



Indore Branch  
Journey Down The  
Memory Lane

PICTURE MEMORIES OF DECADE 1981 TO 1991

INDORE BRANCH OF CIRC OF ICAI



NEWSLETTER

November, 2020 • Price ₹ 20

# Chairman's Communiqué

**CA. Harsh Firoda**  
(Chairman)



## Journey down the memory lane

Respected Members,

**An occasion to celebrate victory over defeat, light over darkness, awareness over ignorance, an occasion to celebrate life. May this auspicious occasion light up your life with happiness and peace. Wish you all A very Happy Diwali.**

I would like to draw your attention to the fact that 27 October to 2 November 2020 was being celebrated as The Vigilance Awareness Week 2020 themed Prosperous India (Satark Bharat, Samridhd Bharat). The awareness week campaign affirmed commitment to the promotion of integrity and probity in public life. In 2020, the Central Bureau of Investigation (CBI) hosted a National Conference on Vigilance and Anti-Corruption which was addressed by Prime Minister Shri Narendra Modi.

**Let us also take integrity pledge to fight against corruption.**

**Let me also update you about some of the significant developments that have taken place recently. After continuous effort of ICAI and various tax associations, Ministry of Finance extended few dates:**

### DIRECT TAX

**I** Due date for furnishing the Tax Audit Report by 2 months to 31st December 2020 from 31st October 2020

**I** In the press release, CBDT stated that the due date for furnishing of IT Returns for the taxpayers (including their partners) who are required to get their accounts audited has been extended to 31st January, 2021 from the prescribed due date of 31st October 2020 [u/s 139\(1\)](#).

**I** For those having no tax audit requirement, the date is extended by one month from 30th November 2020 to 31st December 2020.

### GST

**I** GST Audit and Annual return due date to 31st December 2020 as a Dussehra gift to all taxpayers and CA fraternity.

**I** With the extension, GST council also extended applicability of GSTR 1 and 3B till March 2021.

**I** Rule 36(4) would be applicable from October 2020 return and with introduction of GSTR 2B timely filing of GSTR 1 would be important.

Lastly, I would like to bring in your notice that Indore branch is continuously communicating the raising issues of our fellow members through representations to the concerned forums.

I would like to congratulate to all the respected senior members, fellow members and all the past chairman and secretary of the branch on celebrating the Golden Jubilee of Indore Branch of ICAI.

All the members of the fraternity have done excellent hard work and given sincere efforts for the betterment and growth of the branch making it the best among the rest, that too multiple times. It feels immense pleasure to be a part of the Noble profession since 1975. Celebrating 50 years of Indore Branch is a once in a life time event and precious moment.

My heartiest congratulations to the chairman of the branch CA Harsh firoda and managing committee who have taken keen interest in the event.

Since 1971-72, the foundation year of the branch, all the fellow members have been continuously supporting towards developing the branch to be the best branch in India.

Our senior member late CA R.S. Bansal dream of having our branch building and auditorium. During the construction period, all the fellow members of the branch contributed whole heartedly to make his dream come into reality and becoming the first branch to construct its own building and auditorium.

I want to give my best wishes to all the members and hope that fellow members will continue to achieve greater heights.

Happy Diwali to all the members of the institute.



**CA. M.P. AGRAWAL**



### MANAGING COMMITTEE

**CA. Kirti Joshi** (Vice-Chairman) **CA. Gaurav Maheshwari** (Secretary) **CA. Ankush Jain** (Treasurer)  
**CA. Samkit Bhandari** (CICASA Chairman) **CA. Pankaj G. Shah** (Imm. Past Chairman), **CA. Anand Jain** (Media & Digital Comm. Chairman)  
Ex. Officio Member : **CA. Kemisha Soni** (CCM), **CA. Nilesh Gupta** (RCM), **CA. Churchill Jain** (RCM)

In light of the ongoing spurt of the COVID-19 all across the country, to facilitate the members in discharging their duties on the professional updates, Indore Branch has organized the Virtual CPE Meetings/Programme. In case you missed the program dont worry you can still watch on ICAI you tube channel - Indore branch of CIRC of ICAI.



# OCTOBER MONTH ACTIVITIES

DATE	VIRTUAL CPE MEETING	SPEAKER/DIGNITARIES
3 <sup>rd</sup> OCT.	Latest Amendments in TDS and TCS under Income Tax	CA. Rajesh Mehta
6 <sup>th</sup> OCT.	Drafting of Accounting Policies and Notes to Account	CA. Vikram Gupte
8 <sup>th</sup> OCT.	Useful Tricks of Trade in Income Tax Matters	Adv. Pavan Ved
10 <sup>th</sup> OCT.	Practical Approach to File GSTR 9 & 9C	CA. Kirti Joshi
14 <sup>th</sup> OCT.	Valuation of Securities of Financial Assets	CA. Tarun Mahajan
15 <sup>th</sup> OCT.	White Cane Safety Day (Stick Day)	Anubhuti Vision Seva Sansthan
17 <sup>th</sup> OCT.	Precautions to be taken under CORONA	Dr. Sanjay Londhe Dr. Nishant Khare
20 <sup>th</sup> OCT.	Central Government Industrial Subsidies	CA. G.B. Modi
24 <sup>th</sup> OCT.	Introduction of New Labour Codes	Adv. Girish Patwardhan
25 <sup>th</sup> OCT.	Understand Insolvency as Planning Tool for Easy Exit	Adv. (CA) Nipun Singhvi
29 <sup>th</sup> OCT.	Bill Discounting Opportunities for CA's	CS Prakalp Mattha



\*Subject to max 300 members CPE allowed



“Learn to value yourself, which means: fight for your happiness.”



