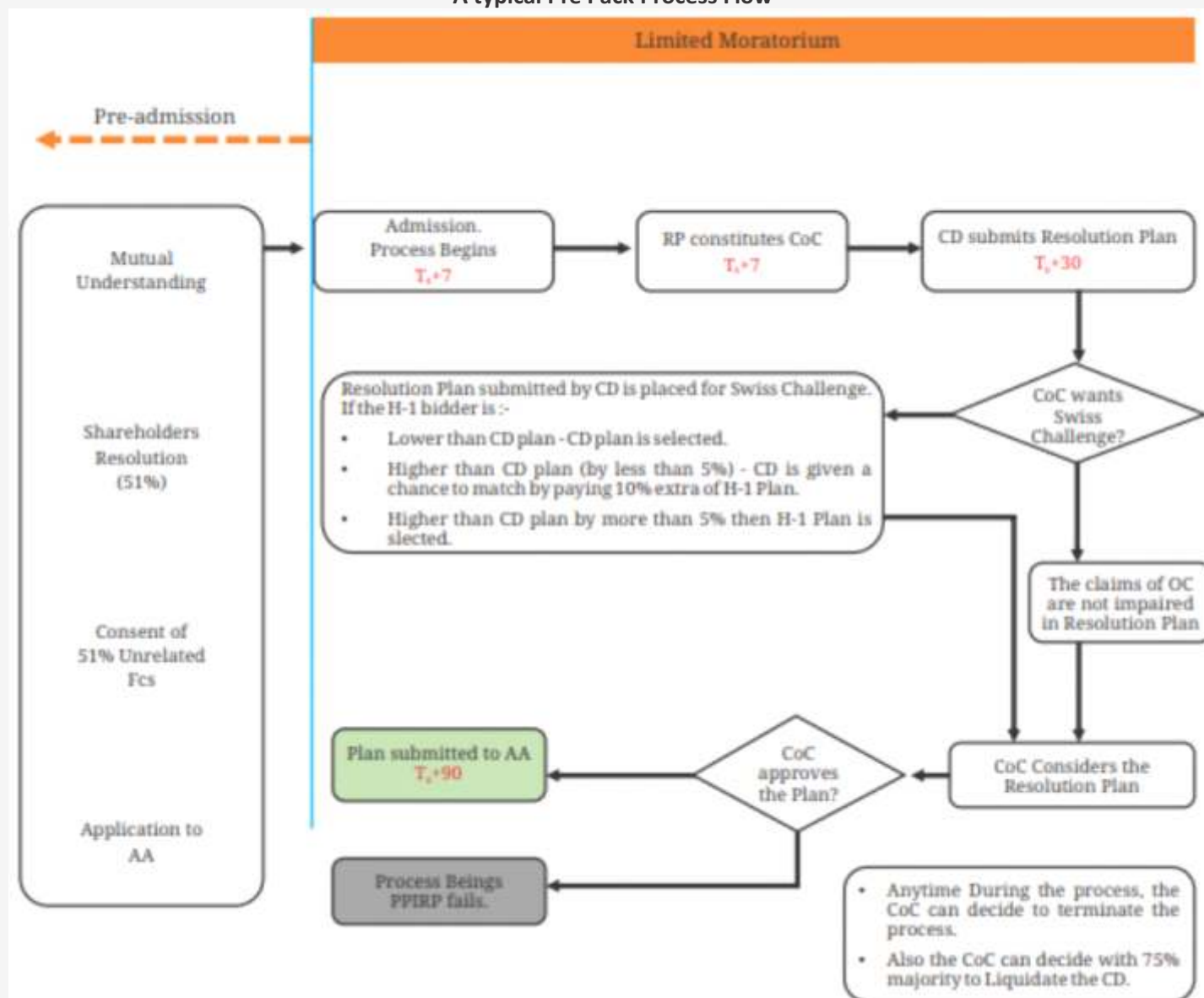
- ▶ Basic principles of the new Pre-packaged insolvency law is that the basic structure of the Code must be intact, no rights of parties must be compromised and the framework must have checks and balances.
- ▶ Debtor in control' model: The Corporate Debtor ("CD") initiates the pre-pack with simple majority.
- ▶ Information Memorandum: CD to make a list of outstanding claims and criminal liability for omitting or wrong information.

