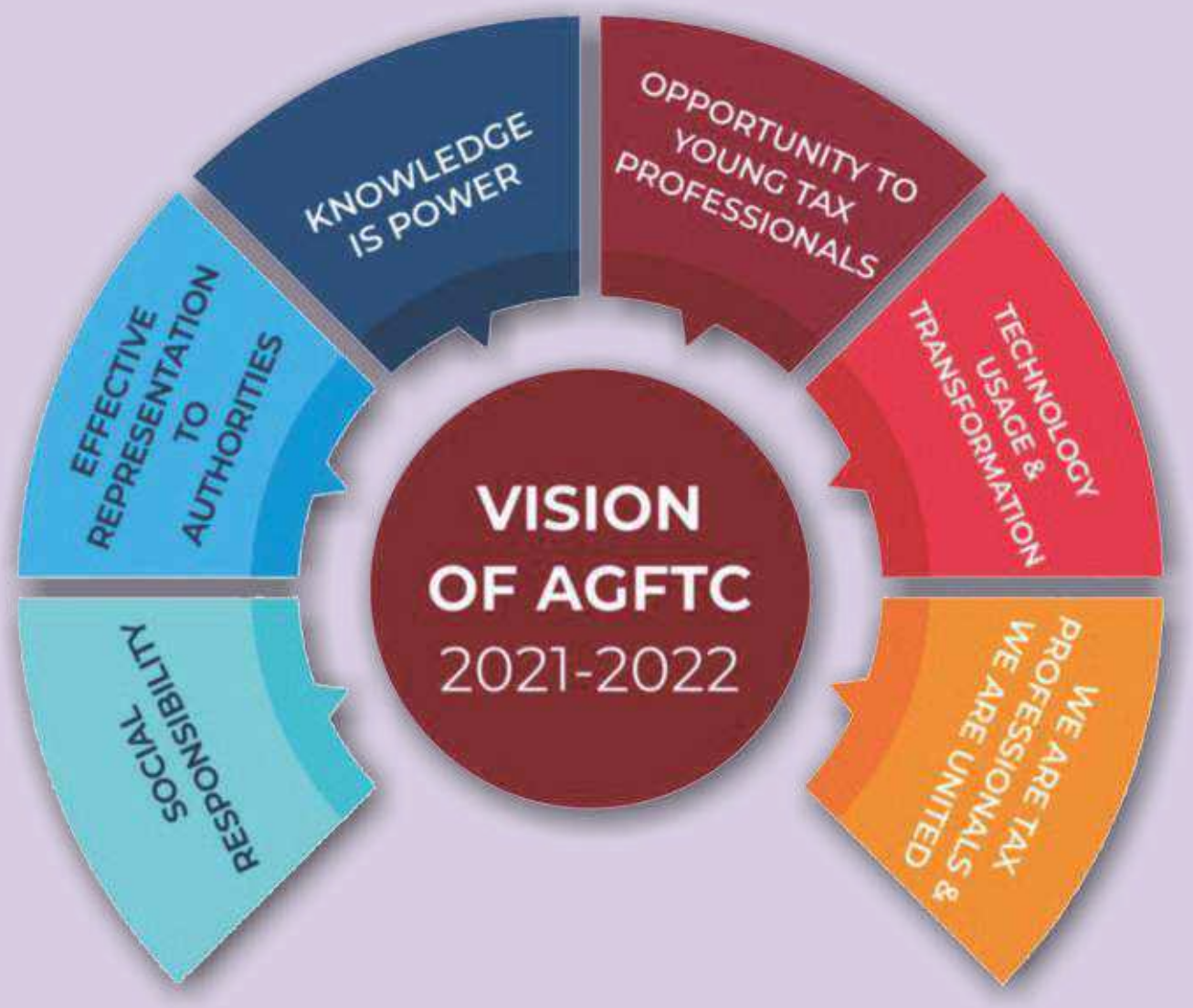
2021 - 2022

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

Celebrating 30th Year

TAX GURJARI 2022



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JUDGE
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MESSAGE

19th February, 2022

I am happy to know that All Gujarat Federation of TAX Consultants has come out with its publication "TAX Gurjari in its 30th year of activity" to keep the Tax Professionals of Gujarat updated in law.

The publication is of immense use to the members to update the knowledge. The experts who have contributed articles, sharing their vast knowledge and experience for the benefit of all, deserves credit.

The Chairman of "Tax Gurjari" Mr. Hiren R. Vakil whom I know since long for his meticulous work in profession needs a special mention for his contribution.

I also congratulate President Shri Kartikey B. Shah for making "Tax Gurjari" available to all the members at free of cost.

I wish "Tax Gurjari" all the best to achieve great heights in coming days.

[BHARGAV D. KARIA,

To
Shri Hiren R. Vakil
Chairman - "Tax Gurjari" &
Senior Vice President,
AGFTC.

To
Shri Kartikey B. Shah
President, AGFTC.

Residence : Bunglow No 12, Sarvotam Nagar Society, Opp. Memnagar Fire Station, Navjivan, Ahmedabad - 380 014
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Chairman Writes

Hiren R. Vakil
Advocate

Dear Colleague,

I have the great honour and privilege of being appointed as chairman of 'Tax Gurjari' publication of All Gujarat Federation of Tax Consultants (AGFTC) in its 30th year of activity. I sincerely thank you from the bottom of my heart of resposing trust and confidence in me for this opportunity to serve the profession of apex body.

I am indeed greatful to president Mr. Kartikey B. Shah & Hon'secretary Shri Dhruvin Mehta for assigning this task to me of sharing the knowledge through experts.

We ought to possess expert knowledge on the subjects we deal in.Our power is our knowledge.I am very happy to announce that we are distributing this edition of 'Tax Gurjari' to each & every member free of cost. Thus, we will be providing tremendous value addition as invaluable possession and a very useful addition to the library of our members.

One has to be proud of being law compliant. It is a compliance which protects our present. It secures our future. It is not about the knowledge you possess but the knowledge you share. 'Vidya' cannot be donated. It can be shared and it is only this 'vidya' which enhances by sharing.

We have the power to make our future a better place where the guilty is punished and the citizen is fearless.

Once again thank you for providing me this opportunity. I would like to end by saying that let us clap our hand together. Let us walk shoulder to shoulder with discipline and dedication.

Date.:- 28/02/2022

Hiren R. Vakil

Chairman

Message of President

President Communication

Kartikey B Shah
Advocate

Respected Members of August institution AGFTC

I feel very emotional and content the way I received your support, enthusiasm and readiness to run this prestigious federation. Tax Professionals fraternity is recognised as one of the most respected fraternity in the society. People look at us with respect and shower their trust on us. Trust comes from the guiding light we provide to them and we obtain this guiding light from the knowledge we gather through knowledge inputs shared by our federation in various ways.

AGFTC's this year one of the theme object is "KNOWLEDGE IS POWER". One of the main objects of All Gujarat Federation of Tax Consultants is to imparttaxation and other allied laws knowledge to the tax professionals of entire Gujarat. Since Two years due to COVID Pandemic it is very difficult to arrange Mofussil programs in good numbers and hence we found alternative in form of Webinars. In digital era Webinars come as a blessings for knowledge seeking professionals. For AGFTC it has been an opportunity to arrange maximum webinars and to give maximum benefit to all the tax professionals. In another endeavour we sent articles written by experts on mail to our members for providing them knowledge at their end.

TAX GURJARI is one of the novel concepts of providing knowledge to the tax professionals initiated earlier in the federation. This year in this edition we have incorporated various articles on interesting subjects such as Charitable Trust, Works Contract under GST, Reassessments, Partnership Firms, Constitutional remedies in tax proceedings, Presumptive Taxation, Home buyers in RERA and IBC, Recent Income Tax Judgements, Section 8 Company and Project Finance.

I am highly obliged and thankful to all the experts CA BAKUL I SHAH, ADV BHARAT L SHETH, CA DHINAL SHAH, CA KARAN SUKHRAMANI, CA MEHUL THAKKER, ADV ASHUTOSH THAKKAR, ADV ADITYA AJGAONKAR, ADV TEJ D SHAH, ADV CA NIPUN SINGHVI, CA MAHADEV BIRLA, ADV JAIMIN GANDHI, CS YASH MEHTA, CS NIDHI SHAH MEHTA AND CA SAMIRKUMAR CHAUDHARY.

I am very much confident that articles shared in tax gurjari will surely help you to get an edge in knowledge addition and perform your professional practice in a best way.

Happy Reading!!!

Date: 28/02/2022
Place: Ahmedabad

HON. SECRETARY'S COMMUNICATION

Dhrvin D. Mehta

Respected seniors, Professional Brothers and Sisters of Splendid Federation,

I Feel Very resplendent being Hon Secretary of this glorious federation AGFTC. Federation includes members from all over state of Gujarat which consists of chartered accountants, Advocates and Tax consultants. AGFTC is a true symbol of unity among tax professionals.

This year our honorable president popularize as logan "Knowledge is Power" which he along with AGFTC team support very well proved by organizing various webinars, Mofussil programs and sharing experts articles on different subjects.

AGFTC'S main motto is enhancing knowledge of the members by arranging different avenues of impartation of knowledge.

"Tax Gurjari" is also a small step towards achieving our object. Tax Gurjari is a "SAYER" of our shining organization. This year we have includes new and very important subjects which are very useful for our professional brothers in their routine practice.

I am expressing my deepest gratitude with folded hands to all the experts who self-less way shared their articles in tax gurjari for the benefit of tax professionals fraternity.

I am saying assertively that this publication will surely update member's knowledge and mastery.

Date : 28/02/2022

Place : Ahmedabad.

INDEX

IMPORTANT PROPOSAL RELATED TO PUBLIC CHARITABLE TRUST IN FINANCE BILL – 2021

CA Bakul I Shah

1) Rationalization of the provisions of Charitable Trust and Institutions.

At present, there are two type of trust or institutions which gets exemption subject to fulfilling of the conditions provided under various sections.

Regime – I :- Regime for any fund or institution or any university or other educational institution or any hospital or other medical institution referred to in sub clause (iv) or sub clause (v) or sub clause (vi) or sub clause (via) of clause [23C] of section 10.

Regime – II :- Trust registered under section 12AA/12AB At present, there is no specific provision under the Act which provides for the maintenance of books of accounts of both the exemption regimes.

Therefore it is proposed that where the total income of the trust or institution under both regimes, without giving effect to the provisions of clause [23C] of section 10 or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution. Shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed.

These amendments will take effect from 1st April 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years. In other word, these provisions will be applicable from financial year 2022-23.

2) Penalty for passing unreasonable benefits to trustees or specified persons

Under section 13 of the Act, Trusts or Institutions under the second regime are required not to pass on any unreasonable benefits to the trustee or any other specified person.

To discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts or institutions under both regimes.

i. Where the violation is noticed for the first time, the assessesing officer may direct that such person shall pay by way of penalty, a sum equal to the aggregate amount of income applied, directly or indirectly by such person, for the benefit of any person referred to in sub section (3) of section 13 and

ii. A sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub section (3) of section 13, where violation is noticed again in any subsequent previous year.

These amendments will take effect from 1st April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years, In other words, the above provisions will be applicable from financial year 2022-23.

3) Cancellation of approval or registration of the Trust or Institution

The approval and/or registration granted to the trust or institutions under both the regime can be cancelled on account of specified violation.

Specified Violation for First Regime :-

a) where any income of trust or institution under the first regime has been applied other than for the objects for which it is established; or

b) the trust or institution under the first regime has income from profits and gains of business is not incidental to the attainment of its objective or separate books of account are not maintained by it in respect of business which is incidental to the attainment of its objectives; or

c) any activity being carried out by the trust or institution under the first regime –

   A. is not genuine; or

   B. is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or

d) the trust or institution under the first regime has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such noncompliance has occurred, has either not been disputed or has attained finality.

Specified violation for Second Regime :-

a) where any income of the trust or institution under the second regime has been applied other than for the objects for which it is established; or

b) the trust of institution under the second regime has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

c) the trust or the institution under the second regime has applied any part of its income from the property held under a trust for private religious purposes which does not enure for the benefit of the public; or

d) the trust or institution under the second regime established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste;

e) any activity being carried out by the trust or the institution under the second regime,

   A. is not genuine; or

   B. Is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

f) the trust or the institution under the second regime has not complied with the requirement of any other law, as referred to in item (B) of sub clause (i) of clause (b) of sub section (1) of section 12AB, and the order, direction or decree, by whatever name called, holding that such non compliance has occurred, has either not been disputed or has attained finality.

These amendments will take effect from 1st April 2022.

4) Accumulation Provisions

At present there are some inconsistency with regard to last year of application for the accumulated funds between two regimes

The first regime trust or institutions has to spend the accumulated fund within five years otherwise it will be taxed in fifth year itself. However the second regime trust or institution, if does not spend the accumulated fund within five year, it will be taxed in 6th year

In order to bring consistency between two regimes, it is proposed that in respect of both the regimes, the accumulated income should he spent within five years of its accumulation any if any amount remain unspent same will be considered as the income of the last previous year that is the 5th year of accumulation.

The proposed amendment will take effect from 1st April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment year.

In other words, this provision will be applicable from financial year 2022-23.

It is also to be mentioned that form no. 10 for accumulation of income should be filed on or before the due date of furnishing of return of income under section 139(1) of the Act. The money so accumulated or set apart is invested or deposited in the forms or modes specified under section 11(5) of the Act. The income is to be utilised for the purpose for which it is so accumulated and should remain invested or deposit as per the modes prescribed under section 11(5) of the Act.

5) Filing of return by person claiming exemption under clause [23C] of section 10 of the Act

It is proposed to insert twentieth proviso to clause [23C] of section 10 of the Act to provide that for the purpose of exemption under this clause, any trust or institution, under the first regime is required to furnish the return of income for the previous year in accordance with the provisions of sub section (4C) of section 139 of the Act, within the time allowed under that section.

This amendment will take effect from the 1st April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years. In other words this provision will be applicable from financial year 2022-23.

6) Application will be allowed only when it is actually paid

The word "application", it means actually paid. Any sum payable by any trust under the first or second regime shall be considered as application of income in the provision year in which such sum is actually paid by it, irrespective of the previous year in which the liability to pay such sum was incurred by such trust according to the method of regularly employed by it.

These amendments will take effect from 1st April 2022, and will accordingly apply to the assessment year 2022-23 and subsequent assessment years. In other words this provisions are applicable from financial year 2021-22.

7) Providing clarity on taxation in Certain Circumstances

There is presently lack of clarity on computation of taxable income in case of non availability of exemption in these cases.

