



# The Institute of Chartered Accountants of India Raipur Branch of CIRC

ENTERING  
**70**<sup>th</sup>  
YEAR  
CELEBRATION



**April - June 2018**  
Quarterly Newsletter



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**CA SURESH AGRAWALA**  
Chairman



**CA YOGESH PUROHIT**  
Secretary



**CA AMITABH DUBEY**  
Vice Chairman



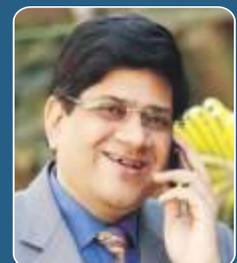
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**CA AMIT CHIMNANI**  
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**CA M.M. UPADHYAY**  
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**CA ABHAY KU. CHHAJED**  
Ex-Officio Member

# Message

## ICAI Raipur Branch Chairman's Communication

Respected Members,

I deem it to be a privilege and honor to share my thoughts in this Communiqué. At the outset I thank all the members of the branch for their support and belief. Also I acknowledge and appreciate all the past chairman and senior members for their valuable contribution to make the Raipur branch a Vibrant one

During The last three months with the support of all the members we have organized too many seminars, workshops, lecture meeting & study circle meetings. Our basic intention is to update the members with all these activities covering all most all the areas of professional practice. Our motive is to provide the best professional atmospheres among members through various activities and communications.

We are trying to organize all these seminars with various committees of ICAI and Central India regional council (CIRC) as well

Our activities were graced by the presence of Central Council members Ms Kemisha Soni Ji, Shri Manu Agrawal Ji, Prakash sharmaji and our CIRC Chairman Shri Gyan Chand Mishra Ji.

We have organized back to back two Seminars on Bank audit with overwhelm response, Seminars on GST with a new thought area, i.e. "Sectoral Seminar on GST", Update the members with "Practical workshop on EXCEL", "Seminar on RERA" graced with the presence of Registrar RERA chhatisgarh Shri Ajay Agrawal Ji. Beside this we have organized seminars on corporate affairs, ICDS, different topics on Income tax and GST. We have also conducted post qualification course on "DISA" and plan to organize another Certification course on "IND-AS" in the month of July.

Further we have organized a National Seminar 'AVSAR' with Bhilai Branch of CIRC at Bhilai graced by the presence of Cabinet Minister of Chhattisgarh Govt. Shri Prem Prakash Pandeyji and Union Minister Shri Arjun Ram Meghwal Ji.

We were invited by the Income tax Department Raipur to be a part of the "jan mitra Abhyan" and gave an opportunity to share our views in behalf of all the members.

Wishing you all "HAPPY CA DAY", we are going to celebrate 69<sup>th</sup> Foundation day of our Institute on 01.07.2018, this time we will celebrate the occasion throughout the week that is "CA WEEK 1<sup>st</sup> July to 7<sup>th</sup> July 2018". Must be part of the each and every occasion of the celebration and feel proud to be a Member of the Esteemed Institution.

We are always committed to be updated for the benefit of members, students and society.

Thank You!



**CA SURESH AGRAWALA**  
Chairman

# Secretarial



**CA YOGESH PUROHIT**  
Secretary

Hello  
Dear Professional Friends,  
Heartiest Greetings on the occasion of CA Day!  
We all are celebrating the beginning of the 70th year of the establishment of our glorious profession. We at Raipur branch will be celebrating "CA Week", where we will be conducting various programs and events throughout the week beginning from 1st of July. I encourage you all to participate widely and update yourselves.  
Also, Raipur Branch is organising "CA Students Conference" on the 15th and 16th of July, and I urge you to ensure maximum participation of the students in touch with you. This is a national level event, and Raipur has got the opportunity to host it after 2015. I am sure the working teams shall leave no stone unturned to make it a grand one.

With Warm Regards!

## From the Desk of the Editor



**CA MAHAVIR PRASAD JAIN**  
Editor

Dear Members,  
Hope you all are doing well!  
It is my great pleasure to present to you this newsletter on the occasion of the 70<sup>th</sup> CA Day.  
I thank all the members who gave their contributions for this newsletter, and helped in making it a great learning resource.  
I also encourage other members to contribute their valuable knowledge in the form of Short Articles, for the benefit of all members.  
Please e-mail your write-ups to – prakharjain2244@icai.org, along with your Full Name, Membership No, and a Photograph.

With Warm Regards!



## NEW DIMENSIONS IN REASSESSMENT UNDER INCOME TAX LAW

### INTRODUCTION:

1. Under the Income tax act, the tax authorities have specifically been granted the power to assess or reassess income that has escaped assessment. Although there are restrictions placed upon tax authorities before they are empowered to reopen concluded assessment, however in the present day scenario the reassessment proceedings have become rampant. Prior to the decision of Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. vs ITO (2003) 259 ITR 19, it was generally a prevalent practice, that the taxpayers were not intimated the reasons as to why the assessment was sought to be re-opened. Taxpayers were kept in oblivious as to the reasons recorded for initiating reassessments proceedings and in one instance the revenue even took nine years to disclose the reasons so recorded in support of the action of re-assessment and ultimately the court found that the reasons were sketchy and did not have proximity with the escapement of income, hence such proceedings were quashed by the High Court. As such the assessing officers completed the

assessment without any restriction and as a result the taxpayers were left with no choice but to challenge the same only after completion of reassessment that too, in the appellate proceedings as such the taxpayers were also prompted to challenge the notice issued under section 148 by an appropriate writ.