- ▶ Moratorium will be applicable.
- ▶ Insolvency Professional (IP/RP): He will have a role of conducting the process and will not run the business and conduct of the CD, RP will provide public announcement, constitute Committee of Creditors ("CoC") of unrelated Financial Creditors ("FC"), Applications on avoidance application to be filed.
- ▶ CoC: will vote with majority and only to liquidate will it need 75% of majority votes.
- ▶ Valuation: the liquidation value and the fair value will be done through two valuers.
- ▶ The pre-pack should start with a base resolution plan, which will face Swiss challenge. This should come from the promoters if they are eligible and interested. Otherwise, the CoC may arrange a base plan – (should offer two options with and without the Swiss challenge approach)
- ▶ The Insolvency Resolution Process Cost ("IRPC") shall include interim finance, fees of the RP and other process related costs approved by CoC and not include cost incurred to run the process.
- ▶ 90 days' timeline for market participants to submit resolution plan and 30 days for AA to approve the same.
- ▶ The Resolution plan once approved, the Resolution Applicant shall start on a clean slate.

### Concerns with pre-packs

The nature of pre-packs leads to a lack of transparency, where often unsecured creditors feel disenfranchised by the secrecy. Concerns may also be raised on the valuation process -- and experts feel more can be done to explain the valuation methodology to bring comfort to all stakeholders. Additionally, the insolvency practitioner has no legal requirement to look at the future viability of the new business emerging from a pre-pack sale, and the practitioner's legal responsibility is to the creditors of the old business. This may be a concern for both transferring suppliers and new ones. The sale of business and assets of the corporate debtor to connected parties has also garnered criticism.

### A typical Pre Pack Process Flow



## A typical Pre Pack Process Flow

Parameter	CIRP	Proposed Pre-pack
Objective	Resolution through a resolution plan	Resolution through a resolution plan
Legal framework	Relatively more in the statute and less in regulations	Relatively less in the statute and more in regulations
Applicability	Companies and LLPs	Companies and LLPs
Initiation of process	Default above Rs.1 crore, excluding COVID-19 Default	Pre and post default stress, including COVID-19 default. In a phased manner, if required
Initiation by	FC, OC, or CD	CD, with consent of majority of unrelated Fcs
Management of the CD	IP-in-possession with creditor-in-control	Debtor-in-possession with creditor-in-control
Role of IP	IRP appointed by the applicant and then RP by the CoC	RP, to be appointed with consent of majority of unrelated Fcs
	Managing affairs of the CD and conducting the process	Conducting the process
Claim collation	IRP to invite and collate	CD to provide. RP to verify.
Information memorandum	Prepared by RP	Draft prepared by CD and finalised by RP
Moratorium	Moratorium under section 14	Limited Moratorium
Interim finance	Yes	Yes
Avoidance transactions	Yes	Yes
Valuation	By two valuers	By two valuers
IRPC	Includes cost of running operations	Does not include cost of running operations
Invitation for resolution plans	Public process	First right of offer to promoters, Swiss Challenge
Ineligibility for resolution plan	Section 29A to applies	Section 29A to apply
Early closure of process	Under section 12A, on request of the applicant	With approval of 66% of voting share, present and voting; Suo moto by CoC
Approval of resolution plan by CoC	66% of voting share	66% of voting share, present and voting
Consequence of termination of process	No termination allowed	Liquidation, with 75% of voting share of CoC
Consequence of failure of process	Liquidation	Closure
Binding outcome	Resolution plan binding	Resolution plan binding
Regulatory benefits	Yes	Yes
Clean Slate, post resolution	Yes	Yes
Role of IP and AA	Relatively more	Relatively less
Timeline	180 days till approval of resolution plan by the AA	90 days for filing of resolution plan with the AA plus 30 days for the AA to approve it
Cooling off	12 months between two CIRPs	Three years between two Pre-packs

Source: Report of Sub-committee of the Insolvency and Law Committee on Pre-packaged Insolvency Resolution Process, Ministry of Corporate Affairs, October 2020.





