ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

DTPA-J

Direct Taxes Professionals' Association Journal

Volume 2 - 2017-18 | April 2018

BUDGET SEMINAR 2018

NEW BENAMI LAW & ITS INTERPLAY WITH INCOME TAX

Cricket Match with IRS Association at Sambaran Banerjee Cricket Academy

EXECUTIVE COMMITTEE 2017 - 18

OFFICE BEARERS

Mr. Ramesh Kumar Chokhani
President

Mr. Kamal Bagrodia
Immediate Past President

Mr. Vikash Parakh
Sr. Vice President

Mr. N. K. Goyal
Vice President

Mr. P. D. Rungta
General Secretary

Mr. D. S. Agarwala
Joint Secretary

Ms. Barkha Agarwal
Treasurer

COMMITTEE MEMBERS

- Mr. Mahendra Agarwal
- Mr. Ajit Kr. Tulsian
- Mr. Niraj Harodia
- Mr. Kamal Kr. Jain
- Mr. Sanjay Poddar
- Mr. Ravi Tulsiyan
- Mr. Pankaj Verma
- Mr. Ritesh Vimal
- Mr. Binay Singhania
- Mr. Kedar Nath Gupta
- Mr. Shyam Agarwal
- Ms. Manju Lata Shukla
- Mr. Ashish Rustagi
- Mr. Ajay Mitruka

PAST PRESIDENTS

- Mr. K. C. JAIN
- Mr. R. N. Bhaduri
- Mr. N. P. Jain
- Mr. J. R. Bhadani
- Mr. V. K. Singhania
- Mr. Indu Chatrath
- Mr. R. D. Kakra
- Mr. Pawan Agarwal
- Mr. Raja Ram Chowdhary
- Mr. D. N. Agrawa
- Mr. P. K. Agarwalla
- Mr. S. D. Verma
- Mr. M. C. Jagwayan
- Mr. B. L. Kheria
- Mr. R. N. Rustagi
- Mr. A. K. Tibrewal
- Mr. Santosh Kulthia
- Ms. Nilima Joshi
- Mr. P. R. Kothari
- Mr. Arvind Agrawal
- Mr. Sajjan Kr. Sultania
- Mr. Sanjay Bajoria
- Mr. Subash Agarwal
- Mr. Aghor Kr. Dudhwewala
- Mr. Bishnu Kr. Loharuka
- Mr. P. K. Himmatsinghka
- Mr. Paras Kochar
- Mr. Kashi Prasad Khandelwal
- Mr. Sunil Surana

SUB COMMITTEES 2017 - 18

NAME OF SUB CIMMITTEE	CHAIRMAN	CO-CHAIRMAN
STUDY CIRCLE	**Mrs. Nilima Joshi** (Convenor)	**Mr. Niraj Harodia** (Dy. Convenor)
GROUP DISCUSSION	Mr. Sanjay Bajoria	Mr. K. N. Gupta
JOURNAL & PUBLICATION	Mr. Mahendra Agarwal	Mr. Ritesh Vimal
INFORMATION TECHNOLOGY	Mr. Binay Singhania	Mr. Shyam Agarwal
CORPORATE & ALLIED LAWS	Mr. K. P. Khandelwal	Mr. N. K. Goyal
MEMBERSHIP	Mr. P. K. Himmatsinghka	Mr. Pankaj Kumar Verma
DIRECT TAX	Mr. Anand Tibrewal	Ms. Manju Lata Shukla
INDIRECT TAX	Mr. Vikash Parekh	Mr. D. S. Agarwal
LIBRARY CUM CONFERENCE ROOM	Mr. M. C. Jagwayan	Mr. Kamal Jain
FELLOWSHIP	Mr. Aghor Dudhwewala	Mr. Ashish Rustagi
RESIDENTIAL SEMINAR	Mr. D. N. Agarwal	Mr. Ajit Tulsyan
INCOME TAX DEPT. CO-ORDINATION	Mr. Sajjan Sultania	Mr. Paras Kochar
ITAT CO-ORDINATION	Mr. Subash Agarwal	Mr. Sunil Surana
INTERNATIONAL SEMINARS	Mr. Arvind Agarwal	Mr. Ravi Tulsyan
PUBLIC RELATION COMMITTE	Mr. Pawan Agarwal	Mr. Sanjay Poddar

DTPA Journal & Publication Sub Committee 2017 - 18

Mr. Mahendra K. Agarwal
Chairman

Mr. Ritesh Vimal
Co-Chairman

Mr. Ravi Verma
Nominated Member

Ms. Aditi Jhujhunwala
Nominated Member

Ex-Officio

Mr. Ramesh Kumar Chokhani
President

Mr. P. D. Rungta
General Secretary

INDEX

EDITORIAL

Dear Friends

It gives me immense pleasure to come back to you with this edition of our reverred DTPA Journal, which introspects the Union Budget 2018 in detail.

Friends' as is well known to you, the Union Budget 2018 was presented amidst immense concern regarding subdued economic growth, difficult fiscal situation & distress in many sectors of the economy. The GDP growth rate had plummetted to 6.75%, low by any standard, because economy was unable to bear the onslaught of Demonetisation & GST. Shifting of real interest trend rates affected investment activities causing currency appreciation which in turn had adverse effect on export activities. Rise in Crude Oil prices also complicated the situation.

Needless to say, our economy thrives on prosperity of its 3 core foundations - Agriculture, Rural Economy & Infrastructure. Mr. Arun Jaitley, Hon'ble Union Finance Minister in order to boost the key sectors & fast track country's progress has made several proposalf in the Union Budget, 2018, which are expected to enhance the growth momentum post implementation of crucial reforms in the form of GST & Demonetisation.

Some of the key features of the Budget are as below :

- Long-term Capital Gains exceeding Rs.1 lakh will henceforth be taxed at 10%, without covering indexation.
- To ensure increased transparency and efficiency, an electronic IT assessment is expected to spread out across India.
- There has been a 20% increase in the Custom Duty levied on mobile phones and 15% on parts of televisions.
- There has been an increase in the cess levied on education and health. It has now surged to 4%.
- The exemption limit on bank deposits pertaining to senior citizens has gone up to Rs. 50,000.
- Mr. Arun Jaitley has proposed to institute a 10% tax on the Distributed Income earned through equity-specific Mutual Funds.
- Salaried individuals henceforth will have to withstand a deduction of Rs. 40,000 pertaining to expenses in the areas of medicine and transportation.
- If your company has an annual turnover of Rs. 250 crore, you will have to pay a 25% tax on the same.
- There has been no changes in the Income Tax slab rates. All individuals are to comply with the existing slab rates.
- Mr. Arun Jaitley has proposed a fiscal deficit of 3.3% pertaining to the country's GDP for FY 2018-19.
- An EPF contribution of 12% is to be rolled out to all new employees in all sectors.

As have been mentioed earlier this years budget primarily emphasises rural development by giving sops to agriculture, horticulture, self-employment in the rural sector. Development of rural infrastructure is also one of the focus areas.

The Government has initiated the Bank Recapitalisation Programme by issuing bonds of Rs. 80,000 crore this year.

Our country is certainly embracing emerging technologies well with the resolution to explore the use of blockchain for payments. These initiatives will propel India into the league of innovation.

However all is not well. It fails in terms of macroeconomic & fiscal management.

The Budget largely fails to provide any boost to the most critical area of generating employment. ILO estimates number of unemployed at 18 million, while the reality is that the number is much more. It does not take into account disguised & seasonal unemployment. The fund allocated for skill development is inadequate considering the magnitude of the problem. The allocated amount is Rs. 5000 Crores, which tantamount to Rs. 80 per person of the workforce.

In respect of the Health Insurance Schemes too, budgetary allocation vis-à-vis potential beneficiaries also work out to be inadequate.

The Corporate Sector also desires greater focus on tax-simplification, tax relief so as to encourage private investment. Not much might have been said in terms of words but the downward swing in the Sensex following the budget indicated the sentiment.

The defense allocation also needs a relook, as the increase in allocation in real terms is small.

The current Journal of DTPA published delves on the relevant issues & hopes to enhance the debating mind of our already enlightened Members.

The current Issue is no exception. We are very much thankful to the writers who have spared their precious time through contributions for the magazine. We hope readers find this useful and we welcome suggestions for inclusion in future reviews.

CA. Mahendra K. Agarwal
Chairman DTPA Journal Committee
30th April, 2018

FROM THE DESK OF THE PRESIDENT

My Dear Professional Colleagues,

I am really happy and honored to address you all through my Message. Through this Journal, I bring to you the evolution of our Association in its current form, where we are and where we wish to go. I believe in creating examples and I assure you that we through our efforts have left no stones unturned in the progress of our Association and enriching the professional knowledge of our members. Our Association today has uplifted its image through various modes of its presence and is further taking it to new heights with each passing day.

Since the day from which I was given the responsibility as the President till date, numerous Study Circle Meetings, Seminars and Conferences have been held in our DTPA Conference Hall & in various established places like BCCI, Rotary Sadan, Mahajati Sadan etc. by eminent speakers from all over India which witnessed a huge participation by our Members. Moreover, a four days Residential Seminar at Shillong had been organized in the month of February. Our Association has organized DTPA Annual picnic on 28th of January, 2018 which was well attented by our members. Our Association welcomed Smt. Seema Khorana Patra, Pr. CCIT - West Bengal & Sikkim, on the 9th day of February, 2018 at Aayakar Bhawan, Kolkata and had also welcomed Shri Arvind Singh, Pr. Chief Commissioner - CGST & CX, on 13th day of February, 2018. Our Association has organised the Live Telecast on Union Budget at the DTPA Conference Hall on 1st of February, 2018 along with a Seminar on Union Budget 2018 by Advocate N. K. Poddar, CA S. Venkatrameni at Mahajati Sadan on 2nd day of February, 2018.

I'm very proud to say that our association is one of the largest of it's kind in the Eastern Region with more than 1650 Members. I'm glad to inform you all that last year we introduced Life Member's card and we have issued approx 263 Life Member's cards to our members till date which are authorized by the Income Tax authority for entering into the Income Tax Building.

As we all know behind every successful man there is a woman but behind every successful woman there is a tribe of other successful women holding her back. With this we should all focus more towards Women empowerment and their achievements regardless of their nationality, ethnicity, cultural or political backgrounds and celebrate all the women who are in our lives.

March being the last month of the financial year, brings joy in our lives by taking stock of activities of past one year and celebrating festivals like Holi, Mahavir Jayanti, Good Friday, Gudi Padava and Nowruz and welcoming the new financial year as well. I pray the almighty to fill our life with growth, happiness and achievements in the coming year.

By the time this edition of the Journal reaches you the exams of CA IPC and Finals have got over. I take this opportunity to wish every student for better results.

Please feel free to write to me at rkchokhani@yahoo.com

We from DTPA wish you an Enjoyable and Successful Life ahead!

With warm regards,

CA Ramesh Kumar Chokhani
President-DTPA
30th April, 2018

A journey through certain Apex Court's decisions on reassessment proceedings

P.R. Kothari, FCA

Introduction :

Considering a big spurt recently in reopening of assessments under section 147 read with section 148 of Income tax Act, 1961, it is high time to refresh the memory of relevant aspects of important Supreme Court decisions which are law of land on the subject. In this article, decisions which were rendered in respect of provisions of section 147/148 prevailing since 01.04.1989 have been compiled.

1

ITO Vs. Tech Span (India) P. Ltd.

(2018) 92 taxmann.com 361(SC)

The power of reopening u/s 147 is conditional upon A/O having 'reason to believe' about escapement of income from assessment. The liberal interpretation of 'reason to believe' would result in conferring arbitrary powers on A/O to initiate reassessment proceeding merely on 'change of opinion' on the basis of same facts and circumstances which have already been considered during original assessment proceedings. Section 147 proceedings are not triggered merely because of change of opinion by A/O regarding interpretation of law differently on the facts that were well within A/O's knowledge at the time of original assessment. Doing so would have the effect of giving the A/O the power of review whereas section 147 provides the power to reassess and not the power to review.

The word 'change of opinion' implies formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formation of belief by A/O resulting from his thinking on particular question. It is a result of understanding, experience and reflection. However, before rejecting reopening of assessment on the ground of only change of opinion, it has to be verified whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on the issue being subject matter of reassessment. If the asst. order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute any opinion to the A/O on the question raised in reassessment proceedings. Change of opinion cannot be assumed even in cases where the original asst. order does not address itself to an aspect sought to be examined in the reassessment proceedings.

In the instant case, reassessment proceedings were initiated on the ground of excess allowance of deduction u/s 10A on account of non-maintenance of separate books of accounts for software development business and human resources development business for which separate income were declared. However, notice issued in original asst. proceedings makes it clear that issue which is subject matter of reassessment proceedings was well considered in the original proceedings. In view of this, initiation of reassessment proceedings was based on nothing but change of opinion on same facts and circumstances which were already in A/O's knowledge even during original assessment proceedings.

By reading this judgement as a whole, it can be inferred that if there is any evidence of formation of an opinion original assmt. proceedings even by necessary implication that is by issue of show cause notice/receipt of reply by the assessee and even if not by an express discussion in the asst. order on the issue subjected to reassessment proceedings, the reopening of assessment on same issue would amount to 'change of opinion' and reassessment proceedings would not be justified.

2

Sky Light Hospitality LLP Vs. ACIT

(2018) 92 taxmann.com 93 (SC)

Reassessment notice issued in the name of erstwhile Private Limited Co. despite same being non-existing due to conversion into LLP, does not invalidate reassessment proceedings as name of erstwhile Pvt. Ltd. Co. given in the notice was merely a clerical error **considering the peculiar facts of the case** and such error could be corrected under section 292B of Income tax Act.

3

Girilal & Co. Vs. ITO

(2016) 387 ITR 122 (SC)

During original assessment proceedings, value of subject plot land was disclosed by assessee in support of which a report of registered valuer was also annexed to letter disclosing the value of land. The size of subject plot of land was mentioned in said Regd. Valuer's report. The Court held that it cannot be said that there was a true disclosure of size of plot of land in original asst. proceeding as A/O is not expected to go through the said information available in the valuation report for ascertaining actual size of plot of land. Held that, it cannot be said that there was no reason to believe. The required information was in annexure and reassessment would be valid in view of Explanation 2(c)(iv) of section 147.

4

DCIT Vs. Simplex Concrete Piles (India) Ltd.

(2012) 358 ITR 129 (SC)

When the original assessment was completed relying on the law as declared by judgement of jurisdictional High Court which view was subsequently reversed by Supreme Court judgement, the reopening of assessment on the basis of subsequent Supreme Court judgement would not be justified as the original assessment stood closed on the basis of law as it stood at the relevant time.

5

ACIT Vs. ICICI Securities Primary Dealership Ltd.

(2012) 348 ITR 299 (SC)

In original assessment proceedings, assessee disclosed full details about its loss in dealing in stocks and shares which was claimed and assessed as business loss. On mere re-look of such details, initiation of reassessment proceedings to treat said loss as speculation loss is clearly a change of opinion and reopening was not justified.

6

CIT Vs. Kelvinator of India Ltd.

(2010) 320 ITR 561 (SC)

A schematic interpretation to the words 'reason to believe' is required. Otherwise section 147 would give arbitrary powers to A/O to reopen assessments merely on 'change of opinion', which cannot be per re reason to reopen. The conceptual difference between power to review and power to reassess is also to be kept in mind. A/O has no power to review but has power to reassess. Such power to reassess is subject to fulfillment of certain preconditions and if the concept of 'change of opinion' is removed then in the garb of reassessment, review would take place. Thus, concept of 'change of opinion' is in-

built check against any abuse of power by A/O. Hence after 01.04.1989, A/O has power to reopen provided there is tangible material to show escapement of income from assessment.

7

ACIT Vs. Dhariya Construction Co.

(2010) 328 ITR 515 (SC)

Mere opinion of District Valuation Officer(DVO) per se is not sufficient for seeking reopening of assessment. The Assessing Officer is required to apply his mind to the information/ opinion received or collected and must form his own belief about escapement of income.

8

ACIT Vs. Rajesh Jhaveri Stock Brokers (P) Ltd.

(2007) 291 ITR 500 (SC)

In view of the conceptual difference between section 143(1) and section 143(3) of Act, A/O is free to initiate proceedings under section 147 provided ingredients of that section are fulfilled. Failure to assess under section 143(3) would not come in the way of initiation of reassessment proceedings even when only intimation u/s 143(1) had been issued.

9

GKN Driveshafts (India) Ltd. Vs. ITO

(2003) 259 ITR 19 (SC)

When a notice u/s 148 of Income tax Act is issued, the proper course of action for noticee is to file return and he may choose to seek reasons for issuing notice. The A/O shall be bound to furnish reasons within a reasonable time. On receipt of reasons, noticee is entitled to file objections to issue of notice and A/O is bound to dispose of the same by a speaking order. As reasons have been disclosed in the instant case, A/O has to dispose o the objections, if filed, by passing a speaking order before going ahead with the reassessment.

In absence of any specific time frame for the actions mandated by this judgement and also in absence of any guidelines by CBDT in this regard, no standard time lines are in vogue. The Gujarat High Court in the case of Shahkari Khand Udyog Mandal Ltd. Vs. ACIT (2015) 370 ITR 107 (Gujarat)/ (2014) 46 taxmann.com 69 (Gujarat) directed as under :

" (1) Once the Assessing Officer serves to an assessee a notice of reopening of assessment under section 148 of the Income-tax Act, 1961 and within the time permitted in such notice, the assessee files his return of income in response to such notice, the Assessing Officer shall supply the reasons recorded by him for issuing such notice **within 30 days of the filing of the return by the assessee** without waiting for the assessee to demand such reasons.

(2) Once the assessee receives such reasons, he would be expected to raise his objections, if he so desires, **within 60 days of receipt of such reasons.**

(3) If objections are received by the Assessing Officer from the assessee within the time permitted hereinabove, the Assessing Officer would dispose of the objections, as far as possible, **within four months of date of receipt of the objections filed by the assessee.**

(4) This is being done in order to ensure that sufficient time is available with the Assessing Officer to frame the assessment after carrying out proper scrutiny. The requirement and the time-frame for supplying the reasons without being demanded by the assessee would be applicable only if the assessee files his return of income within the period permitted in the notice for reopening. Likewise the time frame for the Assessing Officer to dispose of the objections would apply only if the assessee raises objections within the time provided hereinabove. This, however, would not mean that if in either case, the assessee misses the time limit, the procedure provided by the Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) would not apply. It only means that the time frame provided hereinabove would not apply in such cases.

(5) In the communication supplying the reasons recorded by the Assessing Officer, he shall intimate to the assessee that he is expected to raise the objections within 60 days of receipt of the reasons and shall reproduce the directions contained in sub-paragraphs 1 to 4 hereinabove giving reference to this judgment of the High Court.

(6) The Chief Commissioner of Income-tax and the Cadre Controlling Authority of the Gujarat State, shall issue a circular to all the Assessing Officers for scrupulously carrying out the directions contained in this judgment. "

The adherence to time frame suggested by aforesaid Gujarat High Court judgement may cause practical difficulties in view of reduced time limits for completion of reassessment proceedings. It would be very ideal situation, if CBDT itself frames guidelines in this regard considering all aspects in mind including spirit of judgement of Hon'ble Apex Court in GKN Drive Shafts case.

Conclusion :

In view of lot of controversies and lot of judgements sometimes conflicting ones also, one can at least be sure of the latest position of law propounded by the Highest Court of the land which is binding on assessee and revenue both as the said position prevails until reversed by larger bench of Apex Court or by the legislation.

Reintroduction of Capital Gains Tax on Equity Share, Unit of an Equity Fund and A Unit of A Business Trust Etc.

N. M. Ranka
Senior Advocate

With a view to boost share and stock market, to give phillip to the industrial revolution, Section 10(38) was inserted with effect from 01.04.2005 providing for total exemption from capital gain on transfer of a long term asset being an equity share etc., if such transaction is chargeable to securities transaction tax, transacted through recognized stock exchange and on fulfilling other conditions. A fairly large number of unscrupulous assessees indulged in shedy deals through shell companies, understated purchase price, over-stated sale consideration (unreal) and sought and get exemption from long term capital gain. More than two lakh such companies were detected and closed, resulting in assessment / re-assessment with tax, penalty, interest and some prosecutions. To curb this menace and to put a stop to such abusive act, to check revenue loss, to discourage diversion of investment in financial assets, the Finance Act, 2018 reintroduced the capital gains tax on transfers on and after the 1st day of April, 2018, by insertion of fourth proviso to the said Section along with other relevant and consequential amendments. It would be operative for and from the assessment year 2019-20.

A new section 112A in the Act has been introduced to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, shall be taxed at 10 per cent of such capital gains exceeding one lakh rupees. It will be applicable to such long term capital gains, if (i) in a case where long term capital asset is in the nature of an equity share in a company, securities transaction tax has been paid on both acquisition and transfer of such capital asset; and (ii) in a case where long term capital asset is in the nature of a unit of an equity oriented frund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset.

Further, sub-section (4) of the new section 112A empowers the Central Government to specify by notification the nature of acquisitions in respect of which the requirement of payment of securities transaction tax shall not apply in the case of equity share in a company. Similarly, the requirement of payment of STT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust shall not apply if the transfer is undertaken on recognized stock exchange located in any International Finance Services Centre (IFSC) and the consideration of such transfer is received or receivable in foreign currency.

It has also been provided : (i) The long term capital gains will be computed without giving effect to the first and second provisos to section 48, i.e., inflation indexation in respect of cost of acquisitions and cost of improvement, if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed. (ii) The cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of - (a) the actual cost of acquisition of such asset; and (b) the lower of - (I) the fair market value of such asset; and (II) the full value of consideration received or accruing as a result of the transfer of the capital asset.

(iii) "equity oriented fund" has been defined to mean a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and - (a) In a case where the fund invests in the units of another fund which is traded on a recognized stock exchange, - (I) A minimum of 90 per cent of the total proceeds of such funds is invested in the units of such other fund; and (II) such other fund also invests a minimum of 90 per cent. of its total proceeds in the equity shares of domestic companies listed on recognized stock exchange; and (b) in any other case, a minimum of 65 per cent, of the total proceeds of such fund is invested in the equity shares of domestic companies listed on recognized stock exchange.

(iv) Fair market value has been defined to mean - (a) in a case where the capital asset is listed on any recognized stock exchange, the highest price of the capital asset quoted on such exchange on the 31st day of January, 2018. However, where there is no trading in such asset on such exchange on the 31st day of January, 2018, the highest price of such asset on such exchange on a date immediately preceding the 31st day of January, 2018 when such asset was traded on such exchange shall be the fair market value; and (b) in a case where the capital asset is a unit and is not listed on recognized stock exchange, the net asset value of such asset as on the 31st day of January, 2018.

(v) The benefit of deduction under chapter VI-A shall be allowed from the gross total income as reduced by such capital gains. Similarly, the rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains. Section 54EC has been amended, whereby the investment has been restricted on 'long term capital asset being land or building or both' meaning thereby not on shares etc. In Section 55 in sub-section (2) after (ab) new clause (ac) has been inserted for working cost of acquisition, fair market value, Cost Inflation Index recognized stock exchange etc.

The scheme of taxation and rate of tax, after exemptions, deductions and allowances is just fair, reasonable and minimum. It is high time that the tax payers are advised to develop **'culture to pay due taxes'**. It is bounden duty of we tax advisers / planners to keep the tax payers on right side and build them **'to follow the law'** – not '**break the law**'. Coming years would not be peaceful for tax evaders as the jungle of strong tax laws have been created and the tax administration is well equipped like 'Inland Revenue in United States'. Tax payers and tax administrators are partners in "Building the Nation". Must 'Respect' each other and not 'Suspect'.

Current status of Top 12 Companies as listed by RBI under Insolvency and Bankruptcy Code

CA Binay Kumar Singhania

Ten months after the first NPA giants list was declared by the Reserve Bank of India, Insolvency and Bankruptcy Code, 2016 has approved its efficiency as Resolution plan has already been successfully passed by NCLT in one of the 12 companies, whereas other companies are now in the final stages of resolution.

On 17th April, 2018, National Company Law Tribunal, Kolkata Bench approved the Resolution plan submitted by the Vedanta Limited for Electrosteel Steels Limited, and the committee of creditors of Bhushan Steels have already approved Tata Steels plan for resolution. Most of the other companies are having their biddings done for completing the resolution process.

Under the Insolvency and Bankruptcy Code, a corporate insolvency resolution process must be completed within 270 days (on getting extension of 90 days) of admission of a case. A CIRP is considered complete when the committee of creditors and the NCLT both approve of a resolution plan.

Current Status of the 10 of these NPA giants are as follows:-

Electrosteel Steels Limited

Electrosteel Steels was originally incorporated as Electrosteel Integrated Limited on December 20, 2006 as a public limited company. In the year 2010, Electrosteel Integrated was renamed as "Electrosteel Steels Limited". The company dealt in manufacturing of DI and CI spun pipes.

Upon an application being made under Section 7 of the code by the financial creditor, State Bank of India, the CIRP was initiated against Electrosteel Steels on 21st of July, 2017. SBI stated in its petition that the defaulted amount including principle and interest was Rs.923.75 Cr against facility 1, Rs.262.15 against facility 2, Rs.218.25 Cr against facility 3, therefore making the total outstanding default Rs.1404.15 Cr.

Mr.DhaivatAnjaria, insolvency professional was appointed as the Resolution Professional for Electriosteel Steels Limited.The total quantum of claim admitted under the resolution process was Rs.13,958.69 Cr. which included Rs.13,175.15 Cr. due to financial creditors, Rs.783.41 due to operational creditor excluding Employees and Workmen and Rs.0.13 Cr. due to Employees and Workmen.

Sr No.	Category of Creditor	No. of Claims	Amount Claimed	Amount Admitted
1	Financial Creditor	26	13,581.88	13,175.15
2	Operational Creditor (Excluding : Employees and Workmen)	815	1,688.40	783.41
3	Operational Creditor :Employees and Workmen	31	0.24	0.13
Total Quantum of Claim			**15,270.52**	**13,958.69**

Ten months after the first NPA giants list was declared by the Reserve Bank of India, Insolvency and Bankruptcy Code, 2016 has approved its efficiency as Resolution plan has already been successfully passed by NCLT in one of the 12 companies, whereas other companies are now in the final stages of resolution.

On 17th April, 2018, National Company Law Tribunal, Kolkata Bench approved the Resolution plan submitted by the Vedanta Limited for Electrosteel Steels Limited, and the committee of creditors of Bhushan Steels have already approved Tata Steels plan for resolution. Most of the other companies are having their biddings done for completing the resolution process.

Under the Insolvency and Bankruptcy Code, a corporate insolvency resolution process must be completed within 270 days (on getting extension of 90 days) of admission of a case. A CIRP is considered complete when the committee of creditors and the NCLT both approve of a resolution plan.

Current Status of the 10 of these NPA giants are as follows:-

Electrosteel Steels Limited

Electrosteel Steels was originally incorporated as Electrosteel Integrated Limited on December 20, 2006 as a public limited company. In the year 2010, Electrosteel Integrated was renamed as "Electrosteel Steels Limited". The company dealt in manufacturing of DI and CI spun pipes.