However, with the landmark judgment of Hon'ble Supreme Court in GKN Driveshaft the agonies of the taxpayers were adequately taken care of and the sub-standard practices prevailing in the income tax department came to a grinding halt. Before proceeding with the subject proper let us look at the Law so laid down by the Hon'ble Supreme Court in GKN Driveshaft India Ltd.'s case.



CA PRAFULLA PENDSE

### LAW ENUNCIATED BY THE HON'BLE SUPREME COURT IN GKN DRIVESHAFTS:

2. Hon'ble Supreme Court in GKN Driveshafts case has laid down the following procedure for reassessment proceedings under the Income-tax Act, 1961:

1. Where a notice under section 148 is issued, the assessee is required to file the return in pursuance of said notice.
2. The assessee may seek the reasons for issuing such a notice from the Assessing Officer.
3. On receipt of such request the Assessing Officer is bound to furnish the reasons within a reasonable time.
4. After the receipt of reasons, the assessee has a right to file objections, if any, against the issuance of the said notice.
5. Once objections are filed by the assessee, it is mandatory for the Assessing Officer to dispose of the same by a speaking order.

Now with the passing of above said judgment the assessee is first required to lodge preliminary objection before the Assessing Officer who is bound to decide the preliminary objections to issuance of

the re-assessment notice by passing a speaking order. If the order framed on the preliminary objections is still against the taxpayer, the taxpayer will be entitled to challenge the same by filing a writ petition. In this way the taxpayer will not have to wait till completion of the re-assessment proceedings and the same can be challenged as soon the order disposing off the objections is passed. In this way the difficulties of the taxpayer have greatly been reduced as the genuine issues can now be settled without any further wastage of time and money. At the same time the possibility of improving upon or supplementing the reasons so recorded before issue of notice is also considerably diminished because the assessing officer is obliged to provide the reasons so recorded within a reasonable time once a valid request is made by the taxpayer. It has to be kept in mind that the Hon'ble Delhi HC in Haryana Acrylic Manufacturing case has held that 'within a reasonable time' as used by Hon'ble Supreme Court cannot be stretched to such an extent that it extends beyond six years stipulated in section 149. However, in order to permit the taxpayer to challenge the order of rejection, Hon'ble Bombay High Court has held in Asian Paints Ltd. vs DCIT (2008) 296 ITR 96 that after disposing off objections the assessing officer should not proceed with assessment for four weeks thereafter. Now the assessing officer is now duty bound to pass a speaking order against the objections raised by the taxpayer. In simple terms a speaking order is an order that speaks for itself and which stands the test of legality, fairness and reason. It means that authorities must record the reason for arriving at the conclusion whether for or against after considering all the relevant material / submissions filed by the taxpayer. In this way restraint has been placed on the possible abuse of reassessment proceedings by the dictum of Hon'ble Apex Court in GKN Driveshafts case.

### **MUCH NEEDED DEVELOPMENTS IN LAW RELATING TO REASSESSMENT :**

3. Although the dictum laid down by Hon'ble Supreme Court in GKN Driveshafts case have

already reduced the difficulties of the taxpayers in the matter of reassessment proceedings, however, the latest decision of Hon'ble Delhi High Court in Sabh Infrastructure Ltd. (rendered on 25.09.2017) have also added new dimension to the existing legal position as regards reassessment proceedings. While quashing the reassessment proceedings under section 147 of the income tax act Hon'ble Delhi High Court have laid down few guidelines for tax department with regard to reopening of reassessment proceedings which were badly needed because of the rampant abuse of process of law on reopening of assessments.

Sabh Infrastructure Ltd being a taxpayer was engaged in the business of real estate development which had filed its return for AY 2008-09 at Rs.59.83 Lacs. During the under consideration the company had received share premium of Rs.400/- per share from five companies against nominal value of Rs.100/- per share. The case was selected for scrutiny and details of share application money received during the year were called for by the assessing officer in terms of his questionnaire. The taxpayer furnished the following details :-

- Details of companies from whom share application money was received.
- Confirmation from said companies.
- Copies of PAN cards and their return of income.
- Audited Financial Statements of said five companies.

Initially the assessment was completed without any discussion of share application money as there were no doubts in the mind of assessing officer with respect to the same. Subsequently after four years the assessing officer issued notice for reassessment under section 148 on the pretext that income has escaped assessment. That the assessing officer based on the letter of investigation wing of the tax department initiated reassessment proceedings. The letter of the investigation wing stated that the companies from whom taxpayer had received share application money were paper companies. The objection of the tax payer were rejected by the assessing officer. Before the Honble High Court the taxpayer sought the quashing of the notice issued

under section 148 of the IT Act and also the order passed by the assessing officer disposing off the objections filed by the taxpayer.

