



SURAT BRANCH OF WIRC OF ICAI

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Celebration of 51st year of the



E - Newsletter

SURAT BRANCH

February 2023



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From Chairman's Desk:

Dear Esteemed colleagues,

Warm Greetings!!

I feel extremely to be honoured as Chairperson of Surat Branch of WIRC of ICAI. It was a great honour for me to be blessed with a unique opportunity to serve members, students and society at large.

In my last communication as 51st Chairperson of the Surat Branch of WIRC of ICAI. I would like to extend my sincere thanks to all my professional colleagues, students and well-wishers of the Surat Branch for their active participation, co-operation and overwhelming response to achieve grand success of all conferences, seminars, workshops and other events organised during the year.

“Learning gives Creativity, Creativity leads to Thinking, Thinking provides Knowledge, Knowledge makes you Great”

This tenure was a wonderful learning experience for me and I also had a very good time working with Surat Branch-United Managing Committee Members Team during my tenure. I want to thank everyone for their untiring support and putting all the efforts to make this tenure outstanding and memorable. It will remain a highlight in my professional career. I hope our paths may continue with same enthusiasm and spirit by the successor.

In the last month we have organised several programmes for members as well as for students – Start-up Samvad, Women's National Conference, Articleship placement programme. Also, we celebrated 74th Republic Day and felicitated more than 200 Newly Qualified CA members. In the month of February we have organised Live Screening of Union Budget – 2023 and we have also got to the permission to host the Physical Batch of Diploma Information System Audit 3.0 Course. We have also planned for Seminar on S. Vaidyanath Aiyar Memorial Lecture, WICASA Box Cricket League 2023 for students & etc. I hope for your active participation and support.

I would like to thank all the past chairmen who have been pillars of strength and source of inspiration throughout the year. Your leadership that has been inspired to work hard to achieve the best version of myself to serve the profession at large.

I express my gratitude towards all leaders of Central and Regional Council members who visited and inspired the Surat Branch during the tenure. I would also like to express my heartfelt gratitude to the Chairperson CA. Murtaza Kachwaha and CCM CA. Vishal Doshi for their enormous source of support and inspiration for me that I can never forget.

I also want to give special thanks to all staff members of Surat Branch for their hard work and their outstanding support to raise the level of success of Branch Activities for members and students.

I also want everyone to please forgive me if you have felt any work that was not up to the mark or any shortcomings in my working tenure.

Whenever I think that my tenure is coming to the end but I assure that I will always serving this profession in whatever possible way irrespective of position.

दस्तर है जमाने का यह पुराना,
लगा रहता है यहां आना और जाना,
रहो जहां अपनी छाप ऐसे छोड़ जाना,
हर कोई गुनगुनाता रहे आपका ही तराना।

Before I rest my pen, let me also take this opportunity to give my warm wishes to all members on the occasion of Holi in advance. May several colours make your life all the more colourful and happier! I also wish each and every members & students of Surat Branch for bright and colourful future ahead.

With all best wishes,

CA. Nikesh Kothari
Chairperson

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From Editorial Desk:

Greetings Surat Branch Members,

As we approach the month of February, the month of Budget, I extend my best wishes for the upcoming budgets to meet all of our expectations.

Upon reflection on the past year, I am pleased to announce that the Surat Branch has successfully achieved all of its goals, thanks to the guidance and leadership of our esteemed Branch Chairman, CA Nikesh Kothari. On behalf of the Editorial Committee, I extend our heartfelt congratulations to Chairman CA Nikesh Kothari for his outstanding achievements.

Throughout the year, the Editorial Committee has been dedicated to fostering a love of reading among our members in the Surat Branch. We have made great strides in promoting this passion and hope to continue this important work in the future.

This Newsletter includes Rule 88C-GSTR 3B v/s GSTR-1 Mismatch in Liability, Section 2(22)(e) : Deemed Dividend, Appeals before CIT(A) : Critical Aspects, Theme on Market for 2023, Upcoming CPE Programme by Surat Branch.

Let's learn together, grow together, shine together and succeed together and take a pledge to make Surat branch reach newer heights in alignment with our theme of this year "United WE CAN".

I would like to take this opportunity to sincerely thank all the contributors for sending the updates and sparing their precious time for the cause of the profession. In order to make the newsletter more resourceful, we need your support by way of contribution of updates, useful suggestions, etc. I extend my sincere gratitude to the Editorial team for their hard work to publish this newsletter in time. I urge all the Members of Surat Branch who are willing to contribute for E-newsletter, kindly share your insights on topics of your choice with us on surat@icai.org.

Happy Learning!!