In order to bring clarity in the computation of the income chargeable to tax in such cases, the following amendments are proposed.

The income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions namely

i. such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;

ii. such expenditure is not from any loan or borrowing;

iii. claim of depreciation not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and

iv. such expenditure is not in the form of any contribution or donation to any person.

These amendments will take effect from 1st April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years. In other words these provisions will be applicable from financial year 2022-23.

8) Amendment of Section – 68

Clause 17 of the finance bill has amended the section 68 which will take effect from 1st April 2023 and will accordingly apply from A.Y. 2023-24 and onwards. In other words the provisions will be applicable from financial year 2022-23.

By the proposed amendment, the nature and source of any sum credited in the books of an asseesee whether in the form loan or borrowing shall be treated as explained only if the source of funds is also explained in the heads of the creditor or entry provider.

9) Amendment in the provisions of section 272A of the Act

Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnished information, returns or statements, allow inspections etc. At present, the amount of penalty for failures listed under sub section (2) of section 272A is one hundred rupees for every day during which the failure continues. The said penalty is proposed to increase Rs. Five hundred from existing such one hundred rupees with effect from 1st April 2022.

■ ■ ■

WORKS CONTRACT UNDER GST LAW

ADV Bharat L. Sheth

PREAMBLE

Works Contract is a contract of service which may also involve supply of goods in the execution of the contract. It is a composite supply of both service and goods, with the service element being dominant in the contract between parties.

WORKS CONTRACTS UNDER PRE-GST REGIME

Works contracts consisted of three kinds of taxable activities as per the previous law. It involved supply of goods as well as supply of services. Previously, the supply of goods was taxable in the form of VAT and the service was taxable under service tax.

If a new product appeared in the process of completing a works contract, Central Excise duty was levied. So, different aspects of one single activity were taxed by different laws. This caused a lot of confusion regarding treatment and taxability which is why there were so many legal disputes related to works contracts.

The Hon'ble Supreme Court held in the case of Gannon Dunkerly that Works Contract was a supply of service. The Court held that in case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act). The contract being one indivisible contract, it cannot be broken up to levy VAT on sale of goods involved in the execution of works

contract. This decision led the Government to amend the Constitution of India and insert Article 366(29A) (b) which enabled the State Governments to levy tax (VAT) on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Prior to GST Works Contract was applicable for both contract i.e contract for movable property and contract for immovable property. Under GST regime it is applicable only to contract for immovable property.

WORKS CONTRACTS

The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as under;

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of

property in goods (whether as goods or in some other form) is involved in the execution of such contract."

The definition of Works Contract is restricted to any work undertaken for an "immovable property". Any work like fabrication/painting done on any movable property will not fall within the definition of works contract under GST law. It remains composite supply, but will not be treated as works contract under GST law.

In **Schedule II** (Activities or Transactions to be treated as supply of goods or supply of services) to the CGST Act, 2017, paragraph 6 is regarding Composite supply. It states that The following supply shall be treated as supply of services, namely:_

(a) works contracts as defined in clause 2(119) of section2; and

(b) Supply by way of or as part of any service or 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, differed payment or other valuable consideration.

Schedule II to the CGST Act, 2017, clearly state that this type of works contract will be treated as supply of services. It has removed confusion regarding the Tax treatment. The treatment of works contract as service and not supply of goods bring clarification for levy tax. Under VAT regime, State has different scheme for levy tax on works contracts. There was different composition scheme with different rate of tax, In Service regime; treatment of tax was very complex. There was abatement of different rate on new works contract and repair contract.

IMMOVABLE PROPERTY

The immovable property has not been defined under the GST Law.

Immovable property define under section 3 (26) of the **General Clause Act, 1897** as under; –

"Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

Immovable property define under section 2 (6) of the **Registration Act, 1908** as under;-

"Immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;"

Immovable property define as per interpretation clause under section 3 of **the Transfer of Property Act, 1882** as under;-

"Immoveable property" does not include standing timber, growing crops or grass;" Under the interpretation clause it is also interpreted for "attached to the earth" "attached to the earth" means— (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in

the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

PLACE OF SUPPLY IN RESPECT OF WORKS CONTRACT

Section 12 (Place of supply of services where location of supplier or location of recipient is in India) of the Integrated Goods and Services Tax Act, 2017 provides for place of supply where location of supplier or location of recipient is in India. The sub-section (3) states as under:-

(3) The place of supply of services,-

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts and estate agents, any service provided by way of grant of rights to use immovable property or for any carrying out or co-ordination of construction work: or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called and including house boat or any other vessel: or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property: or

(d) any services ancillary to the services referred to in clause (a),(b) and (c),

Shall be location at which the immovable property or boat or vessel, as the case may be located or intended to be located.

PROVIDED that if the location of the immovable property or boat or vessels, as the case may be is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation: where the immovable property or boat or vessels is located in more than one States or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value of services separately collected or determined in terms of the contract or agreement entered into this regard or, in the

absence of such contract or agreement, on such other basis as may be prescribed.

The section states that where both the supplier and recipient are located in India. The place of supply would be where the immovable property is located.

As per proviso, In case the immovable property is located outside India, the place of supply would be the location of recipient.

Section 13 (Place of supply of services where location of supplier or location of recipient is outside India) of the Integrated Goods and Services Tax Act, 2017, provides for place of

supply where location of supplier or location of recipient is outside India. Sub-section (4) state as under;

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel,inn,guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

This section states that, where the Supplier or the Recipient are located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

VALUE OF SUPPLY OF WORKS CONTRACT

The Notification 11/2017 Central Tax(Rate), dated 28th June 2017, In Table , Entry no. 3 relates to Construction service (HSN 9954) is as under;

SL. NO.	Chapter, Section or Heading	Description of service	Rate (Percent)	Condition
3	Heading 9954 (Construc tion services)	(I) Construction of complex building, civil structure or a part thereof , including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority, or after its first, whichever is earlier. (Provisions of Paragraph 2 of this notification shall apply for valuation of this service)		

PARAGRAPH 2

In case of supply of service specified in column (3) of the entry at item (i) against serial no.3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be in such supply may be deemed ot be the one third of the total amount charged for such supply.

Explanation: For the purpose of Paragraph 2, "total amount" means the sum total of,-

(a) Consideration charged for aforesaid services: and

(b) Amount charged for transfer of land or undivided share of land, as the case may be.

So, the value of a works contract service is determined by whether the contract includes a land transfer as part of the works contract. In the case of a service supply involving the transfer of property in land or an undivided share of land, the value of the service and commodities element of the supply shall be equal to the entire amount charged for the supply less the value of the land or undivided share of land, as the case may be. One third of the entire price paid for such supply will be deemed to constitute the value of land or an undivided share of land, as the case may be.

TIME OF SUPPLY OF WORKS CONTRACT

Sections 13 of the Central Goods and Services Tax Act, 2017 provides time of supply of service. Sub-Section (2) of section states as under:

(2) The time of supply of service shall be earliest of the following dates, namely:

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 or the date of receipt of payment, whichever is earlier , or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31 or the date of receipt of payment, whichever is earlier , or

(c) the date on which the recipient shows the receipt of service in his books of account, in a case where the provisions of clause(a) or clause (b) do not apply:

PROVIDED that where the supplier if taxable service receive an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation: For the purpose of clause (a) and (b)-

(i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment; (ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Section 31 of the Central Goods and Services Tax Act, 2017 is regarding tax Invoice. Sub-Section (2) of section states as under:

(2) A registered person supplying taxable service shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charges thereon and such other particulars as may be prescribed:

PROVIDED that the Government may, on the recommendations of the Council, by notification,-

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of service in respect of which-

(i) Any other document issued in relation to the supply shall be deemed to be tax invoice; or

(ii) Tax invoice may not be issued.

Rule 46 of the Central Goods and Services Tax Rules, 2017 is regarding Time limit for issuing tax invoice. Rule 46 states as under;

The invoice referred to the rule 46, in the case of taxable supply of service, shall be issued within a period of thirty days from the date of the supply of service:

Rule 47 of the Central Goods and Services Tax Rules, 2017 is regarding Manner of issuing invoice. Sub rule (2) states as under;

(2) the invoice shall be prepared in duplicate, in the case of supply of services, in the following manner, namely:-

(a) the original copy being marked as ORIGINAL FOR RECEIPINT; and

(b) The duplicate copy being marked as DUPLICATE FOR SUPPLIER.

INPUT TAX CREDIT

Section 17 of The Central Goods and Services Tax Act, 2017 provides Apportionment of credit and blocked credits.

Sub section (5) of the section 17 of CGST Act, 2017, States that,

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section(1) of the section 18, input Tax Credit shall not be available in respect of the following, namely:-

(c) Works contract services when supplied for construction of an immovable property (other than Plant and Machinery) except where it is an input service for further supply of Works contract service.

(d) goods or services or both received by a taxable person for construction of an immovable property(other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation: For the purposes of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alteration or repairs, to the extent of capitalization, to the said immovable property.

This restriction does not apply to plant and machinery and also in case the input services are further used for supply of Works Contract service.

So, if the recipient is in the same line of business and using such services received for further supply of works contract service. For Example, if a Builder developers-Contractor engages sub-contractor for certain portion of the whole work, the sub-contractor will charge GST in Tax invoice raised to main Contractor. The main contractor will be entitled to get ITC

on the tax invoice raised by his sub contractor as his output is work contract services.

Plant and machinery when affixed permanently to the earth would constitute immovable property. Where the works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever the business of the recipient. ITC will be available when it is used in the course or furtherance of business.

MAINTENANCE OF ACCOUNTS

Rule 56 of the Central Goods and Services Tax Rules, 2017 provides Maintenance of accounts by registered persons. Sub rule (14) states as under:

(14) Every registered person executing works contract shall keep separate accounts for works contract showing –

(a) the names and addresses of the persons on whose behalf the works contract is executed;

(b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;

(c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;

(d) the details of payment received in respect of each works contract; and

(e) the names and addresses of suppliers from whom he received goods or services.

CONCLUSION

Under GST, a works contract is considered a supply of services. There were challenges with the tax treatment of works contracts under the previous regime. However, this changed with the implementation of GST. GST aims to end the debate by defining what constitutes a works contract, implying that a works contract includes a supply of service, and specifying a unified rate of tax applicable across India on the same value. As a result of GST, the taxation of works contracts will be simplified and easier to manage.

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RELEVANCE OF SETTLED PROPOSITIONS UNDER NEW REGIME OF REASSESSMENT

Adv. CA. Dhinal Shah

CA. Karan Sukhramani

Background

Under the erstwhile regime, reassessment was permitted if Assessing Officer had 'reason to believe' thatincome has escaped assessment. Different periods of limitation were prescribed forreassessment subject to satisfaction of conditions prescribed therein and law was mostlysettled on account of various landmark rulings of Hon'ble Supreme Court and Hon'ble High Courts over of period of time. Even the procedure to be followed by authorities was laid down by Hon'ble SupremeCourt in case of GKN Driveshafts India ltd. (2002) 125 taxman 963 and Hon'ble Gujarat high Court in case of Sahkari Khand Udyog Mandal Ltd. [2014] 46 taxmann.com 69 (Gujarat) and other courts.

Vide Finance Act 2021, with effect from AY 2022-23, a new procedure for reassessment was introduced whereby substantial changes were brought to the provisions of the Income tax Act, 1961 ('Act'). Unlike reopening basis the 'reason to believe', under the new regime, reopening is permissible if Officer has information with him which suggests that income chargeable to tax has escaped assessment for the relevant year.

Under the old regime, tax authority was required to have 'reasons to believe' to validly assume jurisdiction for initiation of reassessment proceedings. As against that, pursuant to amendment by Finance Act, 2021, the goal post is shifted to possession of information by the Assessing officer 'which suggest that the income chargeable to tax has escaped assessment'. This expression covers following two cases:

(i) Any information flagged in the case of Assessee in accordance with RMS i.e. Risk Management Strategy formulated from time to time by Central Board of Direct taxes ('CBDT')

(ii) Any final objection of C&AG about assessment in the case of Assessee not being in accordance with the provisions of the Act.

Recently, vide Finance Bill 2022, the aforesaid clauses are further proposed to be amended wherein the Word 'flagged' appearing in clause (i) of explanation to section 148 is proposed to be omitted and Clause (ii) of explanation to section 148 is proposed to be substitute with following :

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court.

As regards time limit for issue of notice under section 148, vide Finance Act 2021, the time limit was curtailed to i) 3 years from the end of the relevant Assessment Year or ii) 10 years from the end of the relevant Assessment Year where AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax represented in the form of asset, which has escaped assessment is likely to INR 50 Lacs. The purpose for reduction in time limit was technology driven initiatives of CBDT in early detection of such cases and overall objective of reduction in litigation.

Surprisingly, vide Finance Bill 2022, Government has proposed certain changes (which go completely against the very objective of introduction of amendments by Finance Act 2021) and proposed to amend section 149 of the Act so as to provide as under:

In section 149 of the Income-tax Act, in sub-section (1),– (i) for clause (b), the following clause shall be substituted, namely:—

"(b) if three years, but not more than ten years, have elapsed from the end of the relevantassessment year unless the Assessing Officer has in his possession books of account or otherdocuments or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

From the above, it is clear that practically, for cases, where amount of escapement is likely to exceed INR 50 lacs, the AO will have wide powers to reopen the assessment within the period of 10 years from the end of the relevant AY.

In this article, an attempt is being made to analyze the impact of changes brought by Finance Act 2021 on the settled judicial precedents.

Reassessment based on Change of View or Change of Opinion

There are series of decisions by Hon'ble Courts holding that reassessment proceedings merely based on the change of opinionor change of view already taken during the course of assessment proceedings is not permissible. Several illustrative factors constituting change of opinion are; reopening based on borrowed information without application of mind ; or fresh application of mind to the same issue on the same facts which are already fully disclosed during the assessment.

Hon'ble Supreme Court of India in the case of CIT vs Kelvinator of India Ltd. (228 CTR 488) observed as under:

"...However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open

assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."

Further, Hon'ble Supreme Court in case of CIT vs BhanjiLavji (79 ITR 582) has held as under:

"...But when the primary facts necessary for assessment are fully and truly disclosed, he is not entitled on change of opinion to commence proceedings for reassessment. The Income-tax Officer was apprised of all the primary facts necessary for assessment, and he proceeded to "drop the assessment proceedings". He may have raised a wrong legal inference from the facts disclosed but on that account he was not competent to commence reassessment proceedings under section 34(1)(a) for the two assessment years 1947-48 and 1948-49..."