The Hon'ble High Court held that power to reopen assessment can be exercised after four years only if there is failure to fully and truly disclose all material facts and information. In the present case the names of said five companies, number of shares, share amount and share premium amount received from them etc. were initially disclosed by the tax payer during assessment proceedings. There was no new material found in the reasons to believe which was not disclosed by the taxpayer, hence the notice issued under 148 was quashed. The Court held that reasons to believe did not mention what fact or information was not disclosed by the taxpayer which was vital to the initiation of reassessment proceedings and if the revenue had any basis to show that primary facts were incorrect the same ought to have been spelt in the reasons to believe itself. It further held that the allegation that companies are paper companies without further facts is by itself insufficient to reopen assessment which have been closed under section 143(3) of the IT Act. Further the reasons to believe have to be self explanatory and cannot be thereafter be supported by any extraneous material. The order disposing of the objections or any counter affidavit before the High court in a writ proceedings cannot act as a substitute for the reasons to believe.

After quashing the proceedings for reassessment, Hon'ble Delhi High Court issued valuable guidelines to tax authorities as it was perceived by them that same errors are being repeated by revenue authorities in spite of numerous judgments on the issue. The Court therefore, went on to direct the revenue to adhere to following guidelines in the matter of reopening of assessments:-

1. While communicating the reasons for reopening the assessment, the copy of the standard form used by the assessing officer for obtaining the approval of the Superior Officer should itself be provided to the assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating

the reasons in a letter addressed by the AO to the assessee is to be avoided.

- *Providing copy of standard form will bring in desired sanctity to the reopening proceedings.*
- *Possibility of improving upon or supplementing reasons to believe so recorded by assessing officer is negated.*
- *Whether the sanction of superior officer is mechanical or otherwise can be ascertained with reasonable certainty.*

2. The reasons to believe ought to spell out all the reasons and grounds available with the assessing officer for reopening the assessment, especially in those cases where the first proviso to section 147 is attracted (i.e. where four years have lapsed from the end of the relevant assessment year).

" The assessing officer has to categorically mention in the reasons to believe itself as to what primary facts or information was not disclosed by the assessee i.e. there has to be an undisputed allegation and not a vague or arbitrary one. Once primary facts are disclosed and which are not shown to be false then the reopening is not justified.

3. The reasons to believe ought to also paraphrase any investigation report that may form the basis of the reasons and any enquiry conducted by the assessing officer on the same and, if so, the conclusions thereof.

- *The assessing officer has to expressly state with more clarity the contents of investigation report which are the basis of reasons to believe and which are relevant to the assessee.*
- *The assessing officer has also to state his conclusions based on enquiry conducted by him so that the taxpayer is acquainted with what is going on the mind of the assessing officer.*

4. Where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such a report should be enclosed along with the reasons.

- *The assessing officer is now required to enclose copy/extracts of relevant portions of report/ document*

which are referred to in the reasons to believe thereby enabling the taxpayer to understand the precise nature of allegation against him.

5. The exercise of considering the assesses objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion.

- *The assessing officer is obliged to pass a speaking order by objectively determine the facts and drawing conclusions there from based the principles of natural justice.*

- *The assessing officer is obliged to deal with each objection of the assessee and is not supposed to reject the contentions of the assessee in a summary manner.*

6. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

- *The assessing officer is hereby been advised that improving upon or supplementing reasons already disclosed to the assessee is not permissible.*

#### **CONCLUDING REMARKS :**

4. The Hon'ble Delhi HC in its divine wisdom have enshrined some crucial guidelines to be followed by the revenue authorities so as to apply breaks on the routine practice of reopening of assessment which would ultimately curtail unwanted litigation. This ruling of the Hon'ble High Court was a much awaited Law on the subject as on the one hand it lays down what information and documents are to be supplied to the tax payers and on the other hand directs the revenue authorities to adopt a judicious approach while maintaining desired integrity and discipline in the functioning of the tax department.

The Law laid down by Hon'ble Supreme Court in GKN Driveshafts and the guidelines framed by Hon'ble Delhi High Court in Sabh Infrastructure Ltd. as discussed above should be codified and made part of the statute book which will eventually result in proper administration of justice. Off late Hon'ble Bombay High Court in KSS Petron Private Limited vs ACIT rendered on 03.10.2016 has held that where

the assessment order is without jurisdiction because the law laid down by the Apex Court in GKN Driveshaft has not been followed, reopening proceedings have to be invariably quashed and there is no reason to restore the issue to the assessing officer to pass fresh order, as the same would lead to unnecessary harassment of the taxpayer by reviving stale matters. Although the decision of any other High Court has a persuasive or has advisory value but Hon'ble Bombay High Court in CIT vs T. Maneklal Mfg Co Ltd (1978) 115 ITR 725 has also observed that the Income tax Act being an all India statute, uniformity in the construction of its statutory provisions is eminently desirable and the considered opinion of any other High Court should be followed unless there are overriding reasons for taking a divergent view. It is therefore, urged through this write up that the immediate steps should be taken by Legislature and/or Judiciary so that the guidelines enunciated by Hon'ble Delhi High Court in Sabh Infrastructure are either made part of the statute book or else at least followed by tax officials in letter and spirit so that it brings in the desired transparency and also inculcate fairness in the administration of tax laws.