Upon an application being made under Section 7 of the code by the financial creditor, State Bank of India, the CIRP was initiated against Electrosteel Steels on 21st of July, 2017. SBI stated in its petition that the defaulted amount including principle and interest was Rs.923.75 Cr against facility 1, Rs.262.15 against facility 2, Rs.218.25 Cr against facility 3, therefore making the total outstanding default Rs.1404.15 Cr.

Mr.DhaivatAnjaria, insolvency professional was appointed as the Resolution Professional for Electriosteel Steels Limited.The total quantum of claim admitted under the resolution process was Rs.13,958.69 Cr. which included Rs.13,175.15 Cr. due to financial creditors, Rs.783.41 due to operational creditor excluding Employees and Workmen and Rs.0.13 Cr. due to Employees and Workmen.

Sr No.	Category of Creditor	No. of Claims	Amount Claimed	Amount Admitted
1	Financial Creditor	54	56,079.99	56,004.72
2	Operational Creditor (Excluding : Employees and Workmen)	815	831.38	276.86
3	Operational Creditor :Employees and Workmen	31	1.58	0.23
Total Quantum of Claim			**56,912.95**	**56,281.81**

In the case of Bhushan Steel, Tata Steel and India's biggest domestic steelmaker JSW Steel Ltd were the two primary industry bidders. Tata Steel trumped JSW with an aggressive all-cash bid offering an upfront cash payment of Rs 35,200 crore and 12.2% equity to lenders. JSW had offered upfront cash payment of Rs 28,000 crore and no equity. The CoC and resolution professional have also agreed on distribution of total pledged shares of 74,302,524, offering financial creditors and trustees future equity upside.

As per the resolution plan submitted by Tata Steel, it has offered an upfront cash of about Rs35,200 crore to the financial creditors, along with Rs.1,200 crore to operational creditors. The Committee of Creditor declared Tata Steel as the highest bidder and the approved resolution plan has been submitted to NCLT, for its approval. As per the sources Tata Steel may acquire three-fourths of Bhushan Steel's share capital by an equity infusion that is it will be paying Rs.180 crore to acquire 75% of the paid up share capital by issuing 120 crore new shares as part of its plan to salvage the debt-laden steel company while lenders would also raise their stake by converting a part of the outstanding loans into stock. Tata Steel will have room to buy an additional 4,500 crore at Rs 2 a piece that may take its holding to 98%. In the event of additional purchase of shares by Tata Steel, the remaining 2% will be held between lender, shareholders and promoters.However, if Tata Steel chooses to not exercise its right to buy additional shares, Bhushan Steel's shareholding pattern will feature 75% to Tata Steel, 13% to lenders, 10% to public and remaining 2% to promoters. For the quarter ending March 2018, the promoter and promoter group held 43.9% of the share capital, down from 57.82% at the end of December. There is no lock-in and bankers can choose to liquidate their equity positions according to choice.

As per the plan the country's largest lender, SBI, which also had the largest exposure ofRs 12,831crore, will get back Rs 8,083.30 crore. PNB, withRs 4,904-crore exposure, will receive Rs 3,081 crore. Canara Bank, with the third-highest exposure of Rs 2,856 crore, will receive Rs 1,794 crore. Even private lenders ICICI Bank and Axis Bank would get back Rs 1,538 crore and Rs 1,218 crore, respectively, of their individual exposures of Rs 2,448 crore and Rs 1,939 crore.In all, there are 54 lenders to the company, including foreign banks such as DBS, Deutsche Bank, Standard Chartered, Credit Agricole, Bank of Tokyo, and ING Bank. NBFCs such as Tata Capital and L&T Finance and insurance players such as LIC Pension Fund Ltd. also feature on the list of lenders to the stressed steelmaker. The Tata Steel bid translated into a 27% haircut for lenders, with the approval of the NCLT another NPA giants resolution shall come to an effective end.

Bhushan Steel and Power

On 26th July, 2017 another Bhushan group company,Bhushan Power and Steel Limited was admitted by the National Company Law Tribunal, Principle Bench for insolvency resolution. The petition to initiate CIRP againstBhushan Steel & Power Ltd (BSPL) to recover loans the company had defaulted on was submitted by PNB, who was the lead bank. NCLT appointed interim resolution professionals (IRPs) Mahender Kumar Khandewalwith instructions that all personnel connected with the corporate debtor, its promoter or any other person associated with the management of the corporate debtor shall be under legal obligation to extend every assistance and cooperation to the IRP as may be required by him in managing the affairs of the corporate debtor.

As per the order initiating insolvency resolution, BPSL had a total amount of Rs.4383.12 Cr in default against the lead bank PNB. Other than PNB, Bhushan Power has 31 other Financial Creditor, a few of them having high exposures are State Bank of India with the highest exposure of Rs.9834.86 followed by Bank of India and Bank of Baroda with exposures of Rs.2487.08 Cr and Rs.2313.59 Cr respectively.

As per the list of creditors, Bhushan Power has an total outstanding of Rs.47,825.89 Cr including Rs. 47,204.52 Cr as financial debt and Rs. 621.38 Cr as operational.

Upon expression of interest being called the list of interested bidders in the month of October included Tata Steel, Arcelor Mittal, JSW Steel, Vedanta Ltd, Mesco and AION Capital. Whereas, resolution plans were received from JSW Steel, Tata Steel and UK-based Liberty House. As Liberty House failed to submit the resolution plan within the last date for submission of bids the resolution professional concerned could not take a decision on whether the bid should be accepted and it had to be the decision of the committee whether or not to accept the bid. The professional were of the opinion that if Liberty House's proposal was admitted then it might set a trend of submitting late bids quoting higher amount than ones submitted within deadline. This though might help creditors recover more money from non-performing assets they take to the NCLT but this practice shall be against the best interest of the bidders, who maintained the deadlines. Therefore, when the bid of Liberty House was rejected Liberty house approached the tribunal seek relief post which Delhi bench of NCLT ruled that the meeting of CoCcannot held to decide on the resolution plan for Bhushan Power and Steel till the court delivers a final verdict in a matter where UK's Liberty House has requested for its late bid for the company to be considered. Therefore, the creditors' meeting that was supposed to be held was cancelled until a final order for the case comes about.

To ease the pressure on the deadline for the resolution to take place, justice MM Kumar also said that the number of days spent on legislation shall not be counted as part of the corporate insolvency resolution process (CIRP) and will be deducted from the 270-days that the resolution professional gets to decide on the fate of a stressed asset. Among the other two bidders, Tata Steel has emerged as the highest bidder for the asset, defeating JSW Steel by a significant margin. It has offered Rs 24,200 crore for the asset upon a condition that the lenders buy the entire equity of the two subsidiaries of Bhushan Power and Steel , namely Nova Iron & Steel and Ambey Steel & Power.

However, Liberty House which had submitted a bid after the February 8 deadline had argued that the creditors had rejected the bid without even opening it and that the bid should at least be opened to be considered.

On 23rd April,2018, the National Company Law Tribunal asked lenders of Bhushan Power & Steel Ltd. to consider Liberty House UK's bid for Bhushan Power at the next meeting of the Committee of Creditors. Further it stated that, bids can be rejected only on substantive grounds, and not because of delays, the bench headed by Justice MM Kumar. The tribunal also extended the deadline for

finalising the resolution plan by two months to June 23,2018.

In the times to come, considering that Liberty House claims to have bid more than Tata Steels, a better resolution plan can be expected.

Amtek Auto Limited

Insolvency proceeding against Amtek was initiated by Corporation Bank on 24th July, 2017, the corporate debtor defaulted in repayment to debt of Rs.824 Cr. NCLT, Chandigarh Bench appointedMr. Subramanian as the resolution professional in this matter.

As per the list of creditors, the total outstanding of Rs. 12,547.88 Cr is in default, the amount includes Rs. 12,321.95 Cr as financial debt and Rs. 223.86 Cr as operational debt (excluding employees and workmen) and Rs.2.08 Cr as debt to employees and workmen.

Sr No.	Category of Creditor	Amount Admitted
1	Financial Creditor	12,321.95
2	Operational Creditor (Excluding : Employees and Workmen)	223.86
3	Operational Creditor :Employees and Workmen	2.08
Total Quantum of Claim		**12,547.88**

As per the sources, upon invitation the resolution plans for Amtek auto Limited was received from Liberty House Group and Deccan Value, the Committee of Creditors ('CoC') of AAL held on 06 March 2018 resolved that the resolution plan submitted by Liberty House Group based in United Kingdom is the preferential bidder.However, it is yet not clear the extent of haircut the lenders will need to take as part of the deal to keep the company afloat. In lack of any decisions of the committee regarding approval of resolution plan submitted by Liberty House, the resolution process is on hold.

ABG Shipyard Limited

ABG Shipyard Ltd., the flagship company of ABG group was incorporated in the year 1985 as Magdalla Shipyard Pvt. Ltd. with the main objects of carrying Shipbuilding and Ship Repair business. In a span of 15 years from the year 1991, the company has achieved the status of the largest private sector shipbuilding yard in India with satisfied customer base all around the world. The registered office and the yard are situated at Surat in the state of Gujarat and the corporate office is in Mumbai. Now, however, the fate of ABG Shipyard, is seen as near-certain but in the opposite direction.

ICICI Bank Limited upon a default of Rs. 4877.12 Cr initiated CIRP against ABG Shipyard on 1st August, 2017.

As per the list of creditors, the total outstanding of Rs. 18166.78 Cr is in default, the amount includes Rs. 18129.51 Cr as financial debt and Rs. 36.39 Cr as operational debt (excluding employees and workmen) and Rs.89Lakhs as debt to employees and workmen.

Sr No.	Category of Creditor	No. of Claims	Amount Claimed	Amount Admitted
1	Financial Creditor	34	18,245.44	18,129.51
2	Operational Creditor (Excluding : Employees and Workmen)	192	43.15	36.39
3	Operational Creditor :Employees and Workmen	193	8.74	0.89
Total Quantum of Claim			**18,297.32**	**18,166.78**

ABG Shipyard had received a lone bid submitted by Liberty House, in an earlier round of bidding and the same was rejected by the committee of creditor because it was below the liquidation value. As per sources, the second bid submitted by liberty house was also rejected by the lenders, on the grounds that Liberty House's bid was disqualified as it was seen to be in violation of Section 29(A) of the Insolvency and Bankruptcy Code. Though nothing has been clearly stated by the lenders of the ABG Shipyard.Therefore, fate of ABG shipyard is yet uncertain of whether it will be liquidated or not.

Jyoti Structures Limited

The Insolvency Resolution Process against Jyoti Structure was initiated by State Bank of India on 4th July, 2017 when the corporate debtor defaulted in repayment of Rs. 1961.60 Cr.

As per the list of creditor available, the total outstanding is Rs. 8256.07 Cr, which includes Rs. 7625.45 Cr as financial debt, Rs. 438.11 Cr as operational debt and Rs. 192.51 as claims due to employees and workmen.

In the month of December, the Resolution professional, Ms.Vandana Garg, seeked CoC's approval to extend the insolvency resolution period by 90 days, the resolution being passed by requisite majority the deadline for completion of the CIRP was postponedfrom 31st December,2017 to 31st March,2018.

Jyoti Structures had received a resolution plan from ultra-high-net-worth individuals, led by Sharad Sanghi founder of Netmagic, in total, 66% lenders voted in favour of a revival proposal submitted but as the code states all decisions of the Committee of Creditors require not less than 75 per cent of the majority to approve resolutions. Therefore, the resolution plan submitted got rejected. With rejection of the only resolution plan submitted, Jyoti Structure landed up being the first company among the 12 NPA gianstlisted by RBI that would head into liquidation, inflicting a loss of Rs 7,000 crore on the affected bankers and other stakeholders.

The decision to take the company into liquidation came after three failed attempts to sell the assets. In a notice to the stock exchanges, it was stated that the resolution professional had sought the approval of the committee in respect to the final resolution plan submitted by the Resolution Applicant but the proposal got rejected due to the lack of requisite majority.

It is believed that the drawback of the resolution plan was that the recovery was supposed to be made from the cash flows of the company, which meant that if the company doesn't do well, then there shall be no repayment.

Sources in the know said that the committee of creditors rejected the offer because the haircut was steep and almost on a par with the liquidation value. Furthermore, the lenders did not agree to the plan that payments were to be made over 15 years and that the resolution applicant had sought four years' moratorium to start repaying the dues.

Monnet Ispat & Energy Limited

Monnet Ispat Ltd. (MIL) was incorporated on February 1, 1990 in the State of West Bengal with an objective of setting up a 1,00,000tpa Sponge Iron Project. Later in the year 2008, Monnet Ispat changes name to Monnet Ispat& Energy Ltd. by which its known now.

Upon a default madein repayment of debt to State bank of India initiated CIRP process against the company. NCLT, Mumbai Bench admitted the petition to initiate insolvency proceeding against Monnet Ispat on 18th July, 2017. Monnet Ispat & Energy was the first stressed company to get resolution plans from prospective bidders. The company owes more than Rs 10,300crore to its lenders.

Resolution Plan for Monnet Ispat was submitted jointly by JSW Steel and AION Capital the lone bidder. In the meeting committee of creditors (CoC) held on April 7, 2018, and the resolution applicant presented the plan before the CoC and the same has been put to vote through e-voting commencing on April 9, 2018 from 10 am onwards till 10 am on April 10, 2018.

On 10th April, 2018, the CoC approved the only resolution plan submitted by Sajjan Jindal's JSW Steel along with AION Capitaland the lenders haveaccepted the terms Letter of Intent (LoI) dated 12 April, 2018 in this respect. Though the closure of the transaction shall be subject to obtaining necessary regulatory approvals, including from the National Company Law Tribunal and the Competition Commission of India.

Alok Industries Limited

In July 2017, the Ahmedabad bench of NCLT had admitted insolvency proceedings against the textile company under the IBC. Lenders have an outstanding claim of over Rs.29,600 Cr from Alok Industries.

NCLT, Ahmedabad Bench appointed Mr. Ajay Joshi as the Resolution professional for Alok Industries. Upon expression of Interest being called by the resolution professional, Resolution plan was submitted by Reliance Industries along with JM Financial Asset Reconstruction Company.

As per the intimation being filed by the resolution professional at BSE, the corporate insolvency process for the company had expired on April 14, 2018 and the resolution professional has not received the approval of the CoC for resolution plans within the time period prescribed under the IBC, 2016. Therefore, Alok Industries along with Jyoti Structures is deemed to go into liquidation proceedings.

LancoInfratech Limited

NCLT had initiated insolvency resolution for Lanco on August 7, 2017, based on a petition filed by the company's lead lender IDBI Bank. Lanco has a debt of over Rs 10,000 crore at the holding company level while the consolidated debt was more than Rs 40,000 crore. Under the Insolvency and Bankruptcy Code (IBC) the deadline for completion of insolvency processcomes to an end on February 7, 2018. Mr. Savan Godiwala has been appointed as the resolution professional for LancoInfratech.

On expression of interest being called by the resolution professional, four little-known companies had shown interest in acquiring LancoInfratech, the holding company for several power and infrastructure projects, this stoked concerns among the lenders that they might have to accept a steep haircut to resolve this loan totalling more than Rs 50,652 Cr from financial and operational creditors. The four resolution applicants are, OPG Group, Prem Energy, Goyal Group and Diva Group. There have been no further decisions taken up by the lenders in the Lanco case, but it is believed that it may go into Liquidation like Jyoti Structures and Alok Industries.

Jaypee Infratech Limited

Since the very day insolvency proceedings had been initiated against Jaypee Infra, it has been in constant news. IDBI Bank on August 9, 2017 approached NCLT to initiate insolvency proceedings against the embattled real estate firm for defaulting repayment of Rs.526 Cr and not handing over homes to buyers who had invested their savings and have been waiting for more than eight years.

Even though the insolvency proceeding had been initiated, and a new form was introduced for the homebuyers to file their claim, the proceeding were stopped by the order passed by the Supreme Court dated 16th April, 2018, the order stated that no insolvency proceedings shall proceed henceforth until the status of the homebuyers was confirmed, as to whether they are financial or operational creditors,as their hard earned money on account was being treated as unsecured debt.

The JaypeeInfratech matter happens to be a unique case because other companies that were taken up under the Insolvency and Bankruptcy Code were business-to-business firms but JaypeeInfratech involved thousands of homebuyers.

With insolvency proceedings on stay, we look forward to further orders being passed by the Supreme Court in times to come.

Essar Steel India Limited

Insolvency proceedings against Essar Steel India Limited was initiated by State Bank of India in the month of June, 2017. Upon commencement of CIRP period ESIL moved a petition at Gujarat High Court against the insolvency proceedings initiated by its lenders, stating that RBI could not direct judicial bodies. The High Court on petition being moved restrained the National Company Law Tribunal (NCLT) from conducting any further proceeding against Essar Steel till the matter was disposed off. On 17th July, 2018, Gujarat High Court disposed EssarSteel's petition and observesdthat RBI press releases should not 'direct or guide judicial/quasi-judicial authorities'.

Finally on 2nd of August , 2017 NCLT Ahmedabad bench admits insolvency petition by common order against Essar Steel; appointing Mr.Satish Kumar Gupta as the Resolution Professional.

Overall, Essar Steel has 55 financial creditor claims totaling approximately Rs.49,212Cr; 1,842 operational creditor claims totaling approximately Rs.3,339Cr and 11 claims from employees/workmen totaling approximately Rs.20 Cr were received as of 27 March 2018 electronically and/or physically. Below is a summary of claims received.

Sr No.	Category of Creditor	No. of Claims	Amount Claimed	Amount Admitted
1	Financial Creditor	55	54,857.20	49,212.56
2	Operational Creditor (Excluding : Employees and Workmen)	1842	24,043.79	3,339.36
3	Operational Creditor :Employees and Workmen	11	20.23	18.06
Total Quantum of Claim			**18,297.32**	**18,166.78**

Resolution plan for Essar Steel was submitted by two companies, namely, Numetal Group and Accelor Mittal Group. As per Section29A,Numetal and Arcelor Mittal bids were declared not eligible by the Resolution Professional. Upon rejection of the claim both the applicants challenged the disqualification before the Tribunal. On April 19 NCLT Ahmedabad asks RP to re-examine first round of bids afresh. Says some provisions of IBC were not followed by RP in rejecting bids of first round. According to the tribunal, Section 30(4) of the IBC says that the committee should have provided a period of 30 days to both ineligible applicants to repay any overdue amount and rectify the issues under Section 29(A). Thus the CoC has been directed to reconsider both bids and take a fresh decision in the matter. Faced with ineligible bids the Essar Steel CoC considered two options presented to it by the resolution professional.

The first was to issue a fresh request for proposal and seek fresh bids from any interested party. The second option was to allow only entities which had submitted an expression of interest in the previous round of bidding to bid in the second round. Further, the tribunal has ordered that the 30 days of litigation so far not be counted towards the 270 day insolvency resolution process deadline.

Era Infra Engineering

The insolvency proceeding against Era Infra Engineering was initially triggered by an operational creditor, Prideco Commercial Projects Private Limited, on 12th April, 2017. But the same was stayed stating that winding up petition was already pending with High Court.

Again in the month of August, upon application being made under section 7 by UBI, a special bench of the National Company Law Tribunal (NCLT), New Delhi had sought clarity on the insolvency proceedings against Era Infra Engineering Ltd from the presidentof the tribunal.The special bench stated that the president of the NCLT, Justice Mahesh Mittal Kumar, shall decide if the case needs to be referred to a larger bench for a decision on its insolvency proceedings.

Recently, NCLT ruling was passed which stated that Insolvency proceedings can be started against a company even if the winding up petition against it is pending in a high court, therefore, as there is no bar on the NCLT to trigger an insolvency resolution process on an application filed under sections 7, 9 and 10 if a winding up petition is pending, unless an official liquidator has been appointed and a winding up order is passed,on the basis of the NCLT ruling the insolvency proceeding against Era Infra Engineering may be triggered soon.

New GST Return Filing Mechanism – A snapshot

CA Shubham Khaitan

The GST Council headed by Finance Minister Arun Jaitley finalised the crucial and the most-awaited single monthly return filing system. The Council, in its 27th meeting, approved the new model for filing GST returns on the recommendations of the Group of Ministers on IT simplification. Such model of filing single monthly return has been finalized with the expectation to reduce the compliance burden significantly from the multiple filings currently required in a month. The new return will be implemented in a phased manner which has been discussed below. Some of the highlights being a single return with staggered due dates basis turnover, real time credit eligibility basis invoices uploaded by suppliers, no reversal or recoveries in most scenarios from buyer on non- payment of tax, among others. The detailed elements of the new return design are as follows:

- **All Taxpayers** shall file only **one return** on a **monthly** basis **excluding** a few taxpayers.
- These **taxpayers**, who may file their return **quarterly** are **composite dealers** and **dealers** having **nil transaction.**
- Based on **turnover** of the registered person, return **filing dates** shall be **staggered** throughout the period.
- **Only** the **supplier** will be able to **upload invoices** and no uploading of invoices can be made by the recipient.
- This **document** will be **valid** for **availing input tax credit** by the **recipient**.
- The **input tax credit** will be calculated **automatically** by the system based on the invoice uploaded by the supplier.
- **Recipients** will also be able to **see** those **uploaded invoices** during the month and are not required to upload purchase invoice separately.
- There shall **not** be **automatic reversal** of credit from buyer **on non-payment** of tax by the supplier.
- In case of **default in payment** of tax by supplier, revenue authority **at first** will **recover** the amount **from supplier**.
- **Subsequently**, Revenue authority may **recover** that **amount from recipient** in the situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.
- **Recovery** of tax or **reversal** of input tax credit shall be **through** a **due process** of **issuing notice** and **order** and the process will be automated to reduce the human interface.
- Uploading of **invoices** by the seller to pass input tax credit who has **defaulted** in payment of tax **above** a **threshold amount** shall be **blocked** to control misuse of input tax credit.
- For the **prevention** of loss of revenue and the **identification** of such default at the earliest, **analytical tools** will be **used**. **Similar safeguards** will be used for **newly registered dealers** also.
- For **B2B** transaction, **invoices** shall contain **four digit or more HSN** to achieve uniformity in the reporting system.
- The **B2B dealers** are required to **fill invoice wise details** of the outward supply made by them, accordingly the **system** will **calculate his tax liability**.
- Apart from that, the **return form** will also be **simplified** by reducing the information required to be filled in the return.
- There will be **three stage** transition to the new system:
    - **Stage I**:This stage **consists** of present system of filing of return **GSTR 3B** and **GSTR 1**. GSTR 2 and GSTR 3 will remain suspended. This stage will **continue** for a period not exceeding **6 months**.
    - **Stage II**: In this stage, the **tax payer** will have facility to **upload data**, **invoicewise** for filing return. They will also get **facility** for **claiming** input tax credit on **self-declaration basis** as in case of GSTR 3B. If there will be **any gap** between the **credit** available to them **as per invoices** uploaded by their sellers **and** the **provisional credit** being claimed by them, then in this stage the **dealer** will be **constantly fed** with **this information**.
    - **StageIII** : Six months or a further extended period after the 2nd stage, **provisional credit** will get **withdrawn** and **input tax credit** will be **available** for that amount only which is **mentioned** in the **invoices** uploaded by the supplier.

Decision on introduction of a single return after six months with provisional credit has been made with an intent to allow sufficient window to GSTN and the buyers to reconcile the credit.

Conclusion

This has been a long-awaited simplification of returns process which has been finalized by the Government. Even though the uploading of invoices by recipient is not required, a reconciliation at their end to match with the supplier's data cannot be dispensed with. Only difference is that this process will be carried out offline. It is hoped that this process will not be implemented in haste like the time when the GST was first implemented. Proper testing and pilot runs should be carried outs at the end of the users before the complete implementation of the new return filing mechanism. Whether this marks a new dawn in the GST return filing process or simply old wine in new bottle is something which we are yet to see. Interesting times await us!!

Refund Under GST

CA P. D. Rungta

Introduction

GST law is all about smooth flow of funds and compliances, thus it is imperative for the Government to provide for a hassle free refund process. Refund is a very essential process of any tax regime as it involves release of the blocked fund of the assessee.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Thus, under the GST regime, there is a standardised form for making any claim for refunds. The claim and sanctioning procedure is yet not completely online. Manual invention is involved at the point of processing the refund which slows down the pace of processing the refund.

In the given article we have incorporated certain events when refund will arise along with eligibility and procedural aspects.

A. Refund can be claimed under GST laws in the following cases:-

Sl. No.	Refund on	Available for
1.	Excess Balance in Electronic Cash Ledger	Excess Tax/ Interest paid
2.	On account of ITC accumulated due to Inverted Tax Structure	Unutilized input tax credit
3.	Refund of CGST /SGST paid instead of IGST or IGST paid instead of CGST and SGST	Wrongly paid tax
4.	Export of goods with payment of tax	IGST paid
5.	Export of services with payment of tax	IGST paid
6.	Export of Goods & Services without Payment of Integrated Tax	Tax paid on input goods/services
7.	Supplies to SEZ unit/ SEZ Developer (with payment of tax)	IGST paid
8.	Supplies made to SEZ unit/ SEZ developer (without payment of tax)	Tax paid on input goods/services
9.	Recipient of Deemed Exports	Tax paid on input goods/services
10.	On account of Assessment/Provisional assessment/ Appeal/ Any Other Order	Tax/interest paid
11.	UNO or any other notified organisation or agency	Tax paid on receipt of goods/services

B. Refund under different situations

1. Excess balance in Cash Ledger

Due to error while generating challan excess tax may be paid in electronic cash ledger. The refund of the excess amount can be claimed by application for refund viz., **RFD-01**.

A. Amount of Refund:

Balance available in Electronic cash ledger at the end of the tax period.

B. Procedure for Refund:

➢ An application in Form GST RFD-01 to be filed electronically on GST portal.

➢ The following documents are to be submitted to the jurisdictional officer:

a. ARN (printout, duly attested with a Company Seal)

b. RFD-01 (printout, duly attested with a Company Seal)

c. A **declaration** to the effect that the incidence of tax, interest, or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed Rs. 2 lakh; or

A **Certificate** issued by a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds Rs. 2 lakh;

d. Statement-7 containing details of ARN and tax period for which the refund has been claimed.

e. Payment challan

➢ On submission of application the electronic cash ledger gets debited by the refund claimed.

2. Unutilized Input tax Credit due to inverted duty structure

I. Eligibility

➢ Due to inverted rate structure i.e. where tax rates applicable of inputs or input services is higher than the tax rate applicable on the outward supply of goods or services may result in accumulation of input tax credit. The refund of such unutilized Input tax credit can be claimed.

➢ However, refund of unutilized input tax credit due to inverted rate structure will not be available in the following cases:

(i) In case the outward supply is Nil rated or fully exempt;

(ii) Such goods have been notified by the Government.[1]

The Government has till now issued the following notifications in this regards:-

Notification No. 05/2017- Central Tax (Rate) dated 28.06.2017 notifying certain goods;

Notification No. 15/2017- Central Tax (Rate) dated 28.06.2017 notifying certain services;

Notification No. 29/2017 dated 22.09.2017 -Central Tax (Rate) to include certain goods;

II. Amount of Refund:

- The refund of input tax credit shall be granted as per the following formula –

Maximum Refund Amount = $\{(T_I) * (N/AT)\} - T_p$

Where,

T_I *=Turnover of inverted rated supply of goods and services*

AT= Adjusted Total Turnover[2]

T_p *=tax payable on such inverted rated supply of goods and services*

N=Net ITC[3]

III. Procedure for Refund:

- An application in **Form GST RFD-01 to be filed** electronically on GST portal.
- Hard copy of RFD-01 to be submitted to the jurisdictional officer along with the following documents:
  a. ARN (printout, duly attested with a Company Seal)
  b. RFD-01 (printout, duly attested with a Company Seal)

c. A statement containing the invoice number and date received and issued by the applicant during a tax period;

- On submission of application the electronic credit ledger gets debited by the refund claimed.

