

**GHAZIABAD BRANCH  
OF CENTRAL INDIA REGIONAL COUNCIL OF ICAI**



# CA FLYER

(April - May 2019 Vol. 2)  
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**E- NEWS LETTER**

**SUCCESS**



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

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## FROM THE DESK OF CHAIRMAN



### Respected Professional Colleagues!

I feel extremely honoured and privileged to present the Second edition of our very own E-Newsletter, '*CA Flyer*'. I would like to thank the members of Editorial Board for their valuable contribution for this newsletter.

We have also formed a **Catalyst Club** for members and students to develop their leadership skill, public speaking skill, communication skill. You are requested to come and experience the same.

We are also hosting Certificate Course on **Goods and Services Tax (GST)** from 1st June onwards, in Ghaziabad. Weekends Classes. And **Diploma in International Taxation Course** in from 1st June onwards. This is also Weekends Classes.

After the Great success of **Bank Audit Help Desk**, We have also Launched "**GST Help Desk**" from 01st May, 2019 Onwards. And "**Income Tax Help Desk**" from 20th May, 2019 onwards at our branch level in which, There are panel of experts who will solve your queries, issues, problems related to GST & Income Tax on call or by email. I extend my heartiest thanks to all the members of Bank Audit Help Desk, GST Help Desk & Income Tax Help Desk for their Contribution in these help desk.

At Last I request all the members to Kindly take active part in the Programs & Activities conducted by Ghaziabad Branch of CIRC of ICAI and for any help & suggestions, we are always available for you and it's our pleasure to serve the members, students and society at large.

**" Your only limit is you. A little progress each day adds up to big results.  
Always remember, Nothing 'worth-having' comes 'easy'.**

**Happy Learning to you....**

**Thank you so much.**

With Warm Regards,

**CA Manoj Singh**

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## FROM THE DESK OF EDITORIAL BOARD

Dear Reader,

We wish everyone a very Happy Mother's Day.

It is with great pride and enthusiasm that we present to you the 2nd EDITION of e-Newsletter "CA Flyer" of Ghaziabad Branch of CIRC of ICAI.

Motherhood is a great honor and privilege, yet it is also synonymous with servanthood. Every day women are called upon to selflessly meet the needs of their families. Whether they are awake at night nursing a baby, spending their time and money on less-than-grateful teenagers, or preparing meals, moms continuously put others before themselves- Charles Stanley

We thank each one of you who have contribute to this newsletter in different ways through articles, and your valuable suggestions to make it more effective.

Any Suggestions for improvement of the newsletter are always Welcome

Happy Reading

Regards

Editorial Board

**Relyon Softech Ltd.**  
Vision For Tomorrow



- ◆ Quarterly statements of TDS and TCS, with built-in FUV.
- ◆ Correction statements from data downloaded from TRACES.
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- Multi Tasking
- SMS Integration and Push mail
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## GENERAL ANTI AVOIDANCE RULES (GAAR)



CA. Reetika Agarwal  
CA. Richa Goel

### PURPOSE OF INTRODUCTION:

In order to avoid taxes, tax payer reduces their tax via unethical means or aggressive tax planning which is called "Tax Avoidance".

Therefore, it is felt that tax reduction via unethical means or aggressive tax planning should not be allowed, particularly when the rate of taxes have been significantly reduced. Keeping in view the aggressive tax planning with the use of sophisticated structures, there is a need for statutory provisions so as to codify the doctrine of "substance over form" where the real intention of the tax payer and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose.

Tax statutes across various countries internationally like Australia, the Netherlands, New Zealand, Canada, China etc. have adopted these General Anti Avoidance Rules. India also, vide its Finance Act 2012, introduced General Anti-Avoidance Rules (GAAR) in the Income-tax Act, 1961 ("The Act"). These are also called "Anti Tax Planning Rules".

Firstly, vide Finance Act 2015, GAAR provisions were come into effect from 1.04.2016. However, subsequently deferred by two years and made applicable to the Income of FY 2017-18. As such, current GAAR provisions became effective from assessment year 2018-19. Substantive provisions of GAAR are covered in Chapter X-A (sections 95 to 102 of the Act) and procedural provision is covered in section 144BA of the Act. The procedure for application of GAAR and conditions under which it shall not be applicable is contained in Rules 10U to Rule 10UC of the Income Tax Rules, 1962 ("The Rules").

Summary of Sections introduced in the Act are as follows:

*Section 95: Applicability of General Anti-Avoidance*

*Rule.*

- Section 96: Impermissible avoidance arrangement.*
- Section 97: Arrangement to lack commercial substance.*
- Section 98: Consequences of impermissible avoidance arrangement.*
- Section 99: Treatment of connected person and accommodating party.*
- Section 100: Application of this Chapter.*
- Section 101: Framing of guidelines.*
- Section 102: Definitions.*
- Section 144BA: Reference to Principal Commissioner or Commissioner in certain cases.*

### APPLICABILITY OF GENERAL ANTI-AVOIDANCE RULE

GAAR provisions will be applied in case of arrangement whose main purpose or one of the main purposes is to obtain a tax benefit. Section 95 (1) of the Act clearly deals with the basic requirement for the applicability.

- (1) *Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an **impermissible avoidance agreement** and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter.*

The section starts with the non-obstante clause; therefore, GAAR have an over-riding applicability.