Stay safe and Stay healthy.

CA Shailesh Lakhankiya
Chairperson
Editorial Committee



CA DHARMESH NAKRANI

Rule 88C – GSTR 3B v/s GSTR 1 Mismatch in Liability

Rule 88C has been added to the CGST Rules 2017 vide GST Notification No 26/2022 to implement decisions taken by 48th GST Council Meeting. The Rule 88C specifies manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.

Extract of Recommendation of 48th GST Council Meeting

Rule 88C and FORM GST DRC-01B to be inserted in CGST Rules, 2017 for intimation to the taxpayer, by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage, for enabling the taxpayer to either pay the differential liability or explain the difference.

Further, clause (d) to be inserted in sub-rule (6) of rule 59 of CGST Rules, 2017 to restrict furnishing of FORM GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid. This would facilitate taxpayers to pay/ explain the reason for the difference in such liabilities reported by them, without intervention of the tax officers.

What is Rule 88C under GST?

Section 75(12) of the CGST Act, 2017 allows for recovery of tax without the issuance of a Show Cause Notice under Section 73/74 of the CGST Act, 2017 where any amount of tax is self-assessed in accordance with the return furnished under Section 39 of the CGST Act, 2017.

An explanation was added to the said sub-section by Finance Act, 2021 wherein the expression “self-assessed tax” included tax payable in respect of details of outward supplies furnished under section 37 (GSTR-1), but not included in the return furnished under section 39 (GSTR-3B). The said explanation was made effective from 01st January 2022.

There were many doubts raised by trade and the field formations about how the recovery on account of the mismatches between GSTR-1 and GSTR-3B would be dealt with by the Tax Authorities. On 7th January 2022, CBIC issued guidelines for recovery proceedings under the provisions of Section 79 of the CGST Act, 2017.

It instructed for providing of opportunity to the affected taxpayer to explain the differences between GSTR-1 and GSTR-3B by sending a letter, before initiation of action under Section 79 of the CGST Act, 2017. To standardize the entire recovery proceedings, Rule 88C has been inserted in the CGST Rules, 2017.

The Rule 88C has been explained further in detail below:

1. Rule 88C Applicability

- This provision will be applicable where tax liability as per GSTR-1 / IFF exceeds tax paid in GSTR-3B by such amount and such percentage as may be prescribed by the council. Such mismatches will be considered under the provisions of Rule 88C.

2. Intimation to Taxpayer



- The registered person will be intimated of such difference in Part A of FORM GST DRC-01B.
- FORM GST DRC-01B would be uploaded on the common portal, and a copy of such intimation shall also be sent to his e-mail address as provided in his registration certificate. The said form would highlight the difference between GSTR-1 and GSTR-3B.

3. Action required by taxpayer

- The taxpayer shall have either of the two options to deal with FORM GST DRC-01B.

OPTION- A:

- Pay the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

OPTION- B:

- Furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B.

4. Time Limit:

- The time limit that has been prescribed for a taxpayer to take any action in response to form DRC-01B is 7 days.

5. Consequence of non-compliance of Rule 88C

- In the case where the amount specified in DRC-01B remains unpaid, or no reply was furnished, or where the reply furnished was found to be unacceptable by the proper officer, recovery proceedings would be initiated by provisions of Section 79 of the CGST Act, 2017.
- Section 79 of the Central Goods and Services Tax states that, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

6 .Effective date of the new Rule 88C

- Rule 88C is not yet effective. The said rule gets triggered only where the difference between GSTR-1 and GSTR-3B would exceed a certain amount and percentage as may be prescribed. Since the amount and percentage have not yet been notified, the rule cannot be implemented until the amount and percentage are notified.

7. Blockage of further filing of GSTR-1

- Rule 59(6) of the CGST Act, 2017 also got inserted vide GST Notification No. 26/2022 -Central Tax dated 26th December 2022. The said rule does not allow the filing of GSTR-1/IFF for a subsequent tax period where after the issuance of DRC-01B the taxpayer fails to take any action. That is where the taxpayer neither
 - Pays amount payable as per DRC-01B nor
 - Submits any reply for any amount remaining unpaid in Part B of FORM GST DRC-01B

Kindly note that the rule does not prescribe blocking of GSTR-1 / IFF where the reply furnished was found to be non-satisfactory by the tax authorities. Where the reply was furnished but found to be not satisfactory, only recovery proceedings under Section 79 of the CGST Act, 2017 would be triggered.



Where no action was taken against the issuance of DRC-01B, there would be blocking of GSTR-1/IFF along with initiation of recovery proceedings under Section 79 of the CGST Act, 2017.

