

**BHILAI BRANCH
OF
CENTRAL INDIA REGIONAL COUNCIL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

E-Newsletter

March 2024



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4. Treasurer	CA Shivam Choudhary
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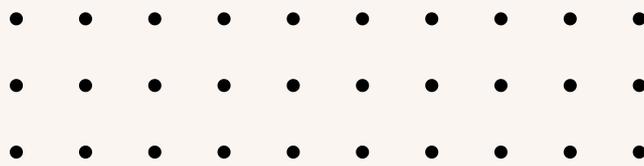


ICAI MOTTO

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।

तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।

तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥



CA Rahul Batra
Chairman



CA Suraj Soni
Vice-Chairman



CA Ankesh Sinha
Secretary



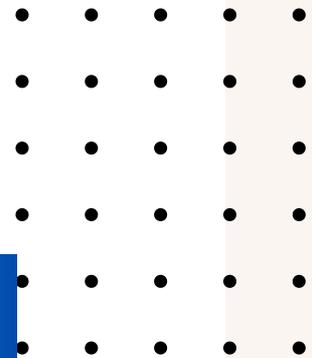
CA Shivam Choudhary
Treasurer



CA Payal Jain
CICASA Chairperson



CA Pradeep Pal
Executive Member



AAWAZ~A CALL FOR ARTICLES

INVITATION TO MEMBERS TO CONTRIBUTE IN MONTHLY E- NEWSLETTER OF BHILAI BRANCH OF CIRC OF ICAI

If you have knowledge, let others light their candle in it~ Margaret Fuller

Sharing knowledge is not about giving people something, or getting something from them. That is only valid for information sharing. Sharing knowledge occurs when people are genuinely interested in helping one another develop new capacities for action: it is about creating learning process.

Innovation comes only from ready and seamless sharing of information rather than hoarding it.

It is in the spirit that The Bhilai branch Monthly e-Newsletter is published every month.

To add a new sphere to this Newsletter reach, coverage and utility, it has been decided to put a new focus on profession-oriented knowledge, where a large number of members are giving their service in various capacities, including as CFOs and CEOs. As such, the members in industry, who have a knack for writing, are invited to contribute in this e-Newsletter the articles specific to their Industry in Professional perspective. Such article, of not more than 3000 words (original and not having been published or hosted anywhere else) with executive summary and authors photographs, should be sent and The authors are also required to give a declaration of originality and a brief profile along with the articles.

There are many ways to be a part of the newsletter. Writing an article is a rewarding way to contribute to the members while enhancing your own professional development. Readers often appreciate recommended resources, charts, checklists, case studies, tables or diagrams, quotations, or points highlighted for emphasis. Members are encouraged to submit articles of interest to the Chartered Accountants for inclusion. Accompanying photos and other artwork are strongly encouraged. All articles, transitions and photos are subject to editing, available space, and the acceptance policy.

[You can Submit your articles at: Bhilai@icai.org](mailto:Bhilai@icai.org)
[Alternatively at : himanisoni478@gmail.com](mailto:himanisoni478@gmail.com)





Message from Chairman desk

Dear Esteemed Members,

I am both honored and excited to address you as the newly appointed Chairman of the Bhilai Branch of CIRC of the Institute of Chartered Accountants of India (ICAI). It is with immense pride that I step into this role, and I am grateful for the trust and confidence bestowed upon me by the members of our esteemed branch.

As I embark on this journey, I want to express my gratitude to my predecessors for their tireless efforts and contributions in shaping the path that has led us to this point. I am committed to building upon the strong foundation laid by them and working collaboratively with all of you to propel the Bhilai Branch to new heights of excellence.

Vision for Bhilai Branch:

My vision for our branch is rooted in a commitment to professional growth, ethical practices, and community engagement. I believe that by fostering a culture of continuous learning and innovation, we can adapt to the evolving landscape of the accountancy profession. Together, we will create an environment that encourages knowledge sharing, mentorship, and collaboration.

Mission Statement:

To realize this vision, our mission includes:

Professional Development: Implementing initiatives and programs that enhance the professional skills and knowledge of our members, ensuring they remain at the forefront of industry advancements.