Under the new reassessment regime, 'reason to believe' has been done away with and reassessment can be opened based on information which 'suggest that income chargeable to tax has escapement assessment' exhaustively, to mean i) Final objection raised by C & AG and ii) information flagged by the RMS. Accordingly, it appears that given the specific reference in explanation 1 to section 148 to permit reassessment based on CAG final audit objection, it appears that legislative intent is to permit reassessment in such case even though it may constitute change of opinion.

As regards reassessment based on information flagged by RMS, parameters involved in selection of cases for reassessment based on the RMS are currently not clear or available. Accordingly, whether the cases can be reopened based on internal audit objection or change of opinion by AO may itself be a debatable issue.

Reassessment after 4 years based on failure to disclosure fully and truly all material facts during the course of assessment under section 143(3) of the Act

Under the old regime, no reassessment was permitted beyond 4 years in case of prior scrutiny assessment of relevant AY unless taxpayer fails to disclose fully and truly all material facts in view of express provisions contained in section 147 of the Act. Further, Hon'ble Courts in numerous cases have laid down the following principles on the scope and impact of the said proviso such as :

- Assessee is required to disclose only primary facts and he is not required to indicate factual or legal inference drawn from the primary facts
- The onus of proving that the taxpayer has failed to disclose fully and truly all material facts required for assessment of income lies on the tax authority.
- Mere production of data or material from which AO could have discovered material facts does not tantamount to full disclosure.

In case of Calcutta Discount Co. (41 ITR 191), the Hon'ble Supreme Court held as under

"..... Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee-to tell the assessing authority what inferences, whether of facts or law, should be drawn. "

In case of Pandesara Infrastructure Ltd v. Dy.CIT (2019) 263 Taxman 367, the Hon'ble Gujarat High Court observed as under:

"6. ...The assessee had treated the Government grants as promoter's contribution and credited to Capital Reserve account and treated as part of shareholders' funds. Whatever be the correctness of such accounting treatment, the assessee had made the full disclosure about the treatment given to such subsidy and the reason therefore. During the course of assessment proceedings also, this aspect had further come to the notice of the Assessing Officer. For example in its letter dated 19.1.2015, in continuation of earlier letter dated 1.9.2014, which both letters were in response to the Assessing Officer's different queries, the assessee had pointed out as under :

"1. Details of capital subsidy received during the year along with copy of ledger account and copy of capital subsidy sanction order by Government of Gujarat (GOG) and Government of India Ministry of Environment & Forests (MOEF) is coll. enclosed as Annexure "A". These sanction letters from respective institutions are self-explanatory."

..Thus not only there was sufficient disclosure in the return filed by the assessee with respect to the entry in question, this was also noticed by the Assessing Officer during the scrutiny assessment. If therefore, the Assessing Officer had any doubt or dispute about the manner in which the assessee treated such subsidy, it was always open for him and in fact, required of him to object then. In any case, reopening of assessment beyond a period of four years would not be permissible under such circumstances...

The Special Leave Petition of revenue against the aforesaid decision was dismissed by the Hon'ble Supreme Court in case of Dy. CIT v. Pandesara Infrastructure Ltd. (2019) 263 Taxman 366.

Post amendment by Finance Act 2021, no such express protection is available to the assessees, as comparable provision similar to first proviso to section 147 of the Act is absent under the new reassessment regime.

Reassessment in respect of New Issues for which Information was not available Permitted

Prior to amendment by Finance Act 2021, section 147 of the Act was in two parts (a) reassessment of income which AO has reason to believe that it has escaped assessment and (b) any other income which has escaped assessment and comes to the AO's notice in the course of assessment.

The text of the relevant provision is reproduced below:

"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped

assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassesssuchincome ***and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section****, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

Hon'ble Bombay High Court has in case of CIT v. Jet Airways (I) Ltd. [2010] 195 Taxman 117/[2011] 331 ITR 236 has held as under:

"….. The words 'and also' cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by the Parliament otiose. The Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard these words as being conjunctive and cumulative. ….. Evidently, therefore, what the Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2), must assess or reassess: (i) 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language used by the Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe, is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently…..

Earlier, it was quintessential for the AO to assess the income for which reasons was recorded and only after assessment thereof he could assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently (Explanation 3 to s. 147)

However, explanation to amended section 147 unequivocally assigns power to assess or reassess irrespective of the fact that the provisions of section 148A in respect of those issues have not been complied with. It seems that the safeguard of the favourable case laws that no addition can be made on additional issues unless addition is made on the primary issue for which procedure of section 148A of the Act is followed seems to be taken away by omitting the second part from the main section 147 of the Act.

Live link or Tangible Material

Hon'ble Supreme Court in case of LakhmaniMewal Das [1976] 103 ITR 437 (SC)[30-03-1976] has held under:

"As stated earlier, ***the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts.*** *It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."*

Under the new regime of reassessment, this requirement of reason to believe has been done away and now AO can initiate the reassessment on the basis of information flagged in the Risk management strategy. However, it may be noted that the use of the words "information with the AO which suggests that the income chargeable to tax has escaped assessment in the case of assessee" indicates that, despite absence of any clear indication in the language of the provision, the information is required to have live link with the escapement of income and aforesaid decision of Supreme Court shall continue to be relevant under the new regime also.

Old vs. New – An Abrupt Change

One of the most striking features of the provisions of the Finance Act, 2021 relating to reassessment was that there was no savings clause which protected the Assessing Officer's power to issue notices on the grounds of having "reason to believe", for Relevant Assessment Years prior to 2021-22. What this meant was that, after 31st of March 2021, if the Assessing Officer wanted to issue a notice for reassessment, even in a case where Relevant Assessment Year was a year prior to 2021-22, the Assessing Officer would be required to have "information" suggesting that income has escaped assessment.

The Parliament had enacted the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act), 2020 (Hereinafter referred to as "TOLA"), in order to relax the time-limits prescribed by various taxation laws for the completion of various actions, to mitigate the hardships of the pandemic.

Section 3(1), TOLA, enables the Central Government to extend any time-limit prescribed for the completion of any action, such as the issuance of any notice, by certain specified acts, which include the Income Tax Act, 1961. Such extension is granted by section 3(1), TOLA, till 31st

March, 2021, and could be further extended to any date prescribed by the Central Government.

CBDT, in a purported exercise of the powers granted by section 3(1), TOLA, notified on 31st March 2021, that the time period for issuing a notice for reassessment stood extended to 30th April, 2021.21 This period was further extended up to 30th June, 2021, by way of a notification dated 27th April 2021. Moreover, it was clarified vide Explanations appended to Clause A(a) and Clause A(b) of the Notifications dated 31st March 2021 and 27th April 2021 (supra), respectively, as :

"for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply."

In essence the intended effect of these two explanations was that, until the 30th June, 2021, the Assessing Officer could issue a notice for reassessment on the grounds of having "reason to believe" that income has escaped assessment. The period of limitation specified in Act as it stood before the commencement of the Finance Act, 2021, i.e. the period of four, or six, or sixteen years, as the case may be, shall apply until 30th June, 2021. Moreover, none of the procedural safeguards introduced by the Finance Act, 2021, such as granting the Assessee an opportunity to be heard, sanction from higher authorities in all cases, etc. shall bind the Assessing Officer until 30th June, 2021. In essence, it meant that all matters relating to reassessment shall governed by the old regime until 30th June, 2021.

Subsequently, lakhs of notices for reassessment were issued in many states of the country, under the provisions of the old regime. These notices were challenged by assessees in respective High Courts. It was contended on behalf of the assessees that Explanations appended to Clause A(a) and Clause A(b) of the Notifications dated 31st March 2021, and 27th April 2021, respectively, were ultra-vires of section 3(1), TOLA. It was argued, inter alia, that section 3(1), TOLA only allows the delegate, i.e. the CBDT in this case, to extend a particular time-limit prescribed in the specified statute, whereas the said Explanations, if given effect would amount to resurrecting repealed law, i.e. the old procedure for reassessment, and also defer the coming into force of the new law enacted by the Parliament, i.e. the new regime introduced by the Finance Act, 2021.

The Hon'ble Chhattisgarh High Court held that the aforementioned explanations were valid and consequently the notices issued under the old regime after 31st of March 2021 were valid. However, the Hon'ble Allahabad, Rajasthanand Delhi High Courts declared the said explanations to be ultra-vires of section 3(1), TOLA, and consequently the notices issued under the old regime were liable to be quashed.

The Budget 2022 has not addressed the above issue and matter is currently pending before Hon'ble Supreme Court.

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WIDENING THE SCOPE OF RE-ASSESSMENT UNDER INCOME TAX ACT – ALARMING PROPOSALS IN THE FINANCE BILL, 2022

CA Mehul Thakker

Finance Bill, 2022 brought out many proposals to amend / substitute / modify the existing provisions relating to re-assessment under section 147 of the Income Tax Act ('Act') subject to the provisions of section 148 to 153. Out of these proposals, two proposals have greater impact on widening the Scope of Re-assessment under the Act. Each of these proposal has been discussed hereunder under three sections namely, (i) Relevant Provisions-vide Finance Act, 2021 (ii) Proposal in the Finance Bill, 2022 (ii) Impact of the Proposal

Sr. No.1

Law relating to re-opening vide Finance Act, 2021 effective from A.Y. 2022-23

*Section 147 of the Income- Tax Act ('Act')*provides that If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year.

Further, Section 148 of the Act provides that before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income for the relevant assessment year (s) under re-assessment.

Proviso to section 148, however, curtails the powers of the assessing officer stating that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1 to the Section 148 provides the meaning of "the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment" as under —

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Proposal to modify the explanation 1 to section 148 of the Act by the Finance Bill, 2022

Recently Finance Bill, 2022 proposed to modify the explanation 1 to section 148 of the Act. The modified version of the said explanation (assuming that the relevant proposal of Finance Bill, 2022 receives assent of the Hon'ble President of India as it is) reads as under:

(i) any information ~~flagged~~ in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(II) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(Iv) any information made available to the Assessing Officer under the scheme notified under section 135A;

(v) any information which requires action in consequence of the order of a Tribunal or a Court.";

Impact of the above proposal

For the purpose of Income escaping assessment,

(i) the requirement of flagging the information has been done away with.

(ii) Simply audit objection to the effect that assessment has not been made in accordance with the provisions of the Act, is sufficient to assume jurisdiction under section 147 of the Act *as against the Final objection raised by C &AG provided in the existing law.*

(iii) The receipt of information under section 90/90A/135A may lead to income escaping assessment

(iv) Any information from the order of Tribunal or Court may lead to income escaping assessment.

Sr. No.2

Law relating to re-opening beyond three assessment years -vide Finance Act, 2021 effective from A.Y. 2022-23

Section 149(1) of the Act deals with the limitation period for the purpose of issue of notice under section 148 of the Act which reads as under:

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

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

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

Proposal to substitute the explanation (b) of section 149(1) of the by the Finance Bill, 2022

"(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:";

Finance Bill also proposed to insert (1A) in the existing provisions of Section 149 of the Act which reads as under:

"(1A) Notwithstanding anything contained in subsection (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of subsection (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be."

Impact of the above proposals

(i) The assessing officer can resort to section 147 proceedings beyond three years from the end of relevant assessment year, if he is in possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

a) expenditure in respect of a transaction;

b) expenditure in relation to an event or occasion; or

c) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more *as against the Income represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more provided in existing law.*

(ii) The proposed section 149(1A) read with the proposed substitution to section 149(1) suggests that limit of Rs.50 Lakh is not restricted to the particular assessment year. Once the asset or expenditure in relation to event or occasion amounting to Rs.50 Lakh or more and the same has been acquired or incurred over the years, then all these years are subject to 147 proceedings with a upper ceiling of 10 assessment years.

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PARTNERSHIP FIRMS - REGISTRATION AND TAXABILITY

ADV Ashutosh Thakkar

Partnership Firm

The law relating to partnership firm in India is prescribed in the Indian Partnership Act of 1932. This Act lays down the rights and duties of the partners between themselves and other legal relations between partners and third persons, which are incidental to the formation of a partnership. Thus, the Act establishes the position of a partner as well as a partnership firm vis-à-vis third parties, in legal and contractual relations arising out of and in the course of the business of a partnership firm. In this article, we look at the various aspects of running a partnership firm in India, registration process in Gujaratand taxability in detail.

Partnership

A partnership is a relationship between individuals who have agreed to share the profits of a business carried on by all or any one of them acting for all as stated in Section 4 of the Indian Partnership Act. Therefore, a partnership consists of three essential elements.

1. A partnership must be a result of an agreement between two or more individuals.
2. The agreement must be built to share the profits obtained from the business.
3. The business must be run by all or any of them representing the rest.

All these conditions must coexist before a partnership can come into existence.

An Agreement

A partnership is the result of an agreement between two or more persons. It should be noted that this sort of a deal can arise only from a contract and not from status. This is why a partnership is distinguishable from a Hindu Undivided Family carrying on family business. The reason is that this kind of an alliance is a creation only out of a mutual agreement. Thus, the nature of a partnership is voluntary and contractual.

An agreement from which a partnership relationship arise may be express. It may also be implied from the Partnership Act done by the partners and from a consistent course of conduct being followed, showing a mutual understanding between them. This agreement may be in oral or in writing.

Sharing Profit of Business

When it comes to sharing profits of the business, two propositions are to be considered.

Firstly, there must be a business that exists. For this purpose, the term 'business' would generally mean every trade, occupation, and profession. The existence of a company is crucial. The motive

of a business is the "acquisition of gains" that leads to the formation of a partnership. So, there can be no partnership where there is no intention to carry on a business and to share the profits obtained from the same.

Secondly, there must be an agreement concerning the sharing of profits. However, an agreement to share the losses is not an essential element that is considered. However, in the event of damages, unless agreed otherwise, these must be borne in a profit-sharing ratio.

Running the Business

The third requirement for a partnership is that the business must be carried on by all the partners or by one or more of the partners acting for all. This is the crucial principle of the partnership law.

Distinction between Partnership and Firm

Individuals who have entered into a partnership with one another are called Partners individually. The partners may be called collectively as the name under which the business is carried on is called the name of the Firm. A partnership is merely an abstract legal relationship between the partners. A firm is a concrete object signifying the collective entity for all the partners. Thus, a partnership is an invisible bind that holds the partner together, and a firm is the visible form of this partnership which is, therefore, bound together.

How to register a Partnership firm in India?

Partnership firm registration is required when two or more parties sign a formal agreement to manage and operate a business and share both the profits and losses.

Registering a Partnership is the right choice for small enterprises as the formation is straightforward and there are minimal regulatory compliances.