IV. Points to be kept in mind

- Check whether invoices for which credit has been claimed is reflecting in GSTR-2A or not;
- Prepare a reconciliation statement for invoices which for which ITC is claimed and which is reflected in GSTR-2A of the tax period or subsequently;
- In case invoices are not reflected the supplier shall be persuaded to file the return or to correct the details GSTIN if already filed.

3. Refund in the case of Change in Place of Supply

I. Eligibility

- For those taxpayers who have considered a transaction as intra-state supply but which is subsequently held to be inter-state supply and vice-versa.

II. Amount of Refund

- Refund will be available for the amount of tax wrongly paid.

III. Procedure for Refund

- An application in **Form GST RFD-01 to be filed** electronically on GST portal
- The following documents to be submitted to the jurisdictional officer:
  a. ARN (printout, duly attested with a Company Seal)
  b. RFD-01 (printout, duly attested with a Company Seal)
  c. Statement 6[4] which contains GSTIN/UIN/Name (if B2C), Details of invoices considered as intrastate or interstate earlier and details of invoices subsequently held interstate or intrastate.

IV. Points to be kept in mind

- Keep the track of all invoices whose place of supply has been wrongly shown.

4. Refund of IGST paid on Exports of goods

I. Eligibility

- Exports are considered a zero rated supply and refund will be available for any tax paid on exports.

II. Amount of Refund

- Integrated tax paid on Exports

III. Procedure for Refund

- GSTR-3B to be furnished providing details of exports in column 3.1.b;
- GSTR-1 to be furnished providing details of exports in table 6A;
- Submission of the returns will be deemed as application for refund and refund will be processed after matching the details provided in returns with shipping details as per custom database.

IV. Points to be kept in mind

- Registration to be obtained on ICEGATE;
- Shipping Bill details (number, date, port code, IGST amount, assessable value) to be correctly provided in GSTR-1;
- In case any error committed in GSTR-1 shall be amended in GSTR-1 of subsequent tax period.

5. Refund of IGST paid on Exports of services

I. Eligibility

- Exports are considered a zero rated supply and refund will be available for any tax paid on exports of services.

II. Amount of Refund

- Refund amount claimed (Integrated Tax/ Cess) should not be more than the amount of Integrated Tax/ Cess mentioned in Zero-rated supplies of GSTR-3B item 3.1(b) filed for the period.

III. Procedure for Refund

- An application in RFD-01 to be filed electronically on GST portal;
- The following documents to be submitted to the jurisdictional officer:
  a. ARN (printout, duly attested with a Company Seal)
  b. RFD-01 (printout, duly attested with a Company Seal)
  c. A statement containing the number and date of shipping bills or bills of Export and the number and the date of the relevant export invoices

6. Refund of ITC on account of Export of goods and services without payment of tax

I. Eligibility

- Export shall be made under bond/ Letter of Undertaking without payment of tax to claim refund of tax paid on inputs and input services.

II. Amount of Refund

- The refund of input tax credit shall be granted as per the following formula –

Maximum Refund Amount [5] = (T_G+$T_{S)}$* N/AT

Where,

T_G = Turnover of zero rated supply of goods

T_S = Turnover of zero rated supply of services

AT = Adjusted Total Turnover[6]

N=Net ITC[7]

III. Procedure for Refund

- An application in **RFD-01 to be filed** electronically on GST portal;
- The following documents be submitted to the jurisdictional officer:
  a. ARN (printout, duly attested with a Company Seal)
  b. RFD-01 (printout, duly attested with a Company Seal)
  c. A statement containing the number and date of shipping bills or bills of Export and the number and the date of the relevant export invoices.
- On submission of application the electronic credit ledger gets debited by the refund claimed.

IV. Points to be kept in mind

- Check whether invoices for which credit has been claimed is reflecting in GSTR-2A or not;
- Prepare a reconciliation statement for invoices which for which ITC is claimed and which is reflected in GSTR-2A of the tax period or subsequently;
- In case invoices are not reflected the supplier shall be persuaded to file the return or to correct the details GSTIN if already filed.

7. Refund of IGST paid on account of supply to SEZ

I. Eligibility

- Supply of goods or services to SEZ is treated as zero rated supply;
- Tax paid on supplies to SEZ can be claimed as refund.

II. Amount of Refund

- Integrated tax paid on supplies to SEZ

III. Procedure for Refund

- An application in **Form GST RFD-01 to be filed** electronically on GST portal
- The following documents to be submitted to the jurisdictional officer:
  a. ARN (printout, duly attested with a Company Seal)
  b. RFD-01 (printout, duly attested with a Company Seal)
  c. Statement 4[8] (duly attested with the Company Seal) which contains GSTIN of recipient, Invoice date, number and value, Endorsed invoice number and date by SEZ, taxable value, Net IGST and CESS amount.

IV. Points to be kept in mind

- While filing GSTR-3B details of supply to SEZ shall be given in column 3.1b;
- While filing GSTR-1 the box supply to SEZ shall be selected.
- In case any error committed in GSTR-1 shall be amended in GSTR-1 of subsequent tax period.

8. Refund of ITC on account of supply of goods and services to SEZ without payment of tax

V. Eligibility

- Supply to SEZ under bond/ Letter of Undertaking without payment of tax and claim refund of Input Tax Credit.

VI. Amount of Refund

Maximum Refund Amount [9] = (T_1+$T_{2)}$* N/AT

Where,

T_1 = Turnover of zero rated supply of goods

T_2 = Turnover of zero rated supply of services

AT = Adjusted Total Turnover[10]

N=Net ITC[11]

VII. Procedure for Refund

- An application in **Form GST RFD-01 to be filed** electronically on GST portal;
- The following documents to be submitted to the jurisdictional officer:
  a. ARN (printout, duly attested with a Company Seal)
  b. RFD-01 (printout, duly attested with a Company Seal)
  c. Statement 5[12] which contains Invoice date, number and value, Endorsed invoice number and date by SEZ
  d. Statement 5A[13] which contains Turnover of zero rated supply of goods and services, Net ITC, Adjusted total turnover and Refund amount

VIII. Points to be kept in mind

- Check whether invoices for which credit has been claimed is reflecting in GSTR-2A or not;
- Prepare a reconciliation statement for invoices which for which ITC is claimed and which is reflected in GSTR-2A of the tax period or subsequently;
- In case invoices are not reflected the supplier shall be persuaded to file the return or to correct the details GSTIN if already filed.

9. On account of Deemed Exports

I. Eligibility

- Supply of certain goods as notified under section 147 which do not leave India and the payment for such supplies is either received in INR or convertible foreign exchange and are manufactured in India, shall be treated as deemed exports.
- The recipient of deemed exports to claim refund of tax paid on such supply of goods.
- As per Notification No. 48/2017-Centra Tax dated 18th October, 2017 supply of certain goods in the following cases have been notified as deemed exports:

Sl. No.	Description of supply
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the Notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation

II. Amount of Refund

- Refund can be claimed for the tax paid on goods treated as deemed exports.

- Lowest for the following will be available as refund:

  a. Refund amount claimed;

  b. Balance in Electronic Credit Ledger;

  c. Tax Credit availed during the period.

III. Procedure for Refund

- An application in RFD-01 to be filed electronically on GST portal;
- The following documents to be submitted to the jurisdictional officer:

a. ARN (printout, duly attested with a Company Seal)

b. RFD-01 (printout, duly attested with a Company Seal)

c. A statement containing the number and date of invoices along with such other evidence as may be notified in this behalf.

10. On account of Assessment/Provisional assessment/ Appeal/ Any Other Order

I. Eligibility

- In case of any refund arising out of any assessment order passed the refund shall be claimed by the registered person.

II. Amount of Refund

- Refund sanctioned as per the assessment order.

III. Procedure for Refund

- An application in RFD-01 to be filed electronically on GST portal;
- The following documents to be submitted to the jurisdictional officer:

  a. ARN (printout, duly attested with a Company Seal)

  b. RFD-01 (printout, duly attested with a Company Seal)

  c. A statement providing the reference number of the order and a copy of the order passed by the officer or appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified[14].

11. Refund to UNO or any other notified organisation or agency

I. Eligibility

- Refund of tax paid by it on inward supplies of goods and services or both.

II. Amount of Refund

- Taxes paid on inputs and input services.

III. Procedure for Refund

- An application in RFD-10 to be filed electronically on GST portal once in every quarter;
- Statement of Inward supply received by person having UIN to be submitted in FORM GSTR-11 monthly.
- Reference number of GSTR-11 filed to be provided in RFD-10 for processing of refund.

C. Other Documents to be submitted to Jurisdictional GST Office for refund:-

a. ARN (printout, duly attested with a Company Seal)

b. RFD-01 (printout, duly attested with a Company Seal)

c. Bank account details (for IFSC and MICR number) statement (duly attested with a Company Seal)

d. A statement in the form of a disclaimer, stating that the said taxpayer has not been prosecuted in any court of law (1.5 crore and above)

e. GSTR 3B or GSTR 3, whichever the case maybe (printout of a filed return, duly attested with a company seal)

f. Declaration that the claimant has not submitted/applied the same Refund claim to any state authority.

g. GSTR-1 Return

h. Declaration that the claimant has no previous dues on account of Central Excise and Service Tax

i. Extract of Electronic liability ledger for the relevant period

j. Extract of Electronic Cash ledger or Electronic Credit ledger for the relevant period

D. Time limit for filing application of refund

- Refund can be claimed within expiry of 2 years from the relevant date. Relevant date will be different depending upon the situation, the meaning of which has been provided in the CGST Act, 2017.

E. Time limit for processing of Refund

- The order for refund shall be issued within 60 days from the date of receipt of application complete in all respects.

(Footnotes)

1 As per first proviso to section 54(3) of CGST Act, 2017.

2 Adjusted Total turnover means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated suppli es, during the relevant period.

3 Net ITC means input tax credit availed on inputs and input services during the relevant period

4 Rule 89(2)(j)

5 Refund amount means the maximum refund that is admissible

6 Adjusted Total turnover means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated suppli es, during the relevant period.

7 Net ITC means input tax credit availed on inputs and input services during the relevant period;

8 Rule 89(2)(d) & Rule 89(2)(e)

9 Refund amount means the maximum refund that is admissible

10 Adjusted Total turnover means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated suppli es, during the relevant period.

11 Net ITC means input tax credit availed on inputs and input services during the relevant period;

12 Rule 89(2)(d) & Rule 89(2)(e)

13 Rule 89(4)

14 Amount specified in section 107(6) and 112(8) of CGST Act, 2017.

What is E-Way Bill

CA Birendra Goyal

E-Way Bill is the short form of Electronic Way Bill. It is a unique document/bill, which is electronically generated for a specific consignment/movement of goods from one place to another, either inter-state or intra-state and where the consignment value of which is more than INR 50,000. It is generated as form GST EWB-01 and is divided into two parts, Part A and Part B.

FORM GST EWB-01

E-Way Bill

E-Way Bill No. : E-Way Bill date :

Generator :

Valid from : Valid until :

PART-A		
A-1	GSTIN of Supplier	
A-2	Place of Dispatch	
A-3	GSTIN of Recipient	
A-4	Place of Delivery	
A-5	Document Number	
A-6	Document Date	
A-7	Value of Goods	
A-8	HSN Code	
A.9	Reason for Transportation	

PART-B		
B.1	Vehicle Number for Road	
B.2	Transport Document Number/ Defence Vehicle No./ Temporary Vehicle Registration No./Nepal or Bhutan Vehicle Registration No.	

1. **Information in Part-A of EWB-01 is to be furnished in the following situations:**

a. Where the consignment value of the goods to be transported exceeds 50000/-

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) for inward supply from an unregistered supplier.

b. Transport of goods by a principal located in one state/union territory to a job worker located in another state/union territory irrespective of the value of the consignment.

c. where handicraft goods are transported by a person who has been exempted from obtaining registration under clause (i) and (ii) of section 24 of the Act irrespective of the value of the consignment.

2. **Who can furnish information in Part-A of EWB-01**

a. Any person who causes movement of goods, i.e. a person who has undertaken the responsibility of transportation of goods either as a consignor or as a recipient of goods.

b. On authorization from the registered person, the transporter can also furnish information.

c. If the goods to be transported are supplied through an e-commerce operator or a courier agency, then on authorization, such e-commerce operator or courier agency can also furnish the information.

d. Where the goods are transported by a person either as a consignor or a consignee and does not furnish information in Part-A, but hands over the goods to the transporter, then the transporter shall furnish the said information.

PART-B OF EWB-01

3. **E-way bill is to be generated after furnishing information in Part-B of EWB-01 in circumstances, such as:**

a. Where the goods are transported by railways or by air or vessel, the e-way bill has to be generated either before or after the commencement of the movement. The railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.

b. The e-way bill can be generated even if the value of the consignment is below fifty thousand rupees.

c. Where the goods are supplied by an unregistered person to a recipient who is registered, it shall be deemed that the recipient has caused the movement of goods, and the recipient shall be liable to generate the e-way bill, if the recipient is known at the time of commencement of movement.

d. Where the goods are transferred from one vehicle to another, the consignor or the recipient who has furnished the information in Part-A, shall update the information in Part-B.

e. Where the consignor or the consignee has not generated the e-way bill and the aggregate value of the consignment exceeds fifty thousand rupees, then in case of **inter state movement** of goods, the transporter shall, on the basis of the invoices or the bills of supply, generate the e-way bill.

f. where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.

g. where the goods are transported by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may generate the e-way bill.

4. **In the following cases, the information in Part-B may not be furnished:**

a. where the goods are transported for a distance not exceeding fifty kilometers within the state or union territory from the place of business of the consignor to the place of business of the transporter.

b. where the goods are transported for a distance not exceeding fifty kilometers within the state/union territory from the place of business of the transporter finally to the place of business of the consignee.

5. **Notwithstanding anything contained in the Act, e-way bill is not to be generated in the following cases:**

a. where the goods are transported through a non-motorised conveyance.

b. where the goods being transported are specified in Annexure (given below);

S. No.	Description of Goods
1.	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)

c. where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

d. in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;

For the purpose of above mentioned clause, i.e. 138(14)(d) of UT GST, the following areas have been notified:

Union Territory of Andaman and Nicobar Islands. -

Union Territory of Chandigarh. -

Union Territory of Dadra and Nagar Haveli. -

Union Territory of Daman and Diu. -

Union Territory of Lakshadweep.

e. where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 as amended from time to time;

f. where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

g. where the supply of goods being transported is treated as no supply under Schedule III of the Act;

h. where the goods are being transported—

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(iii where the goods being transported are transit cargo from or to Nepal or Bhutan;

i. where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 as amended from time to time;

j. any movement of goods caused by defense formation under Ministry of defense as a consignor or consignee;

k. where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

l. where empty cargo containers are being transported; and

m. where the goods are being transported up to a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

6. Applicability

The e-Way Bill for inter-state movement has been implemented throughout India from 1st April 2018.

For intra state movement of goods, the e-way bill is being implemented in stages.

Stage	With effect from	States in which implemented
1st	15th April, 2018	Andhra Pradesh, Gujarat, Kerala, Telengana and Uttar Pradesh
2nd	20th April, 2018	Bihar, Jharkhand, Haryana, Himachal Pradesh, Tripura and Uttarakhand
3rd	25th April, 2018	Union Territory of Arunachal Pradesh, Madhya Pradesh, Meghalaya, Sikkim and Puducherry

Ultimately, all the states shall have to mandate generation of e-way bill for intra state movement of goods by 1st June, 2018.

4. ASSIGNMENT OF E-WAY BILL

The Consignor or the recipient, who has furnished the information in Part-A of EWB-01 or the transporter may assign the e-way bill to another registered or enrolled transporter for updating the information in Part-B for further movement of goods. But if the person who has furnished information in Part-A or the transporter has updated the information in Part-B, such person or the transporter shall not be allowed to assign the e-way bill.

5. CANCELLATION OF E-WAY BILL

Where an e-way bill has been generated but the goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled within twenty four hours of its generation. But if the e-way bill has been verified in transit, it cannot be cancelled.

6. VALIDITY OF THE E-WAY BILL:

An e-way bill generated under Rule 138 shall be valid for the period as mentioned below:

SN	Distance	Period of Validity
1	Up to 100 km	One day in cases other than Over Dimensional Cargo
2	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3	Up to 20 km	One day in case of Over Dimensional Cargo
4	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo

a. A day shall be counted as the period expiring at midnight of the day following the day of generation of e-way bill. For e.g. if the e-way bill has been generated at any time on 01.05.2018, one day shall be deemed to expire on the midnight of 02.05.2018.

b. 'Over dimensional cargo ' shall mean a cargo carried as an indivisible single unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989.

7. **EXTENSION OF VALIDITY PERIOD**

a. The Commissioner may, by notification, extend the validity of the e-way bill for certain categories of goods, as may be specified in the notification.

b. The transporter is also allowed to extend the validity of the e-way bill if the goods cannot be transported within the validity

period due to circumstances of exceptional nature, like trans-shipment.

8. **Documents to be carried by a person-in-charge of a conveyance:**

i) the invoice or bill of supply or delivery challan, as the case may be; and

ii) e-way bill either in physical form or electronic form or mapped to a RFID embedded on to the conveyance.

In certain circumstances the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents in lieu of the e-way bill;

i) tax invoice or bill of supply or bill of entry; or

ii) a delivery challan, where the goods are transported for reasons other than by way of supply.

9. VERIFICATION AND INSPECTION OF GOODS:

a. Any proper officer authorised in this behalf may intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-state and intra-state movement of goods.

b. The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out. Where the e-way bill has been mapped with the RFID, the verification of movement of vehicles shall be done through such device readers.

c. On every inspection of goods in transit, a summary report shall be recorded online in form Part-A of GST EWB-03 within 24 hours and a final report in Part-B of EWB-03 shall be recorded within 3 days of such inspection.

c. On receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out.

d. Where the physical verification of goods being transported has been done at one place within a state or union territory, no further verification of the said conveyance shall be carried out again, unless a specific information relating to evasion of tax is made available.

e. Where a vehicle has been intercepted and detained for more than 30 minutes, the transporter may upload such information in form GST EWB-04 on the common portal.

10. **Other Important Provisions of E-way Bill:**

a. The term "handicraft goods" referred to in 1(c) above has the meaning as assigned to it in the Notification no. 32/2017-Central Tax dated 15.09.2017 as amended from time to time.

b. The consignment value of goods shall be the value determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, and also includes the central tax, state or union territory tax, integrated tax and cess charged, if any, but shall exclude the value of exempt supply of goods where the invoice is issued both for taxable and exempt supply.

c. The e-way bill shall not be valid unless the information in Part-B of EWB-01 is furnished except in circumstances mentioned in 4(a) and 4(b) above, i.e. transportation of goods from the place of business of the consignor to the place of business of the transporter or vice versa.

d. Upon generation of the e-way bill, a unique EBN shall be generated and shall be made available to the supplier, the recipient and the transporter on the common portal.

e. The details of e-Way Bill will be communicated to the registered recipient for his acceptance or rejection of the consignment. It shall be deemed that the recipient has accepted the details if no communication is received within 72 hours of communication to the recipient.

f. If a registered person uploads a tax invoice issued by him in FORM GST INV-1, the information in Part A of Form GST EWB - 01 will be auto populated.

g. The e-Way Bill generated under the CGST rules or SGST/UTGST rules of a State/ Union Territory shall be valid in every State and Union Territory

h. The details of the e-way bill shall be made available to the supplier, if registered, where the information in Part-A of EWB-01 has been furnished by the recipient or the transporter. Similarly, the details of the e-way bill shall be made available to the recipient, if registered, where the information in Part-A of EWB-01 has been furnished by the supplier or the transporter.

i. The facility of generation, cancellation, updating and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

j. The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device (RFID) and get the said device embedded on to the conveyance and map the e-way bill to the RFID prior to movement of goods.

Taxation of Unexplained Income or Investment with Reference to Section 115BBE and Sections 68/69

Narayan Jain, LL.M.

SYNOPSYS

1. **Section 115BBE**
2. **Section 68 (Including Recent Decisions)**
3. **Section 69**

1.0 Section 115BBE : This Article aims at highlighting the provisions of Section 115BBE of the Income-tax Act, 1961 (Act), *applicable from Asst Year 2017-18 onwards* and some practical concerns surrounding its applicability.

1.1 Certain unexplained cash credit, investment, expenditure, etc., are deemed as income under Section 68, Section 69, Section 69A, Section 69B, Section 69C and Section 69D of the Act and were earlier subject to tax as per the tax rate applicable to the taxpayer. As a consequence, in case of individuals, HUF, etc., no tax was levied up to the basic exemption limit and even if such income was higher than basic exemption limit, it could be levied at the lower slab rate.

1.2 Amended Provisions of Section 115BBE : Section 115BBE of the Act, as amended by the Taxation Laws (Second Amendment) Act, 2016 w.e.f. asst year 2017-18 now specifically levies tax on such unexplained items deemed as income at the aggregate of :

a) The amount of Income Tax calculated on the income referred to in sections 68, 69, 69A to 69D at the rate of **60 per cent**(plus surcharge @ 25% on such tax and cess, as applicable). Thus effectively the rate comes to 77.25 per cent if such income is reflected in the return of income furnished u/s 139. It may be noted that if such income is not reflected in the return of income furnished u/s 139, then penalty of 10 per cent on tax payable u/s 115BBE shall be imposed u/s 271AAC w.e.f. asst year 2017-18. In such a case the burden including penalty will come to 83.25 %.

b) The amount of Income Tax with which the assessee would have been chargeable had his total income ben reduced by the amount of income referred to in sections 68, 69, 69A to 69D

c) Moreover, no deduction in respect of any expenditure or allowance (or set off of any loss) shall be allowed to the assessee under any provision of the Income tax Act in computing his income referred to in sections 68, 69, 69A to 69D

1.3 Analysis for better understanding: For the sake of better understanding, let us now ponder on the applicability of Section 115BBE of the Act with reference to the provisions of Section 68 of the Act dealing with unexplained cash credit. Section 68 of the Act provides *inter alia* that if any sum is found credited in the books of a taxpayer and he either does not offer any explanation about nature and source of such sum, or the explanation offered by him is not satisfactory in the opinion of Assessing Officer, then such sum can be taxed as his income.

Consider a scenario where an individual files his return of income, declaring income from Tuition fees and avails the tax slab benefit. However, such individual is unable to substantiate the source of such income and the Assessing Officer rejects the explanation, being not properly explained to his satisfaction.

Under such circumstances, the Assessing Officer may now be tempted to trigger the provisions of Section 115BBE of the Act read with Section 68 of the Act. This means that such income, *though already offered to tax by the taxpayer*, would be taxable at flat rate of 60 per cent on gross basis (i.e., without any deduction / allowance), (plus surcharge @ 25% on such tax and cess, as applicable). Thus effectively the rate comes to 77.25 per cent if such income is reflected in the return of income furnished u/s 139.

Whether it means that the Assessing Officer is vested with unfettered powers to reject any explanation, being not to his satisfaction? It may be noted that the Assessing Officer is required to act reasonable and just while framing any opinion surrounding the explanation offered by the taxpayer. At the same time the taxpayer is nevertheless saddled with the primary obligation to demonstrate the nature and source of any sum credited in books of account.

Some individuals file their return of income, offering income in the nature of Tuition Fee, Commission, Brokerage, Embroidery, etc., and avail the benefit of exemption limit as well as benefit of tax slab. In the absence of requisite substance for proving nature and source in such transactions, one needs to consider the income-tax implications under amended Section 115BBE.

1.4Some Issues on Section 115BBE: Section 68 basically applies to unexplained 'cash credit' like loans, deposits, advances, share capital, etc. The point to be considered is whether it will also apply to 'income' which is already offered to tax as normal income. If an Assessing Officer rejects taxpayer's explanation surrounding the head of taxation (say, House Property v. Business Income or income from other source, Business Income v. Capital Gain), being not to his satisfaction, whether Section 115BBE of the Act can still be triggered, empowering the Assessing Officer to *inter alia* deny all bonafide expenses / allowances as per Income Tax Act? In such a case, it may be argued that Section 115BBE of the Act is a machinery provision to levy tax on income and it should not enlarge the ambit of Section 68 of the Act to create a deeming fiction to tax any sum already credited / offered as income. Such recourse is unwarranted, keeping in view the objective of introducing Section 115BBE of the Act, which was only to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit.

So far tax laws are concerned, it is difficult to predict the precise stand of the department, but one can take adequate measures to safeguard himself from the possible complications or hindrances that may arise. Such safeguards may be an endeavour to demonstrate substance over form; maintain proper documentation evidencing the nature and source of income, Ensuring that transactions are routed through normal banking channel, which will lend due credence and it will help in proving nature and source of amount and to prove that the transaction is bonafide.

1.5 Practical problems concerning flat rate of tax if addition is made u/s sections 68, 69, 69A to 69D –

a) **Flat rate of tax, surcharge and education cess** : While we appreciate the anxiety of the Revenue about taxing the income deemed and added in assessment under Section 68 section 69, 69A to 69D, lot of confusion has arisen on the practical implication and charging of the effective tax @ 77.25% u/s 115BBE if income is reflected in the Return furnished u/s 139. Such tax rate is prohibitive. And in case the income is not reflected in the Return, there is provision for penalty of 10% u/s 271AAC on Tax u/s 115BBE. In such a case the effective tax, surcharge, education cess and

penalty will work out to 83.25 per cent. Such stipulation needs review and the tax rates should be resumed to maximum marginal rate of 30% as prevailing prior to amendment made after demonetization w.e.f. asst. year 2017-18.

b) The Board need to make difference in case an assessee has already considered a receipt as his income and shown in the return say under the head Income from other sources. In such a case it will not be proper to resort to provisions of section 68 etc. as it will entail unnecessary litigation. We need to appreciate that in practical life it may not be possible for the taxpayers to prove the source with hard evidence in all cases. In contrast, if somebody is claiming any credit as capital receipt and has not offered it for tax, then the A.O. may apply provisions of section 68. In such cases marginal rate of tax may be applied at best.

c) We suggest that a proviso should be inserted to provide that if any assessee declares any income at his own under the head income from other source mentioning its nature, then in such cases section 68 or section 115BBE will not apply.

d) In case income of any other person is shown by other member of a family, the remedy is already available to the department. F**or example, In case any lady assessee shows income of vague nature and the department feels that it belongs to her husband, then the department is already empowered to make protective assessment in the hands of lady and make substantive assessment of such income in the hands of husband. If the case of the department is that income does not belong to the assessee, why they treat it as her income at all. Let them find out, whom it actually belongs to and tax it in his hands.**

e) If the income shown by a lady assessee is from "other sources" and if such amount is invested by her, some enthusiastic A.O. may also trap her u/s 69 by questioning source of investment and deeming the amount in certain cases as unexplained investment. For being just and avoid double jeopardy, it needs to be provided that where any amount is declared on his own by the assessee as Income from other sources, there need not be any addition u/s 69 to the extent of such income utilised for the investment.

f) It is suggested to clarify that the amount shown as income by the assessee will not be subjected to any addition u/s 68 etc. and secondly on such amount which are declared as income by assessee on his own, the normal tax rate or at best maximum marginal rate of 30 per cent will apply. The exemption limit in respect of amount declared by the taxpayers at their own should continue to be allowed. S**ection 115BBE may be suitably amended to avoid unnecessary hardship.**

Though section 115BBE applies to the amount of Income referred to in sections 68, 69, 69A to 69D, we are confining discussion here only to implications of section 68 and section 69, as these sections are crucial for considering unexplained income.