Therefore, the scope of GAAR is very wide and as per explanation to section 95 which clarifies that provisions of GAAR chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

### NON APPLICABILITY OF GAAR

GAAR provisions are not applicable to:

- An arrangement where the aggregate 'tax benefit' for all the parties to the arrangement in the relevant assessment year does not exceed Rs 3 crore;
- Any income accruing or arising to any person from transfer of investments made prior to 1st April 2017 by such person;
- Subject to certain conditions, investments by FII in listed/unlisted securities and certain investments by non-residents in an FII.

## IMPERMISSIBLE AVOIDANCE AGREEMENT

Broadly speaking, GAAR will be applicable to arrangements which are regarded as 'Impermissible Avoidance Arrangements' (IAA) and can enable tax authorities to re-characterize such arrangements and deny tax benefits or treaty benefits so as to curb any means of tax avoidance. The phrase "impermissible avoidance arrangement" has been defined under section 96(1) of the Act.

- (1) *An impermissible avoidance arrangement means an arrangement, the **main purpose** of which is to obtain a tax benefit, and it-*
- (a) *Creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;*
- (b) *Results, directly or indirectly, in the misuse, or abuse, of the provisions of the Indian domestic tax law;*
- (c) *Lacks commercial substance or is deemed to lack commercial substance, in whole or in part;*
- (d) *In entered into or carried out by means or in a manner which are not ordinarily employed for bonafide purposes*

Each of above clauses are not cumulative. These all are alternative and have wide scope.

IAA refers to 4 tainted elements test:

The **first tainted element** refers to non-arm's length dealings where an arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length. this tainted element is to be examined only in those transactions which are not covered by TP regulations and where the main purpose of the arrangement is to obtain tax benefit. As current transfer pricing regulations are applicable to international transactions and some specified

domestic transactions, a mechanism needs to be provided for the Assessing Officer (AO) to ascertain whether rights, or obligations, created in an arrangement are the same as ordinarily created between persons dealing at arm's length. He should be able to seek expert opinion in this regard from the Transfer Pricing Officer (TPO).

The **second tainted element** refers to an arrangement which results in misuse or abuse of the provisions of the tax law. It implies cases where the law is followed in letter or form but not in spirit or substance, or where the arrangement results in consequences which are not intended by the legislation, revealing intent to misuse or abuse the law.

The **third tainted element** refers to an arrangement which lacks commercial substance or is deemed to lack commercial substance which is the most important one and dealt in further paras.

The **fourth element** refers to an arrangement which is carried out in, or by means of, a manner which is normally not employed for a bona fide purpose. In other words, it means an arrangement that possesses abnormal features. This is not a purpose test but a manner test.

## ARRANGEMENT TO LACK COMMERCIAL SUBSTANCE

As per section 97 of the Act, following factors can be referred to determine an arrangement lacks commercial benefit:

- (a) *The substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or*
- (b) *It involves or includes:*
- *Round trip financing;*
  - *An accommodating party;*
  - *Elements that have effect of offsetting or cancelling each other; or*
  - *A transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or*
- (c) *It involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial*



*commercial purpose other than obtaining a tax benefit for a party.*

## CONSEQUENCES OF IMPERMISSIBLE AVOIDANCE ARRANGEMENT

As per section 98(1) of the Act, if an arrangement is declared to be an IAA, then the consequences may include denial of tax benefit or a benefit under a tax treaty. The consequence may be determined in such manner as is deemed appropriate in the circumstances of the case. Certain illustrations of the manner have been provided, namely:

- (a) Disregarding, combining or re-characterizing any step in, or a part or whole of, the impermissible avoidance arrangement;
- (b) Treating the impermissible avoidance arrangement as if it had not been entered into or carried out;
- (c) Disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
- (d) Deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;
- (e) Reallocating amongst the parties to the arrangement:
  - Any accrual, or receipt, of a capital or revenue nature; or
  - Any expenditure, deduction, relief or rebate;
- (f) Treating:**
  - The place of residence of any party to the arrangement; or
  - The situs of an asset or of a transaction,

At a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

- (g) Considering or looking through any arrangement by disregarding any corporate structure.

It has also been provided that:

- Any equity may be treated as debt or vice versa;
- Any accrual, or receipt, of a capital nature may be

treated as of revenue nature or vice versa; or

- Any expenditure, deduction, relief or rebate may be re-characterized.

## PROCEDURE FOR INVOKING GAAR PROVISIONS

The procedure for invoking GAAR is provided under section 144BA of the Act as under:

- (a) The Assessing Officer (AO) shall make a reference to the Commissioner (CIT) for invoking GAAR and on receipt of reference the Commissioner (CIT) shall hear the taxpayer and if he is not satisfied by the reply of taxpayer and is of the opinion that GAAR provisions are to be invoked, he shall refer the matter to an Approving Panel (AP). In case the assessee does not reply or object, the CIT shall make determination as to whether the arrangement is an impermissible avoidance arrangement or not.
- (b) The AP has to dispose of the reference within a period of six months from the end of the month in which the reference was received from the CIT.
- (c) The AP shall either declare an arrangement to be impermissible or declare it not to be so after examining material and getting further inquiry to be made.
- (d) The AO will determine the consequences of a positive declaration of arrangement as impermissible avoidance arrangement.
- (e) The final order in case any consequence of GAAR is determined shall be passed by the AO only after approval by the CIT and, thereafter, first appeal against such order shall lie to the Appellate Tribunal.
- (f) The period taken by the proceedings before the CIT and AP shall be excluded from time limitation for completion of assessment.