The Partnership Act has been in existence in India since 1932, making partnerships one of the oldest types of business entities in India. A partnership firm can even be registered after it is formed. There are as such no penalties for non Registration of a Partnership firm. But unregistered Partnership firms are denied certain rights under section 69 of the Partnership Act that majorly deals with the effects of non Registration of Partnership firms.

Features and Advantages of Various Business Entities

Features	Proprietorship	Partnership	LLP	Company
Definition	Unregistered type of business entity managed by one single person	A formal agreement between two or more parties to manage and operate a business	A Limited Liability Partnership is a hybrid combination having features similar to a partnership firm and liabilities similar to a company.	Registered type of entity with limited liability to the owners and shareholders
Ownership	• Sole Ownership	• Min 2 Partners • Max 50 Partners	• Designated Partners	• Min 2 Directors • Min 2 Shareholders • Max 15 Directors • Max 200 Shareholders

Features	Proprietorship	Partnership	LLP	Company
				For One Person Company • 1 Director • 1 Nominee Director
Registration Time	7-9 working days			
Promoter Liability	Unlimited Liability		Unlimited Liability	
Documentation	• MSME • GST Registration	• Partnership Deed	• LLP Deed • Incorporation Certificate	• MOA • AOA • Incorporation Certificate
Governance	–	Under Partnership Act	LLP Act, 2008	Under Companies Act, 2013
Transferability	Non Transferable	Transferable if registered under ROF	Transferable	
Compliance Requirements	• Income tax filing if turnover is more than Rs.2.5 lakhs	• ITR 5	• Form 11 • Form 8 • ITR 5	• ITR 6 • MCA filing • Auditor's appointment

Partnership Firm Registration

Section 4 of the Indian Partnership Act, regulates the Partnership firm registrations. The Act states that the registration of a partnership firm is not mandatory as it relies on the decision of the members to register their firm. It can be registered with the state's Registrar of Firms (ROF) that enables individuals to run their businesses by following legal bindings. Non-registration of the firm, though not illegal, would nullify to avail certain benefits by the partnership firm.

Partnership Deed

A partnership deed is a kind of document that includes the responsibilities and rights of all the parties involved in a business operation. This document regulates the conduct of the business. It is also helpful in preventing disagreements and disputes over the role of individual partners in the company and the benefits which are due to them. The following details are to be mandatorily present in a partnership deed:

- Details of all the partners in a firm.
- Duration of Partnership.

- Nature of the business conducted by the firm.
- The capital contribution made by each partner.
- Profit and loss percentage shared among the partners.
- Date of commencement of the firm.

Besides this, the following additional clauses must be mentioned in the deed:

- Salaries and commissions among the partners.
- Interest on the partner's capital.
- Allocations of roles of the partners.

Note:- When adding, removing partner, a partnership deed has to be formed in a stamp paper under the Indian Stamp Act. Every partner must possess a copy of the partnership deed.

Choosing the Partnership Name

Partners are free to choose any name of their choice for the firm. However, they should always ensure that the desired name does not infringe any copyrights or trademarks of a third person. Hence, it is recommended to obtain a trademark for the preferred name of the Partnership Firm; to avoid a third person using the same name or tagline for his/her company. However, follow certain conditions while choosing a name for a firm.

- The name shouldn't be identical or similar to an existing firm that may be involved in a similar business.
- The desired name should not include terms like Empire, Crown, Emperor, Empress or terms that signifies approving, sanctioning, or patronage of a government. In exceptional cases, these are the terms on the endorsement of the State Government.

Advantages of Partnership Firm

Easy Formation: It is easier to form a Partnership Firm as not many legal formalities involved in it. The founder partners can initiate their operations as soon as a Partnership Deed is ready.

No Statutory Audit: A Partnership Firm need not require to register the audited financial reports with the Registrar of Firms. Hence, the Partnership Firm not requires to maintain its books of accounts audited, except if its turnover exceeds prescribed limits.

Compliance and Regulations: The compliance requirements to run a partnership business are considerably less when compared with a Company or LLP.

Winding up: A partnership Firm can easily be closed by entering into a dissolution deed.

Larger Resources: The members in a partnership firm can potentially render more resources for business operations when compared to a sole proprietorship, given the quantum of people making contributions.

Better Management: All the partners of the firm manage the business against a proprietorship firm where a single man is vested with the affairs.

Sharing of Risk: In Partnership Firm, every partner bears the risks individually, which in-a-way curtails their burden.

Documents Required

To register a partnership firm, submit the following the documents along with the application:

- Application for Partnership Registration in Form No. 1.
- An affidavit stating the partner's intention to join the firm.
- Partnership Deed signed by all the members and registered by the Sub-Registrar.
- Passport size photographs.
- Aadhaar Card.
- Ownership proof of the primary location of business or lease/rental agreement of the property.

Gujarat Partnership Firm Registration

A partnership is one of the most common forms of business entity in India. The compliance requirements for setting up such firms are lesser when compared to that of a Limited Liability Partnership (LLP) or a Company. A partnership firm is formed by two or more individuals with the preparation of a partnership deed. In this kind of a venture, all the partners are eligible to share the profits and losses of the business in an agreed rate. In this article, we look at the procedure for completing the Gujarat partnership firm registration.

Application Procedure for Gujarat Partnership Firm

The following are the steps to register the Partnership Firm in Gujarat:

Step (1): For registration of a Partnership Firm, applicants/investors/users are required to visit the Single Window System i.e. Investor Facilitation Portal (IFP) at https://ifp.gujarat.gov.in/DIGIGOV/index.jsp

Step (2): If already registered with the portal: User to login with username and password If not registered on the portal: User to register on the portal by clicking on 'New Investor Registration' and following the given steps. After registration, user to login with username and password.

Step (3): From the right-menu, user to select 'Partnership firm Registration' from the Partnership firm/ Society Registration drop-down

Step (4): User to select 'Partnership/Society Request List' from the drop-down and click on 'APPLY'

Step (5): In the opened link, PAN number needs to be by the user given along with the following details:

Firm Name	
District	Area/Locality/Ward
Mobile Number	E-mail ID

Step (6): User is required to fill the above details and complete 'Form–A' which is downloadable from the portal

Step (7): After uploading the completed 'Form-A', the user may submit the application

Step (8): After successfully submitting the application, user will get the message: "Your Application uploaded successfully. Acknowledgement Number is _____"

Step (9): User to save the Acknowledgement Number for future reference and go back to the application page. User to then upload the mandatory documents to generate the acknowledgement receipt

Step (10): After uploading and submitting the documents, the above acknowledgement number will be sent to user's email ID(s) and mobile number(s)

Step (11): After this, user is required to make e-payment as per the guideline. A message will pop-up as follows: "Please Pay Registration fee of Rs. 30 before generating acknowledgement". Go to Home Page > e-Services> e-Payments for ROF Payment

Step (12): User can then provide the necessary details and make e-payment

Step (13): On this screen, user to enter the necessary details and the amount of Rs. 30/- in the registration fees/Other fees. After that, user to click on the confirm button and submit the same. Users will then be directed to Cyber Treasury website

Step (14): After the payment is complete, users to enter details regarding e-payment and generate the challan. Users to visit www.commercialtax.gujarat.gov.in website, and click on the e-service > ROF link.

Step (15): On this screen, by entering the PAN number, user's data will be auto populated and acknowledgement receipt can be viewed/downloaded accordingly

Checklist:

- Address proof of firm
- Address proof of partners
- Authority Letter to approve any person to apply for registration
- Notarised Partnership Deed
- Notarised photos of Partners
- PAN card of the Firm
- PAN card of Partners
- Profession Tax Payment Receipts Fee Details: INR 30 (Rupees thirty only) as Registration Fees to be paid online

Timeline: The timeline required for the complete process is one (1) working day (excluding the time taken by the applicant for providing necessary inputs, whenever asked for).

The tax rate for a Partnership firm

A partnership firm is required to file a partnership firm income tax return under the Income Tax Act,1961. Partnership firms are liable to pay income tax at the rate of 30% of total income. Besides, a partnership firm is liable to pay an income tax surcharge of 12% if the total income exceeds Rs.1 crores.Additional to the income tax and surcharge a partnership firm must pay the education cess and the secondary higher education cess.

Similar to a private limited company or LLP, partnership firms are also required to pay alternate minimum tax at the rate of 18.5% of "adjusted total income". Alternate minimum tax would be increased by the applicable surcharge, education cess, and secondary and higher education cess.

What are the allowed deductibles?

While calculating the payable income tax an individual must check the available deductible income

- Remunerations or interest paid to the partners of the firm is not under the terms of the partnership.
- Salaries, bonuses, remunerations, commissions paid to the non-working partners of the firm.
- If remuneration paid to partners is following the terms of the partnership deed but such transactions were made or were concerning anything that pre-dates the partnership deed.

For Partnership income tax return filing should be done through Form ITR-5. This form ITR-5 is used to partnership firm income tax returns and not the tax returns for the partners.

Audit Requirement for Partnership Firms

Partnership firms that satisfy any of the conditions below would be required to get accounts audited:

- Carrying on business and total sales exceed Rs.1 crore in the previous year.
- Carrying on a profession and gross receipts in profession exceed Rs.50 lakhs in any previous year.
- Besides, there are other conditions applicable that could make an audit mandatory for a partnership firm.

If a partnership firm entered into international transactions or specified domestic transactions a report must be furnished in Form No. 3CEB under section 92E. For partnership firms required to furnish Form 3CEB, the deadline for filing a tax return is 30th November.

Partnership Firm Tax Return Due Date

The due date for filing the partnership tax return filing is dependent on whether the firm is required to be audited or not. When the firm is not required to be audited the income tax returns should be filed by 31st July. When the firm is not required to be audited then the firm has to file its income tax returns by 30th September.

However, the cost of compliance is lesser as compared to the companies. Unlike companies, partnerships need not conduct meetings or maintain a register. Hence, it should be noted non - compliance can be costlier than meeting compliances.

Assessment of Partners

- After the firm pays the tax, no tax will be payable by the partners on the share of income from the firm.
- Interest amount or remuneration etc. received by a partner will be taxed as 'Business or Professional Income', excluding the amount disallowed in the hands of the firm being more than limits laid down in S. 40(b) and from A.Y. 2004-05 amount disallowed in the event of any failure as mentioned in S. 144 or non-compliance of S. 184.
- The partner's share (including a minor admitted for the benefit of the firm), in the income of the firm is not included in computing his total income i.e. his share in the total income of the firm shall be exempt from tax under section 10(2A) of the Act.

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THE EXERCISE OF CONSTITUTIONAL REMEDIES IN TAX PROCEEDINGS

Adv. Aditya Ajgaonkar

The interest in exploring constitutional remedies in tax proceedings has perhaps piqued in recent times giving somewhat the wide-ranging and substantial changes and amendments that have been brought out in the field of taxation. There has been a rapid revolution in the form of the introduction of the Goods and Service tax (GST) and the endless notifications with regard to the administration of the same thereafter on one hand and the revolution that has been introduced with regards to specially the assessment procedure in the field of direct taxes primarily through faceless assessments and change in procedure in reassessment etc. in the Income-tax Act, 1961.

Advocates are getting regular inquiries from their professional brethren for the filings of Writ Petitions before various High courts, primarily on the basis of judicial pronouncements. It is not much of a stretch to imagine that various other amendments that substantially alter the face of *status quo* shall continue to be introduced in taxing legislations given that the Pandora's box has already been opened. It is perhaps the fitting, then, to revert back to the basics as to the question that is to be asked first while considering the exercise of constitutional remedies. Why and when should an Assessee file a writ petition in exercise of his/her constitutional remedies?

The Constitutional remedies at a glance

Article 32 finds a place in Part III of the Constitution of India containing fundamental rights. The article provides a fundamental right for the aggrieved to seek enforcement of his/her/their fundamental rights directly before the Supreme Court. This right has the privilege of being a fundamental right in itself.

Article 32 of the Constitution reads as under :

Remedies for enforcement of rights conferred by this Part.—

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) *Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliamentmay by law empower any other court to exercise within the local limits of its jurisdiction all or any of thepowers exercisable by the Supreme Court under clause (2).*

(4) *The right guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.*

However, Article 32 has a restraint that has been placed upon itself by its very wording. Article 32 can only be invoked for enforcing those rights that are contained in Part III of the Constitution of India. This is the reason why it is often said that the powers of the High Courts under Article 226/227 of the Constitution of India are wider. This is also the reason why writs relating to taxation that are more often than not relating to inherent lack of jurisdiction, exercise of excess jurisdiction, retrospective application of laws and issues arising out of Part XII of the Constitution of India are often moved before jurisdictional High Court in the form of Writ Petitions.A Special Leave Petition can always be filed before the Supreme Court of India from the order of the High Court in exercise of its Writ Jurisdiction.

Article 136 of the Constitution reads as under :

Special leave to appeal by the Supreme Court.—

(1) *Notwithstanding anything in this Chapter,the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree,determination,sentence or order in any cause or matter passed or made by any Court or Tribunal in theterritory of India.*

(2) *Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or madeby any Court or Tribunal constituted by or under any law relating to the Armed Forces.*

The moving of a Writ Petition before a High Court looks to be an attractive process as it often seems to be the only way to obtain quick and effective relief for an aggrieved. However, the Writ Jurisdiction of a Constitutional Court is highly discretionary in nature and given the wide powers conferred upon the Constitutional Courts, the presence of an alternative and efficacious remedy is considered to be a strong bar for the exercise of these extra-ordinary Constitutional powers. The justification as to why a Constitutional Court should exercise it's powers in the Writ Jurisdiction is in order to 'short circuit' the ordinary process of law whichneeds to be addressed succinctly in every Writ Petition. Such an issue does not crop up when the constitutional validity of a particular piece of primary / secondary / delegated legislation or any amendment to the same is challenged as being un-constitutional, but it would certainly rear its head when the challenge is sought to be made on jurisdictional grounds or on the grounds of the principle of violation of Natural Justice. Strong grounds need to be invoked in order to convince the Constitutional Court that it must exercise it's extra-ordinary jurisdiction, especially in the case where a Writ of *certiorari*to quash notices / proceedings or even Assessment orders is prayed for.