Section 68

2.1 **SECTION 68 :**As per section 68, where any sum is found credited in the books of an assessee maintained and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the A.O., the sum so credited may be charged to income tax as the income of the assessee of the relevant previous year.

2.2 W.e.f. **asst. year 2013-14**, section 68 has been amended to provide that if a closely held company fails to explain the source of share capital, share premium or share application money received by it to the satisfaction of the A.O., the same shall be deemed to be the income of the company u/s 68.

Further, a new section 115BBE has been inserted, w.e.f. asst. year 2013-14, and amended w.e.f. asst. year 2017-18 which provides that the deemed income on account of unexplained cash credit u/s 68, unexplained investment u/s 69, unexplained money u/s 69A, unrecorded investment u/s 69B, unexplained expenditure u/ s 69C and borrowing or repaying of hundi u/s 69D **shall be taxed at an effective rate of 77.25% if such income is reflected in the Return (Please refer para 1 above)** irrespective of the total income of the assessee. It further provides that no expenditure or allowances shall be allowed from such income.

2.3 **Burden of proof is on the assessee :**The Supreme Court in the cases of **Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC)** held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.

In the case of **Shankar Industries v. CIT [1978] 114 ITR 689 (Cal.)**, the Calcutta High Court held that it is necessary for the assessee to prove *prima facie* the transaction which results in a cash credit in his books of account. Such proof includes **proof of the identity of his creditor, the capacity of such creditor to advance the money** and lastly **the genuineness of the transaction.** Only after the assessee has adduced evidence to establish *prima facie* the aforesaid, the onus shifts to the department.

The Madras High Court in the case of **V. Datchinamurthy v. Asstt. Director of Inspection [1984] 149 ITR 341 (Mad.)** held that it has been a long accepted principle of income-tax law that an assessee is obliged to explain the nature and source of cash credits in his accounts and in the absence of satisfactory explanation on his part, the assessing authorities can very well proceed to treat the amount of cash credits in question as representing the taxpayer's income.

The Kerala High Court in the case of **ITO v. Diza Holdings (P.) Ltd. [2002] 120 Taxman 539 (Ker.)** held that it is clear on the terms of section 68 that the burden is on the assessee to offer a satisfactory explanation about the nature and source of the amount found credited in the books of the assessee. It is also clear that the **mere furnishing of particulars** is not enough. The mere fact that payment was made by way of **account payee cheque** is also not conclusive. Therefore, the Assessing Officer would be entitled to consider whether notwithstanding the fact that the payments were made by cheques, whether the assessee has satisfactorily explained the nature and source of the amounts found credited in the books of the assessee.

The Rajasthan High Court in the case of **CIT v. R.S. Rathore [1995] 212 ITR 390 (Raj.)** held that while explaining the various credits and investments, it is possible that the assessee may be successful in explaining some of them, but that does not by itself mean that the entire investments has to be considered as explained. It is **each and individual entry on which the mind has to be applied** by the taxing authority when an explanation is offered by the assessee.

The Calcutta High Court in the case of **C. Kant & Co. v. CIT [1980] 126 ITR 63 (Cal.)** held that in the case of cash credit entry it is necessary for the assessee to prove not only the **identity** of the creditors but also to prove **the capacity of the creditors** to advance the money and the **genuineness of the transactions.** On whom the onus of proof lies in a particular case is a question of law. But whether the onus has been discharged in a particular case is a question of fact.

On the other hand, it was held in the case of **CIT v. Metachem Industries [2000] 245 ITR 160 (MP)** that where the

assessee-firm had satisfactorily explained the credits standing in the name of its partners, the responsibility of the assessee stands discharged. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. **If that person owns the entry, then the burden of the assessee-firm is discharged.** It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited the amount.

2.4 Whether the burden to prove genuineness of transactions as well as creditworthiness of creditor between assessee and creditor and/or creditor and sub-creditor is upon the assessee : In **Nemi Chand Kothari v. CIT [2003] 264 ITR 254 (Gau.)** the assessee who carried on the business of supply of bamboo had taken loans amounting to Rs.4,35,000 and Rs.5 lakhs during the previous year relevant to the assessment year 1992-93. The amounts were paid by cheques by the creditors to the assessee. The creditors received the said amount by way of loans from their sub-creditors by means of cheques. The A.O. declined to treat the loan amount of Rs.4,35,000 as genuine. As regards Rs.5 lakhs he declined to treat the loan amount to the extent of Rs.4,25,000 as genuine. The A.O. added the two amounts to the total income of assessee as income from undisclosed sources. The Tribunal set aside the order passed by the Commissioner (Appeals) and upheld the order of the A.O. on the ground that neither the sub-creditors nor the creditors in question had creditworthiness to advance the said loans.

On appeal the Gauhati High Court held -

(i) that the assessee had established the identity of the creditors. The assessee had also shown, in accordance with the burden, which rested on him u/s 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors which was not in dispute. Once the assessee had established these, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter, the burden had shifted to the A.O. to prove the contrary.

(ii) The failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, could not, under the law be treated as the income from undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. The A.O. failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. Therefore, the A.O. could not have treated the said amounts as income derived by the assessee from undisclosed sources.

(iii) that no assessment could be made contrary to the provisions of law. In the instant case, the very basis for making the assessment was under challenge. If the assessment was based on a completely erroneous view of law, such findings could not be regarded as mere findings of fact, but must be treated as substantial questions of law. Therefore, the question raised in the appeal was a substantial question of law because it went to the very root of the assessment made.

(iv) that a person may have funds from any source and an assessee, on such information received, may take a loan from such a person. It is not the business of the assessee to find out whether the source or sources from which the creditor had agreed to advance the amounts were genuine or not. If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep it in the bank, the said amount cannot be treated as income of the assessee from undisclosed sources.

The above decision is likely to have far reaching effect with regard to provisions of section 68. It is praiseworthy that the Gauhati High Court has added a new dimension by reading section 68 together with section 106 of the Indian Evidence Act. Now, in view of the above decision, a creditor's creditworthiness has to be judged vis-a-vis transactions, which have taken place between the assessee and the creditor and, it is not business of assessee to find out source of money of his creditor or genuineness of his transactions, which took place between creditor and sub-creditor and/or creditworthiness of sub-creditors for these aspects may not be within special knowledge of the assessee. In Nemi Chand Kothari's case the Court has followed the decision of **Tolaram Daga v. CIT [1966] 59 ITR 632 (Assam)**.

2.5 Whether the assessee can seek aid of section 131 to prove the genuineness of transactions : In CIT v. Kamdhenu Vyapar Co. Ltd. [2003] 263 ITR 692 (Cal.), it has been observed that simple disclosure of certain materials will not help the assessee to discharge the burden of proving the credits u/s 68 of the Income-tax Act, 1961. Until the onus is prima facie discharged by the assessee, it never shifts on the Department. But in order to ascertain whether prima facie onus has or has not been discharged, **the A.O. has a duty to enquire into the materials so disclosed.** The assessee may seek assistance of section 131 of the Act for the purpose of proving its own case. Section 131 empowers the A.O. to exercise the same power as vested in a civil court for compelling attendance of witnesses. An opportunity in-built in section 68 of the Act has been given to the assessee to prove to the satisfaction of the A.O. that the apparent is real and the transaction was genuine. In the process of availing of such opportunity, the assessee may seek aid of section 131 of the Act. If in the process, in order to secure attendance of a person a request is made by the assessee to the A.O. for issuing of summons, it is incumbent on the A.O. to issue such summons in order to enable the assessee to avail of the opportunity provided by the statute, otherwise the A.O. would be denying the opportunity provided to the assessee, in-built in section 68.

2.6 Whether A.O. can make an addition merely on ground of non-appearance of the creditor / donor : In **Atmaram J. Manghimalani (HUF) v. ITO 67 ITD 289 (Mum.) : 62 TTJ (Mum.) 357** it had been held that mere non- appearance of the donor, in the absence of any evidence that donated amount represents undisclosed income of the appellant, no addition can be made. Same analogy may apply in case of loan.

2.7 Whether the power of the A.O. u/s 68 is absolute one : In a recent decision of **Hindusthan Tea Trading Co. Ltd. v. CIT [2003] 263 ITR 289 (Cal.)** it was held that the power of the A.O. u/s 68 is not an absolute one. It is subject to his satisfaction where an explanation is offered. The power is absolute where the assessee offers no explanation. The satisfaction with regard to the explanation is in effect an in-built safeguard in section 68 protecting the interest of the assessee. It provides for an opportunity to the assessee to explain the nature and source of the fund. Once it is explained, it is incumbent on the A.O. to consider the same and form an opinion whether the explanation is satisfactory or not.

Duty of A.O. if the conclusion is adverse : If the conclusion is adverse wholly or in part to the interest of the assessee, it is

incumbent on the A.O. to intimate or inform the conclusion arrived at to the assessee. When such information or intimation is received by the assessee, the onus shifts on the assessee. He may furnish further explanation or information to support its contention. If further information or materials are furnished, the A.O. is bound to examine the same and form his final opinion and pass an appropriate order. Such opinion is also subject to examination by the Commissioner (Appeals) or the Tribunal and if it involves a question of law, it is also subject to scrutiny by the High Court.

2.8 **Whether an addition can be made on account of cash credit u/s 68 even if no books of account are maintained :** In the case of **Anand Ram Raitani v. CIT [1997] 223 ITR 544 (Gau.)** it was held that the Assessing Officer before invoking the power u/s 68 of the Act must be satisfied that there are books of account maintained by the assessee and the cash credit is recorded in the said books of account and if the assessee fails to satisfy the Assessing Officer, the said sum so credited has to be charged to income-tax as the income of the assessee of that previous year. The existence of books of account is a condition precedent for invoking the power, discharging the burden is a subsequent condition.

2.9 **If books of accounts have been rejected and tax is levied on estimated income, whether A.O. can make an addition for cash credit u/s 68** : There is nothing in law which prevents the Assessing Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC). Whether in a given case the Assessing Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case -CIT v. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194, 196 (SC).

Where a particular business income of the assessee has been estimated and determined, and in such a case certain cash credits are found, the Assessing Officer may be precluded from adding the said unexplained cash credit as undisclosed income from the business, the income of which was determined on estimate basis. But where the unexplained cash credits are not referable to the business income of the assessee which was estimated, the Assessing Officer is not precluded from treating the unexplained cash credit as income from any other source -CIT v. Maduri Rajaiahgari Kistaiah [1979] 120 ITR 294 (AP).

In CIT v. Neemar Ram Badlu Ram [1980] 122 ITR 68 (All.), the books of account of the assessee-firm for the years 1960-61 to 1963-64 were found to be irregular. The balance-sheets revealed excess of assets over actual liabilities. It was discovered that there were a large number of mistakes in the totals of the cash book and at many places the assessee had deliberately inflated the total on the credit side and deflated the total on the debit side of the cash book to suit his convenience. Taking each year separately, the Assessing Officer made addition for **peak credit/unaccounted money** and also for **extra profits**. The Tribunal drew the inference that there was a connection between the unaccounted money and excess assets discovered in the business from year to year. There was also a connection between the unaccounted money and the extra profits withheld from the account books from year to year. The Tribunal, therefore, held that **only the difference of the peak unaccounted money from year to year after giving adjustment for earlier years' additions could be brought to tax**. It was further held that there should not be any further addition on account of extra profits where the amount of such extra profits did not exceed the amount of the difference in peak credit/unaccounted money added for that year. Where, however, the extra profits estimate is more than the addition on account of the difference in peak credits, the bigger of the two alone will be added. The Tribunal's view was upheld by the High Court.

In CIT v.Tyaryamal Balchand [1987] 165 ITR 453 (Raj.), additions were made in the trading results. Further, amount representing cash credits were also added as income from undisclosed sources. The Tribunal found that the **additions in trading results would cover the amount of cash credits** as also substantial additions had been made in earlier years. It was held that the Tribunal was justified in deleting the addition on account of cash credits.

Similarly, in CIT v. K.S.M. Guruswamy Nadar & Sons [1984] 149 ITR 127 (Mad.), it was held that **two additions, one towards suppressed book profits and the other towards bogus cash credit, should be telescoped and covered into one addition.**

In Ramcharitar Ram Harihar Prasad v. CIT [1953] 23 ITR 301 (Pat.) it was held that adding up extra estimated profits as well as the amounts of cash credits was open to authorities only **when there was material to show that assessee carried on an independent business apart from the business** for which assessment was being made;

In Maddi Sudarsanam Oil Mills Co. v. CIT [1959] 37 ITR 369 (AP) it was held that where the authorities reject the books of account and estimate the gross profits at a flat rate, they cannot rely on the books for the purpose of adding cash credit which were part of the scheme of balancing accounts, to the profits so ascertained.

Similar view has been expressed in **Reliable Surface Coatings v. ACIT [2011] 7 ITR (Trib.) 183 (Ahd).**

In CIT v. Babban Pandey [1970] 77 ITR 601 (All) the High Court followed Maddi Sudarsanam case [observing that the decision of the Supreme Court in Kale Khan's case, [1963] 50 ITR 14 (SC), is not an authority for the contention that where the income of an assessee has been estimated on a percentage basis, the unexplained cash credit appearing in the business books must be separately added].

In CIT v. Daluram Pannalal Modi [1981] 129 ITR 398 (MP) it was held that unless the assessee shows by adducing satisfactory evidence that the cash credits were referable to the undisclosed income of the known or disclosed source, namely, the business, income from which had already been estimated, the Tribunal cannot assume that once the business income was estimated, the unexplained cash credit is covered by the income so estimated.

Other relevant cases are :-

1. Srinivas Ramkumar v. CIT [1948] 16 ITR 254 (Pat.);
2. D.C. Auddy & Bros. v. CIT [1955] 28 ITR 713 (Cal.);
3. G.M. Chenna Basappa v. CIT [1958] 34 ITR 576 (AP);
4. Ratanchand Dipchand v. CIT [1960] 38 ITR 188 (MP);
5. S. Kumaraswami Reddiar v. CIT [1960] 40 ITR 590 (Ker.);
6. Guduthur Bros. v. CIT [1966] Taxation 22 (3)-241 (Mys.).
7. Mangalchand Gobardhan Das v. CIT, [1954] 26 ITR 706 (Assam)
8. L.R. Brothers v. CIT [1957] 31 ITR 815 (All.).

2.10 **Relevance of entries in the books of account with reference to Indian Evidence Act, 1872 :**It has been observed in **CBI v. V.C. Shukla [1998] 3 SCC 410 (SC)** that according to section 34 of the Indian Evidence Act, 1872, entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire. From a plain reading of section 34 it is manifest that to make an entry relevant the reunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the said section 34 it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still,

the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of that section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability…..

Where the genuineness and regularity of the accounts have not been challenged, the accounts are relevant prima facie proof of the entries and the correctness thereof under section 34 of the Evidence Act - Tolaram Daga v. CIT [1966] 59 ITR 632 (Assam); Dhansiram Agarwalla v. CIT [1996] 217 ITR 4 (Gau.).

2.11 **In case share application money is credited in the books of company :** W.e.f. **asst. year 2013-14**, section 68 has been amended to provide that if a closely held company fails to explain the source of share capital, share premium or share application money received by it to the satisfaction of the A.O., the same shall be deemed to be the income of the company u/s 68. However the amendment shall not apply where the share capital, share premium or share application money is received from Venture Capital Fund or Venture Capital Company registered with SEBI.

The position prior to the amendment is enumerated below:

Some Courts had taken a view that amounts received towards share capital are totally outside the scope of assessment, even if they are unproved, on the ground, that they cannot be treated as cash credits falling within the purview of section 68.

The Delhi High Court after a review of the precedents on the subject in **CIT v. Divine Leasing and Finance Ltd. and CIT v. Lovely Exports P. Ltd. [2008] 299 ITR 268 (Del.)** in a group of cases held that section 68 would require both the identity of the depositor and his creditworthiness to be proved. Where a company furnishes the address and permanent account number (PAN), such identity is established. As regards creditworthiness in a matter of subscription to public issue, more may not be expected from the assessee. The burden of proof that is expected as regards creditworthiness has to be decided in the light of the facts of each case. Where the subscriptions were received through banking channels as prescribed under SEBI regulations, the inference that the subscribers lack creditworthiness could not have been lightly drawn without some investigation on the part of the Assessing Officer. The addition without such investigation should be treated as based upon mere surmises. The principle that identity is more important in such cases has been reiterated and that even where creditworthiness is not established to the satisfaction of the Assessing Officer, it need not be unexplained income of the company, since the legitimate inference is that the income is that of the subscriber as long as the advance of the amount to the company is established and there is nothing to suggest that the amount belonged to the company.

The SLP of the department in the case of **Lovely Exports (supra)** has been dismissed by Supreme Court 319 ITR (St) 5 observing: *"Can the amount of share money be regarded* as *undisclosed income under section* 68 *of the Income-tax Act,* 1961? *We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."*

Similar view had been adopted in **CIT v. Electro Polychem Ltd. [2007] 294 ITR 661 (Mad.)** purportedly following the decisions in **CIT v. Steller Investment Ltd. [2001] 251 ITR 263 (SC).** The view upheld by the Supreme Court in Steller Investments' case (supra) was rendered in the context of a Departmental appeal against the rejection of Reference on the decision of the Tribunal, reversing the decision of the Commissioner (Appeals) setting aside the assessment for detailed investigation regarding the genuineness of the subscriptions towards share capital. It was the said order of setting aside, which was reversed in the circumstances, where lack of genuineness was not established by the Assessing Officer. The reason, why the Supreme Court upheld the High Court order was that the Tribunal's decision was based on facts.

Allahabad High Court in the case of Jaya Securities Ltd. v. CIT [2008] 166 Taxmann 7 (All.) held that no addition u/s 68 can be made in respect of investment made by different persons in the share capital of a company, limited by shares, whether public or private.The Full Bench of the Delhi High Court in CIT v. Sophia Finance Ltd. [1994] 205 ITR 98 (Del.)(FB) overruled its earlier decision in the case of Steller Investment Ltd.'s case [1991] 192 ITR 287 (Del.).

In yet another case in CIT v. Bhagwati Jewels Ltd. [1993] 201 ITR 461 (Del.) the High Court even without the benefit of the Full Bench decision in Sophia Finance Ltd.'s case (supra) distinguished the High Court decision in Stellar Investment's case.

The Calcutta High Court in CIT v. Ruby Traders and Exporters Ltd. [2003] 263 ITR 300 (Cal.) held that the Supreme Court decision in Steller Investment Ltd.'s case (supra) had not bound the Income Tax Department to accept share capital amounts as falling outside section 68.

However in Hindusthan Tea Trading Co. Ltd. v. CIT [2003] 263 ITR 289 (Cal.) it was held that the amounts received as share capital by way of cheques on nationalised banks after advertisement in newspapers inviting share capital, cannot be subject to addition. Also refer CIT v. Victor Electrodes Ltd. [2010] 329 ITR 271 (Del.).

In fact, the issue came up before the Supreme Court in CIT v. Gujarat Heavy Chemicals Ltd. [2002] 256 ITR 795 (SC) in respect of credits by way of share capital in the names of certain Sikkim Companies, which were not genuine with the source of funds attributed to one Sanjay Dalmia, so that it was for this reason, that it was not assessable in the hands of the company as decided by the Tribunal and sustained ultimately by the Supreme Court.

In Down Town Hospital Pvt. Ltd.[2004] 267 ITR 439 (Gau.), the High Court reviewed the case law on the subject and concluded, where the identity of the shareholders is established, the further requirement as to the source may not be expected, since the burden shifts to the Revenue once the identity is established.

The above view has been followed in CIT v. STL Extrusion P. Ltd. [2011] 333 ITR 269 (MP); CIT v. Ambuja Ginning, Pressing & Oil Co. P. Ltd. [2011] 332 ITR 434 (Guj.), CIT v. K..C. Fibres Ltd. [2011] 332 ITR 481 (Del.), CIT v. Dwarkadhish Investment P. Ltd. [2011] 330 ITR 298 (Del.), CIT v. Winstral Petrochemicals P. Ltd. [2011] 330 ITR 603 (Del.); **CIT v. Misra Preservers Pvt. Ltd. [2013] 350 ITR 222 (All.)**.

The Delhi High Court in the case of CIT v. Value Capital Services P. Ltd [2008] 307 ITR 334 (Del.) held that department must show that investment made by subscribers actually emanated from coffers of assessee to be treated as undisclosed income of assessee.

A review of the case laws would appear to indicate that the degree of responsibility in respect of share capital on the company may well be less, but it cannot disown the responsibility especially if it is a private company, where the shareholders may ordinarily be expected to be known to the company.

The same issue came up before the Madras High Court before a different Bench in CIT v. Gobi Textiles Ltd. [2007] 294 ITR 663 (Mad.) where the assessee had on the request of the Assessing Officer produced evidence regarding share capital contributions of more than Rs.1 lakh each. Salary certificates were produced to show their identity as well as capacity to

subscribe for the shares. The identity of the shareholders was not in doubt. The Assessing Officer accepted the genuineness of one of the shareholders and added the share capital of nine others. The Commissioner (Appeals) not only confirmed the addition but also sustained the penalty. The Tribunal deleted the addition since the assessee had discharged the onus by the identification and proof as to source, so that the addition could only be taken as made on mere surmise. The finding of the Tribunal being one of fact, the High Court declined to interfere. It incidentally endorsed the reasoning of the Delhi High Court in Sophia Finance Ltd.'s case [1994] 205 ITR 98 (Del.) for its conclusion, that the addition was not justified, since no enquiry was conducted by the Assessing Officer to discredit the claim of genuineness.

The Chattisgarh High Court in the case of **ACIT v. Venkateshwar Ispat P. Ltd. [2009] 319 ITR 393 (Chattisgarh)** held that merely because notice issued to some shareholders was not responded, their share application money cannot be treated as unexplained amount u/s 68.

Where the assessee files the return of income of the share applicants and their loan confirmations, the burden of the assessee stands discharged- **CIT v. Jay Dee Securities and Finance Ltd. [2013] 350 ITR 220 (All.).**

The Delhi High Court in the case of **CIT v. Orbital Communication (P) Ltd. [2010] 327 ITR 560 (Del.)** held that where assessee has established the genuineness of the share transaction and the creditworthiness of the applicant, then mere failure to produce the creditor cannot be a ground for making addition u/s 68. Also refer **CIT v. Samir Bio Tech P. Ltd. [2010] 325 ITR 294 (Del.)**.

However where information was obtained from investigation wing about accommodation entry providers and their modus operandi, and the list contained the name of the assessee to whom entry providers had provided entries, and further summons to such persons were not responded to, in such a case the affidavits filed by assessee after 2 years from entry providers to the effect that transactions were genuine, are of no evidentiary value. There is no duty on assessing officer to prove that monies emanated from coffers of assessee - **CIT v. Nova Promoters and Finlease (P) Ltd. 342 ITR 169 (Del.).**

2.12 When can the amount/ income be treated as cash credits u/s 68 : As per section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of the previous year if the explanation offered by the assessee about the nature and source thereof, is, in the opinion of the Assessing Officer, not satisfactory.

In **Davinder Singh v. ACIT [2006] 101 TTJ 505 (ITAT-Asr.)** it has been held that the expression "any sum" is very wide and general in nature. It covers all credit including loan, receipts and any other amount of similar nature. The credit shall also include both loans and trade credits and also other receipts, be that of cash or kind. These may be in the name of the assessee i.e. capital account or in the name of a third party.

The Supreme Court in the case of **Sumati Dayal v. CIT [1995] 214 ITR 801: 80 Taxman 89 (SC)** held that in case there is *prima facie* evidence against the assessee, *viz.*, the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted can be used against him by holding that it is a receipt of an income nature. **While considering the explanation of the assessee, the department cannot, however, act unreasonable.**

In the case of **Jagdamba Construction Co. v. ITO [2004] 82 TTJ (Jd.) (Trib.) 13,** some of the creditors were produced before the A.O. while affidavits of some of them have been produced. Balance Sheets of some of the creditors were also produced wherein the transactions were entered into. Some of the creditors have filed confirmations. Cash creditors being income-tax assessees who also had bank accounts, the finding of the A.O. that the creditors were not creditworthy was not justified. The examination by the A.O. of some of the creditors had not revealed any finding adverse to the claim of the assessee. Thus, when the cash credits stand explained, no addition, including addition on account of interest thereon, was justified. Presuming that cash credits are unexplained, the CIT(A) was fully justified in allowing set off of intangible additions against addition on account of unexplained cash credits - **Asstt. CIT v. India Tyre House [2001] 72 TTJ (Gau.) 316, CIT v. Heeralal Chaganlal Tank [2002] 257 ITR 281 (Raj.) : [2002] 176 CTR (Raj.) 495, Shivam Synthetics (P) Ltd. v. Asstt. CIT [2002] 76 TTJ (Jd.) 164, Rohini Builders v. Dy. CIT [2002] 76 TTJ (Ahd.) 521, R. Dalmia through L.R. v. CIT [2002] 172 CTR (Del.) 180** and **B & Brothers Engg. Works v. Dy. CIT [2003] 78 TTJ (Ahd)(TM) 876** relied on.

The Kerala High Court in the case of **Oceanic Products Exporting Co. v. CIT [2000] 241 ITR 497 (Ker.)** held that after the enactment of section 68, **the burden is placed on the assessee to prove a credit appearing in its books of account.** That burden has to be discharged with **positive material.** When it is contended that a person has advanced money or had given a loan, **it has to be established that the person was not a man of straw and had the capacity to give the money.** A conclusion regarding **credit-worthiness** or otherwise is essentially one of fact. It does not give rise to a question of law unless it is established that the conclusion was contrary to the materials on record. Section 68 gives statutory recognition to the principle that cash credits which are not satisfactorily explained may be assessed as income. (In this case, cash credits appeared in the names of illiterate and nomadic fishermen who were not capable of lending huge amounts and who were not shown to have owned any assets worth the name, and who also gave different versions during their examination from what they had given earlier in written statements. The High Court sustained the additions made).

The Supreme Court in the cases of **A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC); CIT v. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC)** held that where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, **it is not necessary for the department to locate its exact source.**

The Calcutta High Court in the case of **CIT v. Precision Finance (P.) Ltd. [1994] 121 CTR (Cal.) 20** held that it is for the assessee to prove the **identity** of the creditors, their **creditworthiness** and the **genuineness of the transactions**. Mere furnishing of the particulars is not enough. Where the enquiry of the ITO revealed that either the creditor was not traceable or there was no such file, the first ingredient as to the identity of the creditor could not be said to have been established. If the identity of the creditors has not been established, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors does not and could not arise.

Allahabad High Court in the case of **CIT v. Jaiswal Grain Stores [2005] 272 ITR 136 (All.)** has held that in case of a new business, the addition u/s 68 on the very first day of the commencement of the business should not be made. On the first day of the business it could not be assumed that the assessee firm though assessed as AOP, had unexplained income.