# TAXABILITY OF SUPPLY UNDER GST: BEARING A BRAND NAME OR MANUFACTURER NAME



CA. Nayan Jain

## LEGAL PROVISIONS

1.NOT. NO.01/2017-CENTRAL TAX (RATE)

DATED 28.06.2017

Schedule I – 5% (2.5%+2.5%)

No.	Chapter /Heading /Sub-heading / Tariff item	Description of Goods
11.	0406	Chena or paneer put up in unit container and bearing a registered brand name
13.	0409	Natural honey, put up in unit container and bearing a registered brand name
25.	0713	Dried leguminous vegetables, shelled, whether or not skinned or split [put up in unit container and bearing a registered brand name]
45.	10	All goods i.e. cereals, put up in unit container & bearing a registered brand name
46.	1001	Wheat and meslin put up in unit container and bearing a registered brand name
47.	1002	Rye put up in unit container and bearing a registered brand name
48.	1003	Barley put up in unit container and bearing a registered brand name
49.	1004	Oats put up in unit container and bearing a registered brand name

50.	1005	Maize (corn) put up in unit container and bearing a registered brand name
51.	1006	Rice put up in unit container and bearing a registered brand name
52.	1007	Grain sorghum put up in unit container and bearing a registered brand name
53.	1008	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi] put up in unit container and bearing a registered brand name
54.	1101	Wheat or meslin flour put up in unit container & bearing a registered brand name.
55.	1102	Cereal flours other than of wheat or meslin i.e. maize (corn) flour, Rye flour, etc. put up in unit container and bearing a registered brand name
56.	1103	Cereal groats, meal & pellets, including suji and dalia, put up in unit container & bearing a registered brand name
58.	1105	Meal, powder, flakes, granules & pellets of potatoes put up in unit container and bearing a registered brand name
59.	1106	Meal & powder of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 1106 10 90], of sago or of roots or tubers of heading 0714 or of the products of Chapter 8, put up in unit container and bearing a registered brand name

## EXPLANATION:-

**i.** The phrase “UNIT CONTAINER” means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.

**ii.** The phrase “REGISTERED BRAND NAME” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

### 1. NOTIFICATION NO.27/2017-CENTRAL TAX (RATE) DATED 22<sup>nd</sup> SEPTEMBER, 2017

IN THE NOTIFICATION NO.1/2017 DATED 28.06.2017

(A) In Schedule I-2.5%,-

(I) against serial no. 11, 13, 25, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58 and 59, in column (3), for the words “put up in unit container & bearing a registered brand name”, the words, brackets and letters

“Put Up in Unit Container and,-

**a)** bearing a registered brand name; or

**b)** bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE]”, shall be substituted

**Insertion in Explanation:-**

(ii) a) The phrase “BRAND NAME” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

**b)** The phrase “REGISTERED BRAND NAME” means,-

(A) A brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;

(B) A brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957);

(C) A brand registered as on the 15th May 2017 under any law for the time being in force in any other country.”

### ANNEXURE

For foregoing an actionable claim or enforceable right on a brand name,-

**a)** the person undertaking packing of such goods in unit containers which bear a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and

**b)** the person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.”.

### 2. NOT.NO.28/2017-CENTRAL TAX (RATE) DTD. 22.09.2017 IN THE NOT. NO.02/2017 DTD. 28.06.2017 [EXEMPT SUPPLY NOTIFICATION]

By virtue of this notification, the government against serial number 27, 29, 45, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77 and 78 for the words “other than put up in unit containers and bearing a registered brand name”, the words, brackets and letters

“Other than those put up in unit container and,-

**(a)** Bearing a registered brand name; or

**(b)** bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to the conditions as in the ANNEXURE I]”, shall be substituted;



## ANNEXURE I

For foregoing an actionable claim or enforceable right on a brand name,-

- a) the person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and
- b) the person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.

### QUESTION IN MY MIND

#### WHETHER MENTIONING THE NAME OF MANUFACTURER ON THE PACKAGING OF ITEM AS PER THE STATUTORY REQUIREMENT CAN BE TREATED AS BRAND NAME?