Ethical Practices: Promoting and upholding the highest ethical standards in the profession, thereby reinforcing the integrity and trustworthiness of chartered accountants in Bhilai.

Community Engagement: Strengthening our ties with the local community through outreach programs, educational initiatives, and social responsibility projects. Our goal is to make a positive impact beyond our professional realms.

Technological Integration: Embracing technological advancements to streamline processes, enhance efficiency, and equip our members with the tools needed to thrive in a digital era.

As we collectively strive for these objectives, I am confident that our branch will become a beacon of excellence within the ICAI community.

On a lighter note, I would like to extend my warm wishes to all members for a joyful and colorful Holi. May this festival of colors bring happiness, unity, and prosperity to each of your lives.

I am eager to embark on this journey with all of you and look forward to your support and collaboration in achieving our shared goals.

Warm regards,

CA Rahul Batra
Chairman
Bhilai Branch



Message from Secretary desk

Dear Esteemed Members of the CIRC Bhilai Branch,

I trust this message finds each one of you in good health and spirits. It is with immense joy and gratitude that I share the news of my continued role as the Secretary of our esteemed Bhilai branch for the forthcoming year. This opportunity to serve you all has been a privilege, and I am deeply thankful for the trust and support you have bestowed upon me.

As we embark on this new chapter together, I am committed to dedicating my efforts to enhance the growth and success of our branch. The journey so far has been inspiring, and I look forward to the challenges and triumphs that lie ahead. The strength of our organization lies in the unity and collaboration of its members, and I am honored to be a part of this vibrant community.

I extend my heartfelt appreciation to each member for your unwavering support and confidence. It is your collective dedication and enthusiasm that propels us forward, and I am grateful for the opportunity to continue working alongside such a dedicated group of professionals.

In the spirit of unity and diversity, let us also take a moment to reflect on the cultural significance of the festivals that grace the month of March. Holi, a festival of colors, symbolizes the triumph of good over evil and the arrival of spring. As we celebrate, may the vibrant hues of Holi bring joy, positivity, and renewed energy to our lives and endeavors.

March also marks the occasion of Navroz, a festival celebrated by various communities, signifying new beginnings and the beauty of cultural diversity. Let us embrace this festival as an opportunity to appreciate and cherish the richness that our diverse backgrounds bring to our professional and personal lives.

Furthermore, as we commemorate International Women's Day on March 8th, let us take a moment to recognize and applaud the contributions of the women within our organization. Their resilience, talent, and dedication play an integral role in our shared success.

In conclusion, I express my deepest gratitude once again for the privilege to continue serving as your Secretary. May this new year bring forth prosperity, growth, and a deepened sense of camaraderie among us all. I look forward to the exciting journey ahead and am confident that, together, we will achieve new milestones.

Wishing you and your families a month filled with joy, unity, and success.

With Warm regards
CA Ankesh Sinha
(Secretary)

Events imposing liability on directors of private companies under the GST law

As the GST law is set to complete six years since its introduction, the number of investigations undertaken by the Departmental Authorities are on a rise. It thus becomes important to understand the provisions of the GST law which may burden the directors of a private company with tax liability due to the Government.

Even though a company, being a legal entity, has been recognized as a separate person under Section 2(84) of the Central Goods and Services Tax Act, 2017 (hereinafter, referred to as “CGST Act”), Section 89(1) makes the directors of the company liable for payment of dues under the GST law in certain situations. Accordingly, let us discuss the provision of Section 89(1) in detail.

Understanding Section 89(1) Section 89(1) of the CGST Act states as under:“(1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company”.



In conclusion, conducting a stock audit of a bank requires a deep understanding of the bank's custody operations and the securities and financial instruments held in its custody. By following these key steps, auditors can provide assurance over the completeness and accuracy of the bank's stock of securities and identify any areas of concern that require further attention.