2.13 If a lender, issues confirmation for loan given and also gives affidavit, resiles or retracts later on the plea that it was a hawala transaction: Under similar facts and circumstances Jaipur Bench of ITAT in the case of Sohan Lal Jain v. ITO [1987] 59 CTR (Trib.)(Sp) 17 held that merely because a creditor turns **hostile**, the contention of the assessee setting up a cash credit should not be disbelieved otherwise creditors could bring their assessee to ransom. It further observed that the A.O. should have gone deeper into the matter and should have called the creditors by issuing a notice u/s 131 to find out the truth and the assessee can

certainly produce other collateral evidence to show the circumstances under which the creditor has resiled. The ITAT set aside the above case for fresh examination.

2.14 **Whether loan received in the earlier year can be added u/s 68 as unexplained cash credit :** As per section 68 only amount found credited during the year can be added as such loan received in the earlier year cannot be added - **ITO v. Nasir Khan J. Mahadik [2012] 134 ITD 166 (Mum).**

2.15 **Where a diary containing receipts not recorded in the books of accounts for a period of 2 months is found, can A.O. presume similar undisclosed receipts for the balance part of the year:** In the absence of any other diary or note book for the remaining period, multiplying formula or estimate cannot be applied for the period, for which no omitted receipts were evidenced by slips or notebook or diary **- Dr. R.M.L. Mehrotra 68 ITD 288 (Ahm.).**

2.16 **Whether credits in rough cash book can be added u/s 68:** Where cash credits are recorded in the rough cash book of the assessee and there is no proper explanation, sec. 68 will apply and the credit amount will be assessable as income of the assessee - Haji Nazir Hussain v. ITO [2004] 271 ITR (AT) 14 (Del). However loose sheets of paper are not books**- Central Bureau of Investigation v. V.C. Shukla [1998] 3 SCC 410.**

2.17 **Where the Investigation Wing of the Income-tax Department found that the subscribers of the shares had availed of accommodation entries from professional name-lenders :** There is no evidentiary value of the affidavits filed after two years specifically in view of the fact that subscribers did not appear or respond to the summons and issued statement before investigation wing that share application was accommodation entries - **CIT v. Nova promoters and Finlease (P.) Ltd. [2012] 342 ITR 169 (Delhi).**

2.18 **Bank pass book cannot be regarded as a Book of Account :** The Bombay High Court held that a pass book supplied by the bank to the assessee cannot be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions - **CIT v. Bhaichand H. Gandhi [1983] 141 ITR 67 (Bom.).**

In **Smt. Shanta Devi v. CIT [1998] 171 ITR 532 (P&H),** it was held that a perusal of section 68 would show that the expression "books" has been used with reference to the word "assessee". In other words, **such books have to be books of the assessee himself, and not of any other assessee.** Thus, the books of account of partnership firm cannot be considered to be the books of account of the partner. Any cash credit shown therein cannot be brought to tax as income u/s 68 in the hands of the partners.

2.19 **Treatment of Cash Credits in the case of Firms :** There has been difference of judicial opinion on the issue of Treatment of Cash Credits in the case of Firms. The following cases are relevant-

In **CIT & Another v. Md. Perwez Ahmad & others [2004] 268 ITR 381(Pat.)** - Where the Tribunal after having considered the material on record, had found that section 68 of the I.T. Act,1961 was not attracted in the case for the reason that in this case credit in the booksof account of the assessee firm, **was on account of introduction of capital by the partners and the firm had failed to prove the amount credited in the books of account and as such it would be assessed in the hands of the partners as unexplained investments. The High Court held that this was a finding of fact and no substantial question of law arose from the order of the Tribunal.**

In CIT v. Burma Electro Corporation [2001] 252 ITR 344 (P&H):[2002] 172 CTR (P&H) 541: [2003] 126 Taxman 533 (P&H), the assessee was a firm comprising 12 partners. The cash credit to the extent of Rs.10,000 of Shri Hari Singh, Rs. 5,000 of Shri Gurdev Singh and Rs. 5,000 of Smt, Dhan Raj have not been properly explained by the assessee as sufficiency of funds at the time of assessment in their case to the extent have not been explained. In these circumstances, the Tribunal held that this amount of cash credits of the partners cannot be assessed as the income of the assessee-firm u/s 68 of the Income-tax Act but it may be assessed in their individual hands as their unexplained investments, if that is permissible u/s 69 of the Income-tax Act. Thus, according to the Tribunal the result was that the above calculated unexplained cash credit relating to partners cannot be added in the income of the firm as its unexplained income. The High Court held **" In our opinion, the reasons assigned by the Tribunal for deleting the additions are directly referable to the provisions of section 68 of the Act and we do not find any cogent reason to interfere with the same merely because on a reappraisal of the entire matter, it may be possible to form a different opinion."** Similar view has been expressed in **Abhyudaya Pharmaceuticals v. CIT [2013] 350 ITR 358 (All.)** and **Patel Vishnubhai Kantilal and Co. v. ITO [2013] 21 ITR (Trib) 204 (Ahd.).**

In CIT v. Metachem Industries [2000] 245 ITR 160 (MP), it has been held that where the assessee-firm had satisfactorily explained the credits standing in the name of its partners, the responsibility of the assessee stands discharged. Once it is established that the amount has been invested, by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask the person who makes investment, whether the money invested is properly taxed or not. If that person owns the entry, then the burden of the assessee firm is discharged. It is open to the A.O. to undertake further investigation with regard to that individual who has deposited the amount.

India Rice Mills v. CIT 218 ITR 508, 511(All.) - Where the capital contributions are made by the partners prior to the commencement of the business by the assessee-firm, it is for the partners to explain the source of such capital contributions and if they fail to discharge such onus then such capital contributions, although entered in the books of the assessee firm, cannot be regarded as income of the assessee-firm.

Surinder Mohan Seth v. CIT 221 ITR 239 at page 240 (All.) - In this case the decision in India Rice Mill (supra) was followed.

CIT, Allahabad v. Jaiswal Motor Finance 141 ITR 706 (All.) - The Court held - "It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and, it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm. We are, therefore, of the opinion that the Tribunal did not commit any error of law and rightly held that the deposits shown in its accounts were satisfactorily explained."

CIT v. Kishorilal Santoshilal [1995] 216 ITR 9 (Raj.) - In the case of cash credits in the accounts of a firm, the following points need be noted :

(a) there is no distinction between the cash credit existing in the books of the firm, whether it is of a partner or of a third party;

(b) the burden to prove the **identity**, **capacity** and **genuineness** has to be on the assessee;

(c) if the cash credit is not satisfactorily explained, the ITO will be justified to treat it as income from undisclosed sources;

(d) the firm has to establish that **the amount was actually given** by the lender;

(e) the genuineness and **regularity in the maintenance of the account** has to be taken into consideration by the taxing authorities;

(f) if the explanation is not **supported by any documentary or other evidence**, then the deeming fiction created by section 68 can be invoked;

(g) **simply because the amount is credited in the books of the firm in the partner's capital account, it cannot be said that it is not the undisclosed income of the firm** and that in all cases it has to be assessed as an undisclosed income of the partner alone.

It was held by Assam High Court in the case of **Tolaram Daga v. CIT [1966] 59 ITR 632 (Assam)** that the mere fact that the third party making deposit in a firm happens to be the wife of the assessee-partner does not *ipso facto* make the assessee come into the knowledge of the sources from which the money was realised. **The mere fact that the partner is unable to satisfy the authorities as to the source from which his wife derived the money which she has deposited in the firm cannot be used against the partner.**

2.20 Whether ownership of the person in respect of cash credits is necessary : The Supreme Court in the case of **CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC)** held that it is a common feature of commercial and other transactions that securities are offered by other persons to guarantee the payment of the amount which may be found due from the principal debtor. The concept of security and ownership are different and it would be a wholly erroneous approach to hold that a thing offered in security by a third person to guarantee the payment of debt due from the principal debtor belongs not to the surety but to the principal debtor. **The onus to prove that the apparent is not the real is on the person who claims it to be so.**

In the same decision it was further held that a person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct. From the simple fact that the explanation regarding the source of money furnished by A, in whose name the money is lying in deposit, has been found to be false, **it would be a remote and far-fetched conclusion to hold that the money belong to B.**

2.21 Where charitable trust or institution receives a donation and fails to explain the source thereof, can the same be added u/s 68 : Donations other than corpus donations are always treated as income of the trust subject to its application towards the object of the trust. Since the donation receipts are income of the trust, question of its inclusion in the income of the trust does not arise - **DIT (E) v. Keshav Social and Charitable Foundation [2005] 278 ITR 152 (Del).**.

W.e.f. asst. year 2007-08 anonymous donations received by charitable trusts and institutions other than religious or partly religious trust or institution is taxable @30% u/s 115BBC (subject to the limit of 5% or Rs. 1 lakh, whichever is more).

2.22 Can an educational Institution claim exemption u/s 10 in respect of income added u/s 68 : In case of an educational institution exempt u/s 10(22) **[now 10(23C)]**, the Assessing Officer noticed some credits, which he sought to treat as deemed income u/s 68 of the Income- tax Act, 1961 and brought to tax, but denied exemption for such amount. It was argued on behalf of the assessee that the income which is exempt has to be understood in a wide sense. The High Court in Director of Income Tax (Exemption) v. Raunaq Education Foundation [2007] 294 ITR 76 (Del.) found that the income cannot be given a restricted meaning following the decision of the Supreme Court in different context in P.R. Prabhakar v. CIT [2006] 284 ITR 548 (SC). It also referred to a decision of the Supreme Court in Adityapur Industrial Area Development Authority v. Union of India [2006] 5 Scale 321 (SC), where it was held that an exemption granted cannot be taken away, unless it is expressly provided for. In such cases where the Assessing Officer infers income for a charitable institution other than what is admitted in the books, whether by anonymous donations or by way of loan, the source of which cannot be proved, such income will also be exempt subject only to the conditions for application of such income as well, so that there could be no liability on such income.

The above view has also been taken in the case of **ACIT v. Muslim Educational Society [2010] 1 ITR (Trib) 527 (Coch.)**.

However the law as regards anonymous donations has been amended by insertion of section 115BBC, whereby anonymous donations are taxed in certain cases. Even so income with reference to sction 68 would not be so covered by the amendment.

2.23 Whether section 68 can be applied against bank for deposit received : The Amritsar Bench in the case of **ACIT v. Citizen Urban Co-operative Bank Ltd. [2009] 314 ITR (AT) 91** held that public deposits accepted by bank are not covered u/s 68 as the bank is not obliged to question the source of deposit of customers where depositors have been properly introduced.

2.24 Whether section 68 can be applied to the bank with respect to deposits in the accounts of account holders : Punjab & Haryana High Court in the case of **CIT v. Citizen Urban Co-op. Bank Ltd. [2011] 336 ITR 62 (P&H)** wherein A.O. found that some deposits were made by some account-holders and the accounts were closed immediately withdrawing the deposits in cash, applying section 68 A.O. asked to explain the said deposits to assessee. It was held that since there is no nexus between depositor and the bank, section 68 cannot be applied.

2.25 Where the assessee receives advance against tenancy : The Madhya Pradesh High Court in the case of CIT v. Nevendram Ahuja [2007] 290 ITR 453 (MP) held that the landlord is only to prove the identity of the tenant and the genuineness of transaction under which deposit was made. There is no necessity to prove capacity of tenant to make deposit. Section 68 does not apply in such a case.

2.26 Cash credits in case of intangible additions : It was held by the Supreme Court in the case of **Anantharam Veerasinghaiah & Co. v. CIT [1980] 123 ITR 457 (SC)** held that when an 'intangible' addition is made to the book profits during an assessment proceedings, it is on the basis that the amount represented by that **addition constitutes the undisclosed income of the assessee.** That income, although commonly described as 'intangible', is as much a part of the assessee's real income as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profits could be. There can be no escape from the proposition that the secret profits or undisclosed income of an assessee earned in an earlier assessment year may constitute a fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. But it is quite another thing to say that any part of that fund must necessarily be regarded as the source of unexplained expenditure or of cash credits recorded during a subsequent assessment year. The mere availability of such a fund cannot in all cases imply that the assessee has not earned further secret profits during the relevant assessment year. It is a matter for consideration by the taxing authority in each case whether the **unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or they are reasonably explained by reference to concealed income earned in that very year.** In each case, the true nature of the cash deficit must be ascertained from an **overall consideration** of the particular facts and circumstances of the case. Evidence may exist to show that reliance cannot be placed completely on the availability of a previously earned undisclosed income. A number of circumstances of vital significance may point to the conclusion that the cash deficit or cash credit cannot reasonably be related to the amount covered by the

intangible addition but must be regarded as pointing to the receipt of undisclosed income earned during the assessment year under consideration. It is open to the revenue to rely on all the circumstances pointing to that conclusion. What these several circumstances can be, is difficult to enumerate and indeed from the nature of the enquiry it is almost impossible to do so. In the end they must be such as can lead to the firm conclusion that the assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars.

The Delhi High Court in the case of **R. Dalmia v. CIT [2001] 119 Taxman 547 (Delhi)** held that it cannot be an abstract proposition in law that intangible additions of previous year are to be taken note of while considering cash credit. On the facts of each case a specific plea and proof that there was any **link between the intangible additions in the previous year and the cash credit has to be established**, if that be a fact while tendering explanation regarding cash credit, must plainly state as a fact that the cash credit concerned did come out of the earlier intangible additions. Unless this is done, there is no requirement to make an enquiry regarding reasonableness of the explanation. It is not open to the assessee to offer two different explanations by way of alternative pleas. It is within the domain of taxing authorities to consider **whether a particular cash credit, or unexplained expenditure or investment can reasonably be attributed to intangible additions, if material are placed in that regard.**

The Kerala High Court in the case of **CIT v. M.A. Unnerikutty [1985] 154 ITR 844 (Ker.)** held that the funds comprising the intangible additions made in earlier year would not help an assessee to presume that the said fund was always available to cover the unexplained income of the succeeding years. It is **for the assessee to establish that he has not earned any secret profits** during the relevant year and that the **investment flowed from the intangible additions made in the preceding years.**

Also refer the decision **Jagdamba Construction Co. v. ITO [2004] 82 TTJ (Jd.) (Trib.) 13.**

2.27 **Whether A.O. can make addition u/s 68 without making proper enquiry:** Section 68 of the Income-tax Act 1961, empowers the Assessing Officer to make enquiry regarding cash credit. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the assessee's explanation, A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained - Khandelwal Constructions v. CIT 227 ITR 900 (Gau).

The assessee may seek assistance of section 131 of the Act for the purpose of proving its own case. Section 131 empowers the A.O. to exercise the same power as vested in a civil court for compelling attendance of witnesses. Further the assessee has the right to cross-examine.

2.28 **A.O. must form opinion by applying his mind : The opinion of the A.O. is required to be formed objectively with reference to the material available on record. Application of mind is sina qua non for forming the opinion- CIT v. P. Mohanakala [2007] 161 Taxman 169 (SC).**

2.29 **Any sum found credited – connotation of :The expression "Any sum found credited in books of assessee" in section 68 not only means all entries on the credit side but entries on debit side in books of account- CIT v. Abdul Haseeb, Prop. MSJB Silk [2014] 51 taxmann.com 48 : [2015] 228 Taxman 471 (Mag)(All.).**

2.30 **Right to cross-examine :**The assessee is also entitled to cross examine any person whose statement has been recorded by the A.O. and such statement is proposed to be used by the A.O. - **CIT v. Eastern Commercial Enterprises 210 ITR 103 (Cal.).**

The assessee had for its part produced the discharged hundis and also vouchers showing payment of interest. That is sufficient for the assessee to discharge its initial burden. It was for the ITO to have examined the bankers when he wanted to rely on the statements obtained from them. The A.O. ought to have given an opportunity to the assessee to cross examine them before taking into account the contents of those statements - CIT v. Gani Silk Palace [1988] 171 ITR 373 (Mad.).

2.31 **Identification : Certificate of incorporation, PAN, etc., are not sufficient for purpose of Identification of subscriber company when there was material to show that subscriber was a paper company and not a genuine investor – CIT v. Navodaya Castles (P) Ltd. [2014] 226 Taxman 190 (Mag,) : 50 taxmann.com 110 (Delhi) [SLP dismissed in Navodaya Castles (P) Ltd. v. CIT [2015] 56 taxmann.com 18 (SC): 230 Taxman 268 (SC).**

2.32 **Where assessee had shown trade creditors : Where assessee had shown trade creditors without any significant transactions of purchases and bank accounts of said creditors were opened and handled by employees of assessee company at branch where assessee had its own account and loan applications submitted for all these creditors were processed by said employees while these creditors had not shown said loan in their income tax returns, it was a case of name lending, addition was to be made in the hands of the assessee – CIT v. Karnataka Planters Coffee Curing Works (P) Ltd. [2016] 74 taxmann.com 256 : 243 Taxman 21 (SC).**

Some Recent Decisions on Section 68

2.33 **Whether Receipt is an income from undisclosed sources : The process u/s 68 undertaken by the Income Tax Authorities is only to determine as to whether the Receipt is an income from undisclosed sources or not and is unrelated to the lawfulness of the sources or of the receipt. Thus even if a receipt is claimed as a gift is after the scrutiny of the Income Tax Authorities construed to be income from undisclosed sources and is subjected to income tax, it would not for the purposes of a charge u/s 13(1)(e) of the Prevention of Corruption Act be sufficient to hold that it was from a lawful source in absence of any independent and satisfactory evidence to that effect. Further, disclosure of gifts in the Income Tax Returns of the assessee and the Orders of the Income Tax Authorities on the basis thereof, do not validate the said receipts to elevate the same to lawful income to repel the charge u/s 13(1)(e) thereof- State of Karnataka v. Selvi J. Jayalalitha [2017] 78 taxmann.com 161 (SC).**

2.34 **Donations : Where donations were received by assessee- trust assessee used more than specified amount (75 per cent or 85 per cent as the case may be) of its income for charitable purpose and had submitted list of donors, merely because such list was incomplete, it would not mean that donations were unaccounted money – DIT (Exemption) v. Keshav Social and Charitable Foundation [2017] 394 ITR 496 (SC).**

2.35 **Addition only on the basis of suspicion and surmises for share application money**: The A.O. made addition **only on the basis of suspicion and surmises** on the ground that the share applicants do not have any capacity to explain amount transferred to their account. It was held that once the assessee has furnished necessary evidence to prove the identity of the share applicants and their PAN details to the AO, then the department is free to proceed to reopen their individual assessments of share applicant in accordance with law, but it cannot be regarded as undisclosed income of the assessee. This legal proposition is supported by the decision of Hon'ble Supreme Court in the case of **CIT v. Lovely Exports Pvt Ltd. [2009] 319 ITR (St.) 5 (SC)**, wherein it was categorically held that the AO cannot make addition towards share application money, if the names and addresses and PAN of the creditors have been furnished to the AO. This legal proposition is supported by the judgment of Hon'ble Supreme

Court in the case of **CIT v. Orissa Corporation Ltd. [1986] 159 ITR 78(SC)**. The jurisdictional High Court of Bombay in the case of **CIT v. Gagandeep Infrastructure Pvt. Ltd. [2017] 394 ITR 680 (Bom)** : 2017(3) TMI 1263 and **CIT v. Paradise Inland Shipping Pvt Ltd. in ITA No. 66 of 2016 dated 10-04-2017**, has reiterated the legal position laid down by the Hon'ble Supreme Court in the case of CIT v. Lovely Exports Pvt Ltd **[2009] 319 ITR (St.) 5 (SC)**. The sum and substance of the ratios of the Hon'ble Supreme Court and Bombay High Court, is that once the assessee has furnished names and addresses alongwith PAN of subscribers, then the AO is free to reopen the assessment of subscribers in accordance with law, but the shareapplication money cannot be regarded as undisclosed income of the assessee. Insofar as the argument of the Ld. DR in the light of Company Master Data taken from ROC website that the names of two companies have been struck off by the ROC, we find that the **ROC has struck off the names of two companies for the reason that those two companies have not filed their annual accounts for few years**, but fact remains that the assessee has furnished letters from those two companies wherein they have admitted that their names have been struck off by the ROC for non filing of annual accounts, but they are in the process of restoring the names by filing an application before NCLT. **As regards the AOs observation with regard to the issue of shares at a face value of Rs.10/- issued at a premium of Rs.990 per share, we find that there is no merit in the findings of the AO for the reason that the issue of shares at a premium and subscription to such shares is within the knowledge of the company and the subscribers to the share application money and the AO does not have any role to play as long as the assessee has proved genuineness of transactions. We further notice that the AO cannot question issue of shares at a premium and also cannot bring to tax such share premium within the provisions of section 68 of the Act, before insertion of Proviso to section 68 by the Finance Act, 2012 w.e.f. 1-04-2013** as the Hon'ble Bombay High Court in the case of CIT vs M/s Gagandeep Infrastructure Pvt. Ltd **[2017] 394 ITR 680 (Bom)** held that **Proviso inserted to section 68 is prospective in nature. - Dy. CIT-1(1)(1), Mumbai v. M/s Alcon Biosciences P Ltd. I.T.A No.1946/Mum/2016 ITAT Mumbai H Bench (Asst year 2010-11)** Decision dated 28.02.2018 Reported in http://www.itatonline.org

2.36 **ACIT, Central Circle-17, *v.* Shyam Indus Power Solutions (P.) Ltd.[2018] 90 taxmann.com 424 (Delhi - Trib. B Bench)** [ASST YEARS 2012-13 & 2013-14] **Decision dated 29 Jan 2018** :**It was held that addition was not sustainable where assessee had taken unsecured loan and had furnished names and addresses of concerned parties, their PAN and confirmation with bank account and their Income tax returns, and Assessing Officer had not at all carried out any investigation to show that those companies did not exist but were paper company; they were not having worth of investing and transaction lacked genuinity. Further investigation wing report was not shown to assessee. The addition was deleted.**

2.37 **ACIT, CC-13, New Delhi *v.* Adamine Construction (P.) Ltd.*[2017] 87 taxmann.com 216 (Delhi - Trib. Bench 'A')** [ASST YEAR 2009-10] **Decision dated Aug. 18, 2017**:**Assessee-company received share application money from several companies and in support of their identity, creditworthiness and genuineness of transactions, assessee furnished investor companies confirmations, income-tax return acknowledgements, copies of bank accounts with submission that entire amount was received by assessee through normal banking channels by account payee cheques/ demand drafts. The Confirmations filed revealed source of funds, particulars of bank account through which payments were received and Income Tax particulars establishing identity and creditworthiness of respective share applicants. It was held that assessee had discharged its primary onus to establish identity and creditworthiness of investors companies as well as genuineness of its transaction, thus, ITAT held that additions made under section 68 by Assessing Officer was rightly deleted by Commissioner (Appeals). In order to prove genuineness of share transactions, and creditworthiness of investor companies, assessee company furnished investor companies confirmations, tax return acknowledgement, etc., additions u/s 68 was deleted.**

2.38 **CIT *v.* Orchid Industries (P.) Ltd. [2017] 88 taxmann.com 502 (Bom.) Decision datedJuly 5, 2017 :**The Assessing Officer had added certain amount as income under section 68 only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

It was held by Bombay High Court that the assessee had produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. The assessee had also produced the entire record regarding issuance of shares, *i.e.,* allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance-sheet and profit and loss account of those persons disclosed that they had sufficient funds in their accounts for investing in the shares of the assessee. The Bombay High Court held in view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the assessee. Therefore, the addition was liable to be deleted.

2.39 **CIT 15 *v.* Haresh D. Mehta[2017] 86 taxmann.com 22 (Bom.) Asst. year 2007-08 Order dated Sept 4, 2017 : Burden of proof - During relevant year, assessee obtained unsecured loans from various parties and A.O. took a view that assessee had not proved capacity or genuineness of parties to undertake such huge loan transactions. He thus added said amount to assessee's income u/s 68. The Tribunal found that assessee had produced details like copy of PAN card, copy of return of income, balance sheet and copy of bank accounts before A.O. Tribunal thus opined that once initial burden was discharged, A.O. had then to find out that despite production of record in relation to those parties, why version of assessee could not be accepted. In view of failure of Assessing Officer to carry out said exercise, Tribunal set aside addition made by A.O. It was held by Bombay High Court that since finding recorded by Tribunal was based on material available on record, same did not require any interference. Where assessee had produced on record documents to establish genuineness of party such as PAN of all creditors along with confirmation, their bank statements showing payment of share application money, only because those persons had not appeared before Assessing Officer would not negate case of assessee so as to invoke section 68.**

2.40 **Deem Roll Tech Ltd. *v.* DCIT, Cir. 1 (1) (2), Ahmedabad [2018] 92 taxmann.com 72 (Ahmedabad - Trib.) [Asst year 2011-12] Order datedMarch 1, 2018: During relevant year, assessee received certain amount as share capital and the A.O. issued notice to assessee directing him to furnish identity, confirmation, creditworthiness of share applicants. Assessee filed confirmation from applicants, bank statements, their PANs and, copies of their returns, thereafter - A.O.directed assessee to produce**

applicants before him. Since assessee failed to produce those applicants, A.O. made addition of share capital to assessee's income u/s 68. The Tribunal held that by submitting confirmation, bank statements, copies of returns, PAN data, assessee had discharged primary onus cast upon it by section 68 and thereupon, it was A.O. who had to carry out investigation and demonstrate that those materials were not sufficient for discharging onus cast upon assessee. Since, A.O. failed to carry out any inquiry for falsifying evidence submitted by assessee in support of its explanation, impugned addition made by him was set aside by ITAT.

2.41 ITO, Wd-5(3), Kol. *v.* Blessings Commercial (P.) Ltd. [2018] 91 taxmann.com 176 (Kol - Trib. Bench C) [Asst. Year 2010-11] **Decision dated June 28, 2017 : Share application money: Assessee-company was engaged in business of finance and investment. During relevant year, assessee received certain amount by way of cheques from three companies for issue of share capital at huge premium. Assessee having received those cheques, endorsed the same to another company for allotment of shares. A.O. taking a view that assessee had not proved genuineness and creditworthiness of said transactions, added amount in question to assessee's income. It was noted from records that share applicant companies were artificial individual persons and those companies did not carry out any business activity. It was also found that even though shares had been issued at a huge premium, yet none of methods prescribed to compute share premium by RBI as well as ICAI had been followed. Besides, there were only few thousands of rupees lying in bank accounts of share applicant companies except cheques of huge amount issued in favour of assessee-company for issue of share capital. The ITAT concluded that assessee failed to prove genuineness of transactions and creditworthiness of parties and, thus the ITAT held that amount in question was rightly added to assessee's income u/s 68.**

2.42 Konark Structural Engineering (P.) Ltd. *v.* DCIT 9(2)*[2018] 90 taxmann.com 56 (Bom) Asst year 2007-08 Decision dated DEC. 5, 2017: Share capital - Assessee-company was carrying on business as builders and developers. Where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons served to shareholders u/s131 were unserved with remark that addressees were not available, and, moreover, those shareholders were first time assessees and were not earning enough income to make deposits in question, impugned addition made by AO under sec. 68, was confirmed. Bombay High Court held that assessee failed to prove genuineness of share transactions and, thus, impugned addition was to be confirmed.