# Insights into Finance Bill 2021

## IMPORTANT INCOME TAX AMENDMENT

### CHARITABLE, EDUCATIONAL, MEDICAL INSTITUTIONS

#### Increase in limit of Annual Receipts

Any income received by any person on behalf of educational/medical institutions, existing solely for educational/philanthropic purposes and not for purposes of profit- is fully exempt from tax if the receipts of the person from such institution or institutions do not exceed five crore rupees. [Sec. 10 (23C)(iiiad)/(iiiae)]

- ▶ Limit of annual gross receipts increase from Rs. 1 Crore to Rs. 5 Crores.
- ▶ Limit to be applied for the assessee as a whole and not institution wise.
- ▶ Provision applicable for AY 21-22 onwards.

#### Voluntary Contributions

- 1) Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall be eligible for exemption only if “such voluntary contributions are invested or deposited in specified modes maintained specifically for such corpus”
- 2) Application for charitable or religious purposes from this corpus, shall not be treated as application of income for charitable or religious purposes.
  - ☑ Amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more specified modes maintained specifically for such corpus, from the income of that year and to the extent of such investment or deposit.

#### Loans or Borrowings

- 1) Application for charitable or religious purposes, from

any loan or borrowing, shall not be treated as application of income for charitable or religious purposes.

Amount not so treated as application, or part thereof, shall be treated as application for charitable or religious purposes in the previous year in which the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.

#### Excess expenditure of earlier years

Calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding the previous year.

### BUSINESS INCOME

#### Goodwill

Goodwill of a business or profession is now not eligible for depreciation .[ Sec. 32]

#### PF/ESIC contribution of employees

- ☑ Deduction not available if payment made beyond due date as per Relevant Act. Section 43B not applicable for employee's contribution.
- ☑ Wordings of amendment suggest that this shall be applicable for existing matters also.

#### Tolerable limit for Immovable property transaction

Temporary increase from 10% to 20%

- ☑ Applicable for section 43CA and 56(2)(x) – not for 50C .
- ☑ Transfer only of residential unit.
- ☑ The transfer of residential unit takes place during the period from 12th November, 2020 to 30th June, 2021
- ☑ The transfer is by way of first time allotment of the residential unit to any person



- ☑ The consideration received or accruing as a result of such transfer does not exceed 2 crore rupee

### Tax audit

Tax audit not required if :

- ☑ Turnover up to Rs. 10cr
- ☑ Aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt.
- ☑ Aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.
- ☑ As per ITR Forms what is to be seen is :
  - ⬆ whether aggregate of all amounts received, including amount received for sales, turnover or gross receipts or on capital account such as capital contribution, loans etc. during the previous year, in cash, does not exceed five per cent of said amount.
  - ⬆ whether aggregate of all payments made including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loan etc., in cash, during the previous year does not exceed five per cent of the said payment.

### Sec. 44ADA

Provisions of Sec. 44ADA applicable for a resident individual, Hindu undivided family or a partnership firm other than a limited liability partnership.

## CAPITAL GAINS

### Taxation at the time of dissolution / reconstitution of Partnership Firm Sec. 45(4)

- ☑ Partner receives any capital asset at the time of dissolution or reconstitution of the partnership firm.
- ☑ This capital asset represents the balance in his capital account in the books of accounts of the firm at the time of its dissolution or reconstitution,
- ☑ Then any profits or gains arising from receipt of such capital asset by the partner shall be chargeable to income-tax as income of the firm under the head "Capital gains" and shall be deemed to be the income of the firm of the previous year in which such capital asset was received by the partner
- ☑ For the purposes of section 48,—
  - a) fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result

of the transfer of such capital asset

- b) the cost of acquisition of the capital asset shall be determined in accordance with the provisions of this Chapter

### Sec. 45(4A)

- ☑ Partner receives any money or other asset at the time of dissolution or reconstitution of the firm.
- ☑ This receipt is in excess of the balance in his capital account in the books of accounts of such firm at the time of its dissolution or reconstitution.
- ☑ Then any profits or gains arising from receipt of such money or other asset by the partner shall be chargeable to income-tax as income of such firm under the head "Capital gains" and shall be deemed to be the income of such firm of the previous year in which such money or other asset was received by the partner.
- ☑ For the purposes of section 48,—
  - (a) value of any money or the fair market value of other asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset; and
  - (b) the balance in the capital account of the specified person in the books of accounts of the firm at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

### Common Provisions

For both the above sections, the balance in the capital account of the partner in the books of account of the firm is to be calculated without taking into account increase in the capital account of the partner due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

- ☑ Both the sections shall be applicable for A.OP./B.O.I. and its members also as they apply for firm and its partners.