## JUDICIAL GAAR IN INDIA

A judicial precedent is a decision of the Court used as a source for future decision making. It is therefore worthwhile to ponder what the judiciary over time has had to say on GAAR. Some of the cases are explained in following paragraphs:

- The Patna High Court in Sri Sri Nilkantha Narayan Singh v. CIT, (1951) 20 ITR 8 (Pat) upheld the

concept of substance over form in the following words:

“But in the application of the law relating to income-tax, the principle is well-established that the name given to a transaction by the parties does not necessarily decide the nature of the transaction. It is the substance and not the form of the contract that should be regarded. In analysing the transaction, it is not necessary that the documents should be construed from the purely legal aspect. It is open to the High Court not merely to look at the documents but consider the surrounding circumstances so as to conclude what is the real character of the transaction.”

- In CIT v. A. Raman & Co., (1968) 67 ITR 11 (SC) the Apex Court held that it is open to everyone to so arrange his affairs as to reduce the brunt of taxation to the minimum and such a process does not constitute tax evasion. The Court observed as under:
 

“Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A taxpayer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon considerations of morality, but on the operation of the Income tax Act. Legislative injunction in taxing statutes may not, except on peril of penalty, be violated, but it may lawfully be circumvented.”
- In CIT v. B.M. Kharwar, (1969) 72 ITR 603 (SC), after quoting a passage from the judgement of the Privy Council in the case of Bank of Chettinad Ltd. v. CIT, (1940) 8 ITR 522 (SC), the Supreme Court held:
 

“The taxing authority is entitled and is indeed bound to determine the true legal relation resulting from a transaction. If the parties have chosen to conceal by a device the legal relation, it is open to the taxing authorities to unravel the device and to determine the true character of the relationship. But the legal effect of a transaction cannot be displaced by probing into the ‘substance of the transaction.’

SN	Country	Remark
1	United Kingdom	General Anti-Abuse Rule in section 206 to section 215 under Part 5 of the UK Finance Act 2013
2	South Africa	GAAR under sections 80A to 80L of the South Africa Income Tax Act No. 58 of 1962
3	Singapore	The General Anti Avoidance Provisions under section 33 of the Singapore Income Tax Act.
4	New Zealand	GAAR Extract, Income Tax Act 2007
5	Canada	General Anti Avoidance Rule-Section 245 under Part XVI of the Canadian Income Tax Act, 1985
6	Australia	Part IVA - Income Tax Assessment AT 1936
7	United States America	Section 7701, Chapter 29 of Internal of Revenue Code 1986
8	China	GAAR provisions in the Chinese Corporate Income Tax Law
9	Germany	GAAR provisions under section 42 of the German Tax Code
10	Japan	Some GAAR like provisions in Article 132 and Article 132-2 of Japan Corporation Tax Act.

## SUMMARY

Therefore, GAAR provisions empower the tax authorities to re-characterize transactions and redetermine the resultant tax consequences, if such transactions are structured with the main aim of availing tax benefits or if they lack commercial substance. The conditions and tests as explained above are very elaborate. Almost any situation which will have the effect of tax reduction can be covered within GAAR. Therefore one must analyze the tax implication of any transaction very carefully before undertaking the same.

## COUNTRIES WHERE GAAR HAS BEEN INVOKED

Following are the countries where GAAR has been invoked or in process of implementation:



## UPDATE ON STRESSED ASSETS RESOLUTION MECHANISM



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### ***Recent changes in Resolution of Stressed Assets prior to invocation of IBC....***

Stressed assets construe to be Non Performing Assets (NPAs) of the Indian Banking System. While most of us are familiar (or have atleast heard) about Insolvency and Bankruptcy Code, 2016 (IBC) and how it is helping in resolving the problem of NPAs. However most of us are unaware about resolving the stressed assets outside the purview of IBC.

While earlier framework, designed by apex bank - RBI, provided schemes such as Corporate Debt Restructuring (CDR), Sustainable Structuring of Stressed Assets (S4) and Strategic Debt Restructuring (SDR) for Debt Restructuring, however, introduction of IBC, necessitated substitution of existing framework with fresh guidelines that are harmonized with IBC. This necessity was fulfilled by the introduction of the circular dated **February 12, 2018** by RBI that made its way by discontinuing all the existing frameworks for restructuring.

This circular made it mandatory for banks to identify signs of stress in loan accounts and classify stressed assets as Special Mention Account (SMA) and report such default to RBI. Furthermore, lenders were mandated to finalise a resolution plan in case of a default on large accounts of Rs 2,000 crore and above within 180 days, failing which insolvency proceedings were directed to be invoked against the defaulters. However this circular has recently been quashed by the order of Supreme Court (SC) in the matter of Dharani Sugars and Chemicals Ltd. vs Union of India

&Ors.

The problem began primarily with the Power Sector wherein the entities on account of default and in absence of resolution within the laid time frame of 180 days were being referred under IBC, 2016 by the lenders following the guidelines of this circular. SC while taking the charge of the cases referred at various Courts, stayed the RBI's circular, preventing initiation of Insolvency proceedings against stressed power assets.

SC observed that Power Sector operates in a restricted market space wherein the power can only be purchased by licensed buyers and the substitutability of buyers is impossible. Changes in policies, failure to fulfil commitments, delayed regulatory response and non-payment of dues were all on account of government failures. SC further observed that cancellation of coal mines in 2014 added to the woes of the Thermal Power Plants and likewise Gas Based Plants were no better due to similar reasons. SC held certain inconsistencies in the circular viz. difficulty in arriving at 100% consensus of lenders for approval of resolution (especially when funding is through multiple lenders), impracticable condition for power sector entities to repay at least 20% of outstanding debt as part of restructuring.