I have reproduced here definition of Brand Name as provided in the explanation of Not. No.27/2017 dtd. 22.09.2017 for easy understanding

*The phrase "BRAND NAME" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing Which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.*

In view of the above, there is no bar on the name of manufacturer to be a Brand Name as long as it used ***in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and the person using such name or mark with or without any indication of the identity of that person.***

So, the real test here is the connection between the specified goods on which such a name is being used and the person using such name in the course of trade. In terms of the above meaning, a name or mark would

become a 'brand name', for the purpose of the CGST Notification, only when the following conditions are satisfied:

1. When such name or mark is used in relation to specified goods; and
2. When such name or mark is used for the purpose of indicating a connection in the course of trade between such specified goods and the person using the name or mark, with or without any indication of the identity of that person.

In this regard, it is to be noted that for any name to qualify as a brand name, it must be used in relation to specified goods indicating a connection in the course of trade between the said goods and the person, with or without any indication of the identity of that person. In other words, the use of the name should be to associate specified goods with the person, in a manner that the customer would identify the specified goods with that person. Mere mention of the name of the manufacturer would not constitute a brand name as the customer would obviously not identify the goods with the name of the manufacturer. The above can be further explained by way of the following illustrations:

- a) The products 'noodles' is manufactured and sold by Nestle India Ltd., under the brand name 'Maggie'. It is well known that the customers identify the brand name 'Maggie' with the product noodles and not the name of the Co., mfg. and selling it. It is the brand name 'Maggie' that indicates a connection in the course of trade between the goods and the person using such name.

In terms of definition of the term 'Brand Name', the same must be 'used in relation to such specified goods' based on which such goods are asked for the by the customer. Also one ought to look into the surrounding circumstances of the good to the decipher, if it is in fact branded or not.

In my view, in order to qualify as 'brand name' or 'trade name' it has to be established that such a mark, symbol, design or name, etc. has acquired the reputation of the nature that one is able to associate the said mark, etc. with the manufacturer.



### Advance Ruling Order in This Type of Exemption

Applicant Legal Name : Aditya Birla Retail Limited  
Authority : Maharashtra Authority  
for Advance Ruling  
AAR Order Date : 23.03.2018  
AAR Order Date : 07.08.2018

**Que.1** Where the package of the subject goods would merely have a declaration mentioning the name and registered address of the applicant as the manufacturer, as per the statutory requirement under Statutory Provisions, can be considered as 'not bearing a brand name', and, accordingly eligible for exemption from GST in terms of relevant entries to Not. No.02/2017-Central Tax (Rate) dtd. 28.06.2017 ('CGST Not.), and, the corresponding entries under Notification No.2/2017-Integrated Tax (Rate) dated 28.06.2017 ('IGST Not.), and the Notification

No.2/2017-State Tax (Rate) dtd. 29.06.2017 [Collectively referred to as 'the Exemption Notification']?

**Ans.** The advance ruling author denies the exemption which is confirmed by the higher appellate authority for advance ruling

**Que.2** Where the package of the subject goods would have a declaration mentioning the name & regd. address of the mfr. as per the statutory requirement under the Subject Statutory Provisions as also the declaration 'Marketed by Aditya Birla Retail Limited' can be considered as 'not bearing a brand name', and, accordingly eligible for exemption in terms of relevant entries to the exemption notifications?

**Ans.** The advance ruling author denies the exemption which is confirmed by the higher appellate authority for advance ruling

## INITIATIVES OF THE COMMITTEE FOR MEMBERS IN PRACTICE BY ICAI

Sl.No	Details about the arrangement	Web link
1	Papilio Office Management Software	<a href="https://cmpbenefits.icai.org/papilio-software/">https://cmpbenefits.icai.org/papilio-software/</a>
2	Credit Cards for the Members of ICAI	<a href="https://cmpbenefits.icai.org/credit-cards-facility/">https://cmpbenefits.icai.org/credit-cards-facility/</a>
3	Quick Heal Total Security For Android enabled Mobiles and Desktops/laptops	<a href="https://cmpbenefits.icai.org/antivirus-protection-facility/">https://cmpbenefits.icai.org/antivirus-protection-facility/</a>
4	Tally.ERP 9 Gold Edition ( Multi-User version)	<a href="https://cmpbenefits.icai.org/tally-Software-Solutions/">https://cmpbenefits.icai.org/tally-Software-Solutions/</a>
5	Practice Management Software for Members in Practice & CA Firms of ICAI	<a href="https://cmpbenefits.icai.org/practice-management-software/">https://cmpbenefits.icai.org/practice-management-software/</a>
6	All-in-One Accounting & Compliance Software for Chartered Accountants by: HostBooks	<a href="https://www.icai.org/post.html?post_id=16295">https://www.icai.org/post.html?post_id=16295</a>
7	XBRL Software	<a href="https://resource.cdn.icai.org/58289ccbmp47547.pdf">https://resource.cdn.icai.org/58289ccbmp47547.pdf</a>
8	GST Annual Returns (GSTR-9 & 9C) software	<a href="https://resource.cdn.icai.org/58288ccbmp47546.pdf">https://resource.cdn.icai.org/58288ccbmp47546.pdf</a>
9	LIC Group term Insurance for Members of ICAI	<a href="https://cmpbenefits.icai.org/lic-term-insurance/">https://cmpbenefits.icai.org/lic-term-insurance/</a>
10	Health Insurance for the Members of ICAI	<a href="https://cmpbenefits.icai.org/medical-insurance/">https://cmpbenefits.icai.org/medical-insurance/</a>
11	Motor Insurance for the Members of ICAI	<a href="https://cmpbenefits.icai.org/motor-Vehicle-Insurance/">https://cmpbenefits.icai.org/motor-Vehicle-Insurance/</a>
12	Professional Indemnity Insurance for the Members in Practice/CA Firms	<a href="https://cmpbenefits.icai.org/professional-Indemnity-Insurance/">https://cmpbenefits.icai.org/professional-Indemnity-Insurance/</a>
13	Personal Accident Insurance Policy	<a href="https://cmpbenefits.icai.org/personal-Accident-Insurance/">https://cmpbenefits.icai.org/personal-Accident-Insurance/</a>
14	House Holder Insurance policy for the Members of ICAI	<a href="https://cmpbenefits.icai.org/householders-insurance/">https://cmpbenefits.icai.org/householders-insurance/</a>
15	Unsecured Term Loan Facility for the Members of ICAI	<a href="https://cmpbenefits.icai.org/loan-facility/">https://cmpbenefits.icai.org/loan-facility/</a>