2.43 Principal CIT, Delhi-2 *v.* Best Infrastructure (India) (P.) Ltd.*[2017] 84 taxmann.com 287 (Delhi). Asst years 2005-06 to 2009-10; Decision dated Aug 1, 2017 : Share capital - During search proceedings, 'T', accommodation entry provider, submitted that he had received cash from assessee and in return he had given them entry of share capital in form of a cheque. On said basis, A.O. concluded that share premium and share application money were unexplained credit u/s 68. It was found that statement of 'T' was recorded at back of assessee and assessee was not allowed any opportunity to cross-examine him. Further, assessee had duly furnished declaration of director of share applicant company, share application form, certificate of incorporation from Registrar of Companies as well as Income tax return of share applicant company and Assessing Officer did not make any verification about said documents. Delhi High Court held that, on facts, section 68 addition was not called for on basis of statement that assessee had received share capital through accommodation entry, recorded at back of assessee and the assessee was not allowed to cross examine.

2.44 Prinku Landfin (P.) Ltd. *v.* ITO, Ward-14(4), New Delhi [2018] 91 taxmann.com 120 (Delhi - Trib. Bench F) [Asst. Year2008-09] Decision dated Feb. 2, 2018: Share application money -During search conducted upon premises of one, STG, it was found that assessee-company had received share application money from several shareholders. To prove identity and creditworthiness of applicants and genuineness of transactions, assessee furnished copies of their certificates of incorporation, copy of ITR, bank statements, balance sheet and payment details. However, A.O. added amount of share application money to income of assessee on grounds that share applicants had never appeared before A.O. It was noted that assessee produced all replies filed by these investors in response to inquiry notice issued to them u/s 133(6) before A.O. in which these investors had confirmed making investments in assessee company. A request of assessee to A.O. to issue summons against said investors u/s 131 for their production at assessment stage was not considered and A.O. passed assessment order on next day. Where assessee company had received share application money from several shareholders and discharged its initial onus to prove identity of investor companies, their creditworthiness and genuineness of transaction by producing sufficient evidences, the Tribunal held that revenue could not make addition u/s 68.

2.45 ACIT CC-XXIV, Kolkata v. R. S. Ispat Ltd., ITA No. 246 (Kol) of 2011 Bench A/Asst Year 2003-04: The department filed this appeal against order of ld. CIT (A), who had deleted the addition of Rs.95,00,000/- made by A.O. u/s. 68 alleging that relief was given by CIT (A)**without proper appreciation of the evidences brought on record by the department that it was assessee's own unaccounted money introduced as subscription of shares in assessee company by other companies arranged through accommodation entries** in the booksof the companies for which the Directors of the buyer companies had confessed to theIncome Tax authorities.The Tribunal noted that Hon'ble Rajasthan High Court has held in the case of **Barkha Synthetics Ltd. vs. ACIT [2005] 197 CTR 432 (Raj.)** that the principle relating to **burden of proof** concerning assessee is that where the matter concerns the money receipts by way of share application from investors, **throughbanking channels**, **assessee has to prove existence of persons in whose name the share application isreceived (prior to insertion of proviso to sec. 68)**. Once the existence of investor is proved, it is no further burden of the assessee to prove whether that person itself has invested the said money or some person made investment in the name of that person..

Hon'ble Apex Court in the case of **CIT vs. Daulat Rant Rawatmuli [87 ITR 349 (SC)** has held that onus to prove **that the apparent is not the real is on the person who claims it to be so**. Therefore, **the onus is on the department to prove that the share application money subscribed to the share capital of the assessee- company by the above named share applicants is not the money of the share applicants but of the assessee-company, is on the department. However, the department has not brought any material on record to establish the same.We are of the considered view that the A.O. doubted the genuineness of the share application money on surmises and conjecture and has not brought cogent material on record to establish the bogus nature of transaction.**

ITAT also referred to the Third Member decision of **ITAT Jodhpur Bench** in the case of **Polymers (P) Ltd. vs. DCIT [111 TTJ 112]** wherein it was held that in respect of share

application money, assessee-company has to prove existence of persons in whose name share application is received. **No burden is cast on the assessee to prove whether that person himself has invested orsome other person has made investment in his name. The burden to prove that the money did not belong to him but to some body else is on the revenue**. **It was further held that if any of the shareholders is found to have made unexplained investment, then addition of such investment is required to be made in the hands of the shareholders and not in the hands of the assessee. Accordingly, it was held that the A.O. was not justified in treating the investment made by theseveral shareholders in the assessee-company as bogus and to make addition u/s. 68 of the Act.**

The Tribunal followed the decision of the Hon'ble Apex Court has considered the similar issue in the case of **CIT vs. M/s. Lovely Exports(P) Ltd. [2008] 216 CTR 195 (SC).**

The ITAT concluded that **the assessee has furnished the details of shareholders with complete address, PAN details, bank statements, details of I.T. returns etc. The transactions are admittedly recorded in the audited books of accounts of both the assessee-company as well as share-applicant companies, who purchased shares of the assessee-company. Therefore, no addition on account of unexplained cash credit is warranted in the case of the assessee** on the givenfacts and circumstances as discussed above. **In view of the above, the ITAT held that the action of the A.O. is contrary to the decision of Hon'ble Apex Court in the case of CIT vs. M/s. Lovely Exports (P) Ltd. (supra**) and held that **there is no infirmity in the order of the ld. C.I.T.(A) in deleting the addition Rs. 95 lakhs made by the A.O. u/s. 68 of the Act.**

2.46 **Umbrella Projects Pvt. Ltd Vs. The I.T.O ITA No. 5955/DEL/2014ITAT, DELHI 'D' BENCH,[Asst Year 2010-11] Date of Pronouncement : Feb. 23, 2018:**It was held by the Tribunal that in view of the documents and evidences filed by the assessee, are sufficient to discharge its initial onus regarding the identity, creditworthiness and genuineness as required under Section 68 of the Act. The assessee having discharged its onus, it was upon the AO to bring material or evidence to discredit the same. In the present case, from the assessment order, it is evident that **no adverse material is available with the AO**. **There is no allegation against any of the 4 shareholders of doing anything wrong on record. The AO has drawn adverse inference as he did not receive reply from the 4 aforesaid shareholders in response to notice issued by him under Section 133(6)**. On going through the assessment order it was noted that **it is not the case of the AO that notices have come back unserved or these shareholders were not available at the address given by the assessee**. **If that be so, the ITAT held that no adverse inference can be drawn against the assessee merely because reply has not been received by the AO in response to notice issued under Section 133(6).**The ITAT referred to the judgment of the Hon'ble Supreme Court in the case of **CIT vs. Orissa Corporation 159 ITR 78 (SC)** where a similar issue had come up.

The judgment of the Supreme Court in the case of **Dhakeshwari Cotton Mills Ltd. vs. CIT 26 ITR 775 (SC)** was also referred to wherein it was held that ***the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment.***

The Tribunal also referred and relied on judgment of the Supreme Court in the case of **Umacharan Shaw & Bros v. CIT [1953] 37 ITR 271**(SC) in which it was said that it is also a settled law that **doubt** howsoever strong cannot take place of proof. The relevant observations of the Hon'ble Supreme Court on this issue read *"Taking into consideration the entire circumstances of the case, we are satisfied that there was no material on which the Income-tax Officer could come to the conclusion that the firm was not genuine. **There are many surmises and conjectures, and the conclusion is the result of suspicion which cannot take the place of proof in these matters**."*

The ITAT held that the assessee has fully discharged its onus under Section 68 and accordingly directed the AO to delete the addition.

2.47 **Pr. Commissioner of Income Tax-13, Mumbai V/s. Veedhata Tower Pvt. Ltd. INCOME TAX APPEAL NO. 819 OF 2015 Reported in 2018 (4) TMI 1004 - Bombay H.C.: Source of Source prior to asst year 2013-14;** Addition u/s 68 – Where Revenue urged that the money has been received from bogus shareholders then it is for the Revenue to proceed against them in accordance with law and it would not entitle the Revenue to invoke Section 68 while assessing the respondent for not explaining the source of its source (for the period prior to insertion of proviso to section 68). The impugned order of the Tribunal has raised a finding of fact that the respondent had discharged the onus which is cast upon it in terms of the pre-amended Section 68 of the Act by filing the necessary confirmation letters of the creditors, their Affidavits, their full address and their PAN. The Tribunal has rendered a finding of fact which is not shown to be perverse. In any event, the question as proposed in law of the obligation to explain the source of the source prior to 1st April, 2013, Assessment Year 2013-14, stands concluded against the Revenue by the decision of this Court in Gagandeep Infrastructure 354 ITR 680 (Bom) :2017 (3) TMI 1263 – BOMBAY] decision dated April 17, 2018

The requirement ofexplaining the source of the source of receipts came into the statute book by amendment to Section 68 of the Acton 1st April, 2013 i.e. effective from Assessment Year2013-14 onwards. Therefore, during the subject assessment year, there was no requirement to explain the **source of the source**. Be that as it may, the impugned order of the Tribunal held that the respondent-**assesseehad discharged the onus placed upon it under Section 68 of the Act by filing confirmation letters, the Affidavits, the full address and pan numbers of the creditors**. Therefore,the Revenue had all the details available with it toproceed against the persons whose source of funds were **alleged to be not genuine** as held by the Apex Court in **CIT V/s. Lovely Exports (P.) Ltd. [2009] 319 ITR (St.) 5 (SC).**

Section 69

3.1 **Provisions of Section 69 :**As per section 69, where the assessee has made investments which are not recorded in the books of account maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not satisfactory in the opinion of the A.O., the value of the investments may be deemed to be the income of the assessee of the corresponding financial year.

W.e.f. **asst. year 2013-14**, the Finance Act, 2012 has inserted a new section 115BBE which provides that the deemed income on account of unexplained cash credit u/s 68, unexplained investment u/s 69, unexplained money u/s 69A, unrecorded investment u/s 69B, unexplained expenditure u/ s 69C and borrowing or repaying of hundi u/s 69D shall be taxed at a flat rate of 30% irrespective of the total income of the assessee.

3.2 **Explanation of the assessee is necessary :**Section 69 provides that A.O. may treat the value of the investments as the income of the assessee in case the explanation offered by the assessee is not found satisfactory to him.

The Supreme Court in this regard held in the case of **CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570 (SC) : 103 Taxman 382** that even if assessee's explanation regarding source of an investment is not found to be satisfactory, **AO has discretion to treat or not to treat** such investment as assessee's income.

Similarly, the Andhra Pradesh High Court in the case of **CIT v. Moghul Durbar [1995] 216 ITR 301 (AP)** held that even if the explanation of the assessee is rejected, section 69 confers only a discretion to the AO to deal with the investments as income of the assessee, because the word used is **'may'** and not **'shall'** in the said section.

The Kerala High Court in the case of **CIT v. G. Anandarajan [1997] 228 ITR 664 (Ker.)** held that if the books of account reveal sales and in regard thereto there is **no material of a corresponding nature that the assessee could purchase the commodity** for the purpose of offering for sale, the situation becomes an invitation for the assessee to explain as to how and from what source he held the amount of the commodity with regard to its purchase before it was offered for sale. However, in the absence of an explanation the deeming provision of section 69 will apply.

The Kerala High Court in the case of **CIT v. M.A. Unnerikutty [1985] 154 ITR 844 (Ker.)** held that the funds comprising the intangible additions made in earlier year would not help an assessee to presume that the said fund was always available to cover the unexplained income of the succeeding years. It is for the assessee to establish that he has not earned any secret profits during the relevant year and that the **investment flowed from the intangible additions made in the preceding years.**

The Kerala High Court in the case of **T.C.N. Menon v. ITO [1974] 96 ITR 148 (Ker.)** held that it is clear from a reading of section 69 that before the amount of unexplained investment is included in the total income of an assessee, he is entitled to an **opportunity to explain.**

Where the deposit stands in the name of the third person, even that person is related to the assessee, the assessee cannot be called upon to explain such deposit. In such case, the proper course is that either the person in whose books the deposit appears or the person in whose name the deposit stands should be called upon to explain the deposit - **CIT v. Roshan Lal Seth 178 ITR 660 (Punj.)**. In this case it was held that the deposit in the name of the assessee's wife could not to be added to the assessee's income.

3.3 **Department also liable to prove the existence of unexplained investment :**The Allahabad High Court in the case of **CIT v. Daya Chand Jain Vaidya [1975] 98 ITR 280 (All.)** has held that **merely because the assessee's explanation regarding certain investments made by his wife and sons is not acceptable, the revenue cannot treat the investments as the undisclosed income of the assessee.** The revenue should bring on record material from which it could be concluded that the investments were in fact made by the assessee. If this was not done, no amount could be added as the undisclosed income of the assessee.

3.4 **Additions towards cost of construction of property -**It is settled law that when the credibility of the books of account maintained by the assessee is not doubted, the revenue should not be carried away merely by the report of the departmental valuer. When there is neither doubt about the books of account maintained by the assessee nor there is rejection of the same document by the Revenue, the court should not interfere by substituting its own estimate in the place of one by the Tribunal unless it is shown that the estimate of the Tribunal could not possibly be reached. Thus, where the Tribunal accepted the cost of construction as debited in the books of account of the assessee, it would be justified in deleting the additions made towards estimated undisclosed investment on the basis of the report of the departmental valuer - **Asstt. CIT v. C. Subba Reddy 2005 Tax LR 373 (Mad.).**

In view of the decision of the Supreme Court in the case of **Smt. Amiya Bala Paul v. CIT [2003] 262 ITR 407 (SC) : 130 Taxman 511(SC),** the Assessing Officer would not be justified in obtaining report of the departmental valuer for the purpose of determining cost of construction and in making additions on the basis of such report towards unexplained investment. Where, by excluding such a report from consideration, there was no material whatsoever warranting any addition on account of unexplained investment, the addition made could not be sustained **- CIT v. Ganesh Rice Mills [2005] 145 Taxman 452 (P& H).**

3.5 **In couse of search some notings were found indicating that the property purchased by the assessee might have been purchased at a price higher than the price disclosed by the assessee :**Notings found during the course of search are only indicative but are not a conclusive evidence of the purchase price. In such a case the AO should conduct suitable enquiries and should make addition on the basis of findings of enquiries conducted by him. Addition made merely on the basis of notings found in the course of search without proper enquiry cannot be sustained. Some judicial prononucements:

In the case of CIT v. P.V. kalyanasundaram [2006] 282 ITR 259 (Mad.) the assessee had purchased land on Oct. 26 1988 registered for Rs. 4.10 Lakh from one R. during the course of search some notings had been found indicating a higher consideration. Mr R's statement was also taken. In a sworn statement on 8th Dec.1998 he admitted that he received Rs 34.85 lakhs. In another sworn statement on 11th Dec.1998, R stated that he received Rs. 34.85 Lakh. subsequently in an affidavit given on 8th Jan. 1999 he mentioned the sale consideration at Rs. 4.10 lakhs. The CIT noted that due to conflicting nature of statements given by sellers, his statement could not be relied upon and deleted the said addition. The Tribunal confirmed the findings of the CIT(A). On appeal the Madras High Court held that the burden of proving actual consideration in such a transaction was that of the Revenue. The AO did not conduct any independant enquiry relating to the value of the property purchased. He merely relied on the statement given by the seller. As such the deletion of the addition was justified.

In CIT v. Lalit Bahsin 290 ITR 245 (Del.)assessee purchased a ticket of Calcutta Stock Exchange for Rs.50,000. The AO took the value of the ticket at Rs. 11.5 lakh on the basis of the prevailing market pirce and added Rs 11 lakh as unexplained investment. The Delhi High Court deleted the addition on the ground that AO arrived at conclusion primarily on imaginative basis and conjectures rather than on the basis of any record or books of account and hence deleted the addition.

In the case of Omega Estates v. ITO Ward VII(2) 106 ITD 427 (Chennai) AO relying on some letters given by the assessee to prospective buyers mentioning rate of flats at Rs.1,250 per sq. ft calculated sale receipts of all flats at the said rate. The Chennai Bench of ITAT held that since the revenue could not prove that actual consideration was more than that recorded by the assessee and since books of account had not been rejected, **there was no basis of making the estimated addition.**

In the case of Amarjij Singh Bakshi (HUF) v. ACIT 263 ITR (AT) 75 (Del.) a search was conducted at the premises of one Mr. A and the agreement between the assessee and Mr A. was found pertaining to sale of 9.16 acres of land. the consideration mentioned in the agreement was Rs. 7.07 crore as against the consideration of Rs.23.5 lakhs declared by the assessee. The AO added the difference Rs. 6.83 crore u/s 69B. The court held that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under IT Act but the broad priciples of law of evidence apply to such proceedins. Notings on loose sheets of paper are required to be supported/collaborated by other evidence. A distinction also needs to be drawn between slips of paper or loose sheets found from the possession of the assessee and similar documents found from a third person. In case the statement of the third person is recorded or relied upon then such statement undoubtedly has to be confronted to the assessee and he is to be allowed an opportunity of cross examination. The Delhi ITAT Bench said that the entire addition was based on the document found but **there was no evidence to support Revenue's case that a huge figure**

over and above the figure booked in the records and accounts changed hands between the parties and thus no addition could be made.

In the case of M.M. Financers (P) Ltd. v. DCIT [2007] 107 TTJ 200 (Chennai) a search was conducted at the premises of MR a business associate of the assessee and an unsigned MOU was found reflecting the purchase price of a land at Rs.2.4 crore whereas the disclosed value was Rs.91 lakh. The AO added the difference as income of the assessee. The Chennai ITAT Bench held that since the MOU was found at the premises of MR and not at the premises of the assessee and that the AO had not found any corroborating evidence from any seized meterial and since there was no evidence of payment of money other than Rs. 91 lakh, the addition was not justified.

In the case of Manohar Lal Rattan Lal v. DCIT [2004] 91 TTJ (Asr) 737 an addition was made solely on the basis of a copy of agreement indicating large consideration, found and seized by the Department. The Amritsar ITAT Bench deleted the addition holding that since the signature of the assessee, i.e. the purchaser was not on the document no addition can be made merely on the ground that the said document was found at the premises of the assessee. Moreover the seller of the property was not examined. Hence no addition can be sustained.

In the case of Rejender Kumar Garg v. DCIT [2000] 67 TTJ (Del) 347, sale consideration of a property was recorded in the books at Rs. 9.3 lakhs but the assessee declared during the search the sale consideration at Rs. 38 lakhs. However in an Agreement to sell, found in search, the consideration was stated at Rs. 1.10 crore. The Delhi ITAT Benh directed the AO to compute the income by taking sale consideration at Rs. 38 lakhs and not one crore as the agreement was not signed and none of the buyers or proposed buyers were examined by AO and the department did not get the property valued to establish its real value.

In the case of Smt. Saroj Kumari L/H of Late Smt. Dampati Devi (Decd) v. ACIT [2004] 91 TTJ (Asr) 733a search was carried out at the premises of a firm Lachman Dass Jaspal Singh, Mansa. In the course of the search an agreement between Smt. Dampati Devi and Shri Lachmann Dass for sale of a property at Rs. 188000 was found. The above property was acquired by Dampati Devi at Rs. 33750. The legal heir of Late Dampati Devi argued that the agreement was not signed by the buyer and had not materialsed. But the AO added the same in the hands of the seller also on the ground that the purchaser had accepted the addition in his hands u/s 69 of the entire amount of Rs. 1,88,000. The Amritsar Bench held that **the sole basis of addition was that Lachmann Das (the purchaser) agreed to the addition and on that fact alone addition cannot be made.**

In the case of **K.P. Varghese v. ITO, Ernakulam and Another 131 ITR 597 (SC)**, the Supreme Court held that assessee must be shown to have received more than what is declared or disclosed by him as consideration and only then addition can be sustained. (also see next para)

However Kerala High Court in the case of **CIT v. T.O. Abraham [2012] 347 ITR 378 (Ker)** held that where admission was made by seller that price paid was more than that declared in sale deed, the assessment of difference in hands of purchaser was justified.

3.6 Whether additions can be made on the basis of loose sheets and torn papers found in the course of the search : The principle laid down by the Supreme Court and various Tribunals is that as per section 34 of the Evidence Act, 1872 loose sheets of paper are not to be considered as 'book' and hence entries made therein are inadmissible as evidence and cannot be relied upon. Additions made merely on the basis of loose sheets and torn papers is not justified and Revenue has to bring some corroborative evidence to show that the loose papers and sheets actually show some transaction and that the assessee has earned income out of it, which is undisclosed from the department. The Revenue can tax only those receipts, which must have been proved to be income in the hands of the recipient, which must have been proved to be income in the hands of the receipient. Reference may be made to the decision of Supreme Court in CBI v. V.C. Shukla 1998 AIR Vol. 3 SC 410, wherein it was held that entries in the loose sheets, may not have any evidentiary value. In following cases the Tribunal have held that merely on the basis of entries in loose sheets there cannot be an addition-

S.K. Gupta v. Dy. CIT [1999] 63 TTJ 532 (Del), Shri Ram Bhagwandas Raheja v. Asstt. CIT [ITA (S&S) No.118/Mum/1996, Bench "B", Order dated 23rd September, 1998].

Ashwani Kumar v. ITO [1992] 42 TTJ (Del.) 644: [1991] 39 ITD 183 (Del.), Kishenchand Shobhrajmal v. Asst. CIT [1992] 42 TTJ (Jp) 423: [1992] 41 ITD 97 (Jp),

D.A. Patel v. Dy. CIT [2001] 70 TTJ (Mumbai) 969: [2000] 72 ITD 340 (Mumbai), Satnam Singh Chhabra v. DCIT [2002] 74 TTJ (Lucknow) 976.

Further Punjab & Haryana High Court in the case of CIT v. Ravi Kumar [2007] 294 ITR 78 (P&H) have held that **if assessee claims that loose sheets contains rough calculations, the onus is on the revenue to rebut with material evidence.**

Therefore, merely loose sheets or diaries found in the course of search, may not be sufficient for the Revenue to prove that the entries represent undisclosed income of the assessee. Further if entries are not in the handwriting of assessee or the Accountant, burden is on the Department to prove, beyond reasonable doubt that the entries represent the undisclosed income of the assessee.

Insertion of section 292C raising presumption:

However after the insertion of section 292C(1) w.r.e.f. 1.10.1975 by the Finance Act, 2007 and as amended by the Finance Act, 2008, where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search u/s 132 (w.e.f. 1.10.1975) or survey u/s 133A (w.e.f. 1.6.2002), it may, in any processing under the Income tax Act, be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person :

(ii) that the contents of such books of account and other documents are true ; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

As per **section 292C(2**) inserted by the **Finance Act, 2008** w.r.e.f. 1.10.1975, where any books of account, other documents, or assets have been delivered to the Requisitioning Officer in accordance with the provisions of **section 132A**, then, the provisions of section 292C(1) shall apply as if such books of account, other documents, or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of section 132A(1) had been found in the possession or control of that person in the course of a search u/s 132. (also see last para)

3.7 Where the gold ornaments seized do not tally with the description of the jewellery submitted before the department but the weight of jewellary found in the course of search is less than the disclosed jewellery:

Similar facts came before the Jodhpur Bench of ITAT in the case of DCIT v. Arjun Dass Kalwani [2006] 101 ITD 337 (Jodh) wherein it was held that the assessee had been assessed for more jewellery than those found in the course of search for earlier year under Wealth Tax Act, merely because the assessee could not furnish the **evidence of remaking**, it cannot be said that these jewellery are unexplained investments of the assessee. No addition u/s 69 is called for.

3.8 **Where payment for painting purchased prior to search is made by cheque after search, it is not to be treated as unexplained investment:** Similar facts came before the Mumbai Bench in the case of **V. Sanjay Kumar v. DCIT [2012] 16 ITR (Trib.) 262 (Mum.)** wherein it was held that no amount could be considered as unexplained investment unless there was confirmation from the other party that the amounts were paid in cash other than what was stated by the assessee. Just because the assessee made a payment subsequent to search, the amount paid by cheque could not be doubted and treated as unexplained. Similar view has been expressed by various Courts and Tribunals upholding the basic principle that without corroboration of evidence and cross examination of third party, addition cannot be made in the hands of the assessee.

3.9 **Where assessee admitted undisclosed profit during survey and retracted the same at the time of assessment on the ground that admission was due to mental pressure and coercion :**It is settled law that whatever statement is recorded under section 133A is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law - **CIT v. S. Khader Khan Son [2008] 300 ITR 157 (Mad.)affirmed by Supreme Court in 210 Taxman 248 (SC).**

Further **CBDT in its Instruction dated 10th March, 2003 vide No. F. No. 286/2/2003/IT (Inv)** has also clarified -

No attempt should be made to obtain confession as to the undisclosed income :"*Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessees while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operation do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search & seizure and survey operations, no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.*

Further, in respect of pending assessment proceedings also, Assessing Officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

The statement of the assessee cannot be made the sole basis for addition without any material evidence and there is no provision in the statute to prevent the declarant from retracting his statement. The A.O. cannot make an addition without bringing any adequate material on record to prove the real income to be as admitted by the assessee in the course of survey. The A.O. must examine the correctness of the statement before making the addition – **ACIT v. A.T. Associates 99 TTJ (Nag.) 74.**

3.10 **Whether figures in loose papers found in survey where assessee admitted undisclosed investment but later retracted, can be added u/s 69 :**The Agra Bench in the case of **Asst. CIT v. Ravi Agricultural Industries [2009] 316 ITR (AT) 1 (Agra)** held that figures in loose papers, though admitted but subsequently retracted, could not be the basis for an inference of concealed investments made by the assessee. In such cases, the Assessing Officer is certainly entitled to make further enquiries regarding such information from the loose papers, but where it is not corroborated, no addition can be based on the same.

Information gathered during a survey can, no doubt, be used in the assessment. But where such information is found to be not reliable with reference to further facts, the assessee cannot be pinned down to the information gathered during survey or to the statement by him at the time, since the assessment has to be made with reference to all the materials gathered by the Assessing Officer.

The Amendment to section 292C by the Finance Act, 2008 extending the presumption of correctness to materials found during survey should not make any difference to the conclusion based on further materials.

3.11 **Investments in secret business dealings :** Where secret business dealings of the assessee involve unexplained investments, the amount invested is assessable u/s 69 - **Himmatram Laxminarain v. CIT 161 ITR 7 (P & H).**

3.12 **Whether entire undisclosed sale can be treated as income :**The entire sale proceeds cannot be regarded as profit or treated as undisclosed income of the assessee. It is the net profit rate which is to be adopted - **Manmohan Sadani v. CIT [2008] 304 ITR 52 (MP).**

Sometimes, the A.O. presumes that there was correspindending purchase for undisclosed sales and he may treat the amount used for such purchase as unexplained investment. The above decision is important.

3.13 **Higher stock declared to the bank -whether attracts addition u/s 69 :** Reversing its earlier decision of Coimbatore Spinning and Weaving Co. Ltd. v. CIT [1974] 95 ITR 375 (Mad.), the Madras High Court in the case of CIT v. N. Swamy [2000] 241 ITR 363 (Mad.) observed that we find it little difficult to agree with the observations made in the case of Coimabatore Spinning & Weaving Co Ltd. v. CIT 95 ITR 375 (Mad) that the alleged practice said to be followed by business houses of declaring larger stocks to the banks for the purpose of getting higher loans or overdraft facilities has neither been shown to exist nor recognised in commercial circles or by courts, and even assuming that such a practice exists, the Tribunal is not expected to take judicial notice of such sub-standard morality on the part of the assessees so as to enable them to go back on their own sworn statements given to the banks as to the stocks held or hypothecated by them in the banks.