#### **Note :**

- Our comments are referred to in these bullets.

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# JOB WORK



## **WHAT IS JOB-WORK?**

Section 2 (68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

## **REGISTRATION REQUIREMENT -**

Sec 22.(1) of CGST Act -Supplier liable to be registered in the State or Union territory, other than special category States, from where he makes a taxable supply, if his aggregate turnover in a FY exceeds 20 lakh rupees. (Where such person makes taxable supplies from any of the special category States, he shall be liable to be registered if his aggregate turnover in a FY exceeds 10 lakh rupees.

## **AGGREGATE TURNOVER FOR JOB WORKER -**

Explanation to Sec 22 - The supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

## **JOB WORK PROCEDURE.**

Despatch of Taxable Goods without payment of Duty to job worker by



**CA YOGESH PUROHIT**

the Principal -

Sec143. Intimation Required -

A registered person "principal" may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise.

**Sec 19 - The taxable goods can be despatch by principal from his stock at any place or from supplier directly to job worker.**

SENT THROUGH CHALLAN - The inputs, semi-finished goods or capital goods shall be sent directly to the job worker under the cover of a "Delivery Challan", whose contents are specified in the Rules.

COPY OF CHALLAN - 3 copies, one each for CONSIGNEE, TRANSPORTER and CONSIGNER.

Intimation Contain & Submission -

Description of inputs intended to be sent ( Input / Capital Goods)

- Nature of Process to be carried out by the job-worker.
- Use of the capital goods in the processing carried out by the job worker.
- Submitted to the Jurisdictional Officer.

In case goods are to be sent to another job-worker, the letter of intimation shall indicate the name & address of another job worker.

Required DECLARATION IN GSTR 1 (Monthly Return of outward supply)

The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the 25th day of the month succeeding the said quarter.

Conditions - Return of Goods within prescribed time limit.

WITH IN ONE YEAR & 3 YEAR - bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and

fixtures, or tools, within 1 year and 3 years, respectively, of their being sent out, to any of his place of business, without payment of tax, or supply from place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be :

The job worker after processing can clear the goods to -

1. Another job-worker for further processing
2. Send the goods to any of the place of business of the principal without payment of tax
3. Remove the goods on payment of tax within india or without payment of tax for export outside india. Subject to complying with the conditions.

**IF GOODS NOT RETURNED - IT WILL BE TREATED AS SUPPLY BY PRINCIPAL TO JOB WORKER**

Where the inputs or capital goods are not returned to the principal within the time stipulated ( 1 year in case of inputs and 3 year in case of capital goods )in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

**EXTENDED MEANING OF INPUT -**

Where certain process is carried out on the input before removal of the same to the job worker, such product after carrying out the process is to be referred as the intermediate product. Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of duty to job-worker.



# ANTI PROFITEERING

## A BLENDED BASKET FOR REAL ESTATE

Real Estate sector has been embroiled in disputes due to ambiguity in provisions as well as multiple taxation. This sector saw a turbulent spell with the parallel roll out of Goods and Services Tax ("GST") and Real Estate Regulatory Authority ("RERA"). RERA mandated all builders and developers to register their new and ongoing projects with the Regulatory Authority till May, 2018 and also providing quarterly status of the project. On the other hand, GST aims to streamline the taxation structure in the country and replace a gamut of indirect taxes with a singular GST to simplify the taxation procedure. However, one needs to analyze whether the picture is as rosy as it is portrayed.

To bring to rest the anomaly orbiting multiple taxation, construction activity has been explicitly treated as a 'supply of service'. Further, benefit of full Input tax credit ("ITC") has also been extended as opposed to the scenario under erstwhile regime where credit of VAT was not available. As it is rightly said that every coin has two sides, the inception of GST came along with its set of difficulties for the real estate sector. Tax rate has been increased to 12% (when land value is included in the agreement) opposed to the tax of 5.5% (1% VAT + 4.5% Service tax) - such increase in output tax cannot be offset by the availability of ITC on its procurements. Further, GST has been imposed on barter transaction which increases the tax burden in case of joint development agreements, construction services against TDR etc.

Prima Facie it appears that the tax rate under GST i.e., 12% resulted in a steep increase on the value of properties. However, the GST council believes that the real estate sector is having a lower incidence of GST as compared to a plethora of central and state indirect taxes suffered by them under the erstwhile regime.