Article 226 of the Constitution of India reads as under :

Power of High Courts to issue certain writs.—

(1) Notwithstanding anything in article 32,every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction,to issue to any person or authority, including in appropriate cases, any Government, within those territoriesdirections, orders or [writs, including writs in the nature of habeas corpus, mandamus, prohibition, quowarranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III andfor any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authorityor person may also be exercised by any High Court exercising jurisdiction in relation to the territories withinwhich the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that theseat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in anyother manner, is made on, or in any proceedings relating to, a petition under clause (1), without—(a) furnishing to such party copies of such petition and all documents in support of the plea forsuch interim order; and (b) giving such party an opportunity of being heard,makes an application to the High Court for the vacation of such order and furnishes a copy of such applicationto the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the dateon which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open;and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the casemay be, the expiry of the said next day, stand vacated.]

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]

Habeus Corpus

The Writ of Habeas Corpus means 'to have the body of' – It is used mainly in cases of illegal detention. This writ is used to release a person who has been unlawfully detained or imprisoned.The Court directs the person so detained to be brought before it to examine the legality of his detention. If the Court concludes that the detention was unlawful, then it directs the person to be released immediately. The relevance of the writ of Habeas Corpus in tax proceedings would be confined by and large to illegal arrests if made during tax prosecutions or ancillary economic offenses. It is however relevant to keep in mind that a lot of economic offenses now have special legislations governing them and that these special legislations have evolved increasingly stringent standards for arrest, detention and bail. Multiple

agencies have been empowered under various acts to take action against actions perceived as economic offenses. The Writ of Habeas Corpus, therefore is not wholly irrelevantfor professionals and practitioners inthe economic spheres.

Mandamus

The Writ of Mandamus issued by a Constitutional Court to direct a public authority to perform the legal duties which it has not or refused to perform. It can be issued by the Court against a public official, public corporation, tribunal, inferior court or the government. The Constitutional Courts have from time to time, exercised their power to issue this Writ in order to meet the ends of Justice where they deemed fit. The Gujarat High Court in ***All Gujarat Federation of Tax Consultants v. UOI [2021] 432 ITR 225 (Gujrat) (HC)***when asked to issue a writ of mandamus to the Central Board of Direct Taxes for extension of time limit to file Tax Audit Reports and Income Tax Returns,discussed the issuance to the Writ of Mandamus stating that Mandamus is an action or judicial proceeding of a civil nature extraordinary in the sense that it can be maintained only when there is no other adequate remedy, prerogative in its character to the extent that the issue is discretionary, to enforce only clear legal rights, and to compel courts to take jurisdiction or proceed in the exercise of their jurisdiction, or to compel corporations, public and private, and public boards, commissions, or officers, to exercise their jurisdiction or discretion and to perform ministerial duties, which duties result from an office, trust, or station, and are clearly and peremptorily enjoined by law as absolute and official (P.R. Aiyar, Advanced Law Lexicon, (2005), Vol. III P. 2873.).Mandamus is not a writ of right and is not granted as a matter of course (ex debito justitiae). Its grant or refusal is at the discretion of the court. A court may refuse mandamus unless it is shown that there is a clear legal right of the applicant or statutory duty of the respondent and there is no alternative remedy available to the applicant. (***Union of India* v. *S.B. Vohra* [2004] 2 SCC 150**).

The Court went on to hold that (*a*) certain conditions have to be satisfied before a writ of *Mandamus* is issued; (*b*) the petitioner for a Writ of *Mandamus* must show that he has a legal right to compel the respondent to do or abstain from doing something; (c) there must be in the petitioner a right to compel the performance of some duty cast on the respondents; (*d*) the duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law; (*e*) the remedy of a Writ of *Mandamus* is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately open in such actions; (*f*) the power to issue a Writ of *Mandamus* is a discretionary power. It is sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to issue a Writ of *Mandamus*; (*g*) a Writ of *Mandamus* is not a writ of course or a writ of right but is, as a rule a matter for the discretion of the Court; (*h*) in petitions for a Writ of *Mandamus*, the High Courts do not act as a Court of appeal and examine the facts for themselves. It is not the function of the Court to substitute its wisdom and discretion for that of the person to whom the judgment in the matter in question was entrusted by law. The High Court does not issue a Writ of *Mandamus* except at the instance of a party whose

fundamental rights are directly and substantially invaded or are in imminent danger of being so invaded; (*i*) a Writ of Mandamus is not issued to settle private disputes or to enforce private rights. A Writ of *Mandamus* cannot be issued against the President of India or the Governor of State; (*j*) A writ will not be issued unless the Court is certain that its command will be carried out. The Court must not issue a futile writ.

Certiorari

The Writ of Certiorari is the Writ that is often used by the Constitutional Courts to 'quash' orders passed by an 'inferior court', tribunal or quasi-judicial authority. The Writ of Certiorari is the writ that is perhaps the most sought out, but also the most susceptible to theargument of an alternative and efficacious remedy. The Quashing of a Judicial or quasi-judicial order is not an exercise that the Constitutional Court shall get into routinely, in the presence of an elaborate appellate procedure that has been put in place by the various taxing statutes. The writ of Certiorari has however, often been sought in cases where the non-interference of the Constitutional Court may cause grave prejudice to an Assessee, for example in the case of violation of the principles of Natural Justice, issue of a notice under Section 148 seeking to re-assess Income under Section 147 of the Income-tax Act,1961, without following due procedure or wholly without Jurisdiction or against orders of 'Rectification' passed by the Appellate Tribunals which are not appealable in nature. The Gujarat High Court in the case of **Dolphin Metal (India) Ltd. v. ITO [2021] 431 ITR 666 (Gujarat)(HC)**was pleased to exercise its power under Article 226 of the Constitution of India to issue a writ of Certiorari where the Income Tax Appellate Tribunal had dismissed an Appeal based purely on non-prosecution of the Appeal, without passing any order on the merits and had also dismissed an Application under Section 254 of the Income-tax Act, 1961, as time barred by limitation to quash both the orders.

The first hurdle that must necessarily be crosses in such a writ, is the existence of an alternative and efficacious remedy. In the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1** the Hon'ble Supreme Court, while considering the maintainability of a writ petition, in view of the availability of an effective alternative remedy, had held that an alternative remedy does not operate as a bar in at least three contingencies, viz., where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights, or where there has been a violation of the principle of Natural Justice, or where the order or proceedings are wholly without jurisdiction, or the vires of an Act is challenged. In **Raza Textiles Ltd. v. ITO (1973) 1 SCC 633**, the Supreme Court held that no authority, much less a quasi-judicial authority can confer jurisdiction to itself by deciding a jurisdictional fact wrongly. The Supreme Court held that the question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a Writ of *certiorari*. This has been followed by the High Court of Hyderabad in **Satyam Computer Services Ltd. V. Directorate of Enforcement 2018 SCC OnLineHyd 787.**

Prohibition

The Writ of Prohibition is primarily issued to prevent an inferior court / Tribunal/ Quasi-judicial authorityfrom exceeding its jurisdiction or acting contrary to the principles of Natural Justice. The remedy is preventive in nature rather as opposed to certiorari which is remedial in nature.The Writ of Prohibition is therefore important, especially to avoid the abuse of due process of law by authorities seeking to adjudicate or carry out certain actions over issuesover which they do not have any Jurisdiction. However, given the wide ambit of this power, it does come with equally onerous limitations. The Constitutional Courts are loath to restrain an authority from carrying out any functions until it is clearly demonstrated that such functions are wholly without jurisdiction. In **IshaBeevi v. Tax Recovery Officer [1975] 101 ITR 449 (SC)**, the Supreme Court held that "*In order to substantiate a right to obtain a writ of prohibition from a High Court or from the Supreme Court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or authority complained against. It is not enough if a wrong section or provision of law is cited in a notice or order if the power to proceed is actually there under another provision.*" It was held by the High Court of Madras in **P. KandappaGounder v. Fifth Income-tax Officer[1972] 83 ITR 42 (Madras)** that "A writ of prohibition is issued only in cases where the court's conscience is satisfied that there is a total absence of jurisdiction on the part of the statutory Tribunal whoever he is, functioning under a particular enactment, to exercise the power which he has assumed and pursuing the process further by affecting the rights of third parties and acting to their prejudice. The essential pre-requisite, therefore, is the complete absence of jurisdiction on the part of the Tribunal whose order is sought to be challenged under article 226 of the Constitution. It should be found as a fact and beyond doubt that, on the materials placed before the court, no reasonable person will assume that the statutory Tribunal has ever the authority to assume such power and act in the manner contemplated."

Quo Warranto

The Writ of Quo-warranto is issued to enquire into the legality of the claim of a person or the claim of a person to a public office. The Writ is more in the realm of service / administrative law in as much it is used to restrain a person a person or authority to act in an office which the person is not entitled t0.

Conclusions

The Constitution of India is a repository of rights for those who reside in this country. The founding fathers of our Constitution were acutely aware that rights are of no meaning without their enforceability. The Constitutional debates reflect how the Constituent Assembly strove hard to achieve a balance, one that would not hamper the lofty ideals that our founding fathers strove to achieve in social and economic change in a land ravaged by the inequity promoted by colonialization, as well as protect the rights of the citizenry and residents against the might of the state, another phenomenon perpetuated by colonialization. Constitutional remedies are not restricted to any branch of the law, they are the sentinels that exist to

provide remedies against any excesses that may be purported to be committed by the state through the public authorities, may it be the police or the tax authorities. They are similarly to be exercised with restraint on behalf of the courts.Article 32 and 226 are not the sole constitutional remedies available either, Article 227 of the Constitution of India provides for the power of superintendence over all the Courts and Tribunals by the High Courts within their territorial jurisdiction.The moving of a Writ Petition before a Constitutional Court should not be considered in the matter of course, but after a careful deliberation of all the facts and the prevailing law.This jurisdiction has been successfully invoked in recent times to affect far reaching meaningful changes, like challenging orders under the Faceless Assessment that have been passed without providing an opportunity of hearing, for challenging proceedings where reassessment proceedings were initiated under Section 147 read with Section 148 instead of 148Aof the Income-tax Act,1961, and even to challenge the change in service conditions of the Members of quasi-judicial Tribunals that could affect their efficiency and impartiality. It is often said and often repeated that great power needs to be exercised with great responsibility. The Courts have been ever mindful of this fact, potential Petitioners would be wise to consider this as well.

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SHORT ANALYSIS ON PRESUMPTIVE TAXATION U/S 44AD OF THE INCOME TAX ACT, 1961

Adv. Tej D. Shah

With an intention to iron out the hassles of maintaining books of accounts and getting them audited, the legislature came out with the concept of **"Presumptive Taxation"** for for small businesses being an **"Eligible Assessee"**. In this article, the author has drawn a short analysis on one such presumptive taxation section namely44AD. He has also discussed issues arising out of additions/disallowance being made to the assessee's income declared under the provisions of S. 44AD.

1. **Eligiblity of Assessee and Business** - As per the Explanation to S. 44AD, benefit under this section is granted to an Eligible Assessee carrying on Eligible Business. Such assessee includes an individual, HUF or a Partnership firm but not an LLP. It also excludes a Company, AOP from its ambit. Also, such assessee should not have claimed deduction u/s 10A etc. as mentioned in the explanation. Coming to Eligible Business, it means ANY business except as referred to in S. 44AE and that the total turnover or gross receipts from such business does not exceed Rs. 2 crore. Furthermore, as per sub-section (6), professionals as referred to in S. 44AA(1), persons earning commission or brokerage income and; persons carrying on agency business shall be excluded from the term ANY business for the purpose of claiming benefit u/s 44AD.If the eligible assessee has more than one eligible business, the aggregate of the turnover of all such businesses should be considered.

   Question:Whether an eligible assessee also earning commission income alongside his eligible business will be entitled to claim benefit under this section?

   Answer:YES, if such assessee has shown commission income separately and if the turnover has not been included in the turnover derived from eligible business, then he does get benefit of this section for the income arising from eligible business.

   Question: Whethera Partner deriving income from a partnership firm in the form of salary and remuneration is an eligible assessee to claim benefit under this section?

   Answer: NO. **The Hon'ble Madras High Court in the case of Anandkumar 122 taxmann.com 252** held that where the assessee-partner not engaged in any business but only deriving income by way of salary and remuneration from the partnership firm, is not entitled to declare income u/s 44AD. In denying so, it held that even though such salary/remuneration amounts to profits and gains of business and profession, they are not derived from gross receipts/turnover of a business carried on by the partner.

2. **Calculation of Profits and Gains** -The essence of S.44AD lies in sub-section (1) which says that a sum equal to 8% of the total turnover or gross receipts in the P.Y.

derived from eligible business, shall be deemed to be the Profits and Gains of such business chargeable to tax under the head "Profits and Gains of Business or Profession".Here a question may arise if such turnover/gross receipts shall also mean to include all taxes, cess, service charge etc? As per the ICAI guidelines, if the assessee follows the exclusive method for such tax, cess etc., it shall be excluded while computing such turnover and if he follows inclusive method, it shall be included.In case the assessee has earned a higher sum than 8%, that amount shall be deemed to be the Profits and Gains. In order to promote digital transactions and to encourage small unorganized business to accept digital payments, S. 44AD was amended w.e.f. 01-04-2017 by reducing the existing rate of deemed total income of 8% to 6% in respect of the amount of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.

3. **Deductions allowable -** As per sub-sections (2) and (3), any deduction which may have been claimed by the assessee u/s 30 to 38 while computing his income of eligible business and; the WDV of any asset of the eligible business shall stand calculated and allowed while computing the sum as mentioned in sub-section (1) and no further deductions under those sections shall be now allowed.

NOTE: Before 2017,as per the proviso, interest or remuneration paid to a partner by a partnership firm was deductible from the income computed under sub-section (1) subject to the limits prescribed u/s 40(b) which means that even though the income fell below 8%, the assessee was eligible to claim benefit under this section since there was an exception carved out by way of the proviso.However, after 01-04-2017, the said proviso was omitted which created a grey area. In my opinion, it implies that interest or remuneration is deemed not to be allowable while computing income of the firm.As per S. 44AD(2) deductions falling within S. 30 to 38 only shall be allowable and since partner's remuneration or salary is not deductible under S. 30 to 38 but within the limits prescribed u/s 40(b), it cannot be claimed by the eligible assessee firm.

4. **Which Previous Years to be considered** – As per sub-section (4), an eligible assessee can claim benefit under this section for any number of years PROVIDED he declares profit as per sub-section (1). However, the year in which he shifts to regular computation (for the reason that he claims to have earned lower profits than the limit of 8or 6%), then calculating from that A.Y. and an additional four years i.e. for FIVE A.Ys. from the last A.Y. in which he claimed benefit under this section, he shall not be eligible to claim benefit. It should be borne in mind that the denial of benefit under sub-section (4) is only for violation of sub-section (1) (i.e. declaring profits lower than 8 or 6%). In a situation where the assessee declares profit as per sub-section (1)but his turnover exceeds the limit of Rs. 2 crores as per the Explanation, can he still be denied eligibility for five years?In my opinion, he loses eligibility only for that year because the requirements of sub-section (4) reads "*declares profit... not in accordance with the provisions of sub-section (1)*". In the succeeding year(s), if the turnover/gross receipt is below Rs. 2 crores, the assessee can still claim benefit under this section.