# Can Second Hand Goods Dealer Opt For Composition Scheme?



CA. Arpit Mehta

## **Introduction:**

Normally Value of supply of goods or services or both shall be **transaction value**; however, in respect of **second hand goods**, a person dealing in such goods may be **allowed** (option) to pay tax on the margin i.e. the difference between the value at which the goods are supplied and the price at which the goods are purchased. If there is no margin, no GST is charged for such supply. **The purpose of the scheme** is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply and the economic supply chain.

## **Legal Provisions:**

**Levy & Collection are discussed in Section 9 of CGST Act, 2017** As per Section 9(1) of the CGST Act, 2017, Subject to the provisions of sub-section (2), there shall be **levied a tax** called the central goods and services tax on all intra- State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, **on the value determined under section 15** and at such rates, not exceeding twenty percent, as may be notified by the Government on the recommendations of the Council and collected in **such manner as may be prescribed** and shall be paid by the taxable person.

**As Per Section 15(1) of the CGST Act, 2017**, Value of supply of goods or services or both shall be **transaction value**, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

**As Per Section 15(4) of the CGST Act, 2017**, where the value of the supply of goods or services or both cannot be determined under Section 15(1), the same shall be

determined in such manner as may be prescribed. **Valuations rules are prescribed** under Chapter IV of the CGST Rules, 2017 from Rule 27 to Rule 35.

## **Valuation of Second Hand Goods**

**As per Rule 32(5) of the CGST Rules, 2017**, 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.

## **Interpretation to the Margin Scheme Valuation**

**Rule 32(5)** flows from Sec. 15(4) which applies “**ONLY TO**” cases covered by Sec. 9 of the CGST Act, 2017.

## **Composition Levy – Section 10**

Section 10 of CGST Act, 2017 starts with a non-obstinate clause providing: “**Notwithstanding anything to the contrary contained in this Act** but subject to provision of sub sections (3) & (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh may opt to pay, **in lieu of the tax payable by him under section 9(1),\*\*** an amount calculated at such rate as may be prescribed, but not exceeding

**\*\* Amended vide CGST Amendment Act, 2018 Prior to CGST Amendment Act, 2018**, section 10(1) provided that composition tax was in “**lieu of tax payable by him.**”

*Hence one can argue that, composition dealer can pay tax on the basis of Rule 32(5) by opting margin Scheme.*

Notification No. 8/2017- central tax dated 27.06.2017

was amended by notification No. 1/2018 – central tax dated 01.01.2018 composition tax would be calculated as under:

(iii) Half Percent of **turnover of taxable supplies** of goods in the stat in case of other suppliers

**For the Purpose of Section 10**, neither value of taxable supplies has been specified for the purpose of payment of tax. **For this one may have to refer again** section 15 for the value of taxable supply which in turn again contradicts the above provisions.

**Analysis:** | Person dealing in Second hand goods cannot opt the composition scheme & pay tax on the value prescribe under Rule 32(5). As **Rule 32(5)** flows from Sec. 15(4) which applies “**ONLY TO**” cases covered by Sec. 9 of the CGST Act, 2017 **NOT** by Sec. 10.

| Merely similarity of Non availment of Input Tax Credit under Rule 32(5) & Section 10 doesn't make Taxable Registered person dealing in second hand goods liable to opt composition scheme

| Government must notify separate valuation rules for the composition scheme dealers.