### Taxation of ULIPs

- ☑ Sum received under any unit linked insurance policy, shall NOT be exempt U/s. 10(10D), if
  - ❖ The policy is issued on or after 1st February 2021 and



- ❖ Premium payable for any of the previous year during the term of such policy exceeds Rs. 2,50,000.
- ☑ Gains arising from receipt of above amount shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such amount was received and the income taxable shall be calculated in such manner as may be prescribed. [Sec. 45(1B)]
- ☑ The rate of tax applicable on these gains shall be same as applicable for Equity Oriented Mutual Funds u/s. 112A
  - ☞ Such policies have been specifically added to the definition of "Capital Assets" u/s. 2(14)
  - ☞ Any sum received on the death of a person shall be eligible for exemption.

## EXEMPTIONS

- 1) Extension of date of sanction of loan for affordable residential house property- for claiming extra deduction of interest of Rs. 1.5 lacs – till 31.3.2022 (80-EEA)
- 2) Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up –till 31.3.2022 (80-IAC & 54GB)
- 3) Period of approval for 100% exemption to affordable housing project extended till 31.3.2022 (80-IBA)
- 4) 100% exemption to profits and gains derived from the business of **developing and building rental housing project**.
  - ☑ "Rental housing project" means a project which is notified by the Central Government upto 31.03.22.

### Time Limits – ITRs, Notices, Assessment

#### 1) Filing of ITR-

- ☑ Time limit for filing belated and revised return reduced by 3 months –to be filed upto 31st Dec.
- ☑ For partners of the firm covered under transfer pricing – ITR due date is now 30th November.

#### 2) Time limits u/s. 143

- ☑ For issuance of intimation u/s. 143(1) – 9 months from the end of the year in which ITR is filed.
- ☑ For issuance of scrutiny notice u/s. 143(2) – 3 months from the end of the year in which ITR is filed.

#### 3) Time limit for completion of assessment

- ☑ For AY21-22 onwards – 9 months from the end of AY.

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- ☑ For issuance of intimation u/s. 143(1) – 9 months from the end of the year in which ITR is filed.
- ☑ For issuance of scrutiny notice u/s. 143(2) – 3 months from the end of the year in which ITR is filed.

#### 3) Time limit for completion of assessment

- ☑ For AY21-22 onwards – 9 months from the end of AY.

## RELIEF TO SENIOR CITIZENS : Sec. 194P

In order to provide relief to senior citizens who are of the age of 75 year, it is proposed to insert a new section to provide a relaxation from filing the return of income, if the following conditions are satisfied:-

- (i) The senior citizen is resident in India and of the age of 75 or more during the previous year;
- (ii) He has only pension income and interest income from the same bank in which he is receiving his pension income.
- (iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank.
- (iv) Assessee shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.
- (v) Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of





income by such senior citizen for this assessment year.

## TDS/TCS

### TDS on purchase of good : Sec. 194Q

#### Assessee Covered

Any person, being a buyer whose total sales, gross receipts or turnover from the business exceed ten crore rupees during the last financial year

#### Transaction Covered

Payment to any resident for purchase of any goods of the value or aggregate of value exceeding fifty lakh rupees in any previous year.

#### Time of TDS

At the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier,

#### Rate of TDS

0.1 % of such sum exceeding fifty lakh rupees. (If seller does not have PAN, rate would be 5%)

**Provisions not applicable** to a transaction on which :

- (a) tax is deductible under any of the provisions of this Act
- (b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.

**Date of Applicability :** 01st July 2021

#### Fate of 206C(1H) post applicability of 194Q

Sec. 206C(1H)- TCS by seller- provides that *"provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount."*

Accordingly, for all practical purposes, Sec. 206C(1H) shall stop being applicable post applicability of Sec. 194Q.

#### TDS/TCS for non files of ITRs ; Sec. 206AB, Sec. 206CCA

Where tax is required to be deducted at source under the provisions of Chapter XVIIIB (other than sections 192, 192A, 194B, 194BB, 194LBC or 194N)

And deductee is a person (other than a nonresident who does not have a permanent establishment in India):

- i. who has not filed the returns of income for both of the two assessment years relevant to the two

previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under subsection (1) of section 139 has expired; and

- ii. the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.