While the reasons mentioned above only describes the absurdity relating to Power Sector and how the "one size fits all" approach of RBI did not go well with Power Sector, however taking further account of the circular, SC has held the circular as constitutionally

invalid. SC has observed that the newly inserted Section 35AA of Banking Regulation Act, 1949 that gives power to RBI to direct banking institutions to move under the IBC, requires fulfilment of two precedent conditions:

- that there is a Central Government authorisation to do so; and
- that it should be in respect of specific defaults.

SC has observed that while the first condition was met, however the second condition of specific defaults was not met. Since RBI circular aims to issue directions to banking companies “generally” and does not refer to “specific” cases of default, the circular is declared ultra vires as a whole and Non Est in law.

Consequences of this judgment include that all actions

taken under the said circular, including actions by which the IBC is triggered must fall along with the circular.

Accordingly at present RBI is working upon the revised circular to provide a mechanism for NPA resolution

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## DIRECT TAX CASE LAW



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### **1. Gift received by an individual from HUF isn't exempt: ITAT:**

[Gyanchand M. Bardia v. INCOME TAX OFFICER [2018] 93 taxmann.com 144 (Ahmedabad - Trib.)]

The assessee claimed that gift of received from his Hindu undivided family (HUF) was exempt from tax under section 56(2)(vii). However, the Assessing Officer held that the term 'relative' in Explanation (e) to Section 56(2)(vii) does not include HUF as donor and, therefore, added the impugned amount to assessee's income under Section 68.

On further appeal, the Tribunal held in favour of revenue that as per Explanation to Section 56(2)(vii) members of an HUF are its relatives. Therefore, if HUF receives any sum from any of its member, such sum shall not be chargeable to tax. However, in vice-versa cases when member receives any sum from the HUF, same would be chargeable to tax as the term 'relatives' defined under said Explanation does not include HUF as a relative of such individual. The legislative intent is very clear that an HUF is not to be taken as a donor in case of an individual recipient. Thus, the assessee's plea of having received a valid gift from his HUF was rightly declined and impugned addition was to be upheld.

### **2. Sec. 68 additions not tenable on grounds that relatives gave gift without any occasion: High Court:**

[Pendurthi Chandrasekhar v. DUPUTY COMMISSIONER OF INCOME TAX [2018] 91 taxmann.com 229 (Hyderabad)]

In this case, additions were made under section 68 on the grounds that assessee had failed to show why, without any occasion, Rs. 73 Lakhs had been gifted by

the maternal aunt without any consideration. The appellate authorities also upheld the action of the Assessing Officer. On further appeal, the High Court held in favour of assessee that an occasion is not necessary to accept a gift from a relative. Section 56 does not envisage any occasion for a relative to give a gift, it was almost impermissible for any authority and even for the Court to import the concept of occasion and develop a theory based on such concept.

The Court further held that when donor had given a confirmation letter that she had transferred Rs. 73 lakhs to her nephew as a gift out of natural love and affection, the AO should not have further doubted her. The donor in instant case was assessee's own maternal aunt and was covered within the definition of 'relative' defined under explanation to section 56(2)(v). Therefore, unexplained addition under section 68 with respect to gift of Rs. 73 lakh received by assessee from his maternal aunt was to be deleted.

### **3. Market value of other business assets not relevant to determine FMV value of unlisted shares of a co.:**

[Minda S M Technocast (P.) Ltd. v. ACIT [2018] 92 taxmann.com 29 (Delhi - Trib.)]

The assessee-company was deriving its income under the head 'rental and interest income'. It acquired shares of another entity at Rs. 5 per share. The value of such shares was derived on basis of book value of assets of issuing co. in accordance with Rule 11UA of the I-T Rules. Valuation Report from a CA firm was also produced in support of claim.

The Assessing Officer was of the view that the fair market value (FMV) of the land as per the circle rate

should be taken into consideration while determining the value of the shares of issuing co. Accordingly, he substituted the book value of the land with FMV of the land as per the circle rate and determined the value of shares at Rs. 45.72 per share.

The Tribunal held in favour of assessee that Rule 11UA contains the provisions for determination of fair market value of a property, other than an immovable property. Rule 11UA provides that while valuing the shares the book value of the assets and liabilities declared by the issuing co. should be taken into consideration. There is no provision in Rule 11UA as to substitute the FMV of land with its book value while calculating the FMV of shares. Therefore, the share price calculated by the assessee of issuing co. at Rs. 5 per share had rightly been determined in accordance with the provisions of Rule 11UA.

#### **4. HC upheld additions on basis of 'window-dressed' financials prepared for bank loans:**

[[Binod Kumar Agarwala v. CIT \[2018\] 94 taxmann.com 422 \(Calcutta\)](#)]

The assessee approached a bank to obtain the credit facilities on basis of books of account prepared by a firm of Chartered Accountants. Subsequently, different financial statements were presented before Income-tax Dept. which were audited by another Chartered Accountants Firm. The financials for Income-tax purposes were not commensurate with what was reflected in the books of account presented before Bank. The Assessing Officer made additions due to difference in two audited balance sheets.

The High Court held in favour of revenue that once assessee presents the financial statements, as certified by a Chartered Accountant, for obtaining bank loan, he can't subsequently backtrack from such position at the time of filing annual accounts for purpose of taxation. The assessee can't argue that that earlier accounts had been prepared on estimation basis for presentation thereof to bank.