From a bare perusal of Section 89(1) of the CGST Act, it is apparent that the directors of a private company are made jointly and severally liable in respect of not only GST liability but also interest and penalty. Having said that, it is essential to note that the persons, acting as directors, can be made liable for GST dues of a private company only if the following conditions are cumulatively satisfied the GST liability, interest or penalty in respect of supply of goods and/ or services cannot be recovered from the company; the persons were also the directors of the company during such period when the goods and/ or services were being supplied; and the directors are unable to prove that the nonrecovery of dues cannot be attributed to any gross neglect, misfeasance or breach of duty on their part in relation to the affairs of the company. Whilst Section 89(1) may seem to be easy to interpret, it suffers from its own complexities which can have far reaching implications. The various complexities sewed to Section 89(1) of the CGST Act are discussed hereunder.



1. Applicability of Section 89(1) to input tax credit The first point that needs to be pondered upon is whether Section 89(1) of the CGST Act applies to the recovery of input tax credit as well or not. The analysis of this issue requires a closer look at the wordings of Section 89(1). The aforesaid section deals with recovery of tax, interest, or penalty due from a private company in respect of any supply of goods and/ or services. The word “tax” is not per se defined under the GST law. Sub-sections (21) and (104) of Section 2 of the CGST Act define the words “Central tax” and “State tax”, as tax levied under Section 9 and under State Goods and Services Tax Acts, respectively. On a primary reading of the aforementioned definitions, it can be argued that the term “tax”, as mentioned in Section 89(1), refers only to such tax that a private company was required to charge on the supply of goods and/ or services made by it.

This is also evident from the reading of other provisions of the CGST Act which themselves differentiate the term “tax” from “input tax credit”. To illustrate, Section 50 of the CGST Act provides for a levy of interest on delayed payment of tax. While Sub-section (1) of Section 50 deals with a levy of interest on delayed payment of tax, Sub-section (3) of Section 50 specifically provides for a levy of interest on input tax credit wrongly availed and utilized. Similarly, Sections 73 and 74 of the CGST Act, which inter alia provide for the issuance of show cause notice, separately covers scenario of tax not paid or short paid, and input tax credit wrongly availed or utilized. Here, reference can also be made to Section 132 of the CGST Act wherein the Government has specifically covered “input tax credit” within the ambit of the term “tax” by way of an explanation to the said section.



Thus, in the absence of specific inclusion of the term “input tax credit” in Section 89(1) of the CGST Act, it can be contended that Section 89(1) of the CGST Act does not deal with cases involving recovery of input tax credit wrongly utilized by a private company. Resultantly, the recovery of an input tax credit wrongly availed and utilized by a company cannot be made from the directors of such a company.

2. Two-step cover before the directors can be made liable

The next point worth noting under Section 89(1) of the CGST Act is that the directors cannot be automatically made liable for the dues of the private company. The directors can be made liable only after the following factors are uncovered:-

- i. the GST dues are not recoverable from the company; and
- ii. the directors, by virtue of their action, are responsible for the nonrecovery of GST dues from the company.

Before delving into the above-mentioned factors, it may be noted that Section 179(1) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”) is pari materia to Section 89(1) of the CGST Act. Thus, reliance can be placed upon the jurisprudence under the IT Act, in order to interpret the provision of Section 89(1) of the CGST Act.

Having said the above, let us now deliberate on each of the two factors in detail.

- i. **GST dues are nonrecoverable from the company** One of the prerequisites for attracting the provisions of Section 89(1) of the CGST Act is that the GST dues “cannot be recovered” from the company.



The phrase “cannot be recovered” signifies that the authorities must make reasonable efforts to substantiate that it is not possible for them to recover the GST dues from the company. For this purpose, support can be drawn from the decision of the Gujarat High Court in the case of **Bhagwandas J. Patel v. Deputy Commissioner of Income Tax [1998 (12) TMI 61]**. In the said case, the assessee i.e., a director handed over the assets and liabilities of the company to a new director. The respondent initiated the recovery of tax dues from the assessee stating that the recovery of demand from the company was found difficult. The Gujarat High Court held that it is necessary for the Revenue to establish that such recovery cannot be made against the company and then only it can reach the directors who were responsible for the conduct of business during the previous year in relation to which the liability exists. The High Court further observed that no assertion has been made by the Revenue that despite making efforts against the company, it is not possible to recover the amount from the company by reaching its assets. Consequently, the order under Section 179 was quashed.