It also held that the assessee's income is to be assessed by the ITO on the basis of the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank. The mere fact that the assessee had made such a statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee has undisclosed income is on the revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee has deliberately suppressed his income.

On similar facts it was held in the case of CIT v. Relaxo Footwear [2002] 123 Taxman 322 (Raj.) that where the Tribunal accepted the assessee's explanation that the stock statement submitted to bank was to make it easier for the assessee to have availed higher credit facility by inflating the stock position to the bank, it was justified in deleting addition on account of the discrepancy between the stock shown in the books of account and the stock shown in the statement to the bank.

The Jammu & Kashmir High Court in the case of Ashok Kumar v. ITO 201 CTR (J&K) 178 : 149 Taxman 479 (J&K) held that where stock shown in the books of account is properly verified and valued as per cost, no addition should be made on account of inflated stock statement furnished to the bank.

It is immaterial that the difference has arisen on account of higher valuation or on account of disclosing higher quantity to the bank- CIT v. Khan & Sirohi Steel Rolling Mills 200 CTR (All.) 595, Pranab Kumar Dawn v. ITO ITA NO.668/Kol/2010 dated 30.9.2010.

Similar view has also been expressed by the Madras High Court in the case of CIT v. Apcom Computers (P) Ltd. [2007] 158 Taxman 363 (Mad.).

Where the book stock was reliable but inflated stock statement was furnished to bank for obtaining higher credit facility, the addition cannot be sustained -CIT v. Veerdip Rollers P. Ltd. [2010] 323 ITR 341 (Guj.). SLP filed by Department has been rejected by Supreme Court [2008] 307 ITR (St.) 3.

Different Courts and ITA T benches have held that no addition can be made merely on the basis of difference between stock statement submitted by the assessee to the bank and the stock as per books. The burden of the AO to establish the undisclosed income in the hands of the assessee does not stand discharged merely on bringing out the difference between stock statement submitted to bank and assessee's books - CIT v. Acrow India Ltd, 298 ITR 447 (Bom), CIT v. Das Industries 303 ITR 199 (All), CIT v. Sidhu Rice and General Mills 281 ITR 447 (Bom), CIT v. Sri Padmavati Cotton Mills 236 ITR 340 (Mad), Sri Taraka Jewellers v. ITO ITA No.1007/Hyd/2011 dated 10.5.2012.

However in special facts courts and IT AT benches have held that the difference between stock statement submitted to bank and stock as per books may be added as unexplained investment - Swadeshi Cotton Mills Co. Pvt. Ltd. v. CIT 125 ITR 33 (All.), Dhansiram Agarwal v. CIT 201 ITR 192 (Gau.), CIT v. Pioneer Breeding Farms 295 ITR 78 (Mad.), CIT v. Ashok Estate Private Ltd. 141 ITR 785 (Ker.), Max Text Chemm Products v. CIT 83 ITD 96 (Pune).

3.14 **Unexplained stock**: Where assessee had not maintained stock register and Assessing Officer, on verification of records of assessee, found certain excess stock of bearings, he was justified in making addition on account of that as unexplained investment, since it was obligatory for assessee to maintain stock register so that one was able to ascertain actual position of stock lying with the assessee in which he was trading - **Sanjay Son of Dwarkadas Jajoo v. CIT [2006] 154 Taxman 101 (MP).**

Unexplained stock in trade is not covered by section 69**- Addl. CIT v. Danyabhai Pitamberdas & Co. [1974] Taxation 36(1) 25-26 (Guj.).** However contrary view has been expressed in **Ramanlal Kacharulal Tejmal v. CIT [1984] 146 ITR 368 (Bom.)** in which stock declared to bank was in excess. (also refer the decision in the case of Smt. Amiya Bala Paul v. CIT 262 ITR 407 (SC)and provisions of section 142A)

3.15 **Whether the method prescribed in Accounting Standards for valuation of stock is relevant for the purpose of unexplained investments :** In a case suppose the Valuation of stock shown in the books of accounts is on the basis of FIFO (i.e. First In First Out) method, which is mandatory as per Accounting Standard- 2 issued by The Institute of Chartered Accountants of India. During the year end, the price of the stock had gone down, therefore, as per the method prescribed in AS-2 the valuation of the stock lying in the showroom as well as godown was made at reduced rate as prevailing at that time. However, the stock valuation sheet submitted to bank for the purpose of obtaining higher loans/overdraft facilities was prepared on the basis of actual costs of the stock. Thus in fact there was no question of any higher amount of stock on the basis of the value of inventory submitted to the Bank.

3.16 In case assessee purchased shares at a cost lower than the market price, whether the difference between market price and purchase price shown by the assessee can be added as income u/s 69 : In the given case the investment that is the purchase of shares have been recorded in the books of accounts. As per section 69 only such value of investments may be deemed to be the income of the assessee as was not recorded in the books of account. Thus section 69 is not applicable. The above view has been expressed in the case of **Rupee Finance & management P. Ltd. v. ACIT (2009) 310 ITR (AT) 403 (Mum).**However **w.e.f. 1.10.2009** as per section 56 (2) (vii) the difference between the fair market price and the purchase price will be taxed under the head 'other sources' if the assessee is an individual or HUFand the difference between fair market price and purchase price exceeds Rs.50,000.

3.17 **Treatment of unexplained investment in case of partnership firms:**The Allahabad High Court in the case of India Rice Mills v. CIT [1996] 218 ITR 508 (All.) held that in respect of capital contributed by partner in firm, the onus is on the partners to explain the source, and if they fail to do so, the amount could be added as income from undisclosed sources in the hands of the partner only and not in the hands of the firm.

3.18 **If assessee is found in possession of demonetised notes, can the same be treated as unexplained investment :**Demonetised notes ceases to be legal tender and has no value at all and in fact they are scrap papers. Therefore the same cannot be treated as unexplained investment- **CIT v. Andhra Pradesh Yarn Combines (P) Ltd. 200 CTR(Ker.) 641.**

3.19 **Provisions u/s 142A regarding estimate by Valuation Officer in certain cases:**Section 142A has been inserted by the **Finance (No. 2) Act, 2004, w.r.e.f. 15.11.1972** to provide that for the purposes of making an assessment or reassessment under the Income-tax Act -

(i) Where an estimate of the value of any investment referred to in **section 69** or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required to be made, the A.O. may require the Valuation Officer to make an estimate of such value and report the same to him.

(ii) The Valuation Officer to whom such a reference is made shall, for the purposes of dealing with such reference, have all the powers that he has u/s 38A of the Wealth-tax Act, 1957.

(iii) On receipt of the report from the Valuation Officer, the A.O. may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment.

However, the above provisions shall not apply in respect of an assessment made on or before 30.9.2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

3.20 **In case of search where there is no finding as to unexplained investment, whether A.O. can refer valuation to DVO :**In case of search there must be some material that there is an unexplained investment for referring the matter to DVO in case of purchase or construction of a property. Moreover if the report of the DVO is not based on comparable cases, the same cannot be relied upon - **CIT v. Abhinav Kumar Mittal [2013] 351 ITR 20 (Del.), CIT v. Dinesh Jain HUF 254 CTR (Del.) 534**.

3.21 **Whether prerequisite conditions of section 69 have to be satisfied even if presumption u/s 132(4A) is raised against the assessee :** In **Ushakant N. Patel v. CIT [2006] 282 ITR 553 (Guj.)** it was held that in the first instance it is

incumbent upon the authority to establish that there were investments made by the assessee; that such investments were not recorded in the books of account maintained by the assessee; and that such investments had been made in the financial year immediately preceding the assessment year in question.

Even if the contention of the revenue that the provision of section 132(4A) of the Act are available to the revenue during the course of regular assessment proceeding is accepted for the sake of argument, yet none the less, the **requisite conditions of section 69 cannot be given a go by and have to be met.**

Therefore **even if presumption u/s 132(4A) is raised against the assessee, the ingredients by way of prerequisite conditions of section 69 have to be satisfied and cannot be presumed to have been established on the basis of section 132(4A) of the Act simpliciter.**

3.22 **Whether procedure available in regular assessment by application of the principles relating to burden of proof in sections 68, 69, 69A, 69B and 69C, also apply in search cases :** The Special Bench of ITAT in the case of **Triumph Securities Ltd. v. Deputy CIT [2011] 10 ITR (Trib) 1 (Mum.)(SB): [2010] 39 SOT 139 (Mum.) (SB): [2010] 132 TTJ 257 (Mum.)(SB)** held that where a search in the case of stock-broker revealed mismatch between actual transactions and those recorded in the books, the income in the block has to be computed after taking into consideration the undisclosed income inferable on the basis of materials found during search and post-search enquiries relating to such materials. The assessee's argument that the procedure available in regular assessment by application of the principles relating to burden of proof in **sections 68, 69, 69A, 69B and 69C**, would have no application was found to be without merit. The inference, whether there was an element of undisclosed income embedded in the transactions discovered during search has to be considered in the light of burden of proof on the part of the assessee to explain the discrepancies. The transactions recorded by the stock exchange are good pieces of evidence. Where the assessee did not choose to explain the discrepancies except by furnishing confirmation letters of some parties which did not cover the discrepancies of all clients, the addition is justified.

3.23 **Deposit in joint names :**Where bank deposits were in joint names of husband and wife and there was no material on record to show who earned the money deposited, nor was there any material to show that money belonged to the husband, half of the interest on such deposits was held taxable in the hands of the husband because of the fact that the wife was assessed on half of the interest at least in one year and she was admittedly owner of a house property - **CIT v. Ishwar Das Sharma 158 ITR 167 (Del.).**

3.24 **Whether maintenance of books of account is necessary for making addition u/s 69 :**The section 69 provides that where in any financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income and if A.O. does not find satisfactory explanation from the assessee, then the value of investments may be deemed to be the income of the assessee of such financial year.

The Madhya Pradesh High Court in the case of **Dr. Prakash Tiwari v. CIT [1984] 148 ITR 474 (MP)** held that **where the assessee has not maintained books of account and additions are made towards unexplained investments, the additions made would be sustainable under section 69** and not under section 69B.

For applying sections 69 and 69B, **it is not necessary that the books of account are to be rejected**. The onus of proving the source of a sum of money is on the assessee. If he disputes the liability for tax, it is for him to show that the receipt was not income or that it was exempted from taxation under the law. In the absence of any proof, the Assessing Officer is entitled to charge it as taxable income. It is not necessary that the books of account have to be rejected expressly or that it is to be, in express terms, recorded that the books of account are not reliable or the explanation is not satisfactory - **Unit Construction Co. Ltd. v. Jt. CIT [2003] 260 ITR 189 (Cal.).**

Similar view has been expressed in **CIT v. Ambience Hotels & Resort Ltd. 83 CCH 021 (Delhi HC).**

3.25 **Treatment of unexplained investment in case of partnership firms :**The Allahabad High Court in the case of **India Rice Mills v. CIT [1996] 218 ITR 508 (All.)** held thatin respect of capital contributed by partner to firm, the onus is on the partners to explain the source, and if they fail to do so, the amount could be added as **income from undisclosed sources in the hands of the partner only** and not in the hands of the firm.

3.26 **The burden of showing that the assessee had undisclosed income : The burden of showing that the assessee had undisclosed income is on the revenue. The burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with the transaction which was not directly related to assessment, and making that the sole foundation for a finding that the assessee had deliberately suppressed his income – CIT v. N. Swamy [2000] 241 ITR 363 (Mad.).**

3.27 **Unaccounted Production : An Income Tax Officer cannot carry out the functions of an authority under the Central Excise Act and arrogate to himself the power to determine the quantity of production, or to utter a final word on the intricacies of the manufacturing process – Girija Smelters Ltd. v. ACIT [2015] 378 ITR 487 (Telangana & AP).**

Merely on the basis of demand in show cause notice issued by Central Excise Department, determination of tax under Income Tax Act cannot be made; said amount could not be treated as the unaccounted turnover of assesseefor relevant years- **CIT v. Amman Steel & Allied Industries [2015] 377 ITR 568 (Mad.).**

3.28 **What is peak credit theory :**As per Peak theory, where a single credit or number of credits appear in the books in the account of any particular person, those with a number of debits should all be arranged in serial order, so that a credit following a debit entry should be treated as referable to the latter to the extent possible. Further the '"Peak" of the credits should be treated as unexplained and not the aggregate of the credit amounts.

3.29 **What is theory of telescoping :**Telescoping is one type of technique which delinks all subsequent transactions of the original transaction or amount which have merely rotation, recycling and conversion of one into another. By this technique a real income is to be determined. The real income is subject to tax in the Income-tax Act, for example if in a search, assets of Rs.10 lakhs were found and assessee disclosed Rs.10 lakhs in his return against notice u/s 158BBC, then it is telescoping that assets found were the application of this disclosed income as on other assets etc. were found in search. Therefore assuming or accepting that the application of this income into assets is called telescoping. Both the above theories, peak theory (see **earlier para**) and theory of telescoping are applicable in case of block assessment.

In support of above view reference can be made to the decision of Jaipur Bench of the Tribunal in the case of **Ramesh Chand Modi v. Asstt. CIT 1998 Tax World 510(Jp)** and Ahmedabad Bench of Tribunal in case of **Kishore Mohanlal Tewala v. Asstt. CIT [1999] 64 TTJ (Ahd) 543.**

3.30 **Tax Rate for deemed income uls 68, 69, 69A, 69B, 69C and 69D :**

Please refer amended section 115BBE w.e.f. asst. year 2017-18 in para 1 above.

(Narayan Jain is Master of Law. He is founder General Secretary and Past President of DTPA. He is author of famous books " How to Handle Income Tax Problems" as well as "Income Tax Pleading & Practice" with CA Dilip Loyalka.)

Composition Scheme Under GST

CA D. S. Agarwala

1. Introduction

In order to reduce compliance burden for small tax payers, the government has brought in composition Scheme under GST. The salient features of the scheme are as follows:

2. Statutory provisions

Section 10 of the CGST Act, 2017 read with the composition rules (Rule 3 to 7 of the CGST Rules, 2017) govern the composition Scheme under GST. Provisions of section 10 came into force with effect from 22nd June, 2017[1]. Composition rules also came into force the same day[2].

3. Who can opt this scheme

A registered person, whose aggregate turnover in the preceding financial year did not exceed one crore rupees[3], may opt to pay tax under composition scheme in lieu of the tax payable by him.

However, exercising of such option is subject to the provisions of section 10(2) and conditions and restrictions prescribed in Rule 5(1) as mentioned in para 6 below.

GST Council in its 23rd meeting held at Guwahati on 10.11.2017 has recommended to increase the annual turnover eligibility of Rs. 1 crore to Rs. 2 crores and the eligibility for composition to Rs. 1.5 crores per annum. However, these recommendations could not be implemented as no corresponding amendments were made in the CGST and the SGST Acts. As such, the threshold limit under composition scheme still remains Rs. 1 crore.

4. Composition tax rate

Composition tax rate as mentioned in section 10(1) read with Rule 7 are as follows:

Sl. No.	Category of registered persons	Rate of Tax
(1)	(2)	(3)
1.	Manufacturers, other than manufacturers of notified goods	0.5% CGST+ 0.5% SGST of the turnover in the State or Union territory[4]
2.	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II. Such supply is: "Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration."] **Example:** Restaurant services	2.5% CGST +2.5% SGST of the turnover in the State or Union territory[5]
3.	Any other supplier eligible for composition levy under section 10 and composition rules. This includes traders.	0.5% CGST+ 0.5% SGST of the turnover of taxable supplies of goods in the State or Union territory[6]

5. Reverse Charge

A composite tax payer shall, however, be liable to pay tax under reverse charge both under section 9(3) and 9(4). Payment of tax under section 9(4) is at present exempt till 30.06.2018 [Vide N.No. 10/2018-CT (Rate) dated 23.03.2018]

6. Who cannot avail this scheme: [Section 10(2) read with Rule 5(1)]:

a) a person engaged in the supply of services. However, a person making supplies referred to in clause (b) of paragraph 6 of Schedule II (e.g. restaurant services) is allowed to opt this scheme. Such a person is eligible even if he supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. This has been clarified in para 2 of the Order No. 01/2017-CT dated 13.10.2017 of the Central Goods And Services Tax (Removal Of Difficulties) Order, 2017[4];

b) a person engaged in supply of goods which are not leviable to tax under this Act; [As per section 2(78) of the CGST Act, a non-taxable supply is not leviable to tax. For example- supply of alcoholic liquor for human consumption which has been specifically excluded from levy in section 9(1) and petroleum products as referred to in section 9(2) on which levy has been deferred for the time being];

c) a person engaged in making any inter-State outward supplies of goods;

d) a person engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52;

e) a manufacturer of notified goods. A person cannot avail this scheme if he was engaged in the manufacture of notified goods during the preceding financial year also. As per Notification No. 8/2017-Central Tax dated 27th June, 2017, manufacturer of the following goods shall not be eligible to opt for composition scheme:

S. No.	Tariff item , sub- heading, heading or Chapter	Description
(1)	(2)	(3)
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

f) a casual taxable person or a non-resident taxable person;

g) an existing taxpayer opting to pay tax under composition scheme from the appointed day i.e. 22.06.2017 under rule 3(1), if the goods held in stock by him on the said day have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State;

h) a person if the goods held in stock by him have been purchased from an unregistered supplier. He would be allowed if he pays the tax thereon under section 9(4). Payment of tax under section 9(4), however, is at present exempt till 30.06.2018 vide N.No. 10/2018-CT (Rate) dated 23.03.2018.

i) a person shall not be eligible to opt for this scheme unless all the registered persons having same PAN also opt to pay tax under composition scheme [Proviso to section 10(2)]

Other Conditions

j) he shall pay tax under section 9(3) or section 9(4) on inward supply of goods or services or both;

k) he shall mention the words- **"composition taxable person, not eligible to collect tax on supplies"** at the top of the bill of supply issued by him; and

l) he shall mention the words- **"Composition taxable person"** on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

7. Input tax credit reversal Where any registered person who has availed of input tax credit opts to pay tax under composition scheme, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option. After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse- **Section 18(4)**

Rule 44(1) states that the amount of input tax credit as stated above shall be determined as follows:

For inputs held in stock and inputs contained in semi-finished or finished goods held in stock	the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs –**Rule 44(1)(a)**
For capital goods held in stock	the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years- **Rule 44(1)(b)** ***Illustration:*** *Capital goods have been in use for 4 years, 6 month and 15 days.* *The useful remaining life in months= 5 months ignoring a part of the month* *Input tax credit taken on such capital goods= C* *Input tax credit attributable to remaining useful life= C multiplied by 5/60*

Rule 44(2): The amount, as specified in rule 44(1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

Rule 44(3): Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under rule 44(1) based on the prevailing market price of the goods on the effective date of the exercising of the option to pay tax under composition scheme.

Rule 44(4): The amount determined under rule 44(1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GST ITC-03.**

Rule 44(5): If the details are furnished in accordance with rule 44(3), then such details have to be certified by a practicing chartered accountant or cost accountant.

8. Restrictions A composite taxpayer shall not collect any tax from the recipient on supplies made by him. He shall also not be entitled to any credit of input tax- **Section 10(4)**

9. Intimation for composition levy

Sl. No.	Type of registered persons	Compliances
1	**Migration cases:** Existing taxpayers granted provisional registration under rule 24(1)(b) and opted to pay tax under composition scheme- **Rule 3(1)**	**1. Intimation:** Submit **GST CMP-01** electronically **2. Due date:** Prior to appointed day i.e. 22.06.2017 or within 30 days thereafter or such further period as may be extended by the Commissioner in this behalf. [Date extended upto 16th August, 2017 vide Commissioner (GST)'s Order No. 01/2017-GST dated 21.7.2017] In **Rajasthan Tax Consultants Association Versus Union Of India And Ors reported in 2017 (10) TMI 254 dated 20.09.2017**, Hon'ble Rajasthan High Court has extended this date further upto 30.09.2017 on the ground that the system is not working upto the level and the same is required to be corrected & updated to meet requirements. Proviso to Rule 3(1) provides that where GST CMP-01 is filed after appointed day i.e. 22.06.2017, the registered person shall not collect any tax from 22.06.2017 but shall issue bill of supply for supplies made after 22.06.2017.
		3. Details of stock, including the inward supply of goods received from unregistered persons, held on the day preceding the date from which he opts to pay tax under composition scheme: Furnish the details in **FORM GST CMP-03-** Rule 3(4) **4. Due date of furnishing CMP-03:** Within [ninety][8] days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.[9] **5. Effective date for composition duty:** 22.06.2017- Rule 4(1)
	New registration under Rule 8(1)- **Rule 3(2)**	**1. Intimation:** May give an option in **Part B of FORM GST REG-01**, which shall be considered as an intimation to pay tax under section 10. **2. Effective date for composition duty [Rule 4(2):** (i) **If registration application submitted within 30 days of his becoming liable for registration:** Effective date would be the date on which such person becomes liable for registration as per Rule 10(2). (ii) **If registration application submitted after 30 days of his becoming liable for registration:** Effective date would be the date of grant of registration as per Rule 10(3).
	Registered person opting to pay tax under composition scheme from next financial year- **Rule 3(3)**	**1. Intimation:** Submit **GST CMP-02** electronically **2. Intimation Due date:** Prior to the commencement of the financial year **3.** Declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods under section 18(4): **Statement in FORM GST ITC-03** in accordance with the provisions of rule 44(4). **4. Due date of furnishing ITC-03:** Within 60 days from the commencement of the relevant financial year. **5. Effective date for composition duty:** Beginning of the financial year - Rule 4(1)

	Migrant or new taxpayers opting to switch over to composition scheme during current financial year- **Rule 3(3A)**	1. **When composition scheme will commence:** With effect from the first day of the month immediately succeeding the month in which he files an intimation in **FORM GST CMP-02**[10]**.** 2. **Due date of filing CMP-02:** On or before the 31st day of March, 2018. **6.** Declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods under section 18(4): Statement in **FORM GST ITC-03** in accordance with the provisions of rule 44(4). 3. **Due date of furnishing ITC-03:** Within 180 days[11] from the day on which such person commences to pay tax under composition scheme. 4. **Restriction:** Such persons shall not be allowed to furnish **GST TRAN-1** after the statement in **FORM GST ITC-03** has been furnished.

10. Intimation about place of business Any intimation under sub-rule (1) or sub-rule (3) [or sub-rule (3A)][5] of Rule 3 in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number- **Rule 3(5)**

11. Whether a fresh intimation is to be filed every year No. The registered person paying tax under composition scheme may not file a fresh intimation every year and he may continue to pay tax under composition scheme subject to the provisions of the Act and the rules.

12. Validity of composition levy The option to pay tax under composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit of Rs. 1 crore- **Section 10(3)** His option shall also lapse if he fails to satisfy other conditions specified in section 10 of the CGST Act and Rule 3 to 5 of the CGST Rules.

Once he ceases to satisfy any of the conditions mentioned therein, he shall:

- be liable to pay tax under section 9(1) from that day onwards; and
- issue tax invoice for every taxable supply made thereafter; and
- also file an intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.

Entitlement of Input Tax Credit: Where any registered person ceases to pay tax under composition scheme, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9, provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed- **Section 18(1)(c)**

Such person may electronically furnish at the common portal, a statement in **FORM GST ITC-01** containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn **within a period of thirty days** from the date from which the option is withdrawn.

13. Voluntary Withdrawal from the scheme The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04.** Such person **may** electronically furnish at the common portal, a statement in **FORM GST ITC-01.** The statement is to be filed **within 30 days** from the date of withdrawal of option. It will contain details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn.

14. Consequences if a person paid tax under composite scheme though ineligible to do so or contravened the provisions of the Act and/or rules

Where the proper officer[6] has reasons to believe that the registered person was not eligible to pay tax under composition scheme or he has contravened the provisions of the Act or of the composition rules, he may issue a show cause notice (SCN) to such person in **FORM GST CMP-05** to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under composition scheme shall not be denied.

The registered person shall submit the reply in **FORM GST CMP-06** and upon receipt of the same, the proper officer[7] shall issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply. The proper officer may accept the reply or deny the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.

If the proper officer[8] has reasons to believe that a taxable person has paid tax under composite scheme despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty- **Section 10(5)**

A person who has been denied the option to pay tax under composition scheme through an order in **FORM GST CMP-07**, may electronically furnish at the common portal, a statement in **FORM GST ITC-01** containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, **within a period of thirty days** from the date from which the option is withdrawn or from the date of the order passed in **FORM GST CMP-07**, as the case may be.

15. Applicability of withdrawal intimation or denial to other places of business Any intimation or application for withdrawal or denial of the option to pay tax under composition scheme in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places

of business registered on the same Permanent Account Number.

16. Tax invoice or Bill of Supply

A composite tax payer cannot issue a tax invoice as he is not allowed to collect any tax from the recipient on supplies made by him. Instead, for the supplies made by him, he shall issue a bill of supply containing such particulars and in such manner as may be prescribed- **Section 31(3) (c) read with Rule 49.**

17. Filing of returns

A composite tax payer is not required to file any monthly return. Instead, he shall, for each quarter or part thereof, furnish, a quarterly return in **Form GSTR-4** electronically, of his turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter- **Section 39(2) read with Rule 62.** The question of reporting inter-state outward supply of goods does not arise as a composite tax payer is not allowed to make any such supply of goods under section 10(2)(c).

If the registered person opts to pay composition tax with effect from the first day of a month which is not the first month of a quarter, then he shall furnish the return in **FORM GSTR-4** for that period of the quarter for which he has paid tax under composition scheme and shall furnish the returns as applicable to him for the period of the quarter prior to opting to pay tax under composition scheme[9].

18. Payment of tax

A composite tax payer shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the composition rules by debiting the electronic cash ledger- **Rule 62(2).** He is not entitled to avail any credit of input tax as it is prohibited by section 10(4).

19. Cancellation of registration for failure to furnish returns

If a composite tax payer fails to furnish his returns for three consecutive tax periods, the proper officer may cancel his registration from such date, including any retrospective date, as he may deem fit- **Section 29(2)**

20. Transitional credit

A migrant tax payer opting to pay tax under composite scheme shall not be eligible to take transitional credit of VAT or CENVAT credit- **Section 140**

21. SEZ supply

A composite tax payer cannot supply goods to SEZ as supply to SEZ is treated inter-state supply under section 7(5) of IGST Act and a composite tax payer is debarred from making any inter-state outward supply of goods under section 10(2)(c) of CGST Act.

(Footnotes)

1 N. No.01/2017-CT dated 19.06.2017

2 N. No.03/2017-CT dated 19.06.2017.

3 Initial limit of Rs. 50 lacs was first increased to Rs. 75 lacs (Vide N.No. 8/2017-CT dated 27.06.17) and then to Rs. 1 crore (Vide N.No. 46/2017-CT dated 13.10.2017).

4 **Order No. 01/2017-CT dated 13.10.2017 of The Central Goods And Services Tax (Removal Of Difficulties) Order, 2017: Para 2.** For the removal of difficulties,-

(i) it is hereby clarified that if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.