## COMPLIANCE CHART NOVEMBER 2020

Return / Forms	Month/Year	Due Date/ Extended Date	Remark
GSTR 3B	Oct-20	20 November 2020	RP having ATO > Rs 5CR
		22 November 2020	For State of MP and South of MP
		24 November 2020	For States North of MP
GSTR 1	Oct-20	11 November 2020	RP having monthly filing of return
GSTR 5	Oct-20	20 November 2020	Non-Resident taxable person
GSTR 6	Oct-20	13 November 2020	ISD return
GSTR 7	Oct-20	10 November 2020	TDS return
GSTR 8	Oct-20	10 November 2020	TCS return
GSTR 2B	Oct-20	12 November 2020	Auto-populate data for Rule 36(4)

Nature of Compliance	Month/Year	Due Date/ Extended Date
Depositing of TDS/TCS	Oct-20	07 November 2020
Depositing Equalization levy	Oct-20	07 November 2020
Belated return of Income (A.Y. 2019-20)	Oct-20	30 November 2020
Revised return of Income (A.Y. 2019-20)	Oct-20	30 November 2020
Payment of PF Contribution	Oct-20	15 November 2020
Payment of ESI Contribution	Oct-20	15 November 2020



# Goals for Global Development

CA. Surinder Kumar Gujral



## Millennium Development Goals (MDGs) 2000-2015

The MDGs of United Nations during this period (2000-2015) have helped to shape the global development landscape and have brought significant changes and challenges. Since then the development landscape has changed significantly.

The six largest Middle Income Countries (MICs) now account for roughly the same share of global Gross Domestic Product (GDP) as the six largest high income countries. Inequality within many countries is on the rise. There is also a growing gap between the richest and poorest countries, with some of the poorest countries caught in a "poverty trap". Extreme poverty (defined as the number of people living on less than USD 1.25 a day) has declined sharply, from 52 % of the world's population in 1980 to 22 % in 2010, and a lower proportion today. Yet, 1.2 billion people still live in extreme poverty.

## Sustainable Development Goals (SDGs) 2016-2030

In September 2015 at a United Nations Summit, leaders from around the world adopted an ambitious global 2030 development agenda called the Sustainable Development Goals (SDGs), are They comprise 17 objectives (goals) and 169 targets, expanding the MDGs—which were targeted to be achieved by end-2015—for the period 2016-2030. The SDGs tackle the dual challenge of overcoming poverty and protecting the planet, setting out a comprehensive vision of sustainable development that embraces economic, social and environmental dimensions.

### The 17 Goals

These goals have the power to create a better world by year 2030, by ending poverty, fighting inequality and addressing the urgency of climate change. Guided by the goals, it is now up to all of us, governments, businesses, civil society and the general public to work together to build a better future for everyone.

## THESE GOALS ARE:

<b>Goal 1</b>	<b>No Poverty</b> End poverty in all its forms everywhere	<b>Eradicating poverty is not a task of charity, it is an act of justice and the key to unlocking an enormous human potential.</b> Sadly , nearly half of the world's population lives in poverty, and lack of food and clean water is ki lling thousands every day. Together, we can feed the hungry, wipe out disease and give everyone in the world a chance to prosper and live a productive and rich life.
---------------	--	---



"The only way to find true happiness is to risk being completely cut open."

<p><b>Goal 2</b></p>	<p><b>Zero Hunger</b> End hunger, achieve food security and improved nutrition and promote sustainable agriculture</p>	<p><b>Hunger is the leading cause of death in the world.</b> Our planet has provided us with tremendous resources, but unequal access and inefficient handling leaves millions of people malnourished. If we promote sustainable agriculture with modern technologies and fair distribution systems, we can sustain the whole world’s population and make sure that nobody will ever suffer from hunger again.</p>
<p><b>Goal 3</b></p>	<p><b>Good Health &amp; Well Being.</b> Ensure healthy lives and promote well-being for all at all ages</p>	<p><b>Over the last 15 years, the number of childhood deaths has been cut in half.</b> This proves that it is possible to win the fight against almost every disease. Still, we are spending an astonishing amount of money and resources on treating illnesses that are surprisingly easy to prevent. The new goal for worldwide Good Health promotes healthy lifestyles, preventive measures &amp; modern, efficient healthcare for everyone.</p>
<p><b>Goal 4</b></p>	<p><b>Quality Education</b> Ensure inclusive and equitable quality education &amp; promote lifelong learning opportunities for all</p>	<p><b>Education liberates the intellect, unlocks the imagination and is fundamental for self-respect.</b> <i>It is the key to prosperity and opens a world of opportunities, making it possible for each of us to contribute to a progressive, healthy society. Learning benefits every human being and should be available to all.</i></p>
<p><b>Goal 5</b></p>	<p><b>Gender Equality</b> Achieve gender equality and empower all women and girls</p>	<p><b>Gender bias is undermining our social fabric -&amp; devalues all of us.</b> It is not just a human rights issue; it is a tremendous waste of the world’s human potential. By denying women equal rights, we deny half the population a chance to live life at its fullest. Political, economic &amp; social equality for women will benefit all the world’s citizens. Together we can eradicate prejudice and work for equal rights and respect for all.</p>
<p><b>Goal 6</b></p>	<p><b>Clean Water &amp; Sanitation</b> Ensure availability and sustainable management</p>	<p><b>One in three people live without sanitation.</b> This is causing unnecessary disease and death. Although huge strides have been made with access to clean drinking water, lack of sanitation is undermining these advances. If we provide affordable equipment and education in hygiene practices, we can stop this</p>
<p><b>Goal 7</b></p>	<p><b>Affordable &amp; Clean Energy</b> Ensure access to affordable, reliable, sustainable and modern energy for all.</p>	<p><b>Renewable energy solutions are becoming cheaper, more reliable and more efficient every day.</b> Our current reliance on fossil fuels is unsustainable and harmful to the planet, which is why we have to change the way we produce and consume energy. Implementing these new energy solutions as fast as possible is essential to counter climate change, one of the biggest threats to our own survival.</p>
<p><b>Goal 8</b></p>	<p><b>Decent Work &amp; Economic Growth</b> Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.</p>	<p><b>Economic growth should be a positive force for the whole planet.</b> This is why we must make sure that financial progress creates decent and fulfilling jobs while not harming the environment. We must protect labour rights and once and for all put a stop to modern slavery and child labour. If we promote job creation with expanded access to banking and financial services, we can make sure that everybody gets the benefits of entrepreneurship and innovation.</p>