When financial statement of an assessee is accompanied by a certificate as to its fairness, it couldn't be tailor-made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon. Thus, it was open to the Assessing Officer and income tax authorities to pin assessee

down on basis of assessee's representation contained in earlier balance-sheet and make additions.

#### **5. Sum received on relinquishment of 'right to sue' is non-taxable capital receipt: ITAT:**

[[Bhojison Infrastructure \(P.\) Ltd. v. ITO \[2018\] 99 taxmann.com 26 \(Ahmedabad - Trib.\)](#)]

The assessee-company entered into a development agreement by virtue of which a right in land was created in its favour by owner of land. Assessee's case was that despite development agreement entered into by landlord, the landlord had decided to sell said land to other parties. The assessee filed a suit in the Courts of law for specific performance of pre-emptive right to purchase the land. Later on, it received damages from the potential purchaser for relinquishment of 'right to sue' in the Courts of law for breach of development agreement. The assessee claimed that 'right to sue' was a personal right which would not fall within sweep of definition of 'capital asset' under section 2(14). Consequently, damages received from potential purchaser were treated as non-taxable capital receipts.

#### **The ITAT held in favour of assessee as under:**

The essence of long list of judicial pronouncements cited by assessee was that section 6 of the Transfer of Property Act which uses the same expression 'property of any kind' in the context of transferability makes an exception in the case of a mere right to sue. The decisions thereunder make it abundantly clear that the 'right to sue' for damages is not an actionable claim. It cannot be assigned. Transfer of such a right is opposed to public policy as it tantamount to gambling in litigation.

Hence, such a 'right to sue' does not constitute a 'capital asset' which, in turn, has to be 'an interest in property of any kind'. Despite the definition of expression 'capital asset' in the widest possible terms in Section 2(14), a right to a capital asset must fall within the expression 'property of any kind' subject to certain exclusions.

Notwithstanding widest import assigned to the term 'property' which signifies every possible interest which a person can hold and enjoy, the 'right to sue' was a right in personam and such right could certainly not be transferred. In order to attract the charge of tax

on capital gains, the sine qua non is that the receipt must have originated in a 'transfer' within the meaning of section 45, read with section 2(47) of I-T Act. In the absence of its transferability, damages received by assessee couldn't be assessed as capital gains.

### **6. AO should apprise counsel on all facts to avoid delays in disposal of cases: HC:**

[[PCIT v. Grasim Industries Ltd \[2018\] 94 taxmann.com 81 \(Bombay\)](#)]

The Bombay High Court held that it is primary duty of the Assessing Officer to apprise the Counsel about all facts involved in matter, more particularly facts which may have surfaced after passing of impugned order of Tribunal so as to avoid unnecessary delays in disposing of cases pending before Court. Officers of revenue should not believe that once matter is in Court, it is sole responsibility of revenues counsel to protect the interest of State.

Thus, it is appropriate to suggest to CBDT to consider holding of a training programme, where leading advocates could address domain-expert on ethics, obligation and standard expected of advocates before they start representing State. It would ensure that revenue is properly represented to serve greater cause of justice and fair play.

### **7. No capital gain tax on 'Power of Attorney' holder just because real owner didn't file ITR: ITAT:**

[[Samir Trikambhai Patel v. ITO \[2018\] 96 taxmann.com 291 \(Ahmedabad - Trib.\)](#)]

During the assessment proceedings, the Assessing Officer noted that the assessee had sold immovable properties and earned long-term capital gains. The assessee submitted that he had only signed the documents by virtue of Power of Attorney (POA) executed by Mr. A and Mr. B, the original vendors of such sale transactions who were Non-resident Indian.

The Assessing Officer concluded that as assessee failed to furnish the residential address of the vendors and vendors didn't file returns of income, he shall be considered as owner of the properties. Accordingly, the assessee was held liable to be taxed on the capital gain arising from sale of these properties.

On further appeal, the ITAT held in favour of assessee. It held that the copy of purchase agreement, power of

attorney and sale deeds produced before AO, mentioned nowhere that the assessee was the real owner of the property or the consideration had been received by him. The residential address of the actual vendors was also mentioned in the Sale Deed as well as in the Power of Attorney. In spite of information about the residential address of real owner, the AO had not taken any initiative to make an enquiry with an intent to impose tax on capital gain upon them. Instead of doing so, he made the assessee liable for payment of tax. Therefore, as the properties didn't belong to the assessee, capital gain arising from those properties couldn't be taxed in his hands solely on the ground that the person being the real owners hadn't filed their income-tax returns.

### **8. Payment of advance salary to defeat purpose of demonetisation won't come under purview of benami transaction:**

[[G. Bahadur v. ACIT \[2018\] 100 taxmann.com 179 \(PBPTA-AT\)](#)]

The appellant was employed in a College run by a Trust. He received Rs. 50 thousand as advance salary from the said trust. The appellant deposited entire amount in his bank account, which was subsequently withdrawn by him and used for own purposes.

The Initiating Officer (IO) assumed that Chairman of trust had forced employees to distribute, deposit and retain their own money in demonetized currency in guise of loan received, which had to be repaid after some time in new currency. Thus, IO held chairman of college as beneficial owner and appellant as benamidar and passed order provisionally attaching bank account of appellant.

