



BHILAI BRANCH OF CIRC OF ICAI

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E-NEWSLETTER



Dear Esteemed Members,

I am confident that with the support of my team members in the branch managing committee combined with support of esteemed professional colleagues and past chairmen of the branch, I will be able to serve the members and students to the best of my abilities.

I would like to share some of the important decisions of Managing committee for the ensuing year. The Onetime payment scheme called ARS of Bhilai Branch which is very popular in the region will be continued without any upward revision in the fee for all sections of members.

I request each one of you to make payments through Swiping Machine available in the Branch or through NEFT/RTGS mode or through Cheques or DDs. Let us lead by example by making it a less cash transactions branch.

In order to be on top of the happening World, we need to be ready for radical change and should be the pioneer in setting the trend for the radical

change. That will save us to be relevant for the future.

While keeping pace with the race for relevance and being ready for radical change, we have to unleash the potential, explore newer opportunities for the betterment of the profession.

We, at ICAI Bhilai Branch, design various action plans in the light of the above mantras and provide enhanced platform capabilities for Members and Students. It is the request to the Members and Students to be benefitted in their endeavour to stay relevant, adept to the radical change and unleash the potential.

With Best wishes and warm regards,

CA. NITIN RUNGTA

Chairman

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RECENT UPDATES UNDER GST

In this edition of recent updates, let us understand some recent clarifications brought in the GST law by way of a reference to a Circular.

Clarification1:

Disclosure of details of Inter-state supplies made to Unregistered persons Supplies made to Un-Registered person needs its attention for disclosure in GSTR1 at Table 5 and Table7B. Similarly, such details of supplies of Un-Registered persons has to be disclosed at Table 3.2 in GSTR3B. Department has noted that details of information furnished under GSTR1 at Table7B are not being duly disclosed while GSTR3B at Table 3.2. Accordingly, exercising the Power under Section 168 (Powers to Issues instructions or directions) Board has exercised to issue a Circular No.89/08/2019 -GST dtd:18.02.2019 in this regard. Through the above circular, board clarifies that apportionment of IGST to the respective states in case of Inter-state supplies made to Un-Registered persons is on the basis of information furnished in Table 3.2 of GSTR3B. Non-furnishing of such information in Table 3.2 of GSTR3B results in non-apportionment of due amount of IGST to the state where such supply takes place as per Section 17 of IGST Act, 2017. Accordingly, it has been directed for all the Registered Persons to make a note of the disclosure requirements in Table 3.2 of GSTR3B and Table 7B of GSTR1 as mandated by law. Further the Circular has referred to invoking for Penal action under Section125 of CGST Act, 2017 for any contravention in this regard.

Points for thought process:

1. If a disclosure is made in either of GSTR1 or 3B and not in both, does it deprive the authorities concerned in making the apportionment of IGST funds to respective states
2. Since the filing of information in relation to supplies are made online, why at all a corresponding auto-fill or auto-check mechanism has to be brought in for enabling the Registered person to key in the figures without causing for reconciliation issues
3. For the Registered person who made supplies to Un-Registered persons in relation to inter-state supplies where information has been fed in either of the GSTR1 or GSTR3B no recourse exists for the period July 2017 till January 2019. However, since the information exists in either of the forms the same shall needs to be considered by the authorities concerned
4. Imposing penalty under Section125 for contravention in disclosure of information in either of the Forms to be filed it shall be an undue burden casted upon the Registered person for a procedural lapse in disclosure of information. Information available in any of the Tables concerned should be picked up by the officers concerned for apportionment of the IGST paid or a proper checks & balances to be duly incorporated in the forms being filled online



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5. A learning from above, procedural lapses should give a possibility for the Registered Person to do the rectification of errors/omissions in the respective forms i.e. both GSTR3B and GSTR1 which may not have any revenue implication rather can improvise the data being furnished

Clarification2:

Compliance with Rule 46(n) while issuing invoices in case of inter-state supply A Registered person who supplies goods or services is required to issue a Tax Invoice under Section 31 of CGST Act, 2017 read with Rule 46 of CGST Rules, 2017. Board has got to know that many of the Registered persons (especially Banking, Insurance and Telecom sector etc.,) are not mentioning Place of Supply along with name of the state in case of supplies made in the course of inter-state trade or commerce in case of supplies made in the course of inter-state trader or commerce. Accordingly a Circular No.90/09/2019 -GST dtd:18.02.2019 The above mechanism is in contravention of Rule 46(n) of CGST Rules, 2017 which mentions that above details are mandatory in nature. Exercising the powers conferred under Section 168 of CGST Act, 2017 to ensure that destination-based consumption tax is implemented duly, a proper compliance under