<b>Goal 9</b>	<b>Industry, Innovation and Infrastructure</b> Build resilient infrastructure, promote inclusive and sustainable industrialization & foster innovation	<b>A functioning and resilient infrastructure is the foundation of every successful community.</b> To meet future challenges, our industries and infrastructure must be upgraded. For this, we need to promote innovative sustainable technologies and ensure equal and universal access to information and financial markets. This will bring prosperity, create jobs and make sure that we build stable and prosperous societies across the globe.
<b>Goal 10</b>	<b>Reduced Inequalities</b> Reduce inequality within and among countries	<b>Too much of the world's wealth is held by a very small group of people.</b> This often leads to financial and social discrimination. In order for nations to flourish, equality and prosperity must be available to everyone -regardless of gender, race, religious beliefs or economic status. When every individual is self sufficient, the entire world prospers.
<b>Goal 11</b>	<b>Sustainable Cities &amp; Communities</b> Make cities and human settlements inclusive, safe, resilient and sustainable	<b>The world's population is constantly increasing.</b> To accommodate everyone, we need to build modern, sustainable cities. For all of us to survive and prosper, we need new, intelligent urban planning that creates safe, affordable and resilient cities with green and culturally inspiring living conditions.
<b>Goal 12</b>	<b>Responsible Consumption and Production</b> Ensure sustainable consumption & production patterns.	<b>Our planet has provided us with an abundance of natural resources.</b> But we have not utilized them responsibly and currently consume far beyond what our planet can provide. We must learn how to use and produce in sustainable ways that will reverse the harm that we have inflicted on the planet.
<b>Goal 13</b>	<b>Climate Action</b> Take urgent action to combat climate change and its impacts.	<b>Climate change is a real and undeniable threat to our entire civilization.</b> The effects are already visible and will be catastrophic unless we act now. Through education, innovation and adherence to our climate commitments, we can make the necessary changes to protect the planet. These changes also provide huge opportunities to modernize our infrastructure which will create new jobs and promote greater prosperity across the globe.
<b>Goal 14</b>	<b>Life below Water</b> Conserve and sustainably	<b>Healthy oceans and seas are essential to our existence.</b> They cover 70 % of our planet and we rely on them for food, energy



# CESS

## A BUSINESS EXPENDITURE?



CA. Aayush Garg

### EXORDIUM

In common parlance 'Cess' is a form of tax levied or collected by the Government for the development or welfare of a particular sector. Cess is different from normal tax collected by the Government such as IT, GST etc., as any normal tax collected by the Government goes into Consolidated Fund of India which can be allocated for any purposes. However, the Cess amount collected by the Government gets credited to a specific Cess Fund which cannot be used for or diverted to purposes other than for which it had been setup. Under the Direct Tax Laws in India, the concept of cess was introduced in the Finance Act, 2004, as "an additional surcharge" to finance the Government's commitment to universalize quality basic education, in the form of Education Cess at 2 % rate, which was subsequently increased to 3 % In the year 2018, this Education Cess was replaced with a Health and Education Cess, charged at the rate of 4 percent, to cater the needs of education and health of rural families.

Under the Income-Tax Act, 1961 (hereinafter for the sake of brevity referred to as "the Act"), a deduction from the taxable business income of a taxpayer is generally allowed for all business-related expenses, subject to certain exceptions. It is a well settled principle that 'Income-tax' paid by a taxpayer is a not an allowable business expenditure. However, whether the 'Income-tax' payable by the taxpayer also includes 'Cess' or does not include such 'Cess' has been a matter of continuous debate and discussions. For Taxpayers, the word Cess may immediately bring the discomfort of parting with a little more of their hard earned money. Being able to deduct the money spent on such cess from one's taxable business profits would surely sweeten the blow a bit.