In this regard, it may be noted that the GST Act contains an anti-profiteering clause requiring the builder to pass on the benefit arising on account of implementation of GST such as an increase in input credits, etc. by way of reduction in the price of the goods/services so that the benefit of reduction in tax can be availed by the final consumer. The relevant extract of Section 171 of CGST Act which provides for Anti-profiteering clause is reproduced below -

"(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."



CA SAMYAK JAIN

Further, it is important to note that the Government has issued FAQ's and press releases for Real Estate sector wherein they have categorically mentioned that there has been no increase in tax cost under GST for Real Estate on account of additional credit that may be available to a Developer and therefore any additional money collected from Customer towards taxes will be considered as Anti-profiteering.

Though the above claim from the Government may not be completely true, the fact that the introduction of GST has brought changes in the credit position and hence resulted in additional credit availability to the real estate sector cannot be overruled. Additionally, the acts of the Government in the context of the real estate sector are indicative of a focused approach of the Government in the context of real estate sector.

Therefore, builders are expected to pass on the benefits of lower tax burden considering full input tax credit is available for offsetting the headline rate of 12% to the buyers by way of reduced prices.

Further, real estate developers are likely to be the first to face investigations by the new anti-profiteering watchdog for allegedly denying the consumers benefit of reduced tax burden under the GST regime. Therefore, it becomes imperative to compute the savings which is likely to be available to the real estate developers on account of introduction of GST and pass on the same to the customers in order to avoid future litigation

### CONCLUSION

This sector has been reflecting a negative growth in last few years and with the genesis of GST, the Real Estate Sector is racing against time to get things resolved. It is necessary that the Government issues appropriate guidelines which would reduce the litigation in future and assist this sector for smooth and effective evolution.

# THE REAL ESTATE

(Regulation and Development)  
Act, 2016 (RERA, 2016)



CA PRAVEEN JAIN



## INTRODUCTION:

"Chhattisgarh Government has notified RERA rules with effect from May 1, 2017 and established Chhattisgarh Real Estate Regulatory Authority (CGRERA), vide Notification No. F 7-13/2017/32 dated 29 April 2017. Under this all the ongoing projects, completed projects which have not received Completion Certificate till May 1, 2017 were required to be registered by June 30, 2018. Henceforth no project shall be launched or invite customer advance or make advertisement before obtaining RERA Registration."

## REAL ESTATE PROJECTS REGISTRATION

- A.** All commercial and residential Real Estate projects will have to register, except in projects where.
- area of land proposed to be developed does not exceed five hundred square meters.
  - number of apartments proposed to be developed does not exceed eight, inclusive of all phases.
  - promoter has received completion certificate for a Real Estate project prior to commencement of this Act.
  - for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the Real Estate project.
- B.** No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any Real Estate project or part of it, in any planning area within Chhattisgarh,

without registering the Real Estate project with the Chhattisgarh Real Estate Regulatory Authority (CGRERA). Promoter of ongoing Real Estate projects, in which all buildings as per sanctioned plan have not received Completion Certificate, shall also be required to be registered for such phase of the project which consists of buildings not having occupation or completion certificate.

- C.** If any promoter fails to register as per Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the Real Estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the Real Estate project, or with both.
- D.** Apart from Registration, the promoters shall be required to provide quarterly updates on the status of the project to the authority.

## REGISTRATION FEE UNDER RERA :

Type of Project	Land Area		Maximum Limit
	Upto 1000 sq. mt.	Exceeds 1000 sq. mt.	
1. Group housing Projects	Rs. 5 per sq. mt.	Rs. 10 per sq. mt.	Rs. 5 lakhs
2. Mixed Development (Residential & Commercial)	Rs. 10 per sq. mt.	Rs. 15 per sq. mt.	Rs. 7 lakhs
3. Commercial Projects	Rs. 20 per sq. mt.	Rs. 25 per sq. mt.	Rs. 10 lakhs
4. Plotted Development projects	Rs. 5 per sq. mt.		Rs. 2 lakhs

### **WITHDRAWAL FROM DESIGNATED BANK ACCOUNT :**

If Rs. 100 (From Allottee) ➔ Minimum Rs. 70 to RERA Designated Account ➔ Trf. to Project operating Account; Rest Upto Maximum Rs. 30 to Non-RERA Account.

### **FILING OF COMPLAINTS :**

Any aggrieved person may file a complaint with CGRERA or the adjudicating officer, as the case may be, with respect to any registered Real Estate project, for any violation or contravention of the provisions of this Act or the rules and regulations made there under.

### **FINANCIAL DISCIPLINE :**

The Act strives to ensure greater financial discipline in the Real Estate sector. Some of its provisions are as follows:

- A.** A promoter shall not accept more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale.
- B.** Seventy per cent of the amounts realized for the Real Estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.
- C.** Withdrawal from such accounts shall be in proportion to the percentage of completion of the project, which shall be certified by an engineer, an architect and a chartered accountant in practice.
- D.** Promoter to compensate buyer for any false or incorrect statement with full refund of property cost with interest.
- E.** Project Accounts to be Audited / Financial Year. Copy to be submitted to CGRERA.
- F.** Provision for CGRERA to freeze project bank account upon non-compliance.
- G.** Provision for stronger financial penalties for CGRERA non-compliances.