Rule 46(n) is required for ensuring disclosure of Place of Supply along with the name of the state in the documents issued by the Registered person. Contravention to any of the above compliance a penal action to be invoked under Section 122 or Section 125 of CGST Act 2017 Rule 46(n) is being reproduced herewith for brevity of its understanding: "place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;"

Points for thought process:

1. Place of Supply along with name of the state is a phrase which requires a decoding. Does the above rule mandates State code along with State name or reference to the phrase "Place of supply" along with state name to be mentioned in a legible way
2. Whether a connectivity exists between GSTR3B, GSTR1 and a Tax Invoice issued by the Registered person for ensuring destination based tax under GST by the Officers concerned for invoking the above check mechanism and penal action
3. Reference to a State code and name of the state for application of respective tax duly disclosed in a Tax Invoice does it not absolve the Registered person from the compliance requirements and what is the further clarity required has to be thoroughly understood by the officers concerned
4. A reference to specific industry for compliance under above Rule, does it indicate that a non-compliance thereof shall have an impairment in taxes collected and deposited already is a question to think broadly



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Clarification3:

Tax paid for goods deposited for supply of warehoused goods while being deposited in Customs bonded warehouse for the period July 2017 to March 2018 It has been brought to the notice of the Board that Registered person who supplied Warehoused goods in Customs bonded warehouse shall be an Interstate supply, however registered person supplying such goods to a recipient in the same state have considered it to be an Intra-state supply and accordingly CGST & SGST has been discharged. The above practice has been adopted considering the lacuna on the common portal while filing GSTR1 it didn't permit to make an Inter-state supply where supplier and recipient are in the same state. However, such lacunae has been cleared from 01.04.2018 whereby selection of such supply as Inter-state supply has been enabled. Accordingly, a Circular No.91/10/2019 -GST dtd:18.02.2019 has been issued Since the Registered person have paid SGST & CGST for such supplies though the same is an Inter-state supply, Board has exercised its power under Section 168 of CGST Act, 2017 and have decided to consider the tax paid as onetime exception and it shall be deemed that such suppliers have complied with the law as long as CGST & SGST paid equals the IGST applicable on such supply.

Points for thought process:

- ♣ Apportionment of tax paid as SGST & CGST instead of IGST which invariably vests with the same authorities concerned. Will there be any revenue loss for the contraventions if any
- ♣ Section 77 of CGST Act, 2017 has been formulated to handle such situations. However, in the above scenario it is not the mistake of the Registered person who have alleged deposited wrong tax rather the GSTN is not properly designed to cater for the tax law requirement
- ♣ GSTN also need to read the GST law along with the Registered person for ensuring a proper compliance with law and such procedural lapses [revenue neutral] at administrative wing are being waived off without any disciplinary action and the same shall be expected by the trade bodies are concerned. Disclaimer: The opinion & interpretation drawn above by is purely on the basis of understanding & interpretation drawn by the author. User is directed to read the statutory provision for having a better clarity on the Interpretation aspects.



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PRICING PRESSURE ON THE SOFTWARE INDUSTRY IN INDIA

Information technology in India is an Industry comprising of two major components: Traditional IT services and business process outsourcing services (BPO). This sector has increased its contribution to India's GDP from 1.2% in 1998 to 7.7% in 2017. According to NASSCOM, the sector aggregated revenues of US \$ 160 billion in 2017 with export revenues of US\$ 99 billion and the balance from domestic revenues with a growth of over 13%. The United states accounts for two thirds of India's IT service exports. Any guesses how much it would have cost in early 1980's to develop or to design a website? Unbelievable but yes, it was USD 3 Mn which was charged by a Japanese company. Currently the same work costs less than 1 lakh Indian rupees (approximately USD 1600) . This shows how the industry has evolved and the reason being, development of innovative methodologies. There has been constant cut-throat competition in this industry with regards to innovation which resulted in a reduction of cost to the customer. If we were to analyse the current supply chain methodology of the retail industry, every vendor wants to supply products at lesser cost. It was during this journey of cost optimization/reduction, that vendors realized that it is possible to reduce cost through information technology. For example: Introduction of a bar code reader in a super market. Just imagine, if instead of the bar code reader, we used humans , the cost will increase exponentially which would eventually impact the price of the product. In a case of cut throat competition in the market, this simple act of using a bar code reader might be deciding factor for survival. As we continuously evolve the way we work, we have reached a point where innovative ideas are needed constantly. At the same time, the ask from business is also increasing rapidly. Apart from traditional IT services, there is lot of work is happening on the digital front. In addition to that, new financial models are required for a company to serve their customers. Few models are mentioned below:

1. Maintaining the data centers of the client i.e hardware
2. Shifting from onsite to offshore model
3. Rebadge and redeploy employees i.e reverse partnering business model
4. Capex and opex model
5. Joint ventures

The above list is not an exhaustive list. There are lot of innovative business models trending in the market and eventually clients are looking to save the money through this models. Usually in a software industry we emphasize "deal wins" and "deal pipeline". For Eg: Company A wants to develop an application and it wants to outsource to company B. So, this entire contract is referred as a "Deal". Under this deal, company A has specified budget which can be spent at different point of times and accordingly company B starts the phase wise development work. Key discussions revolve around on how much cost savings will pass on to the client and in addition to that whether it is competitive in the industry. The pressure on Indian firms increases as they compete with global firms which see improved business in emerging areas and generate better margins from a lower base.



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Indian IT service providers are likely to see their operating margins subdued for next few years, as they struggle to get better prices for traditional services and generate new business in digital and cloud that require expensive hires to work on client locations. The margins for Indian firms are between 20 and 26 per cent, which is substantially higher than what global firms earn. The struggle to retain margins means that ambitious targets are set by Indian IT services majors, and to achieve that could be an uphill task. Reasons like continuous pricing pressure on traditional mainframe technology service and slow-paced growth in emerging technology business may turn out to be spoiler for large Indian IT services companies .

Also, rapidly shifting technology needs, Brexit, changes in immigration and visa norms had put the brakes on this industry growth. Shift from an old way of doing business (a focus on outsourced, costbased software services) to evolving first to provide software platforms; and updating capabilities to cater to shifting customer demands to be more of a business partner and less of an IT provider- this is the new mantra. This would involve Indian outsourcers learning to work with marketing chiefs (who often control more of the IT budget than CIOs and CTOs), and speaking their language (business outcomes over tech jargon) to stay competitive. Most of the IT firms are therefore focusing on innovation, digital platforms and other areas where they can leverage to offer better price to the customer. We need to wait and watch how this landscape will move in the coming years.



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CORE CONCEPT OF PENALTY PROCEEDINGS u/s 271(1)(c) IN DIGITAL ERA - AN INSIGHT

Apart from penalty for various defaults, the Income-tax Act also contains provisions for launching prosecution proceedings against the taxpayers for various offences. A punitive measure that the law imposes for the performance of an act that is prohibited or for the failure to perform the required act. The sec 271(1)(c) is an important provision to capture the basics, as the same is still applicable to upto 6 years in case of assessment proceedings in sec 147 and 16 years in case of Non-resident assessee and is effected for 6 previous years in case of search u/s 132/132A/153A. While sec 270A is levied as penalty in recent years i.e. Penalty for under reporting and misreporting of income, Whereas sec 271(1)(c) is Penalty for Concealment / furnishing of Inaccurate particulars of Income.

Let's analyse the provisions of Sec 271(1)(c) further,

I. Levy of Penalty: Penalty u/s 271 (1) (c) proceeding can be initiated on two charges i.e.

- (1) Concealment of particulars of income,
- (2) Furnishing of inaccurate particulars of income.

The word 'conceal' as per Webster's Dictionary means "to hide, withdraw, or remove from observation; cover or keep from sight; to keep secret; to avoid disclosing or divulging. That means non-disclosure of particulars of income. On the other hand, where particulars are disclosed but such disclosure is not correct, true or accurate, it would amount to "furnishing of inaccurate particulars of income".

For example, in case of Business Assessee, if a particular transaction of Purchase is not shown in the books, it would amount to 'Concealment of particulars of income', while such Purchase is shown but at a lesser value, it would amount to 'furnishing of inaccurate particulars of income'.

II. Conditions for Levy of Penalty: The Preconditions may be summarised as below:

- a. There must be Satisfaction of AO to proceed for a levy.
- b. Recording of satisfaction
- c. Material on record
- d. Clear findings / Specific Charge under one of the Limb
- e. Malafide intention vs. Bonafide accts (Mens Rhea)
- f. No escape route from Deeming provisions under explanations



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a) Satisfaction:

The provisions of the section 271(1)(c) of I.T. Act 1961 shows that “satisfaction” of the concerned tax authority. “satisfaction” the condition precedent for levy of penalty and such satisfaction must be arrived at in the course of any proceeding under the Act. it is the satisfaction of the ITO in the course of assessment proceedings regarding the concealment of income which constitutes the basis and foundation of the proceedings for levy of penalty. Thus, this condition must be satisfied. The apex court held this view in the case of CIT vs. Angidi Chettiar 44 ITR 739 while construing the similar provisions of section 28(1)(c) of I.T. Act 1922 (in short ‘1922 Act) and reiterate the same view in the case of D.M. Manasvi 86 ITR 557 (SC) while construing the provisions of section 271(1)(c) of 1961 Act.