GSTR 1 and GSTR 3B are the two most important returns in the GST system. Comparing GSTR-3B with GSTR-1 is a much-needed process to be undertaken by every taxpayer in order to ensure that there are no variations or gaps, which could, in turn, lead to a demand notice from the tax authorities or unwanted issues that may arise and hinder the accurate filing of the annual returns.

In this article, let us understand in detail about mismatches in GSTR 1 and GSTR 3B in liability...

Reasons for the mismatch in GSTR 1 and GSTR 3B in liability

1. Misallocation: GSTR-1 is prepared at the invoice level and GSTR-3B is prepared at the aggregate level. This can lead to furnishing supplies under the wrong head in GSTR-3B, but declaring the same details correctly in GSTR-1.
2. RCM Supplies: Interstate supplies made to unregistered persons not declared in GSTR-3B.
3. Wrong tax heads: The total value of supplies is correctly shown but taxes are paid under the wrong head.
4. Post-filing Amendments: Amendment in supplies made after GSTR-1 filed.
5. Different filing periods: The time difference in reporting time of invoices in GSTR-1 and GSTR-3B.
6. Tax not paid in GSTR 3B on supplies: There have been multiple instances of ITC being passed on by the supplier vide GST-R1 for which tax have not been discharged through GSTR 3B.

Some mismatches in GSTR 1 and GSTR 3B may convert in tax liability, while some other may be on account of genuine errors and does not have any impact on tax liability. To identify the error, one requires an explanation by the registered person and the judicious application of mind of the Department officers.

Vide the recommendations of the 48th GST Council meeting on 17th December 2022, Rule 88C was inserted to provide for a mechanism for dealing with the difference arising from taxpayer's liability as reported in GSTR-1 v/s GSTR-3B.

ARE 7 DAYS' ENOUGH FOR TAKING ACTION?

The time limit that has been prescribed for a taxpayer to take any action in response to DRC-01B is merely 7 days. Failing which recovery proceeding would be initiated against the taxpayer. The time limit of 7 days is a very small window offered to an aggrieved taxpayer. Even where an SCN has been issued to a taxpayer the minimum time given to him to reply is 30 days.

The following are some suggestions from my point of view for this time limit of 7 days:

- a. The government should increase the time limit for reply to at least 30 days. If not, then 7 days should atleast be read as 7 working days.
- b. There is currently no provision that allows for the extension of the time limit. Where there is any reason due to which the taxpayer is unable to submit his response within 7 days, he should be given an opportunity to apply for an extension. The proper officer shall be at the liberty to grant extension.
- c. At least 3 to 4 reminder notices should be given to a taxpayer before initiation of any action against him.

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CA RICHA TOSNIWAL

Section 2(22)(e) : Deemed Dividend

The term 'Dividend', as generally understood, refers to the return(s) earned by a shareholder for investing in a company by buying its shares. Earlier such dividend was tax-free for the recipient as companies paying dividends already pay Dividend Distribution Tax when they pay out the dividend. In Budget 2021, the Finance Minister Mrs. Nirmala Sitharaman has abolished Dividend Distribution Tax (DDT). Now the incidence of dividend income taxation is shifted to investors from the companies. This article throws light on the taxability of deemed dividend us 2(22)(e).

Tax on dividend distributed by a company was introduced vide Finance Act 1997 by introducing Section 115-O whereby the companies distributing dividends were required to deduct tax at nominal rate of 10%. The logic behind introduction of DDT was to provide aid in collection of tax and reduce burden of compliance on the taxpayers. An amendment was carried out in 2014, which provided for grossing-up of the DDT rate, which effectively increased the net tax paid as DDT. The moderate DDT rate of 10% in 1997 has doubled @ 20.56% (base rate of 15% plus applicable surcharge and cess). Furthermore, Finance Act 2017 introduced Section 115BBDA whereby taxpayers earning dividend income in excess of Rs.10 lakh are required to pay additional tax at the rate of 10% on dividend received, over and above the DDT paid by the domestic companies while distributing such dividend, thus widening the scope of DDT collection.

Budget 2018 introduced an amendment to Section 115-O and mandated such companies to pay DDT at the rate of 30% plus applicable surcharge and cess on transactions. This amendment had been introduced because the taxability of deemed dividend in the hands of recipient made tax collection on it from the shareholder difficult. Due to this, the shareholder doesn't have to pay any taxes on such receipts.

In Budget 2021, the burden of paying tax on dividend is transferred to the shareholders. all the dividend income shall be taxed in the hands of the shareholders. Now the companies are not liable to pay Dividend Distribution Tax (DDT) while distributing dividends to the shareholders, i.e. DDT is abolished. This amendment has put all this to rest.