### **PECULIARITIES:**

- A.** Fees of RERA Registration is irrespective of FAR/FSI Limits and irrespective of the Constructed Area. The Fees has to be calculated on the basis of Size of the Land on which Construction / Development Activity is being carried out.
- B.** There can be more than 1 RERA Registration for a Single Layout Approved, but same is not vice versa.
- C.** Registrants under RERA:
  - I** Promoter
  - ii.** Co-Promoter

iii. Real Estate Agent.

**D.** Co-Promoters under RERA:

- i.** Landowner and Investor Partners to be termed as Co-Promoters
- ii.** Sale proceeds given to such Co-Promoters not to be considered as Cost of the Project and not to be withdrawn from RERA Bank Account
- iii.** Liabilities of Co-Promoters can be restricted to arrangement/agreement with the promoter
- iv.** However, for Withdrawal from Designated Bank Account, they shall be at par with the Promoter
- v.** Co-Promoter in Land Sharing will have to open Separate Bank Account

**E.** As per Circular 9 those Completed projects requiring registration under RERA registration need not require Architect or Engineer Certificate.

### **PRACTICAL DIFFICULTIES FOR BUILDERS :**

- A.** The Projects which did not receive Project Completion Certificate prior to 01.05.2017 but are complete in all respect although completely/ partially sold needs to be registered under RERA.
- B.** To Obtain Completion Certificate from the Local Authority. However if Project is completed but not in accordance with the approved Layout, it would be difficult to get Completion Certificate.
- C.** Not only Interest will be liable for the Default of the Builder but same is leviable to the Allottee @ SBI Prime Lending Rate plus 2%.
- D.** Henceforth, No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.. Re Authority shall have the sole power.
- E.** All the Agreement to Sale shall now mandatorily mention Carpet area of the property, irrespective of Value determination as per Builtup Area or Super Builtup area.
- F.** Carpet area means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. [Sec. 2(k)]
- G.** Compulsory Maintenance of Property for 5 years from the date of Sale shall be borne by the Seller in case of Structural defect, deficient quality.
- H.** Transactions only with Registered Real Estate Agents.

# ROLE OF CHARTERED ACCOUNTANTS

Under Real Estate (Regulation And Development) Act, 2016



CA VINAY ARORA

Due to rapid growth in real estate sector, need for buying the house increase but the demand and supply is inversed due to delays in approval of project which in turns let to dispute. So there is need for act established and RERA estate Act is passed by the government.

Objective of the act is To Maintain Transparency and ensure disclosure of real estate projects by promoters and developers. Registration of real estate project and real estate agents for which Separate circulars is passed from CG Registrar office from time to time and complaint redressal.

Under RERA All commercial and residential real estate projects will have to register if

- Area of land proposed to be developed is more than five hundred square meters or
- More than eight apartments inclusive of all phases
- The promoter has not received completion certificate for a real estate project/phase of the project prior to initiation of this Act.

" Any alternation or deed in the real estate project which involve marketing, advertising, selling or new allotment of any apartment, and plot or building

The Act provides that liability of promoter to compensate the buyer if any false or incorrect statement is given in regards to real estate properties. Further the Project must be audited every FY and a copy of same is to be submitted to State RERA Authority and without written agreement for sale and register the same no promoter can accept more than 10% of cost of plot, apartment or building as an advance or application fee from a buyer.

Further 70% of the amount realized for real estate project from allottee/buyer shall be deposit by the promoter in a Separate account called escrow account to be maintained at Scheduled Bank to cover land cost and cost of construction. Further a Certificate from Chartered Accountant in practice is required if fund withdrawn from such Escrow account which should be in proportion to percentage of completion of the project.

Moreover the Act also envisages Penalty in case Promoter not received completion a penalty levied which may extend up to ten per cent of the estimated cost of the real estate project and if the promoter violates the rules continuously then he shall be punishable with imprisonment up to 3 years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project or both.

On 15th march 2016 Lok sabha present the bill and it received the assent of the President on 1st May 2016. The Act came into force. RERA Rules in Chhattisgarh are notified on 31st October 2016. In Chhattisgarh. RERA supposed to implement from 1st May 2017 and till date more than 100 projects get registered themselves under RERA. Till 31st May 2018, Total 847 Real estate project applications has been received by RERA CG. 11 circulars has been issued till date. As per latest circular no. 11 dated 13.06.2018 direction regarding loan disbursement to banks in Real estate Projects whose application is pending in RERA is extend to 15th July 2018 for loan purpose as per policy. Onwards 15th July 2018 no loan disbursement can be done to those real estate projects by any banks who doesnot have valid RERA Registration Number. Regardless of agreement value Loan can be advanced only if agreement has been registered.