### INTERPLAY OF SEC. 37(1) AND SEC. 40(a)(ii)

Under the scheme of the Act, it is the allowability of an

expenditure or an item or a claim, which has to be first examined under s. 37(1) of the Act. Sec. 40 of the Act starts with a non-obstante clause that not with standing anything to the contrary in sec. 30 to 38, certain amounts shall not be deducted in computing the income chargeable under the head 'Profit and Gains of Business or Profession'. The effect of this non-obstante clause is that the allowability of deduction under s. 40(a)(ii) shall be barred, if it is otherwise allowable under any of the provisions contained in sec. 30 to 38. In other words, only if Cess expenditure is found to satisfy the conditions of s. 37(1), then only a further examination is to be necessarily made whether the said Cess expenditure, is hit by the embargo placed under s. 40(a)(ii) of the Act.

### THE TEST OF ALLOWABILITY UNDER S. 37(1) OF THE ACT

As per provisions of s. 37(1) of the Act, any expenditure not being expenditure of the nature described in sec. 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

On a bare reading of the provisions of the aforesaid section, it is amply clear that the Cess is not an expenditure described under ss. 30 to 36 and it is also not a capital expenditure. As regard to the test of 'personal expenses' and incurrance of the subject Cess expenditure 'wholly and exclusively for the purposes of the business or profession', an assessee may very well argue that it is mandatory for him to pay Cess on the income earned to the Govt. & without incurring the said expenses, he cannot run his business. Thus, the expenditure of Cess is mandatory to be paid as per Law and consequently, it is incurred wholly and exclusively for the purposes of his business.

On the other hand, the Revenue Department may argue that the Cess is not an expenditure at all and it is just a charge upon profits, similar to Income-Tax. On the same lines, the Assessing Officer may treat Cess as an application of income and not an expenditure 'laid out or expended wholly and exclusively for the purposes of business or profession' and disregard the claim of the assessee.

#### **PROHIBITIONS UNDER S. 40(a)(ii)**

Coming to the proscriptions mentioned in section 40(a)(ii), the question to be asked here is whether the bar contained in s. 40(a)(ii) operates qua 'Health and Education Cess' or 'Education Cess' or 'Cess'.

Under s. 40(a)(ii) of the Act, any sum paid by an assessee on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains, shall not be deductible in computing the income chargeable under the head Profits and Gains of business or profession. On perusal of the above provisions, it is noteworthy that any sum paid on account of any rate or tax is disallowed under s. 40(a)(ii) of the Act. However, neither the word 'Cess' nor the words 'Education Cess' or 'Health & Education Cess' are covered by sec. 40(a)(ii) of the Act and the word 'Cess' is conspicuously absent under such section. Further, "Cess" cannot be treated at par with any "rate or tax" under the scheme of the law, as unlike Income-Tax and surcharge, Education Cess/Health and Education Cess cannot be used for any generic purpose. One can very well find the demarcation between 'Income-Tax' and 'Cess' within the Income-Tax Act itself. Under s. 115JB of the Act, which talks about taxing the companies on the basis of their book profits, under one of the Explanations, it has been clearly mentioned that the amount of income-tax shall include Education Cess/Secondary and Higher Education Cess on Income-Tax. If it would have been the intention of the law to treat 'Cess' as a part of the 'Income-Tax' in common parlance, no such special inclusion of the words Education Cess/Secondary and Higher Education Cess was required. Further, the special inclusion of these words shows the specific intention of the legislature to

disallow cess while computing the book profits, while no such special inclusion has been made under s. 40(a)(ii) of the Act, which goes in the favour of the assessee that the law does not intend to disallow Cess under s. 40(a)(ii). It is a well settled law that the language used by the legislature best declares its intention and must be accepted as decisive of it.

#### **CBDT'S CIRCULAR**

To avoid litigation on this sublime issue, the CBDT vide one circular bearing F. NO. 91/58/66-ITJ(19), dated 18-05-1967, had clarified that at the time of introduction of the Income-Tax Bill, 1961 in the Parliament, the word 'Cess' was included in clause 40(a)(ii), but, later at the time of passing of the Bill, the word 'Cess' was deliberately omitted under s. 40(a)(ii) by the Select Committee. The result of such exclusion was that only 'taxes' paid were to be disallowed in the assessments for the years 1962-63 onwards and not the 'cess'. It is worth noting here that a circular issued by the CBDT is binding on tax authorities, more so when the circular confers some benefit upon the taxpayers.