For Example, an eligible assessee has offered income of Rs. 16 lakhs on a total turnover of Rs. 2 crores in A.Y. 2021-22 and similar for A.Y. 2022-23. However, if for A.Y. 2023-24 he offers an income of only Rs. 10 lakhs but again for A.Y. 2024-25 he offers income of Rs. 16 lakhs, then he will not be eligible for claiming benefit under this section from A.Ys. 2023-24 to 2028-29 even though he declares income @8% in A.Y. 2024-25. However, if for A.Y. 2024-25, he offers income of Rs. 16 lakhs i.e. at 8% but his turnover exceeds the limit of Rs. 2 crores as per the Explanation, then he will be ineligible to claim benefit only for that particular A.Y. 2024-25. From the next year(s), if his turnover is within the limit, heagain becomes eligible to claim benefit.

5. **Maintaining Books of Accounts and getting them Audited –** The icing on the cake for an eligible assessee under this section is that he does not have to maintain books of a/cs or get them audited as per S. 44AA and 44AB respectively.Here 2 scenarios are possible:

a) **The assessee loses eligibility as per sub-section (4):** As per sub-section (5), he shall be required to maintain his books of a/cs and get them audited if he falls under sub-section (4) i.e. if he has not declared profit as per the provisions of this section for the reasons that his profit is lower than the prescribed limit of the total turnover/gross receipts. Here a question arises that if as per sub-section (4), the assessee becomes ineligible to claim benefit of this section, he automatically has to maintain his books of a/cs and get them audited (if he falls within the enabling parameters of S. 44AA and 44AB), then why is a specific direction given in sub-section (5)? The answer to this is that as per sub-section (4), the assessee loses his eligibility under this section *only for that specific period of five assessment years*. Once that period is over and if the assessee again meets the conditions of eligibility under this section, he still becomes eligible and is not required to maintain his books of a/cs and get them audited. Therefore, sub-section (5) is clarificatory in nature for a better understanding of the co-relation between S. 44AD vis a vis S. 44AA and S. 44AB.Moreover, once he is required to get his accounts audited as per sub-section (4), the turnover component as per S. 44AB of Rs. 1 crore or Rs. 10 crore (as per the proviso) becomes infructuous. Regardless of the turnover, the assessee has to get his a/cs audited because a specific direction has been given in S. 44AD(4).

b) **The assessee loses eligibility of business because his turnover exceeds Rs. 2 crores as per the Explanation:** If the assessee's turnover exceeds Rs. 2 crores, then he has to maintain his books of a/cs and get them audited as a normal assessee and the limits mentioned in S. 44AA/AB come into play. S. 44AA is fairly simple to interpret and hence need not be discussed. A passing note on S. 44AB is required to be considered as per which, if the sales, turnover or gross receipts exceeds Rs. 1 crore, a/cs are required to be audited. In order to increase digital payments and reduce cash component, this limit was further enhanced to Rs. 10 crores as per the 1st proviso to S. 44AB which says that if the aggregate of all amounts received/paidfor sales, turnover or gross receipts does not exceed 5% of the said amount. It was also clarified that such receipt/payment by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be in cash.

6. **Can addition be made u/s 68, 69 etc. if the assessee declares income under this section?**

The Hon'ble Punjab and Haryana High Court in the case of Surinder Pal Anand 192 taxman 264 held, *"Once under the special provision, exemption from maintenance of books of account has been provided and presumptive tax at the rate of 8 per cent of the gross receipt itself is the basis for determining the taxable income, the assessee is not under any obligation to explain individual entry of cash deposit in the bank, unless such entry has no nexus with the gross receipts. In the instant case, the stand of the assessee before the Commissioner (Appeals) and the Tribunal that the amount in question was on account of business receipts had been accepted. The revenue could not show with reference to any material on record that the cash deposits were unexplained or undisclosed income of the assessee."*

Following the decision of Surinder Pal Anand (supra), the **Chandigarh ITAT in the case of Nand Lal Popli 71 taxmann.com 246** held that if the assessee has declared income under this section but could not explain certain payments from its bank to certain persons merely because they were not reflected in the cash flow statement, addition cannot be made u/s 69C if profit is arrived at after considering these expenses.

The latest decision of the **Cochin ITAT in the case of Thomas Eapen 113 taxmann.com 268**, it was held that once the turnover/gross receipts have been accepted by the revenue, addition u/s 69A being unexplained deposits could not be made without rejecting the books of accounts and also without undergoing the exercise that these deposits are not a part of the assessee's eligible business. S. 44AD does not require the assessee to maintain books of a/cs but inspite of that if the assessee has maintained books of a/cs, does not automatically give right to the AO to reject them without following the above procedure.

Chandigarh ITAT in the case of MC Puri 69 taxmann.com 313 held that even though the assessee declared income u/s 44AD but since he failed to explain that the creditors are not bogus, a higher profit of 11% was required to be estimated as against 8% declared by the assessee.

7. **Can disallowance be made u/s 40(a)(ia)?**

Kolkatta ITAT in the case of Mark Constructions 23 taxmann.com 398 following the decision of Surinder Pal Anand (supra) held that if the assessee has declared profit u/s 44AD, then no disallowance can be made u/s 40(a)(ia) for non-deduction of tax at source.

Surat ITAT in the case of Bipinchandra Hiralal Thakkar 124 taxmann.com 236 During year, assessee made interest payments to various loan parties without deduction of tax at source. It filed its return of income under this section showing turnover of Rs. 92 lakhs. The Assessing Officer noted that turnover of assessee exceeded monetary limits specified under clause (a) or clause (b) of section 44AB during immediately preceding assessment year, therefore, assessee was liable to deduct tax at source under section 194A on said interest payments. Thus, he

disallowed such interest payment under section 40(a)(ia).The ITAT held that provisions of S. 44AD overrides all other provisions contained in section 28 to 43C and turnover of preceding assessment year could not be considered to make assessee liable to deduct TDS in relevant assessment year and to get accounts audited under section 44AB.Since turnover for relevant assessment year was to tune of Rs. 92 lakhs approx., which was below threshold limit of one crore rupees as prescribed in S. 44AD, assessee was entitled to take benefit of provisions of said section and was not liable to deduct TDS on interest payments.

8. **Certain other judgments where courts have considered the rate of 8% as a reasonable benchmark in view of the provisions of S. 44AD**:

Gauhati ITAT in Sayqul Islam 118 taxmann.com 347 held that if the assessee shows income lesser than 8% but has not gotten the books of a/cs audited u/s 44AB, the AO cannot make addition @8% without rejecting books of a/cs. However, a reasonable profit rate has to be adopted taking in view the previous/next years into consideration.

Pune ITAT in Nishikant T. Patne 36 taxmann.com 540 held that if the assessee has shown income lesser than 8% but if the AO rejects books of a/cs after pointing out defects and adopts a rate of 15%, the ITAT held that since it is a construction business, rate of 8% as carved out in 44AD is fair and reasonable. This view was also asserted by the **Hon'ble P & H High Court in the case of Earth Tech Engineers 224 taxman 358 and the Hon'ble Delhi High Court in the case of Subodh Gupta 229 taxman 367.** The underlying principle is that if it is difficult to determine the net profit or if after rejection of books, the profit rate is too high and even if the assessee has not opted for presumptive taxation, the rate of 8% has been considered to be a benchmark for considering income in the case of civil construction business.

Jodhpur ITAT in the case of Hamid Khan 49 taxmann.com 219 held that if the assessee could not explain the difference between lower income shown in his books of a/cs compared to as reflected in Form 26AS, even then the entire amount cannot be added back and only income at 8% should be applied since he was in the business of civil labour supply and he had shown income at the rate of 8% in the preceding years.

Jodhpur ITAT in the case of Kangiri Contractor 45 SOT 1 held that if the assessee has declared income at the rate of 8.15% under 44AD, no separate addition for work in progress can be made.

Conclusion: The provisions of presumptive taxation have indeed turned out to be a boon to small businesses as it does away with the hassles of maintaining books of a/cs much less getting them audited. Inspite of certain glitches like interest/remuneration to partner and additions made u/s 68, 69 etc., the authorities have by and large been liberal in interpreting and accepting income under the provisions of presumptive section.

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"NEW" REMEDIES FOR 'HOME BUYERS' UNDER RERA AND INSOLVENCY CODE

CA.Mahadev Birla

Adv.(CA.) Nipun Singhvi

Introduction:

The housing and construction sector has a multiplier effect on the entire economy - it is the fourth largest employment generator and is a significant contributor to GDP, with studies showing that construction as a whole, accounts for 11.39 percent of the total economic output. Moreover, every rupee invested in the housing sector results in an addition of Rs. 1.54 to GDP and, if household expenditure is also taken into consideration, the contribution adds up to Rs. 2.84.

With intention to balance the interest of homebuyer and real estate developers. ***The Real Estate (Regulation and Development) Act, 2016*** ('RERA') was introduced with the following objects:-

1. Regulate and promote the Real Estate Sector
2. Ensure Sale of Real Estate Project in transparent manner
3. Protect the interest of consumers
4. Establish the Appellate Tribunal

The Government brought forward several important reforms, the most significant being the Real Estate (Regulation and Development) Act, 2016 (RERA). This undoubtedly has boosted consumer confidence and paved way for accelerated demand for housing products and facilitate flow of investments into the real estate sector, both from global and Indian investors.

Implementation of RERA has also streamlined norms for transparency , accountability and a compliance mechanism for timely delivery of good quality housing projects.

By analysis of the above object, we can say that RERA was introduced to protect and for the benefit of Home Buyers which directly or indirectly put restrictions on Real Estate developers for the interest of Home Buyers, however the law deals with commercial real estate also.

Though model RERA came in 2016 and subsequently states notified rules adopting the model law. RERA regulates real estate projects both commercial as well as residential. We shall dsicuss the issues and remedies which are relevant for 'Home buyers' under RERA.

Who is Home Buyer?

RERA doesn't define the home buyer but the same falls under definition of **"allottee".**

As per Section 2(d) "allottee" in relation to a real estate project, means the person to whom

a plot, apartment or building as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquire the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent

As per Section 2(zn) Real Estate Project:- means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, **for the purpose of selling all or some of the said apartments or plots or building, as the case may be,** and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

In the above definition of allottee, there are two type of home buyers or allottees are defined:-

a. First Buyer who directly buy the plot, apartment or building from Real estate developers/promoter.

b. Second buyers who subsequently acquire the plot, apartment or building from the first buyers.

In above definition of allottee word "otherwise transferred" is included however the same is not explained in the Act. "Otherwise transferred "should mean similar to sold or a transaction which is in nature of sale. Otherwise transferred would include all the transaction where property is sold, transferred or gifted and would not include mortgages or lease.

Exclusion from the list of allottees:-

a. Person who take the plot/apartment or building on rent

b. Person who gets new flat (in replace of existing flat) under conversion of existing building into new apartment, plot or building as the same is not for sale and the such project is excluded from the definition of "Real Estate Project" under RERA.

In general any non-compliance, by promoter, in relation to provision, Rules and Regulation of the Act will be default on account of promoter and 'any aggrieved person' can file the complaint against the RERA Authority.

Some of the defaults and corresponding remedies available under RERA are enlisted as infra:

Section	Defaults	Remedies
11 (5)	Cancellation of allotment-Unilateral and without sufficient cause	Allottee can approach to Authority
12	Loss or damage sustain by **any person** due to false/incorrect statement/information contain in the notice advertisement or prospectus, or on the basis of any model apartment	Compensation by promoter in the manner as provided under the Act. Refund of entire amount along with interest, if person want to withdraw from proposed project.

14(3)	Structural and other defect in workmanship, quality or provision of service or other obligations as per agreement to sale within a period of **5 years*** from the date of **possession.**	Rectification of such defects without further charges, within 30 days Compensation for non-rectification of default
18(1)	Fails to complete or is unable to give possession of an apartment, plot or building - As per agreement for sale; Or - ; as the case may be , duly completed by the date specified therein	- If allottee wish to withdraw and demand the refund, promoter is liable to refund the entire amount with interest - if allottee does not intend to withdraw than he will get interest for every month of delay till the handing over the possession
18(2)	Loss caused to allottee due to defective title of land on which project is developed or has been developed	Compensation from the promoter and the **compensation under this subsection shall not be barred by limitation provided under any law for the time being in force**
18 (3)	Fails to discharge any other obligations imposed under this Act, Rules, regulation and terms and conditions of Agreement for Sale	Compensation from promoter

Note:-

*5 Years will be applicable for individual customers separately and period will be as per individual possession.

Some relevant provisions of Gujarat RERA Rules discussed w.r.t Interest

For the purpose of interest payable under RERA

Rule 16 (1)	The rate of interest shall be the contractual rate of interest as may be mutually agreed between the promoter and allottee
Rule 16(2)	Where no contractual agreement than rate of interest shall be rate which is prevalent as per existing directive of RBI i.e. MCLR- +2%
Rule 16(3)	Period of interest will be the date of payment received by promoter till the date of full amount paid
Rule 17	Any money (refund, interest or compensation) become payable by promoter shall be payable within 45 days from the date on which such refund become due

Complaint Procedure with RERA

Under the RERA, there are four level of authority where complaint can be filed

1. Section 31- Filing of Complaint with RERA Authority
2. Section 71-Adjudicating Officer
3. Section 44- Appeal with Appellate tribunal
4. Section 58-Appeal to High Court

As per Section 31 any **aggrieved person** may file a complaint with the **Authority or the adjudicating officer** as case may be for violation or contravention of the provisions of this Act or the Rules and Regulations made thereunder against **any promoter, allottee** or the **real estate agent** as the case may be.

Recently, in the case of ***Sushil Agrwal V/s Yashdhan Associates*** **(2017) decided by** MAHA RERA it was held that there is **no concept of public interest litigation** under the Act. Similarly, in the matter of ***Smt. Manit Malhotra Vs. M/s. AGI Infra*** (Jalandhar Heights)- **Punjab RERA** rejected on similar grounds. In ***Ramprasad P Patel V/s Aditi developer*** **(Gujarat)** Complaintwas rejected as complainant is not aggrieved person as per Rule 11(1).