CA PRATIK BATHWAL

# GOING THE EXTRA MILE...!



The entire CA-student life is filled with variety of options to explore, numerous opportunities to grasp, improve ourselves to our best and push it further beyond; basically, everything to enhance our personality which is capable and competent to satisfy the market expectations. However, we often regret making the wrong choices- leading to the delay of "Chartered Accountant" prefix. Right?

Problems	Solutions
All spoon-feeding, No Self-Studies	Just attending the <b>classes</b> (Regularly, Obviously!!!) is <b>NOT enough...</b> Wo sirf aapko ghar ki study table ke layak banati h!
Subject-O-Phobia	"Subjects" ko <b>tough</b> hum banate h by NOT giving them the appropriate respect (time + efforts) they deserve.
Sincerity + Hardwork not upto the mark?	Trust me frnz, Intelligence is just the cherry topping on the cake, why ignore the importance of the entire base i.e. <b>Consistency</b>
Can't Retain/ Recall???	<ul style="list-style-type: none"> <li>✓ <b>Just Remember "The Forgetting Curve"</b>!(Google it now...)</li> <li>✓ Running Notes + Cumulative Revision/ Practice, Practice, Practice...</li> <li>✓ <b>No More Excuses!</b> If someone can manage all this, why can't you?</li> </ul>
Voluminous Syllabus	<ul style="list-style-type: none"> <li>✓ Of course! That's why its not for every mediocre!</li> <li>✓ Traditional studying practices might not suffice any longer</li> <li>✓ Its high time to switch to E-Books with annotating apps</li> </ul>
Olympics without Rehearsals? LOL!	<ul style="list-style-type: none"> <li>✓ <b>Unspoken rule:</b> 2 Mock tests per subject are mandatory. They were never optional!</li> <li>✓ Try taking some random tests, <b>virtually</b> (Just simulate the 15 min reading time) from Past Exam Question Papers</li> <li>✓ This will help you reinstate the level of consciousness required to reproduce a good quality answer few months later</li> </ul>
Poor Self-Management, Peer-Pressure, Social Media	NO Comments!!! You all are deemed to be smart enough to realize <b>what's right- right now!</b> {D+I+S+C+I+P+L+I+N+E = 100%}
Negative Mindset, Fear of failure etc...	<ul style="list-style-type: none"> <li>✓ No One's Perfect! Just trust yourself...</li> <li>✓ <b>Approach</b> matters a lot!!! Coz what worked for CPT/ Foundation might not be right for IPCC / Finals, irrespective of the immense hard work you put in</li> <li>✓ Satisfaction from your way of smart work overrules all odds.</li> <li>✓ Commit lots of <b>mistakes</b> – as much as you can &amp; rectify them all - <b>bt</b> <b>your exams</b>, hopefully no one intends to spread them over attempts...</li> </ul>

**Remember : Success is NOT about an event, it's all about getting better for the very next moment.**

# TAXABILITY OF SALE OF OLD AND USED VEHICLE IN GST REGIME



CA NITIN GOYAL

## RATE OF TAX FOR SALE OF OLD AND USED VEHICLE :

After the implementation of GST with effect from 1st July 2017, sale of old and used vehicles were taxed at the same rate as applicable on sale of new vehicles i.e. 28% + Applicable GST Compensation Cess up to 15%, and due to this effective tax on sale of old vehicles was up to 43%.

The Central Government in terms of Notification No. 1/2018- Compensation Cess (Rate) and Notification No. 8/2018- Central Tax (Rate) both dated 25th January 2018 exempted the levy of GST Compensation Cess and reduced the rate of GST to 18% and 12% respectively on sale of old and used motor vehicles if the supplier of such goods has not availed input tax credit as defined in clause (63) of section 2 of the CGST Act, 2017, CENVAT credit as defined in CENVAT Credit Rules, 2004, or the input tax credit of Value Added Tax or any other taxes paid on such vehicles.

The GST rate on sale of old and used vehicle revised with effect from 25th January 2018 is presented in following table :

Revised GST Rate on Sale of Old and Used Vehicle effective from 25th January 2018				
Sr. No.	Particular	GST Rate	CESS Rate	Condition
1	<b>Old and used: Diesel driven motor vehicles:</b> If engine capacity is 1500 cc or more and length is 4000 mm or more	18%	Exempted	Input Tax Credit of GST, Central Excise Duty, Value Added Tax, or any other tax paid on such vehicle is not availed.
2	<b>Old and used: Petrol, LPG (Liquefied petroleum gases) or CNG (compressed natural gas) driven motor vehicles:</b> If engine capacity is 1200 cc or more and length is 4000 mm or more	18%	Exempted	Input Tax Credit of GST, Central Excise Duty, Value Added Tax, or any other tax paid on such vehicle is not availed.
3	<b>Old and used: Sports Utility Vehicles (SUVs) including utility vehicles:</b> If engine capacity is more than 1500 cc	18%	Exempted	Input Tax Credit of GST, Central Excise Duty, Value Added Tax, or any other tax paid on such vehicle is not availed.
4	<b>Old and used:</b> <b>All other category not falling under Sr. No. 1 to 3 above</b>	12%	Exempted	Input Tax Credit of GST, Central Excise Duty, Value Added Tax, or any other tax paid on such vehicle is not availed.