A similar observation was made by the Gujarat High Court in the case of **Indubhai T. Vasa (HUF) v. Income Tax Officer [2005 (3) TMI 41]**. A similar view was taken by the Allahabad High Court in the case of **Smt. Pratibha Garg v. Commissioner of Income Tax and Others [2013 (12) TMI 726]**. Here, one of the findings of the respondent was that the debtors of the company did not file their return in the jurisdiction of the assessing authority and thus, it was not possible to ascertain their financial status.



The High Court, while disregarding the aforesaid finding, held that there is no restriction under the IT Act that an amount cannot be recovered where the debtor is not within the territorial jurisdiction of the assessing authority of the assessee in question. The respondents should have inquired and should have made efforts to recover the tax due from the company to the extent possible and merely for the balance amount which could not be recovered from the company, the proceeding could be initiated against the directors in view of Section 179 of the IT Act. On perusal of the above judgements, it becomes clear that the words “cannot be recovered” set a mandatory precondition for invoking Section 179 of the IT Act. Since the wordings of Section 89(1) of the CGST Act are pari materia to Section 179 of the IT Act, the above-mentioned judgements will be squarely applicable to Section 89(1) of the CGST Act. Therefore, it is imperative for the Departmental authorities to first establish that they have taken adequate steps to recover the GST dues from the company. Only after such efforts turn out to be futile, an action for recovery of tax dues can be initiated against the directors of such a company.

ii. The directors, by virtue of their action, are responsible for the non-recovery of GST dues from the company

Though Section 89(1) casts the responsibility upon the directors to bear the GST dues, it does contain a caveat. The caveat applies in cases where the director is able to prove that the non-recovery of GST dues cannot be attributed to any gross neglect, misfeasance, or breach of duty on his part in relation to the affairs of the company. Here, it is important to note the usage of the term “nonrecovery” in Section 89(1) as against the term “non-payment”.



The significance of the term “non-recovery” lies in the fact that the directors are not required to prove that “non-payment” of the tax is not on account of gross neglect, misfeasance, or breach of duty on their part. They are simply required to substantiate that they did not act in a malafide manner which led to the non-recovery of GST dues. In this regard, reliance can be placed on the decision of the Gujarat High Court in the case of Maganbhai Hansrajbhai Patel v. Assistant Commissioner of Income Tax [2012 (11) TMI 189] wherein it was observed that Section 179 of the IT Act provides for a vicarious liability of the director for the payment of tax dues which cannot be recovered from the company. However, if the director establishes that the non-recovery of the tax cannot be attributed to his gross neglect, etc., his liability under Section 179(1) would not arise. The High Court further observed that the question of lack of gross negligence, misfeasance, or breach of duty on the part of the director is to be viewed in the context of non-recovery of the tax dues of the company.

The High Court further took note of the specific facts of the case and held that in the given case, the entire focus of the Revenue was with respect to the petitioner’s neglect in functioning of the company when the company was functional. The Assistant Commissioner did not state anything regarding the gross negligence on the part of the petitioner due to which the tax dues from the company could not be recovered. The High Court further observed that it is not even the case of the department that the petitioner paid the dues of other creditors of the company in preference to the tax dues of the department.



It is not the case of the department that the petitioner negligently frittered away the assets of the company due to which the dues of the department could not be recovered. Hence, the High Court quashed the order against the petitioner and allowed the appeal. Further, in the case of *Jashvantlal Natverlal Kansara v. Income tax Officer* [2014 (4) TMI 210], a company which had taken substantial loans from the bank ran into losses. The bank filed a petition before the Debts Recovery Tribunal which allowed the bank to recover the dues by sale of movable and immovable assets. The Assessing officer invoked Section 179(1) on the ground that the directors of the company were in knowledge of the tax incidence and thus, should have offered the properties for recovery to the Department. The High Court quashed the order passed by the Department and held that the directors did not give consent for the recovery of bank dues from fixed assets. The same was done on order of the Debts Recovery Tribunal. Hence, the action of the petitioners cannot be brought within the expression of gross neglect, misfeasance, or breach of duty on their part. While the aforementioned two decisions mainly focus on the “non-recovery” aspect rather than the manner in which the company is run by the directors, the belowmentioned decisions do acknowledge the distinction between bonafide functioning and the malafide functioning with the intention of defrauding the Government. In the case of *The Commissioner of Income Tax v. Sahu Investment Mutual Benefit Co. Ltd.* [2017 (9) TMI 1230], the Allahabad High Court observed that Section 179 of the IT Act while making director of the private company responsible for payment of tax dues jointly and severally,