Person for this section is person as defined in Section 2(z) and shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

There are two type of method for complaint

a. Online complaint
b. Offline complaint

Complaint with RERA Authority

- As per Rule 11 of the 'Gujarat Real Estate Regulatory Authority Rules, 2016' complaint would be file for violation or contravention of the provisions of this Act or the Rules and Regulations made thereunder, save as those provided to be adjudicated by adjudicating officer.
- Complaint would be filed in **Form 'A'** along with **Fees of Rs. 1,000** by way of DD
- Written Complaint will be filed in 3 Sets- Rule 12A(1)
- Complaint shall clearly contain particular of dispute and the relief claimed-Rule 12A(2)
- Complaint shall be accompanied by copies of such documents as are necessary to prove the claim-Rule 12A(2)
- Time limit is not defined

1 Maharashtra RERA

Complaint with adjudicating officer

- As per Rule 12 (1) of the 'Gujarat Real Estate Regulatory Authority Rules, 2016' any aggrieved person may file a complaint with the adjudicating officer for compensation under section 12, 14, 18 and 19.
- Complaint would be filed in Form 'B' along with Fees of Rs. 1,000 by way of DD

Application for settlement of disputes and appeals to Appellate Tribunal

- The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.-**Section 44(1)**
- Appeal is required to me made **within sixty days** from the date on which a copy of the direction or order or decision made by Authority or adjudicating authority- **Section 44(2)**
- Appellate tribunal may entertain the application after sixty days if it is satisfied that there was sufficient cause for not filing.
- Appeal shall be disposed within in a period of **sixty days** from the date of receipt of appeal-**Section 44(5)**.

Appeal to High Court

- Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court.
- Appeal is required to be filed within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal.
- Appeal will be filed if the order of appellate tribunal is given on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908
- High Court may entertain the application after sixty days if it is satisfied that appellant was prevented by sufficient cause from preferring the appeal
- No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

Insolvency and Bankruptcy Code, 2016 (IBC)

After enactment of RERA, Government thought it fit to bring Insolvency and Bankruptcy Code, 2016 (IBC) to wriggle out NPA's from banking system and rightly so as they had mounted to more than Rs.6,00,000 Crores. This Code has an overriding effect on all the laws and gives a moratorium on any litigations against the company whether new or pending. This proved to be boon for the financially distressed companies and also for erring/defaulting promoters.

But it had unintended disappointment for real estate companies mainly builders/developers who were not delivering the possession on time and were under huge debt from banks/

2 Punjab RERA
3 Gujarat RERA

financial institutions. IBC provided that the company will be run by insolvency professional who is a qualified professional with direction of Committee of Creditors (COC), which would consist of only financial creditors. It was debated whether the home buyers shall be 'financial creditors' or not?

Matter went before the Hon'ble Apex Court in ***Chitra Sharma Vs Union of India*** **(Jaypee Infra case)** wherein by way of an interim order court directed advocate to represent the homebuyers interest in the COC and directed *Union of India* to present their case. Further, Government proactively constituted Insolvency Law Committee who gave their report on 26.03.2018. Therein, the Committee opined that it is well understood that amounts raised under home buyer contracts is a significant amount, which contributes to the financing of construction of an asset in the future. Hence, they proposed homebuyers to be clarified that the intention was to include in the definition of 'financial creditor'. This recommendation was brought into force immediately via Insolvency Ordinance, 2018 on 06.06.2018. This Ordinance clarified that homebuyers were considered to be financial creditors under IBC and definition of 'financial debt' provided under IBC is sufficient to include the amount raised from homebuyers/allottees for a real estate project under its ambit and hence, homebuyers should be treated as financial creditors under IBC.

This clarification subsequently created confusion for the insolvency which were pending during this period. Though the clarificatory amendment was brought it linked the IBC with RERA, it stated that the financial creditor shall be one who is an allottee under RERA.Now, the question came how will huge number of homebuyers specifically in the case of Jaypee Infra which motivated this amendment will actually be possible as the total homebuyers werearound 33,000.

Therefore, after deliberations with various stakeholders, the regulator Insolvency and Bankruptcy Board of India brought in regulations to get the representation of class of financial creditors through authorised person (homebuyers) represented by way of Insolvency Professional as their interest keeper in the COC.

The genuine real estate developers/builders were in soup and they were perplexed as the whole company goes under IBC if even one of the project/unit is not delivered on time. It was argued that the laws like RERA and Consumer Protection Act, 1986 are specific and better laws than IBC. The amendment got challenged by Promoters in Supreme Court by way of Special Leave Petition in the matter of *Pioneer Urban Land and Infra Limited Vs Union of India*[4] and thereafter series of petitions reached the Apex Court challenging the constitutional validity of the above-mentioned Ordinance. Hon'ble Supreme Court after examining the issue, upheld the constitutional validity of the Ordinance and confirmed the status of the homebuyers as financial creditors under IBC. Therefore, law as it stands today is bountiful for home buyers as they have many laws like RERA, COPA[5] and IBC for creating multiple redressal and the situation which appeared to be tilted in favour of builders have now been table turned.

Therefore, 2018 Amendment Act read with the ruling of the Hon'ble Supreme Court in the

4 Writ Petition (Civil) No. 43 of 2019

PUL *(supra)*case provided even a single homebuyer or allottee right to file application under Section 7 of the IBC before National Company Law Tribunal in cases of failure/delay by the builder in handing over the possession of the purchased unit. Therefore, IBC empowers the homebuyer to initiate insolvency in case there is default in the debt.

Thereafter, considering representation of various builder/developer bodies, further amendments on threshold for filing the application by allottees was brought in on 28th December 2019, through *The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019* and as per the amendment, single buyer/homebuyer is prohibited/ barred to approach NCLT under Section 7 of the IBC as the minimum threshold for filing insolvency by allottees is now 100 or 10% of allottees (whichever is lower). Hence, now homebuyers can approach NCLT with a joint application of at least 10% or 100 of the total homebuyers of a project (whichever is less).

Recently even the basic threshold for insolvency default has been increased from Rs.1 lakh to1 Crore by the Central Government through MCA notification dated 24th March 2020 by using inherent power under Section 4 of the IBC. Hence, now the IBC remedy is virtually available now for the allottees who have to come together and meet both criteria for number of allottees and quantification.

Logically concluding the remedy may be suggestible as RERA first and then followed by IBC in case the promoters are defaulting thereafter.

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5 Consumer Protection Act, 2019 (Previously 1986)

RECENT INCOME TAX JUDGMENTS

ADV Jaimin Gandhi

(A) SCA No. 1085 of 2022, RajkamalHealds and Reeds Pvt Ltd (Gujarat High Court).

The assessee filed return of income for the AY 2020 – 21 by invoking the provisions of section 115 BAA. The Chartered Accountant inadvertently failed to electronically file Form No. 10-IC. Accordingly the intimation u/s 143(1) was served upon the assessee. The assessee challenged the said intimation by way of a petition before The Honorable Gujarat High Court. The revenue claimed that s. 115 BAA (5) states that unless the option is exercised by the assessee in the prescribed manner (Form No. 10-IC) on or before the due date specified u/s 139(1), the provisions of section 115 BAA shall not apply. Accordingly the benefits of s.115 BAA are not granted to the assesse and so the intimation is issued u/s 143(1).

The Hon'ble Gujarat High Court observed that the petitioner shall file an appropriate application in writing to the Principal Chief Commissioner or Chief Commissioner, making a request to permit filing of form No. 10-IC electronically after condoning the delay in that regard. The Court observed that if such application is filed then the Chief Commissioner shall look into it expeditiously and may exercise his discretion in accordance with law more particularly keeping in mind object behind section 119(2)(b), after considering the hardships that the assessee may have to face in the event if it is not permitted to file the Form No. 10-IC electronically.

(B) [2022] 134 taxmann.com 16 (Orissa), Neelachallspat Nigam Ltd. *v.*Assistant Commissioner of Income-tax*

The assessee made short term deposit in the bank to enable itself to open letter of credit for procuring plant and machinery. The assessee claimed the interest on such deposit as capital receipt, reducing the cost of acquisition of a capital asset. The revenue treated the interest as revenue receipt and taxed it.

The Honorable High Court observed that it is undisputed that the assessee is borrowing loans from Financial Institutions and using the interest on the above referred deposit for the payments pertaining to the project. So it is apparent that borrowed money was kept in the short term deposit. The interest earned on deposits was reducing the cost of the capital asset and it should not have been treated as revenue receipt as the interest earned on the deposits was for the purpose of enabling the assessee to open letter of credit for procuring the plant and machineries and so it is incidental to such acquisition.

(C) [2021] 133 taxmann.com 320 (Bombay), Bharat Petroleum Corporation Ltd. *v.* Assistant Director of Income-tax, Bang.

The assessee filed return of income claiming refund. However the revenue did not grant refund and adjusted it against other demands without issuing prior intimation u/s 245. Accordingly the assessee challenged the non-granting of refund by way of a petition before the Honorable High Court.

The High Court observed that it is a settled law that non-issuance of intimation in writing prior to setting of the refund is fatal. It would make the entire adjustment as wholly illegal. Accordingly the revenue is directed to release the refund along with interest within 6 weeks.

The honorable High Court further observed that regarding the pending demand for the AY 2015 – 16, 2016 – 17 and 2017 – 18, the appeals are pending and the assessee has deposited 20% of the disputed demand. The effect of this deposit would mean that the time for payment stands extended and the petitioner is not deemed to be an assessee in default for the recovery provisions to be set in motion.

(D) [2022] 134 taxmann.com 307 (SC), Cognizance For Extension of Limitation, *In re*

The Honorable Supreme Court gave the following directions regarding extension of limitation for initiating any proceeding:-

(a) The limitation which has been extended with effect from 15/03/2020 by various earlier orders is now extended till 28/02/2022. Accordingly the above period shall be excluded for the purpose of computing limitation under any general or special law in respect of all judicial or quasi-judicial proceedings.

(b) In a given case where the limitation is expiring during the period starting from 15/03/2020 to 28/02/2022, it shall stand extended for a period of 90 days from 01/03/2022. In the event if the actual balance period of limitation remaining is greater than 90 days, that longer period shall apply.

(E) [2022] 134 taxmann.com 188 (Gujarat), Darshan Enterprise *v.* Additional/Joint/ Deputy/ Assistant Commissioner of Income -tax Income-tax Officer

The assessing officer passed the assessment order which was exact reproduction of the draft assessment order and without considering the reply of the assesse. The assessee challenged the assessment order by filing a petition before The Honorable Gujarat High Court.

The court observed that section 144B (9) makes it clear that if any procedure laid down by section 144B is not followed or complied with, then assessment would be rendered non-est. It would mean a nullity. Accordingly the argument of revenue regarding availability of alternative remedy of an appeal should fail. The Honorable High Court set-aside the assessment order and remanded the assessment back to the assessing officer by directing him to consider the submissions of the assessee before passing the assessment order.

(F) [2021] 132 taxmann.com 293 (Gujarat), Kartik Vijaysinh Sonavane *v.*Deputy Commissioner of Income-tax, Circle-8

The Employer deducted TDS of the employee but failed to deposit it into the Government treasury. Accordingly the assessing officer of the employee disallowed the credit pertaining to the said TDS and issued demand notice. The petitioner challenged the demand notice by way of a petition before the Hon'ble Gujarat High Court. The revenue contended that in absence of any TDS reflected in the system and failure to submit Form No. 16,it will dis-entitle the employee to claim the credit of TDS.

The Honorable Gujarat High Court held that the credit of tax shall be given to the petitioner employee and if in the interregnum any recovery or adjustment is made by the revenue then the petitioner shall be entitled to refund of the same along with statutory interest within eight weeks of the receipt of this order.

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CORRELATION BETWEEN SECTION 8 COMPANY (CA, 2013) AND MFIS

CS Nidhi Shah Mehta

CS Yash Mehta

The micro-finance industry is has been started by the reserve bank of India (RBI) along with central government. Micro-finance business really supports people with financial help where the formal banking system is not available.

Small business owners don't get the loan from the banks due to the complex process of banks. Now days a Section 8 Company is replacing the Trusts and Co operative Societies for their Easy Compliances, Transparent Process, Avoiding Complexities and Corporate Culture.

Unlike Trust and Co-operative Societies, Section 8 Companies are digital friendly as from the Registration to Operation, everything is digitalized for Section 8 Company.

The India's endeavor to be a top most country in the Ease of Doing Index can be very well seen in the working style of Ministry and Approach of Ministry towards granting of Approvals and other relaxations to Section 8 Company.

In this article we have incorporated the brief overview regarding micro finance company, its objectives, and its registration and the benefits and drawbacks of Section 8 Company having Main object of Micro Finance.

We have tried to capture all the aspects related Micro Finance Business through Section 8 Companies by way of Question Answer Mode in very simple language and with limited reference of clause, section, circulars, provision and other notifications to make it convenient reading for all the Tax Professionals.

What is the meaning of MFIs (Micro Finance Instituitions)?

Micro finance also known as micro credit. Microfinance is a form of financial service which provides small loans and other financial services to poor and low-income households. It is an economic tool designed to promote financial inclusion which enables the poor and low-income households to come out of poverty, increase their income levels and improve overall living standards. It can facilitate achievement of national policies that target poverty reduction, women empowerment, assistance to vulnerable groups, and improvement in the standards of living.

Who can provide micro finance services?

Microcredit is delivered through a variety of institutional channels viz.,

(i) scheduled commercial banks (SCBs) (including small finance banks (SFBs) and regional rural banks (RRBs)) lending both directly as well as through business correspondents (BCs) and self-help groups (SHGs),

(ii) cooperative banks,

(iii) non-banking financial companies (NBFCs), and

(iv) micro finance institutions (MFIs) registered as NBFCs as well as in other forms.

What is the object of section 8 company providing micro finance services?

The main object of the section 8 microfinance companies are to reduce the poverty in the country, they facilitates the hassle-free loans without more paper works and procedures.

Registration of microfinance companies under section 8 is the most suitable option when you want to start a finance business across India without RBI approval and capital restriction.

Feature of Section 8 company with object of Micro Finance:

- No need for RBI Approval.
- No need for minimum capital.
- Minimum compliance.
- Legal finance business
- The Lenders can sue the defaulter in case of default of nonpayment of loan amount.

Whether Section 8 –Non Profit micro finance company(MFIs) have to get license from RBI?

As per RBI master circular RBI/2015-16/15 DNBR (PD) CC.No.052/03.10.119/2015-16 dated July 01 2015 has exempted all the Companies registered under Section 8 of Companies Act, 2013 and engaged in micro finance activities to get itself registration from RBI portal.