### **The Appellate Tribunal held in favour of appellant as under:**

Every cash transaction couldn't be termed as a 'benami' transaction. As per section 2(9) of Benami Act the following twin conditions are needed to be satisfied to construe any transaction as benami: (1) the property being held by a person who has not provided the consideration, (2) the property is held by that person for the immediate or future benefit, direct or indirect of the person who has provided the said consideration.

The characteristic of a 'benami' transaction is that there must be a mere lending of name without any

intention to benefit the person in whose name it is made, i.e., a mere name lender. The mischiefs sought to be punished by the Act are only such transactions which have a name lending element without deriving any benefit therein, i.e., 'benami' transactions.

The transaction where cash was paid to person in lieu of a future promise couldn't be a 'benami' transaction, as there was no lending of name. There could be no 'benami' transaction if the future benefit was due from the person who was also the holder of property.

The impugned order was not sustainable as it intended to punish the appellants for wanting to defeat the purpose of demonetization and was beyond the purview of the Act.

## **9. No concealment penalty if assessee has bonafide belief that notional income isn't taxable: ITAT:**

[DCIT v. Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai - Trib.)]

The assessee, Mr. Shah Rukh Khan, had received a villa at Dubai as gift and offered an amount of Rs. 14 lakhs as the notional income of the villa for tax in his return of income for the year under consideration. During the course of assessment proceedings, assessee claimed that Article 6 of India-UAE tax treaty doesn't expressly recognize the right of the resident State to tax the income from immovable property situated in the source State. Therefore, the notional income of the villa owned by him in Dubai could not be subjected to tax in India.

The ITAT held that claim raised by the assessee being clearly backed up by a bonafide belief on his part that the notional income of the villa was not liable to be taxed in India, no penalty for concealment of income could be validly imposed on the assessee.

## **10. Excess share premium not taxable in hands of**

## **closely held co. if its shareholders are relatives: ITAT:**

[Vaani Estates (P.) Ltd. v. ITO [2018] 98 taxmann.com 92 (Chennai - Trib.)]

The assessee-company had only two shareholders 'S' and her husband. On passing away of husband, his shares devolved on their daughter 'V'. The assessee proposed to acquire an immovable property at approximately Rs. 23.09 crores. 'S' brought in money into the company in lieu of allotment of fresh 10,100 shares with a share premium of Rs. 23.31 crores.

The Assessing Officer opined that company had received excess price/share premium for the shares allotted to 'S' over and above the face value of shares. Accordingly, he brought Rs.

## **23.31 crores to tax in the hands of the company under Section 56(2)(viib).**

The ITAT held in favour of assessee as under:

When 'S' introduced money into the company for allotment of shares at an exorbitant premium in contrast to its intrinsic value of just Rs. 10 per share, the benefit of such investment had only passed on to her daughter because there were only two shareholders in the company at that point of time. Had 'S' gifted the money to her daughter 'V' and thereafter if daughter had brought the same into the company for allotment of equity shares at face value, question of invoking of the provisions of section 56(2)(viib) would not have arisen.

Provisions of section 56(2)(viib) couldn't be invoked in the case of the assessee-co. because by virtue of introducing cash in the company by 'S' for allotment of equity shares with unrealistic premium the benefit had only passed on to her daughter 'V' and there was no scope in the Act to tax when cash or asset was transferred by a mother to her daughter.





## REQUEST FOR CONTRIBUTION TO CHARTERED ACCOUNTANTS BENEVOLENT FUND (CABF)

The Ghaziabad Branch of CIRC of ICAI hereby requests all its members to contribute generously towards the CABF and help the Institute in extending support towards needy chartered accountants and their families. Donors may kindly contact Branch Chairman for the same.

### ABOUT CABF

#### Objective

The objective for which the fund is established is to provide financial assistance for maintenance, education or any other similar purpose to necessitous persons being:-

- (a) persons who are or have been members of the Institute, whether subscribers to the fund or not; or
- (b) wives and children of persons who are or have been members of the Institute, whether subscribers to the fund or not.
- (c) widows and children of deceased persons who have been members of the Institute, whether subscribers to the fund or not.
- (d) relatives or others who were dependent for support on a person who has been a member of the Institute, whether subscriber to the fund or not; and who has died without leaving a widow or child.

#### Procedure for becoming a member of the CABF:

There are two categories of members:-

(a) **Life Member:** A single payment of Rs. 5000/- shall make a person eligible to be admitted as a life member of the fund. Thereafter he shall not be liable to pay any amount on account of subscription and shall be styled as a 'Life Member'.

(b) **Ordinary members:** All other members shall be described as 'Ordinary Members' and shall have to pay an annual subscription of Rs. 1000/-.

Apart from this any member can subscribe for 'Voluntary Contribution'.

#### Procedure for making payment

Membership subscription to the Chartered Accountants Benevolent Fund can be paid along with annual membership fee. Alternatively, it can be paid separately by local cheque/DD to the respective Decentralised offices or Regional offices or Head office.

#### Application format

The application for enrolment as a member of the fund shall be made in form 'A'.

(Details can be accessed from:  
[https://www.icaai.org/post.html?post\\_id=745](https://www.icaai.org/post.html?post_id=745))



# Lateral Placement for experienced Chartered Accountants

(5 Years & above)

June, 2019

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#### Date Schedule:

Centre	Date of Interview
Chennai	25 <sup>th</sup> June, 2019
Kolkata	26 <sup>th</sup> June, 2019
Mumbai	27 <sup>th</sup> June, 2019
New Delhi	28 <sup>th</sup> June, 2019

#### Eligibility of Members for Lateral Placement

A Chartered Accountant having Membership as on 31<sup>st</sup> May, 2014 or prior to that.