### **TRANSITIONAL RELAXATION IN RATE OF GST IN CASE OF SALE OF OLD AND USED VEHICLE (UPTO 30TH JUNE 2020):**

The Central Government in terms of Notification No. 37/2017-Central Tax (Rate) dated 13th October, 2017, relaxed the payment of GST rate to 65% GST applicable otherwise on supply of goods if following conditions are satisfied:

1. The supplier of Motor Vehicle is a registered person;
2. Such supplier had purchased the Motor Vehicle prior to 1st July, 2017; and
3. Supplier has not availed input tax credit of central excise duty, Value Added Tax or any other taxes paid on such vehicles.

#### **NOTE:**

- (i) This relaxation of 35% of applicable taxes is available only up to 30th June 2020.
- (ii) The relaxation of 35% was also available in case of payment of GST Compensation Cess on sale of old and used vehicle, which later fully exempted with effect from 25th January 2018.

### **VALUATION MECHANISM IN CASE OF SALE OF OLD AND USED VEHICLE :**

For the purpose of Valuation of taxable supply of sale of old and used vehicle, the supplier may be classified in to two distinct categories as follows:

Category (a): Sale of old and used vehicle by a registered person who is not into the business of sale and purchase of used cars:

Margin scheme as prescribed in Rule 32 (5) of the CGST Rules, 2017 value of supply shall be the difference between the selling price and the purchase price of goods is not applicable as the person selling the old and used vehicle is not a dealer in buying and selling of second hand goods.

In this case, the value of a supply of old and used vehicle is to be determined in accordance with following table :

<b>Sr. No.</b>	<b>Particular</b>	<b>Value for the purpose of taxability</b>
1	where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply	Transaction value, which is the price actually paid or payable for the said supply of vehicle
2	where the supplier and recipient are related	open market value of such supply if the open market value is not available, the value of supply of vehicle of like kind and quality
3	where the supply is for a consideration not wholly in money	open market value of such supply; If the open market value is not available, the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply; In other cases, the value of supply of vehicle of like kind and quality

Category (b) : Sale of old and used vehicle by a registered person who is into the business of sale and purchase of used cars i.e. he is a dealer in buying and selling of second hand goods :

**As per rule 32 (5) of the CGST Rules, 2017 Dealers of used cars have been given an option of paying tax on the gross margin to be determined in accordance with following table :**

Sr. No.	Particulars	Margin (Value on which GST should be charged)	Remark
1	in case of a registered person who has claimed depreciation under section 32 of the Income -Tax Act,1961(43 of 1961) on the said goods	Consideration Received (-) Depreciated Value (WDV)	where such margin is negative, it shall be ignored
2	In any other case	Selling Price (-) Purchase Price	where such margin is negative, it shall be ignored

**Disclaimer :** This write up is based on the understanding and interpretation of author and the same is not intended to be a professional advice)





CA VIKAS GOLCHHA

## CLARIFICATION ON E-WAY BILL PRACTICAL ISSUES

Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST dated 13.04.2018 -reg.

- Circular No. 41/15/2018-GST dated 13.04.2018 was issued to clarify the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.
- In order to clarify certain issues regarding the

specified procedure in this regard and in order to ensure uniform implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under section 168 (1) of the Central Goods and Services Tax Act, hereby issues the following modifications to the said Circular:-

- i. In para 2 (e) of the said Circular, the expression "three working days" may be replaced by the expression "three days";
- ii. The statement after paragraph 3 in FORM GST



MOV-05 should read as: "In view of the above, the goods and conveyance(s) are hereby released on (DD/MM/YYYY) at \_\_\_ AM/PM.

Further, it is stated that as per rule 138C (2) of the Central Goods and Services Tax Rules, 2017, where the physical verification of goods being transported on any conveyance has been done during transit at one place within a State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.

Since the requisite FORMS are not available on the common portal currently, any action initiated by the State tax officers is not being intimated to the central tax officers and vice-versa; doubts have been raised as to the procedure to be followed in such situations.

- In this regard, it is clarified that the hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

- Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made there under.

**Illustration :**

Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made there under has been established by the proper officer.



# GLIMPSES OF EVENTS



# GLIMPSES OF EVENTS





## FORTHCOMING EVENTS

**1st July 18** - Flag Hoisting, Honoring Senior Members, First Aid Workshop, and GST Program for Girl Students

**2nd July 18** - Seminar on GST

**3rd July 18** - Plantation Program

**4th July 18** - Blood Donation Camp

**5th July 18** - Drawing Competition for Children of CA members

**6th July 18** - Workshop on Stress and Life Management

**7th July 18** - Seminar on Women Empowerment

**7th July 18** - IND-AS Classes for Members

**15th & 16th July** - National Conference for CA Students

**4th August 18** -Sub-Regional Conference



**The Institute of Chartered Accountants of India  
Raipur Branch of CIRC**