makes an exception that in case he proves that the assets of the company are not sufficient to meet the tax dues and have reduced for reasons not attributable to him on account of any gross neglect, misfeasance or breach of duty, then such person would not be responsible. The legislature thus has recognised the principle that the doctrine of lifting of the veil in the matter of tax dues is to be applied to prevent fraud etc. and not where the company has suffered despite its normal bonafide function. The persons responsible for its management are not to be made responsible for normal depreciation of capital or assets merely because the dues are of tax. Furthermore, in the case of Gul Gopaldas Daryani v. Income tax Officer [2014 (5) TMI 706], the Gujarat High Court held that if the company raises a completely bogus and malafide claim of tax deduction, with the sole purpose of defrauding the Revenue, it may still be open for the Revenue to argue that provisions of Section 179 of the Act would be applicable. However, while paying all other creditors, the company made no provision for income tax liability, was not a valid ground. The High Court further held the ground that the directors should have taken appropriate measures to protect the property of the company is neither maintainable in law, nor in fact. The decision as to whether a property is to be insured or not is purely a commercial decision. Such decision may turn out to be wise or in some case unwise. That by itself would not mean that the directors were negligent in performing their duties or they committed a breach of duty in the affairs of the company. All the above decisions point towards a common chain of arguments to prevent the directors from being saddled with the GST liability of the company.



Simply put, the provision of Section 89(1) of the CGST Act cannot be resorted to as long as the directors are able to substantiate that they have neither diverted the assets of the company nor misused them to prevent the recovery of GST dues.

Conclusion

Although Section 89(1) of the CGST Act makes the directors liable for the unrecovered GST dues of the company, such liability can be restricted in the following events: -

- a. where the liability pertains to input tax credit wrongly availed and utilized.
- b. where the Departmental authorities fail to establish that they have taken adequate efforts and steps to recover the GST dues from the company.
- c. where the directors have acted in a bonafide manner and have not diverted the assets of the company to make recovery of the GST dues impossible.



MARCH 2024

Compliance Calendar

Due date	Who should File
02.03.2024	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Jan 2024
07.03.2024	TDS Payment for Feb 2024
10.03.2024	Professional Tax (PT) on Salaries for Feb 2024
11.03.2024	GSTR 1 (Monthly) for Feb 2024
13.03.2024	GSTR 1 IFF (Optional) (Feb 2024) for QRMP
15.03.2024	Advance Tax Payment for Jan to Mar 2024
15.03.2024	Tax Planning & Book Closure Plan for FY 2023-24

Compliance Calendar

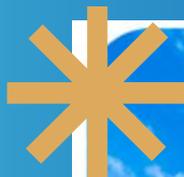
Due date	Who should File
15.03.2024	Provident Fund (PF) & ESI Returns and Payment for Feb 2024
15.03.2024	Form 13 (Nil / Lower TDS) for FY 2023-24
20.03.2024	GSTR 3B for Feb 2024 (Monthly)
25.03.2024	GST Challan Payment if no sufficient ITC for Feb 2024
30.03.2024	TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Feb 2024
31.03.2024	Last Date for Updated ITR for FY 2020-21 (For FY 2021-22 and FY 2022-23 the due date would be 31st Mar 2025 and 2026 respectively)

WELCOME TO BHILAI BRANCH

A Newsletter by Bhilai Branch

March Edition | 2024

Bhilai Branch of CIRC of ICAI was inaugurated by the Hon'ble president Shri. N.D. Gupta on 10th August, 2001. The branch is situated in the "Steel City" of the state of Chhattisgarh. This Branch covers Durg, Bhilai, Rajnandgaon, Balod and Dalli- Rajhara and is having a total of 500+ members associated with it.



Quote of The Day

"Be thankful for what you have; you'll end up having more. If you concentrate on what you don't have, you will never, ever have enough."- Oprah Winfrey.

While it is good to struggle for more, you must not forget and overlook the blessings that you already have in life.