For further details, kindly visit: <https://cmib.icai.org/>

Chairman  
Committee for Members in Industry & Business (CMI&B)  
The Institute of Chartered Accountants of India

For any queries, you are requested to get in touch with the **CMI&B Secretariat, ICAI Bhawan, Indraprastha Marg, New Delhi -110002.**

**For Organisation:**

Tel. No.: (011) 30110526/555/548/450 or e-mail at [careerascent@icai.in](mailto:careerascent@icai.in)

**For Members:**

Tel. No.: (011) 30110548/450 or e-mail at [experiencedcas@icai.in](mailto:experiencedcas@icai.in)



#### Organised By:

**Committee for Members in Industry & Business (CMI&B)**

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

'ICAI Bhawan', Post Box No. 7100, Indraprastha Marg, New Delhi - 110002

**Website:** [www.icai.org](http://www.icai.org)



## Income Tax Department

Government of India

### RATES FOR TAX DEDUCTION AT SOURCE

[For Assessment year 2020-21]

<i>Particulars</i>	<i>TDS Rates (in %)</i>
<b>1. In the case of a person other than a company</b>	
<b>1.1 where the person is resident in India-</b>	
<b>Section 192:</b> Payment of salary	Normal Slab Rate
<b>Section 192A:</b> Payment of accumulated balance of provident fund which is taxable in the hands of an employee.	10
<b>Section 193:</b> Interest on securities	
a) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	10
b) any debentures issued by a company where such debentures are listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder;	10
c) any security of the Central or State Government; [i.e. 8% Savings (Taxable) Bonds, 2003 and 7.75% Saving (Taxable) Bonds, 2018]	10
d) interest on any other security	10
<b>Section 194A:</b> Income by way of interest other than "Interest on securities"	10
<b>Section 194B:</b> Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30
<b>Section 194BB:</b> Income by way of winnings from horse races	30
<b>Section 194C:</b> Payment to contractor/sub-contractor	
a) HUF/Individuals	1
b) Others	2
<b>Section 194D:</b> Insurance commission	5
<b>Section 194DA:</b> Payment in respect of life insurance policy	1
<b>Section 194EE:</b> Payment in respect of deposit under National Savings scheme	10
<b>Section 194F:</b> Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India	20
<b>Section 194G:</b> Commission, etc., on sale of lottery tickets	5
<b>Section 194H:</b> Commission or brokerage	5

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<b>Section 194-I:</b> Rent	
a) Plant & Machinery	2
b) Land or building or furniture or fitting	10
<b>Section 194-IA:</b> Payment on transfer of certain immovable property other than agricultural land	1
<b>Section 194-IB:</b> Payment of rent by individual or HUF not liable to tax audit <b>Note:</b> This provision is applicable from June 1, 2017	5
<b>Section 194-IC:</b> Payment of monetary consideration under Joint Development Agreements	10
<b>Section 194J:</b> Any sum paid by way of a) Fee for professional services, b) Fee for technical services c) Royalty, d) Remuneration/fee/commission to a director or e) For not carrying out any activity in relation to any business f) For not sharing any know-how, patent, copyright etc. <b>Note:</b> With effect from June 1, 2017 the rate of TDS would be 2% in case of payee engaged in business of operation of call center.	10
<b>Section 194LA:</b> Payment of compensation on acquisition of certain immovable property <b>Note:</b> With effect from April 1, 2017, no deduction of tax shall be made on any payment which is exempt from levy of income-tax under Right to Fair Compensation Act, 2013.	10
<b>Section 194LBA(1):</b> Business trust shall deduct tax while distributing, any interest received or receivable by it from a SPV or any income received from renting or leasing or letting out any real estate asset owned directly by it, to its unit holders.	10
<b>Section 194LBB:</b> Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)]	10
<b>Section 194LBC:</b> Income in respect of investment made in a securitisation trust (specified in <i>Explanation</i> of section 115TCA)	25% in case of Individual or HUF 30% in case of other person
Any Other Income	10
<b>1.2 where the person is not resident in India*-</b>	
<b>Section 192:</b> Payment of Salary	Normal Slab Rate
<b>Section 192A:</b> Payment of accumulated balance of provident fund which is taxable in the hands of an employee.	10
<b>Section 194B:</b> Income by way of winnings from lotteries, crossword puzzles, card	30