(ii) it is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

5 Inserted vide Notf no. 34/2017 – CT dt 15.09.2017

6 **'Proper Officer'** here means: Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax-vide Circular No. 1/1/2017-CT dated 26.06.2017

7 **'Proper Officer'** here means: Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax-vide Circular No. 1/1/2017-CT dated 26.06.2017

8 **'Proper Officer'** here means: Assistant or Deputy Commissioners of Central Tax and Assistant or Deputy Directors of Central Tax-vide Circular No. 1/1/2017-CT dated 26.06.2017

9 Inserted vide Notf no. 45/2017 - CT dt 13.10.2017

Key Changes in SEBI (LODR) Regulations based on Kotak Committee recommendation

CS Ravi Varma

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
Coverage of Reg 17A and 21A for exempted categories of SMEs				
Applicability	The compliance with the corporate governance provisions as specified in regulations 17, 18, 19, 20, 21,22, 23, 24, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C , D and E of Schedule V shall not apply, in respect of - (b) the listed entity which has listed its specified securities on the SME Exchange: Provided that for other listed entities which are not companies, but body corporate or are subject to regulations under other statues, the provisions of corporate governance provisions as specified in regulation authorities.	The compliance with the corporate governance provisions as specified in regulations 17, **17A**, 18, 19, 20, 21,22, 23, 24, **24A,** 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C , D and E of Schedule V shall not apply, in respect of - (b) the listed entity which has listed its specified securities on the SME Exchange: Provided that for other listed entities which are not companies, but body corporate or are subject to regulations under other statues, the provisions of corporate governance provisions as specified in regulation 17, **17A**, 18, 19, 20, 21,22, 23, 24, **24A**, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C , D and E of Schedule V shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.	17A and 24A included for other than SME under exempted category of applicability 17 A and 24A deals with Maximum number of Directorship and Secretarial Audit	April 1, 2019
BOARD MEETING / DIRECTORS RELATED CHANGES				
Quorum for Board Meeting	--	***The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director ;***	Higher of 1/3 or 3 Directors which shall include one ID (*the Act prescribes 1/3 or 2 whichever is higher).* Presence of one ID mandatory now to form valid quorum.	
		Explanation I Ç For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum. ***Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.***	Top 1000 listed entities Top 2000 listed entities	April 1, 2019 April 1, 2020
Independent Director Definition	who is or was not a promoter of the listed entity or its holding, subsidiary or associate company ---	who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or **member of the promoter group of the listed company;** **who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is cp"kpfgrgpfgpv"fktgevqt<Ë**	ID declaration to be obtained with this respect. In case, composition is not in compliant, the Companies may choose to regularise at forthcoming AGM 2018.	October 1, 2018.
		No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018	To check whether any Alternate Director is in place of ID	October 1, 2018
		Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of 12 regulation 16 and that he is not aware of any circumstance or situation, which	Even anticipation of change in circumstances that may affect the status as ID is covered.	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
		exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.		
		The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.	BoD to assess independence.	April 1, 2019
		With effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall wpfgtvcmg" Fktgevqtu" cpf" Qhhkegtu" kpuwtcpe cpf" Q" kpuwtcpegÍ+" hqt" cnn" vjgkt" kpfgrg directors of such quantum and for such risks as may be determined by its board of directors.	To implement D & O Insurance Policy	October 1, 2018
Woman Director	board of directors shall have an optimum combination of executive and non- executive directors with at least one woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;	board of directors shall have an optimum combination of executive and non- executive directors with at least one woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors; ***The board of directors of the top 500 listed entities (with effect from April 1, 2019) and the top 1000 listed entities (with effect from April 1, 2020) shall have at least one independent woman director.***	Top 500 listed entities to appoint Independent Women Director	April 1, 2019
		Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.	Top 1000 listed entities to appoint Independent Women Director	April 1, 2020
Non-executive Chairperson	--	***With effect from April 1, 2020, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -*** ***(a) be a non-executive director;*** ***(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term ÊtgncvkxgÉ" fghkpgf under the Companies Act, 2013:*** ***Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.*** ***Explanation - The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.***	Initially top 500 listed companies are covered. Succession planning to be designed accordingly	April 1, 2020
Separate posts of chairperson and chief executive officer	The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.	-		April 1, 2020
Directors of 75 years or more	---	***No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.***	Explanatory Statement to mention justification for appointment of Director in case they have attained age of 75 years or more (*already exist under the Companies Act,*	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
Minimum Director in a company	**----**	***The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.*** ***Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.***	Top 1000 listed entities to have minimum 6 Directors Top 2000 listed entities to have minimum 6 Directors	April 1, 2019 April 1, 2020
Maximum no of Directorship	**--**	The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time – (1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020: Provided that a person shall not serve as an independent director in more than seven listed entities. (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities. For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange."	Maximum number of Directorship restricted to 8 listed Entities. Further Independent Directorship restricted to 7 listed entities by April 1, 2020. A whole time Director / MD of listed entity can hold maximum 3 Independent Directorship in other companies	April 1, 2019 April 1, 2019
Remuneration	**---**	***The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.***	In case of Non-executive Chairperson, the approval from the shareholder may be required in most of the cases	April 1, 2019
		The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if- ***(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or*** ***(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:*** ***Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.*** ***Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.***	New threshold in case of listed entities. The Cos. Act prescribes threshold of 5%. However, the listed cos. to obtain approval from Shareholders if remuneration paid to executive Directors related to promoter is 2.5% or more of net profit or in case of two or more such directors, 5%.	

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
Evaluation of Directors performance	The performance evaluation of independent directors shall be done by the entire board o directors: Provided that in the above evaluation directors who are subject to evaluation shall participate:	***The evaluation of independent directors shall be done by the entire board of directors which shall include -*** ***(a) performance of the directors; and*** ***(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:*** ***Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.***	New addition of responsibilities to review the independence of Directors	April 1, 2019
NOMINATION AND REMUNERATION COMMITTEE (NRC)				
Senior Management	"senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below executive directors, including all functional heads.	"senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below **the chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer**.	The coverage of Senior Management has been broadened and accordingly the companies having policies on their remuneration need to review the policy.	April 1, 2019
Quorum for NRC	-	The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.	Quorum necessarily to have Independent Director	April 1, 2019
Frequency of Meeting	-	The nomination and remuneration committee shall meet at least once in a year.	Frequency fixed for minimum one	April 1, 2019
Role	-	***To recommend to the board, all remuneration, in whatever form, payable to senior management***	The increment for Senior Management to be routed thru NRC.	April 1, 2019
AUDIT COMMITTEE				
Role of Audit Committee	----	***reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments existing as on the date of coming into force of this provision.***	Review of loan extended to subsidiary	April 1, 2019
UVCMGJQNFGTUÍ"TGNCVKQPUJKR"EQOOKVVGG				
Role of SRC	The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders. (3) The board of directors shall decide other members of this committee	The listed entity shall constitute a Stakeholders Relationship Committee to ***specifically look into the various aspects of interest*** of shareholders, debenture holders and other security holders. ***At least three directors, with at least one being an independent director, shall be members of the Committee.*** ***The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders*** ***The stakeholders relationship committee shall meet at least once in a year.***	Scope widened One Independent Director to be appointed Chairperson to be present at the AGM	April 1, 2019
	The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.	***The role of the committee shall inter-alia include the following:*** ***(1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.***	Role has been elaborated with initiation of proactive measures to be taken by SRC for Stakeholders.	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
		(2) Review of measures taken for effective exercise of voting rights by shareholders. ***(3) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.*** ***(4) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.***		
RISK MANAGEMENT COMMITTEE (RM)				
Role & Function of RM Committee	The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit The provisions of this regulation shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.	***The RM committee shall meet at least once in a year.*** The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit ***such function shall specifically cover cyber security.*** The provisions of this regulation shall be applicable to top ***500 listed entities***, determined on the basis of market capitalisation, as at the end of the immediate previous financial year	Top 500 listed entities to form RM Committee. Frequency of RM fixed at least once in a year. The function of RM includes function w.r.t. cyber security.	April 1, 2019
UJCTGJQNFGTUÍ"OGGVKPI"TGNCVGF"EJ[GES				
Special Business - Notice	--	***The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.***	Addition of recommendation in the explanatory statement. (*already exist in the Cos. Act)*	April 1, 2019
		The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year. ***The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.*** ***Explanation: The top 100 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year***.	Top 100 Listed Entities to have AGM by the month of August. Live Webcast	April 1, 2019 April 1, 2019
		The notice being sent to shareholders for an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice: (a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change; (b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.	Disclosure w.r.t. fees payable to Statutory Auditors to be incorporated in the Notice	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
RELATED PARTY TRANSACTIONS				
Related Party Definitions	"related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards: Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);	"related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards: ***Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.*** Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);	The list of Related Party needs to be reviewed.	April 1, 2019
RPT Policy & Procedure	The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.	The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions ***including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly.*** Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. ***Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.***	Mandatory review of policy on RPT. Threshold to be defined clearly in RPT policy.	April 1, 2019
	All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.	All material related party transactions shall require approval of the shareholders through resolution and ***no related party shall vote to approve*** such resolutions whether the entity is a related party to the particular transaction or not.	Clarificatory in nature.	April 1, 2019
	For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.	For the purpose of this regulation, all entities falling under the definition of related parties shall ***not vote to approve the relevant transaction*** irrespective of whether the entity is a party to the particular transaction or not.	Clarificatory in nature	April 1, 2019
		The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.	Disclosure of RPT to be made to Stock Exchanges.	March 31,2019
SUBSIDIARIES RELATED CHANGES				
Material Subsidiary	Êmaterial subsidiaryË shall mean a subsidiary, whose income or net worth exceeds 20% percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.	Êmaterial subsidiaryË shall mean a subsidiary, whose income or net worth exceeds **ten percent** of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.	Material subsidiary coverage needs to be examined as compliance for material subsidiary will be triggered accordingly.	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
CG Norms with respect to Subsidiary	(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.	(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India ***or not***. ***Explanation- For the purposes of this provision, notwithstanding anything to the contrary eqpvckpgf" kp" tgiwncvkqp" 38." vjg" vgto" Êocv uwdukfkct{Ë" ujcnn" ogcp" c"subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the koogfkcvgn{"rtgegfkpi"ceeqwpvkpi"{gct0Ë***	Even foreign subsidiary are now included. But here Material Subsidiary definition included "20%" instead of "10%"	April 1, 2019
	The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. Explanation.- For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.	The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. Explanation.- For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the ***unlisted subsidiary*** for the immediately preceding accounting year.	Clarificatory in nature	April 1, 2019
SECRETARIAL AUDIT				
Secretarial Audit.	--	***Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.***	To ensure the Audit if applicable	March 31, 2019.
FINANCIAL RESULTS RELATED CHANGES				
Financial Results	(3)The listed entity shall submit the financial results in the following manner: (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter. (b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following; (i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.	(3)The listed entity shall submit the financial results in the following manner: (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter. (b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity shall also submit quarterly/year-to-date consolidated financial results.	Consolidated Quarterly results mandatory	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
	Provided that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary. (ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.			
	- The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.	The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures up to the third quarter of the current financial year.	For the last quarter, audited or limited review results to be submitted.	April 1, 2019
		The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.	Cash flow statement required on Half – Yearly basis.	April 1, 2019
		The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.	Duties for consideration of results Audit/ Limited Review.	April 1, 2019
		The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.	Material adjustment to be disclosed by way of Note.	April 1, 2019
		The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/ companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.	Additional Limited Review for all entities whose accounts are being consolidated	April 1, 2019
	With respect to audit qualifications where the impact of the qualification is not quantifiable: i. The management shall make an estimate and the auditor shall review the same and report accordingly; or ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly. The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion).	With respect to audit qualifications where the impact of the qualification is not quantifiable: ***i. The management shall mandatorily make an estimate which the auditor shall review and report accordingly*** ii. ***Notwithstanding the above, the management may be permitted to not provide estimate on matters like going concerns or sub-judice matters; in which case, the management shall provide the reasons and the auditor shall review the same and report accordingly***	Relaxation in some cases; not to disclose estimation of impact.	April 1, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
ANNUAL REPORT RELATED CHANGES				
Statement of Deviation	--	***Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.***	Separate Disclosure for utilisation of funds till the time it is used.	April 1, 2019
Annual Report Dispatch with Notice	The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.	***The listed entity shall submit to the stock exchange and publish on its website-*** ***(a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;***	Restoration of 21days advance Notice and provision to submit to SE revised copy of Annual Report	March 31, 2019
		(b) in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.		
	Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) for the purpose;	***Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) either with the listed entity or with any depository***	Relaxation to companies to send Annual Report thru email to large database of shareholders.	March 31, 2019
		The disclosures made by the listed entity with immediate effect from date of notification of these amendments- (a) to the stock exchanges shall be in XBRL format in accordance with the guidelines specified by the stock exchanges from time to time; and (b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool: Provided that the requirement to make disclosures in searchable formats shall not apply in case there is a statutory requirement to make such disclosures in formats which may not be searchable, such as copies of scanned documents.	Disclosure (Circular in this regard has already been issued by SEBI)	Immediate effect
Disclosure of transactions under Related Party Dislcosures	-	***Disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.***	The coverage is to be checked as it is more exhaustive now.	March 31, 2019
Disclosure of Key Financial Ratio		***(a) Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:*** ***(i) Debtors Turnover , (ii) Inventory Turnover*** ***(iii) Interest Coverage Ratio, (iv) Current Ratio*** ***(v) Debt Equity Ratio , (vi) Operating Profit Margin (%) , (vii) Net Profit Margin (%)*** ***or sector-specific equivalent ratios, as applicable.*** - ***details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof***	Key Financial Ratios to be disclosed with explanations.	March 31, 2019
CG Report forming part of Annual Report	number of other board of directors or committees in which a directors is a member or chairperson	number of other board of directors or committees in which a directors is a member or chairperson, ***and with effect from the Annual Report for the year ended 31st March 2019, including separately the names of the listed entities where the person is a director and the category of directorship***	Name of the Listed entities to be covered henceforth	March 31, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
Disclosures relating to Board of directors:	--	- ***A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following:*** ***(i) With effect from the financial year ending March 31, 2019, the list of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and***	Skills/ expertise to be disclosed.	March 31, 2019
		(ii) With effect from the financial year ended March 31, 2020, the names of directors who have such skills / expertise / competence	Skills/ expertise along with Name of the Director to be disclosed	March 31, 2020
		- ***confirmation that in the opinion of the board, the independent directors fulfill the conditions specified in these regulations and are independent of the management.***	*Already exists*	March 31, 2019
		- ***detailed reasons for the resignation of an independent director who resigns before the expiry of his tenure along with a confirmation by such director that there are no other material reasons other than those rtqxkfgf0Ë***	*Similar requirement for disclosure also*	March 31, 2019
General shareholder information:	----	- list of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, for all debt instruments of such entity or any fixed deposit programme or any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad	Credit Ratings to be provided	March 31, 2019
		- Details of utilization of funds raised through preferential allotment or qualified institutions placement as specified under Regulation 32 (7A).	Already covered	March 31, 2019
		- a certificate from a company secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority. *Provided that the clause shall only apply where recommendation of / submission by the committee is required for the approval of the Board of Directors and shall not apply where prior approval of the relevant committee is required for undertaking any transaction under these Regulations.*	A Certificate from CS in practice for disqualification of Directors.	March 31, 2019
		- ***Total fees for all services paid by the listed entity and its subsidiaries, on a consolidated basis, to the statutory auditor and all entities in the network firm/network entity of which the statutory auditor is a part.*** Save as specified otherwise, the amendments to Schedule V shall be applicable in respect of Annual reports filed for the year ended March 31, 2019 and thereafter.		March 31, 2019

Particulars	Existing Regulations	Amendment Regulations	Action Point	Deadline
WEBSITE RELATED CHANGES				
Website	The listed entity shall disseminate the following information on its website: (a) details of its business; (b) terms and conditions of appointment of independent directors; (c) composition of various committees of board of directors;	The listed entity shall disseminate the following information ***under a separate section*** on its website: (a) details of its business; (b) terms and conditions of appointment of independent directors; (c) composition of various committees of board of directors;	A separate section to be enacted on the Website for the information.	April 1, 2019
	----	- ***With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.*** - ***separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.***	Credit Ratings (*already exists)*	October 1, 2018 April 1, 2019
DISCLSOURES RELATED CHANGES				
Prior Intimation	the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers: *Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchange(s).*	the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers:	Clarificatory in nature	October 1, 2018
Schedule III Ç Disclosure of Events / Information	---	➢ In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor. ➢ Resignation of auditor including reasons for resignation: In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities: i. Detailed reasons for the resignation of independent directors as given by the said director shall be disclosed by the listed entities to the stock exchanges. ii. The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided. iii. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the detailed reasons as specified in sub-clause (i) above.	While informing resignation Auditors/ ID, reason for their resignation to be provided (already exists). However, ID to also confirm that the reason submitted by the company is true & fact.	April 1, 2019

FROM THE DESK OF CA P.D. RUNGTA GENERAL SECRETARY - ACTIVITIES SINCE 11.01.2018

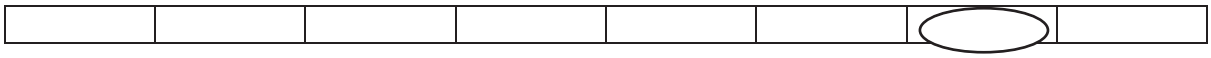
SL. No.	Date	Name of Programme	Speaker
1.	11.01.2018	S. C. Meeting on "Stress Management & Transhumanism" at DTPA Conference Hall	Ms. Saroj Agarwal & Mr. Ayush Poddar
2.	13.01.2018	Cricket Match with IRS Association at Sambaran Banerjee Cricket Academy, Kolkata	IRS Team Vs. DTPA Team
3.	14.01.2018	Inter CA Study Circle Indoor Cricket Tournament at Space Club,Kolkata	DTPA Team with Others Team
4.	18.01.2018	Inrective Session with Pr.CCIT-1 and others CCITs and CITs at Sisha,Kolkata	Shri K. L. Maheswari & others
5.	19.01.2018	S. C. Meeting on "Updates & GST Council Decision" at DTPA Conference Hall	CA. Abhishek Tibrewal & CA. Subham Khaitan
6.	24.01.2018	DTPA S. C. Meeting on "Companies Amendment Act" at DTPA Conference Hall	CA. Sumit Binani
7.	28.01.2018	DTPA Annual Picnic- 2018 at The Heritage School	DTPA Pariwar
8.	31.01.2018	S. C. Meeting on "Industrial Act viz ESI, PF, Gratuity etc. and ICAI Code of Conduct at DTPA Conference Hall.	CA. Ranjeet Agarwal & CA. Vivek Agarwal
9.	01.02.2018	Live Union Budget Telecast at DTPA Conference Hall	CA. Anand Tibrewal, Adv Paras Kochar and CA Rajeev Agarwal
10.	02.02.2018	Seminar on Union Budget- 2018 at Mahajati Sadan,Kolkata	Shri K. L. Maheswari, ADV. N. K. Poddar, CA Svenkataramani, CA S. S. Gupta
11.	03.02.2018 to 06.02.2018	Residential Seminar at Shilong,Meghalaya,India	CA D. N. Agrawal, CA M. C. Jagwayan, CA S. K. Sultania & others
12.	09.02.2018	Felication of SMT SEEMA KHORANA PATRA,Pr. CCIT-1,W.B. & Sikkim at Aayakar Bhawan, Kolkata	Team DTPA
13.	13.02.2018	Felication of Shri Arvind Singh,Pr. CCIT,CGST and CX at GST Bhawan,Kolkata	Team DTPA
14.	17.02.2018	New Benami Law & ITS Interplay With Income Tax Law at BCCI, WM Hall.Kolkata	CA. Ashwani Taneja, Shri N.V.Vasudevan & others
15.	17.02.2018	Fellowship with ITAT Members at Conclave,Kolkata	ITAT Members & others
16.	23.02.2018	S. C. Meeting on "Practical Aspects of Accounting under GST Regime" at DTPA Conference Hall Team from Tally Software	Mr. Siddhartha Halder &
17.	28.02.2018	Group Discussion meeting on"Overview of Ind AS - Impact on Small Companies" at DTPA Cpnference Hall	CA. Vivek Agarwal
18.	14.03.2018	S. C. Meeting on "Bank Audit and Swift Code"" at DTPA Conference Hall	CA. Ajay Jain & CA. Veena Hingarh
19.	16.03.2018	S. C. Meeting on "Overview of Ind AS -Impact on Small Companies and their case studies" at DTPA Conferenece Hall	CA. Mohit Bhuteria & CA. Vivek Newatia
20.	21.03.2018	S. C. Meeting on "Recent Amend.in GST & Customs" & "E-Way Bill System" at DTPA Conference Hall	CA. Ankit Kanodia & CA. D. S. Agarwala
21.	27.03.2018	Group Discussion meeting on"Refund under GST" at DTPA Conference Hall	CA. Sahib Singh Choudhary
22.	06.04.2018	S. C. Meeting on "Recent Regulatory Issues Concerning NBFC" at DTPA Conference Hall	CA. Mohit Bhuteria
23.	20.04.2018	Workshop on "How to Manage your work and time efficiently using Excel" at DTPA Conference Hall	CA. Sanjib Sanghi
24.	25.04.2018	S. C. Meeting on "Relevance of common law in taxation proceedings" at DTPA Conference Hall	CA. Ramesh Kr. Patodia
25.	04.05.2018	S. C. Meeting on "Discussion on Strike off & Restoration of Companies, Disqualification of Directors and Overview on The Companies Amendment Act 2017" at DTPA Conference Hall	CS. Mohan Ram Goenka
Forthcoming Activities			
01.	11.05.2018	S. C. Meeting on ""Penalty U/S 271AAB of the Income Tax Act, 1961 & Re-Assessment U/S 147/148 of Income Tax Act,1961" " at DTPA Conference Hall	CA. A. K. Tibrewal & CA. S. S. Gupta
02.	19.05.2018	Seminar on "Real Estate Conclave" at BCCI,WM Hall,Kolkata	CA.Bhupendra Shah, Adv. V. Raghuraman, Mr. Khalid Aizaz Anwar & others
03.	15.05.2018	Wecome new ITAT member Mr. Godara & Farewell of Mr.Waseem Ahmed, Accountant Member ITAT,Novotel,Kolkata	Team DTPA
04.	21.05.2018	36th. Foundation Day of DTPA and 26th.Library Anniversary at DTPA Conference Hall	SMT. Seema Khorana Patra, PR. CCIT-1,W.B. & Sikkim & others
05.	30.05.2018	Inrective Session on "Observance of dedicated fortnight for Appeal and Rectification effects by the Department.	Shri Rajib Kr. Hota, Ms T.T.Prasad, Mr Arvind Kumar & Addl./Joint CITs

LIST OF NEW LIFE MEMBERS ADMITTED SINCE 18.01.2018

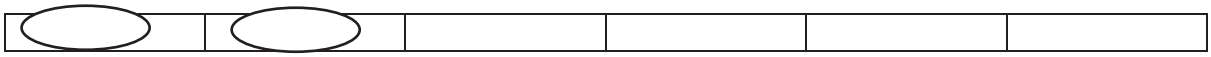
Sl. No.	NAME	PROPOSED BY	QUALIFICATION	E. MAIL ID
01	Mr. Anand Rathi	Mr. Ramesh Kr. Chokhani	FCA, DISA, B.Com(H)	ca.anandrathi@gmail.com
02	Mr. Pankaj Kajaria	Mr. Ramesh Kr. Chokhani	FCA, ACS, DISA(ICAI)	pkkajaria@gmail.com
03	Mr. Abhisek Tibrewal	Mr. P. D. Rungta	FCA, CS, B.Com(H)	tibrewalca@gmail.com
04	Mr. Arti Agarwal	Mr. Ramesh Kr. Chokhani	CA,, DISA	dalmiaarti@gmail.com
05	Mr. Sanjay Kr. Poddar	Mr. Ramesh Kr. Chokhani	B.Com(H), DISA, FCA	sanjay@sanjaypoddar.com
06	Mr. Bharat D Sarawgee	Mr. R. N. Rustagi	CA, DISA	bharatsarawgee@gmail.com
07	Mr. Manish Kr. Drolia	Mr. Ramesh Kr. Chokhani	CA, CS	manish.drolia@gmail.com
08	Mr. Rajesh Saraf	Ms. Manju lata Shukla	CA.	sarafrajesh@yahoo.com
09	Mr. Manish Balasia	Mr. Shankar Saraf	B.Com, LL.B	mbalasia@gmail.com
10	Mr. Abhay Agarwal	Mr. Mahesh Kr. Agarwal	CA.	abhayagarwal0208@gmail.com
11	Mr. Rajib Kr. Ghosh	Mr. Ramesh Kr. Chokhani	B.Com(H), from C.U.,	rkghosh76@gmail.com
12	Mr. Gautam M. Bavishi	Mr. Bharat M. Bavishi	B.Com, FCA	gautam@bavishica.com
13	Mr. Subhash Majumdar	Mr. Jitendra Kaushik	B.Com(H), LL.B, MBA	subhashmajumdaradv@gmail.com
14	Mr. Suraj Pratap Singh	Mr. Dhiraj Agarwal	CA	singhpsuraj@gmail.com
15	Mr. Jay Agarwal	Mr. Vikash Parakh	CA, B.Com(H)	agarwaljay@vsnl.net
16	Mr. Nikhil Doshi	Mr. Vikash Parakh	CA	nikhil.d458@gmail.com
17	Mr. Ashok Agarwal	Mr. Ramesh Kr. Chokhani	B. Com(H), FCA	ipashokagarwal@gmail.com
18	Mr. Aditya Dhanuka	Mr. Subhash Chandra Saraf	CA.	aditya@sarafchandra.com
19	Mr. Jagdish Prasad Kashimpuria(Agarwal)	Mr. Vikash Kr. Dokania	B.Com(H)	jagdish32@hotmail.com
20	Mr. Ritesh Kumar Gupta	Mr. Jagdish Prasad Agarwal	CA.	ritesh@jagarwal.com

SOLVE THE JUMBLE - Arrange these LETTERS to form WORDS :

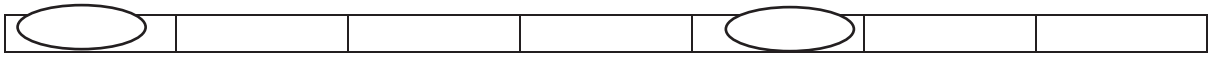
1. TIVOEICN



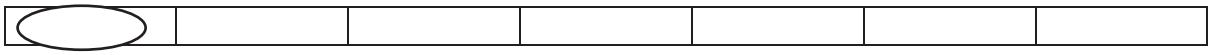
2. ATNOVM



3. TUSTEAT

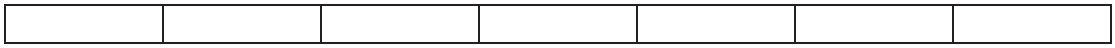


4. PIDESOS



5. EROTPAB

Now arrange the circled letters to form a latin word which means “subject to modification”



Compiled by

CS Ravi Varma

Company Secretary & Compliance Officer, Texmaco Rail & Engineering Limited

Please look for Answers in the next Issue of the Journal.

DTPA STUDY CIRCLE MEETING

DTPA STUDY CIRCLE MEETING








DTPA®
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

Direct Taxes Professionals' Association

(Registered under Societies Registration Act, 1961. Registration No. S/60583 of 1988-89)

3, Govt. Place West, Income Tax Building, Kolkata - 700 001

Phone : 2242-0638, 4003-5451 • E-mail : dtpakolkata@gmail.com • Website : www.dtpa.org