The tax shall be deducted at the higher of the following rates:

- i) at twice the rate specified in the relevant provision of the Act; or
- ii) at twice the rate or rates in force; or
- iii) at the rate of five per cent.

Same provisions shall be applicable with respect to TCS also.

## DISPUTE RESOLUTION COMMITTEE FOR SMALL AND MEDIUM TAXPAYERS

For small and medium taxpayers, a new scheme of dispute resolution is being proposed. The scheme is proposed to be incorporated in a new section 245MA and has the following features

- ☑ The Central Government shall constitute one or more Dispute Resolution Committee (DRC).
- ☑ This committee shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC.
- ☑ Only those disputes where the returned income is fifty lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less shall be eligible to be considered by the DRC.
- ☑ Assessee may approach DRC at the stage of Draft Order also.
- ☑ If the specified order is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A, of the Act, such specified order shall not be eligible for being considered by the DRC.
- ☑ Assessee would not be eligible for benefit of this provision if there is detention, prosecution or



conviction under various laws as specified in the proposed section. 42

- ☑ Board will prescribe some other conditions in due course which would also need to be satisfied for being eligible under this provision.
- ☑ The DRC, subject to such conditions as may be prescribed, shall have the **powers to reduce or waive any penalty** imposable under this Act or **grant immunity from prosecution for any offence under this Act** in case of a person whose dispute is resolved under this provision.

## REASSESSMENT AND SEARCH ASSESSMENT

- ☑ Complete reform of the system of reassessment/ income escaping assessment and the assessment of search related cases.
- ☑ Concept of Search Assessment merged with Reassessment.
- ☑ The provisions of section 153A and section 153C, applicable to only search initiated on or before 31st March 2021. For search initiated after 31/03/21, assessment shall be done u/s. 147.

### Information with the Assessing Officer : Sec. 148

- ☑ Assessment u/s. 147 can now be done only when there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment. Concept of “Reasons to believe” is replaced with “information with the Assessing Officer”.
- ☑ Following only shall be treated as the “information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment”
  - 1) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
  - 2) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.
- ☑ However, in case of a search and survey, Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for

the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

### Issue of notice where income has escaped assessment : Sec. 148

Before making the assessment under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income.

### Time limit for notice : Sec. 149

No notice under section 148 shall be issued for the relevant assessment year,—

- a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year.

### Conducting inquiry, providing opportunity before issue of notice u/s 148 : Sec. 148A

As per new Section 148A, in all the cases, other than the case of search, before issuing any notice/s. 148, AO shall :

- a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.
- b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the

notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a).

- c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b).
- d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires.

### Sanction for issue of notice : Sec. 151

Specified authority for the purposes of section 148 and section 148A shall be,-

- i. Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year.
- ii. Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year."

## MISCELLANEOUS

### 1) Constitution of the Board for Advance Ruling in place of Authority for Advance Ruling

- ☒ It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings on and after the notified date.
- ☒ Every such Board shall consist of two members, each being an officer not below the rank of Chief

Commissioner.

- ☒ Advance rulings of such Board shall not be binding on the applicant or the Department. The applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.

### 2) Advance Tax

- ☒ Advance tax for dividend income (except dividend u/s. 2(22)(e)) payable only after the date of generation of such income.

### 3) ITAT

- ☒ Faceless
- ☒ Jurisdictional-less

### 4) Discontinuance of Income-tax Settlement Commission w.e.f. 01/02/2021. For pending applications, an Interim Board of Settlement to be constitutes.

- 5) Provisional attachment of property u/s. 281B, in respect of penalty u/s. 271AAD (Fake Invoice cases) where likely amount of penalty exceeds Rs. 2 crore.



**CA. MANISH DAFRIA**





## Blood Donation Camp



## Felicitation of Smt. Sumitra Mahajan "Tai"





## Press Conference at ICAI Bhawan



## Republic Day Celebration





## Budget Discussion with TPA



## Felicitation of Past Managing Committee Members, Speakers, Faculties & Staff

## Established one more Milestone



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Mail : [indore@icai.org](mailto:indore@icai.org) [www.indore-icai.org](http://www.indore-icai.org)

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