## GHAZIABAD BRANCH OF CIRC OF ICAI

games and other games of any sort	
<b>Section 194BB:</b> Income by way of winnings from horse races	30
<b>Section 194E:</b> Payment to non-resident sportsmen/sports association	20
<b>Section 194EE:</b> Payment in respect of deposits under National Savings Scheme	10
<b>Section 194F:</b> Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India	20
<b>Section 194G:</b> Commission, etc., on sale of lottery tickets	5
<b>Section 194LB:</b> Payment of interest on infrastructure debt fund	5
<b>Section 194LBA(2):</b> Business trust shall deduct tax while distributing any interest income received or receivable by it from a SPV to its unit holders.	5
<b>Section 194LBA(3):</b> Business trust shall deduct tax while distributing any income received from renting or leasing or letting out any real estate asset owned directly by it to its unit holders.	30
<b>Section 194LBB:</b> Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)].	30
<b>Section 194LBC:</b> Income in respect of investment made in a securitisation trust (specified in <i>Explanation</i> of section 115TCA)	30
<b>Section 194LC:</b> Payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond) <b>Note:</b> With effect from April 1, 2018 benefit of such concessional TDS rate has been further extended by three years. Now TDS at concessional rate of 5% will be applicable for borrowings made before July 1, 2020.	5
<b>Section 194LD:</b> Payment of interest on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor <b>Note:</b> With effect from April 1, 2018 benefit of such concessional TDS rate has been further extended by three years. Now TDS at concessional rate of 5% will be applicable for borrowings made before July 1, 2020.	5
<b>Section 195: Payment of any other sum to a Non-resident</b>	
a) Income in respect of investment made by a Non-resident Indian Citizen	20
b) Income by way of long-term capital gains referred to in <a href="#">Section 115E</a> in case of a Non-resident Indian Citizen	10
c) Income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-Section (1) of <a href="#">Section 112</a>	10
d) Income by way of long-term capital gains as referred to in <a href="#">Section 112A</a>	10
e) Income by way of short-term capital gains referred to in <a href="#">Section 111A</a>	15

## **GST Help Desk By Ghaziabad Branch of CIRC of ICAI**

Dear Members,

We have Launched GST Help Desk (from 1st May, 2019 onwards) to entertain the queries, issues & problems related to GST, GST Annual Returns, GST Audit etc. You can call, WhatsApp & Email any of the following Experts of GST according to their convenient time.

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- (v) CA. Manoj Goyal  
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Regards:  
Team ICAI Ghaziabad

## **Income Tax Help Desk By Ghaziabad Branch of CIRC of ICAI**

Dear Members,

We have Launched Income Tax Help Desk to entertain the queries, issues & problems related to Income Tax, TDS, Tax Audit etc. You can call, WhatsApp & Email any of the following Experts of Income tax according to their convenient time.

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Regards:  
Team ICAI Ghaziabad



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament) ( Ghaziabad CIRC )

08.05. 2019

## “ Certificate Course on Goods & Services Tax (GST) ”

### Respected Members!

We are pleased to inform you that Ghaziabad Branch of CIRC of ICAI, is hosting Certificate Course on GST Organized by Indirect Tax Committee of ICAI on following Dates.

01/06/2019	02/06/2019	08/06/2019	09/06/2019
15/06/2019	16/06/2019	22/06/2019	23/06/2019
06/07/2019	07/07/2019		

Timing : From 09:30 AM to 05:30 PM

CPE Hours - 30 Hours

Venue : Hotel Citrus, C-2 Mahaluxmi Mall,  
RDC Raj Nagar, Ghaziabad-201002

Fees : Rs. 18,000/- + GST (3240) = Total 21240/- only

Online Link for payment & Registration : <http://idtc.icai.org/cc/student>

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**For The Institute of Chartered Accountants of India, Ghaziabad (CIRC)**

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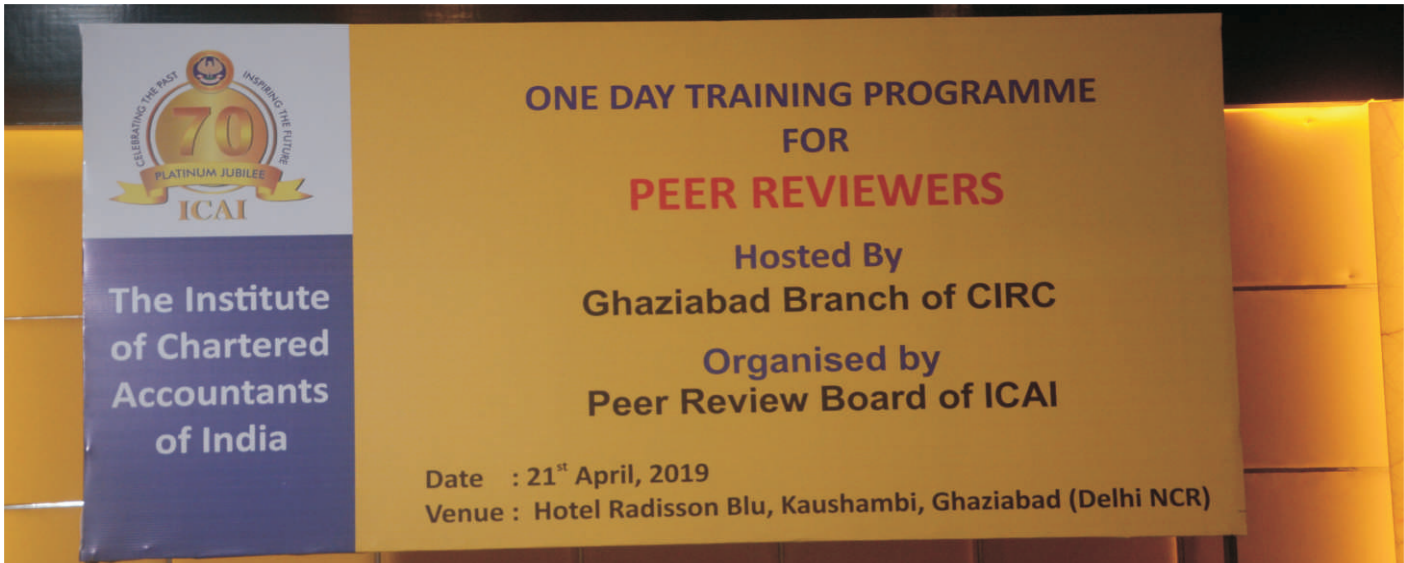


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