The reference of Circular is given as under;

Ø ***Exemption from Sections 45-IA, 45-IB and 45-IC of the RBI Act, 1934 to a micro finance company which is-***

(a)engaged in micro financing activities, providing credit not exceeding Rs. 50,000 for a business enterprise and Rs. 1,25,000 for meeting the cost of a dwelling unit to any poor person for enabling him to raise his level of income and standard of living; and

(b) Licensed under Section 25 of the Companies Act, 1956/ Section 8 of the Companies Act, 2013; and

(c) not accepting public deposits as defined in paragraph 2(1) (xii) of Notification No. 118 /DG (SPT)-98 dated January 31, 1998.

What are the requirements for registration with RBI?

A company incorporated under the Companies Act, 1956/2013 and desirous of commencing

business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934 should comply with the following:

i. It should be a company registered under the provisions of the Companies Act, 1956/2013

ii. It should have a minimum net owned fund of ₹ 200 lakh.

Comparison between Private/ Public Limited, Nidhi Company and Section 8 with respect to certain mandatory compliance of the Companies Act, 2013:

Sr.	Particulars	Nidhi Company	Private/ Public	Section 8
1	Form INC 20A for Commencement of Business	Required to file if having Share Capital	Required to file if having Share Capital	Required to file if having Share Capital
2	Form NDH-4 for Declaration of Nidhi Company	Nidhi Companies need to file Form NDH-4 before commencing any business, which takes lot of time to be Approved. Further Nidhi Company cannot file any other Forms if the Form is not Approved.	Not Applicable	Not Applicable
3	Registration with RBI	Exemptions Applicable	Private/ Public Companies intend to commence Business of Micro Finance need to take prior Registration of RBI and to maintain the requirement of Net Owned Fund of Rs. 2 Crore.	Exemptions Applicable

Drawbacks of Section 8 Companies:

Every coin has two sides and so the Section 8 Company has some drawbacks which are as follows;

- Section 8 Companies having business of Micro Finance cannot take public deposits hence it has to either depend on the shareholders or any other financial institution or Banks and Inter Corporate deposits.
- As it is not regulated by RBI and not having any minimum criteria for Net Owned Funds, multiple occasion have been witnessed by the regulators that the most of the frauds have been committed by this kind of Section 8 Companies.
- Section 8 Company once incorporate cannot be wound up unless it is converted to any other Format, hence the Directors shall be the responsible for all the non compliance either major or minor and it does not get the privileged like private companies which can be struck off easily by making striking off Application with ROC.

Conclusion:

As per the consultative Document on Regulation on Microfinance published on 14.06.2021 by RBI, there should be some criteria for Section 8 Companies for giving an Exemption and it proposed that the Section 8 Companies having Asset Size of Rs. 100.00 Crore and above shall be taken into consideration for mandatory Registration with RBI. However As per the information available in Bharat Microfinance Report, 2020, 90% of the Section 8 Companies engaged in microfinance activities shall continue to enjoy the exemption from registration requirement. Even if the RBI notifies the Regulation for Mandatory Registration for Section 8 Companies having Asset Size of Rs. 100.00 Crore and More, shall be given six months' time to comply with registration requirements including minimum net owned fund (NOF) criteria.

From the above, the Regulator is clear in its views that the Section 8 Companies having Asset Size of certain amount shall comply with the Regulatory Requirements as applicable to any other Company but the exemption shall continue to prevail to the closely held Section 8 Companies.

Ministry is even looking for Social Stock Exchange, which can even impact on the thought process of the Regulators to look further into these criteria where the public funds are going to infuse if the concept of the Social Stock Exchange gets commercialized.

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PROJECT FINANCE, SOURCE & CREDIT ASSESSMENT (PRE & POST)

CA Samirkumar S. Chaudhary

Introduction:

A famous quote "Money is not Everything, but Everything Needs Money"And as we all knows that Every Person or Business require finance to run successfully and there are different sources of getting Finance. Person can get finance either by getting from its own sources or they may approach some Financer to get the same. Financer can be someone from Near & Dear one, or it can be Formal or Informal method of getting finance. Here, in today's article we are going to discuss on different aspect of getting Finance from Banks, and what point one has to consider.So,let's start a *journey* to know more about Finance.

What Is Project Finance?

- In simple terms, Project Finance is referred as facilities withBanks/NBFCs and other financial institutes.Under such facilities Banks/NBFCs advancesmoney to Businesses for its funding needs.
- Project finance is the funding (financing) of long-term infrastructure, industrial projects, and public services using a non-recourse or limited recourse financial structure. The debt and equity used to finance the project are paid back from the cash flow generated by the project.
- Project financing is a loan structure that relies primarily on the project's cash flow for repayment, with the project's assets, rights, and interests held as secondary collateral. Project finance is especially attractive to the private sector because companies can fund major projects off-balance sheet (OBS).

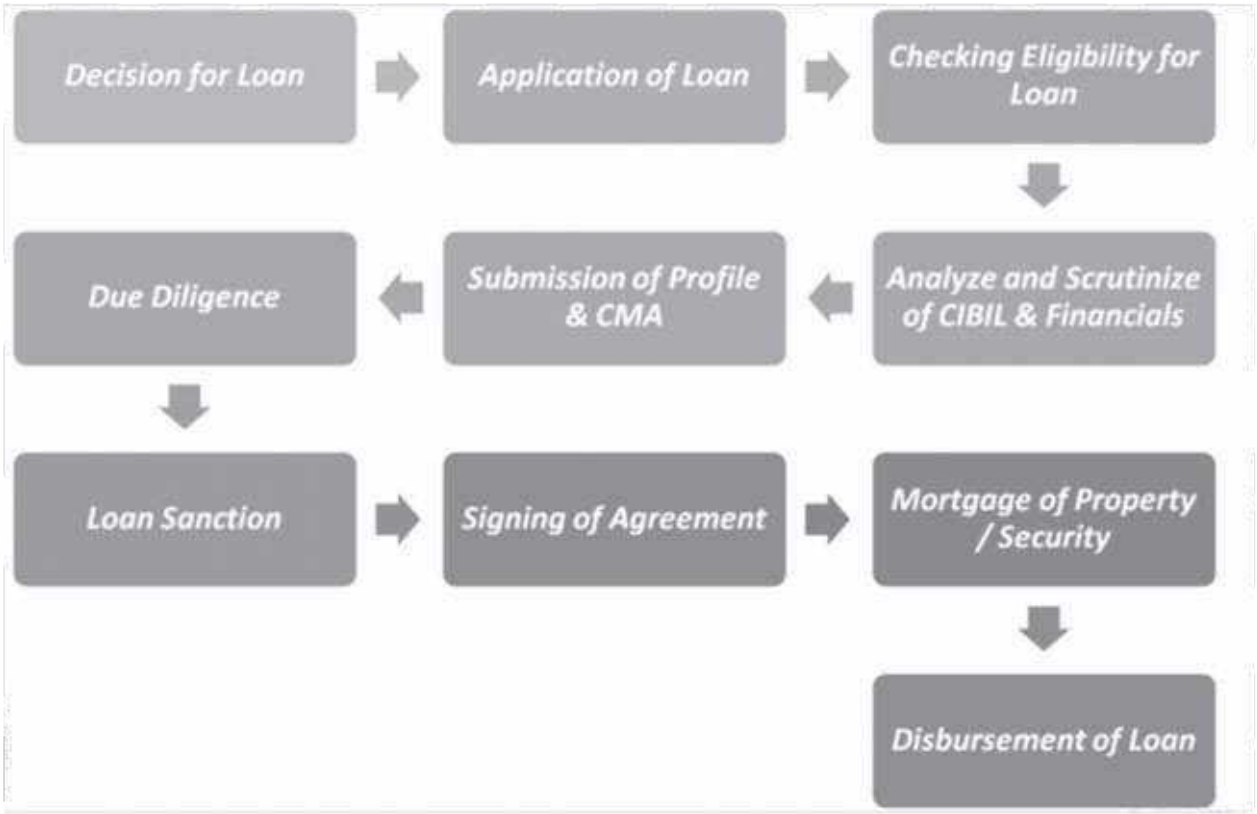
Documents required for application of Finance:

- If an assessee applies for Finance, assessee or consultant faces lot of issue with respect to documents. And if all the documents list is kept at one place, it's going to help and also its process will be easy and faster. For the same following are the Checklist of Documents required to apply for Project Finance/Business Loan:
- Application for loan (Applicable for Applicant and Co-Applicant)
- Pan Card
- Address Proof (Adhaar Card/ Voting Card/ License/ Passport) any 2 of Both

- Bank statement of last 12 months of Both
- Electricity Bill and Municipality Tax Bill of Home and Office (Rent agreement if any property of Rent)
- Last 3 years ITR with Financials of Entity and Applicant and co-applicant (In case of Business Return) or Form 16 (In case of Salary Return)
- Business Proof for e.g., GST Registration, Professional Tax or Shop & Establishment Certificate, Udhyam Registration Certification (MSME)
- GST Return of Last 12 months (if applicable)
- In case of Company MOA & AOA, Certificate of Incorporation, Directors Documents, Bank Statement
- In case of Partnership Firm/LLP> Partnership Deed/LLP Deed, Firm Pan, ROF Certificate, Bank Statement

Process of Loan

It will be really easy for one to summarize the whole process of Loan, and once one understands the same, it will be easy to process the same, The Process of Loan is described as under:



How to apply for Project Finance/Business Loan?

- The process of getting Finance or Loan can be considered as an Art. It is obvious that there is a requirement of technical knowledge, but presenting oneself to the Banker or Financial Institution is an Art. Since it is always said that "FIRST IMPRESSION IS ALWAYS THE LAST IMPRESSION". And this quote makes a remarkable impact when processing for Loan. Other documents that are required for the same are as follows:

- One has to submit a detailed Projection (Credit Monitoring Assessment also said as CMA), Profile of the Borrower in detail, Financials and Audit Report (if applicable), KYCs of key persons/business, with other required documents tobanks/NBFCs to get the loan approved.
- Based on the submitted reports and documents,Banks analysesthe creditworthiness of the applicant.
- Banks after assessment of creditworthiness, check for the legal and technical of the Property offered to Bank as a Primary or Collateral Security.
- Once the Legal and Title of the Property matches the criteria of Bank, and after considering all other Norms, Bank offers Sanction Letter to the Borrower.
- After Signing of the respective documents, and mortgaging the Property (if required) the Bank disburse the Funding to the Borrower.

Importance of CIBIL in getting Finance:

- CIBIL score plays a major role when applying for Finance.
- Your CIBIL score acts as the first impression for the lender, the higher the score, the better chances of the loan/credit card being approved.
- A CIBIL score helps determine your creditworthiness which in turn will help you avail loans faster and easier.
- When a borrower applies for a loan or credit card at a bank or a financial institution, the lender checks the credit or CIBIL score first to determine if the applicant is eligible to avail the loan. The lender will not consider or reject an application if the CIBIL score doesn't meet their expectations or if it's too low.
- On the contrary, higher the CIBIL score higher the chances to get quick loan, and in many cases, Bankers offers some benefits since I always believe that *CIBIL is a Financial Kundli of the Borrower.*

Post Sanction:

- Once Loan is disbursed by Bank, the Bank follows post sanction process to ensure smooth flow of Loan and its interest. The Post Sanction process includes following sub-processes:

- Documentation of the Facility and after care follow up.
- Execution of Mortgage agreement and handing over of original documents of mortgaged property.
- In case of pledging, gold and other valuables are pledged with lender as Post Sanction Process.
- Creation of charge over security and completion of relevant formalities with ROC in case of Company
- Supervision through monitoring of transactions in loan account
- Scrutiny of Periodical statements submitted by borrower
- Physical inspection of securities and Books of Accounts of Borrower
- Periodical reviews and renewals

Objectives of Post Sanction:

- To ensure compliance with terms and condition of sanction
- To ensure that the assumptions on the basis of which the credit decision were made were correct
- To ensure end use of funds
- To ensure adequacy of credit on an ongoing basis depending upon the actual requirement of the borrower

Conclusion:

From the above one can understand, that Project Finance is a Lucrative field and its process is not hard. And it gets very less time considerably than other work area, and once it is Sanctioned & Disbursed, there won't be any liability for the person who is providing Consulting for the same. And even Borrower would be happy to get such service. And it is need of an hour.

In case of any query or feedback, author can be connected to samir@cachaudharyshah.com









ALL GUJARAT FEDERATION OF TAX CONSULTANTS

GLIMPSES OF GEMS

President Mr. Kartikey B. shah, Past President Dhruven V. Shah, Past President Shri Dhireshbhai T. Shah, Co-opt Member Shri Ratilal Vaghasia & Hon. secretary Shri Dhruvin Mehta felicitating Pr.CCIT – Shri Ravindrakumar at his chamber.

President Mr. Kartikey Shah,Senior Vice president Mr. Hiren R. Vakil,Past President Shri Dhireshbhai T. shah, Past President Shri Bakulbhai I. shah, Vice president (Ahmedabad zone) Shri Vishvesh Shah, Shri Ashutosh Thakkar and Hon. Treasurer Shri Shivam Bhavsar welcoming Shri Ravindrakumar Hon'ble Pr. PCIT on his assuming charge at ahmedabad at his chamber.

President, Senior Vice President & all committee members presenting appreciation award to Outgoing President Shri Bharatbhai Sheth on recognition of his services to the AGFTC.

President Mr. Kartikey B. Shah handing over the cheque at Second Moffusil Programme held at Nadiad.

GLIMPSES OF GEMS

President Mr. Kartikey B. Shah handing over the cheque to President of Income Tax Bar Association Bhavnagar Mr. CA Prem Gopalani and President of Sales Tax Bar Association Bhavnagar Mr. Dipak Jani on First Moffusil Program held at Bhavnagar. Also seen from left to right Past President Shri Dhruven V. Shah, Hon. Secretary Shri Dhruvin Mehta, IPP Shri Bharatbhai Sheth, Senior Vice President Shri Hiren R. Vakil, Shri Maulik Patel, Narendra Karkar, Ashutosh Thakkar, Ramesh Trivedi & Shivam Bhavsar.

Senior Vice President Mr. Hiren R. Vakil & IPP Mr. Bharatbhai Sheth presenting Memento to Faculty Shri CA Divyang Shah at First Moffusil Program held at Bhavnagar. President Mr. Kartikey B. Shah clapping the event.

Past President Shri Dhruven V. Shah & Vice President (Saurashtra Zone) Shri Ramesh Trivedi presenting memento to Learned Faculty CA Punit Prajapati at First Moffusil Program held at Bhavnagar.