#### **JUDICIAL PRONOUNCEMENTS**

Recently, the Bombay High Court in the case of Sesa Goa Limited vs. JCIT [2020] 117 taxmann.com 96 (Bombay) has held that education cess is an allowable expenditure as the word 'cess' is absent under the provisions of s. 40(a)(ii) of the Income-Tax Act, 1961. The Bombay High Court had also discussed that under the Income-Tax Act, 1922, section 10(4) had banned allowance of any sum paid on account of 'any cess, rate or tax levied on the profits or gains of any business or profession'. However, in the corresponding section 40(a)(ii) of the Income-Tax Act, 1961, the word 'cess' is absent. The High Court has held that though the cess may be collected as part of income tax but that does not render such cess as either 'rate or tax' which cannot be deducted in terms of provision of s. 40(a)(ii) of the Act. The High Court has also discussed the above referred CBDT Circular in assessee's favour. The Division Bench of the Rajasthan High Court (Jaipur Bench) in Income-Tax Appeal No. 52/2018 in the case of Chambal Fertilizers and Chemicals Ltd. vs. CIT has held that the ITAT erred in holding that education cess is a disallowable expenditure under s. 40(a)(ii) of the

Act. Further, ITAT Calcutta in the case of DCIT vs. Peerless General Finance and Investment and Co. Ltd. (ITA No. 1469 and 1470/Kol/2019), ITAT Pune in the case of DCIT vs. Bajaj Allianz General Insurance (ITA No. 1111 and 1112/PUN/2017) and ITAT Delhi in the case of Thomson Press India Ltd. vs. ACIT Special Range-9, New Delhi (ITA No. 2561/Del/2017) has very well allowed the claim of the appellant of the cess amount as business expenditure.

At present, there is another school of thought that the judgments in the case of Sesa Goa Ltd. and Chambal Fertilizer (supra), may not have been correctly decided by the respective High Courts. It may be noticed that in both the decisions, the High Courts have not examined the allowability of cess in terms of provisions of s. 37(1) at all, and have only examined the question as to whether the education cess is included in section 40(a)(ii) of the Act or not. Further, the High Courts have not discussed and differentiated the facts of the cases with the judgment of the Hon'ble Apex Court in the case of CIT vs. K. Srinivasan [1972] 83 ITR 346. In the case of K.Srinivasan (supra), it was held that an 'additional surcharge' is nothing but tax and in the Explanatory Memorandum to the Finance Bill 2004, education cess was introduced as an additional surcharge only.

## EPILOGUE

The above referred judgments of the Bombay High Court and Rajasthan High Court have sparked a new polemic in tax law with reference to deductibility of education cess as business expenditure. With the Revenue gearing up to assail the case of Sesa Goa (supra) before the Apex Court, the taxpayers are in the process of claiming the deduction of cess by filing additional grounds before the judicial forums or by revising their returns of income. On one hand, the specific exclusion of the word 'Cess' from section 40(a)(ii), CBDT's Circular and the favorable decisions of High Court strengthens the claim of the taxpayers, while on the other hand, the Revenue Department may attempt to blur the line of distinction between cess and tax on the ground that the term 'tax' is very wide in concept & subject to different interpretations under different circumstances. Thus, in the present scenario, business houses and we professionals too, will have to stay updated on the rapidly emergent tax reforms and should be preemptive while implementing the tax strategies with regard to the subject issue.

# EDITORIAL BOARD



CA. Priyank Rana



CA. Vinay Manchanda



CA. Aayush Zanzari



CA. Sourabh Agrawal



CA. Yash Khandelwal



CA. Aayush Garg



CA. Mayank Ghatia



CA. Ena Kansal



CA. Urvashi Agrawal



CA. Guneet Khurana



CA. Anuradha Jain



CA. Swati Jain



CA. Priyanshi Sikchi



CA. Shreya Kedia



## Yeh Diwali - Sabki Diwali

Donation of Blankets and Food Items in association with FICCI FLO Robin Hood Army & Radio Mirchi



Members taking integrity pledge during Vigilance Awareness Week in presence of **Shri R.R. Goyal** (Operation Head - Patrika Newspaper)



**Editorial Board Meeting**

# आओ दीप जलाएँ

अंतरमन में उजास के लीये  
घोर अंधेरों में प्रकाश के लीये  
सुख-समृद्धि की आस के लीये

दीपोत्सव की अग्रिम  
शुभकामनाएँ



Registered with the Registrar of Newspaper for India under No. MPBIL 01231/12/1/2008-TC

Printed Book-Post  
ICAI, Indore News Letter  
To,

Printed & Published by **CA. Harsh Firoda**, Chairman on behalf of the Indore Branch of Central India Regional Council of The Institute of Chartered Accountants of India, Plot No. 19-B, CA. Street Scheme No. 78, Part-II, Indore (M.P.) and designed at **Profiles**, 639, Sneha Nagar, Indore - 452 001 Ph.: 94250 64293, 0731 - 4061632 and published from Indore.

If undelivered please return to :  
**INDORE BRANCH OF CIRC OF ICAI**  
19-B, CA. Street, Scheme No. 78, Part-II,  
Indore (M.P.) Tel. : 0731-2570052-53, 4298198  
Mail : [indore@icai.org](mailto:indore@icai.org) [www.indore-icai.org](http://www.indore-icai.org)

Disclaimer - The views expressed in the articles or contents published in news letter do not necessarily represent the views of office bears the approval of the Council of the ICAI or any of its Committees or the concerned Regional office or its Committees or Branch Managing Committee or Committees.