b) Recording of satisfaction:

The Recording of satisfaction for the AO in the assessment order is sine qua non for initiating penalty proceedings under the above section. Mere observations “penalty proceedings are being initiated separately” is not enough. it is clear that satisfaction of the tax authority is still a condition precedent which must be discernible from the order of assessment.

c) Material on hand: Further, such satisfaction must be based on some material on record. AO should have material on hand while recording satisfaction and also should form his opinion by applying his Mind while framing a suitable charge. There should be nexus between formation of satisfaction and charging the penalty.

Rajnder Mohan Lal vs. Principal Commissioner of Income Tax, (Punjab and Haryana High Court) ITA No. 359 of 2016

Where assessee did not offer any explanation for concealment of income and whatever explanation was offered was not substantiated through any evidence or material on record, explanation 1 to Section 271(1)(c) of the Act was clearly attracted.

d) Clear finding/ Specific Charge:

There must be a clear finding about the charge of penalty. It is incumbent upon the AO to state under which Limb penalty was being levied for concealment of income or for furnishing of inaccurate particulars of income.

CIT vs. SSA’s Emerald Meadows (SC) I.T.A. NO. 380 OF 2015

The apex court held that omission by the AO to explicitly specify in the penalty notice as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation.



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e) Malafide intention vs. Bonafide accts (Mens Rea):

Levy of penalty under section 271(1)(c) is subject to the discretion of the income tax officer. The dictionary meaning of “Mens Rea” is the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused. “Mens Rea” literally means a guilty mind or nothing but intention to commit the prohibited act. This was not at all verified in digital era and the penalty hitherto decided wrt facts of the above case. Further, AO has a discretionary power to levy penalty.

CIT vs. Dalmia Dyechem Industries (Bombay High Court) ITA No.1396/2013

The rigors of penalty provisions cannot be diluted only because a small number of cases are picked up for scrutiny. No penalty can be levied unless if assessee’s conduct is “dishonest, malafide and amounting concealment of facts”. The AO must render the “conclusive finding” that there was “active concealment” or “deliberate furnishing of inaccurate particulars”

f) Deeming provisions/ Fiction:

Explanation 1 creates a legal fiction and raises a presumption against the ‘A’. various Explanations have been added to sec 271(1)(c) which provides for deemed concealment/furnishing of inaccurate particulars of income. ‘

CIT vs. Rucha Engineers Pvt. Ltd (Bombay High Court) 2015-ITRV-HC-MUM-025.

Held that before proceeding to the Explanation below s. 271 and putting the responsibility on the assessee, it is necessary for the AO to first demonstrate that the assessee’s explanation or conduct is not reasonable on human probabilities, or that it was in the nature of violating settled legal positions. If the explanation is not fanciful, baseless or unacceptable, penalty cannot be levied.

Analytical Diagram/A Chart to describe the provisions in brief:

The same may be depicted with the following diagrammatic representation to understand the essence of the provisions and its impact on difference scenarios. There may be two types of assessments, i.e. 1. Normal assessments u/s 143(3), 144 etc , 2. Special assessments u/s 147, 153A, or CIT u/s 263.



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CONCLUSION:

All the proviso's, explanations, etc in sec 271(1)(c) are judgement driven as per facts & circumstances of the cases and may not be a core aspects wrt the objectives with which it was inserted. All the above discussion highlights the legal penal consequences in the modern assessments in the light of prudence and are a process of accelerated assessments. Similar provisions are in other Penal provisions which were not discussed here are raw in nature as newly enacted into the act and are yet to taste its brutality in future as they are tightly drafted as per the previous experiences and hinder any tax planning or foul play. That's the order of the day too. Hence sec 270A (wef 1st April 2017) & 271AAB (Applicable from 1st July 2012, Amended on 1st April 2017) etc read with sec 275 shall have full authority to levy penalties.

UPCOMING EVENTS OF BHILAI BRANCH OF CIRC OF ICAI

- 01-04-2019 : FULL DAY SEMINAR ON GST
- 26-04-2019 : RESEDENTIAL REFRESHER COURSE ON GST AT KANHA
- 27-04-2019 : RESEDENTIAL REFRESHER COURSE ON GST AT KANHA
- 28-04-2019 : RESEDENTIAL REFRESHER COURSE ON GST AT KANHA