BARE ACT

Section 2(22)(e) deals with the theory of deemed dividend under the income Tax Act 1961 which states as follows:

- “(e) any payment by a company, **not being a company in which the public are substantially interested**, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, **by way of advance or loan to a shareholder**, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, **or to any concern in which such shareholder is a member or a partner** and in which he has a substantial interest (hereafter in this clause referred to as the said concern) **or any payment by any such company on behalf, or for the individual benefit, of any such shareholder**, to the extent to which the company in either case possesses



accumulated profits.

but “dividend” does not include—

- (i)
- (ia)
- (ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;
- (iii)
- (iv)

EXPLANATION

1. Loan or Advance is compulsory

For invoking the provisions of section 2(22)(e), there must be a payment by the company by way of advance or loan and **if no loan or advance was given by the company, section 2(22)(e) is not applicable**. Therefore, any amount which does not represent loan or advance given by the company during the year under consideration, said amount does not fall within the ambit of provisions of section 2(22)(e).

2. Decoding the meaning of the term shareholder in the above provision

The term 'such shareholder' refers to the shareholder being a person who is the beneficial owner of the shares and holds not less than 10% of the voting power in the lender company. If advance or loan is given to a concern then shareholder of lender company must have at least 10% voting power in lender company and a substantial interest in the borrower company at the time of advancement of loan. In this regard, reference can be made to the following judicial precedents wherein the loan amount was not considered as deemed dividend under this section since the first and foremost requirement of any shareholder having not less than 10% voting power in the lender company was not fulfilled.

- CIT vs Navyug Promoters (P.) Ltd.- 16 taxmann.com 292 (Delhi-High Court) wherein it was held that-

“Section 2(22) of the Income-tax Act, 1961 - Deemed dividend - Assessment year 2006-07 - Whether an assessee who is not a shareholder of company, from which he received a loan or an advance, cannot be treated as being covered by definition of word 'dividend' as provided in section 2(22)(e) - Held, yes - Assessee-company took certain loan from two companies - Assessing Officer was of view that said loan was to be added to assessee's income as deemed dividend under section 2(22)(e) - Whether since assessee-company was not a shareholder holding required percentage of shares in any of two companies, impugned addition made by Assessing Officer was to be set aside - Held, yes [In favour of assessee]”

- CIT vs Ankitech (P.) Ltd.- 11 taxmann.com 100 (Delhi-High Court) wherein it was held that-

“13. Under the existing provisions of section 2(22)(e), payment made by way of advance or loan to a shareholder having "substantial interest" in the company was treated as deemed dividend. The shareholder having substantial interest as per provision of clause (32) of section 2 of the Act, was the one carrying not less than 20 per cent voting power. In other words, earlier section 2(22)(e) was applicable to shareholders having substantial interest in the company and



the benchmark of the substantial interest was 20 per cent of the voting power. By Finance Act, 1987, this benchmark of substantial interest was done away with. It is important to note here that section 2(32) defining the expression "person who has substantial interest in the company" was not amended. Therefore, to widen the scope of section 2(22)(e), it was necessary to provide for the category of shareholders to whom the section would apply and it was provided by inserting the words "a shareholder, being a person who is beneficial owner of shares holding not less than 10 per cent of the voting power". The concept of "voting power" was in built on the provisions of section 2(22)(e) as it existed prior to 1987 amendment. The insertion of the words "beneficial owner of shares holding not less than 10 per cent of the voting power" to 10 per cent of voting power."

- ACIT vs. Gurdeep Singh – [2020] 117 taxmann.com 451 (Chandigarh – Trib.)- Where AO made addition to assessee's income by invoking provisions of section 2(22)(e) on the ground that assessee was holding more than 10% shareholding, in view of the fact that as per annual return filed before ROC, assessee had already transferred its shareholding in borrower company to lender company before advancement of loan out of surplus funds, impugned addition was to be deleted.

3. Registered shareholder or beneficial shareholder

"Shareholder", means beneficial owner of shares as stated in the provisions of the Section. One cannot be a registered owner and beneficial owner in the sense of a beneficiary of a trust or otherwise at the same time. The moment there is a shareholder, who need not necessarily be a member of the Company on its register, who is the beneficial owner of shares, section 2(22)(e) gets attracted without anything more.

The argument that as the shares are issued in the name of the Karta, the HUF is not the "registered shareholder" and so section 2(22)(e) will not apply to loans paid to the HUF is not correct because in the annual returns filed with the ROC, the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder. Even if it is assumed that the Karta is the registered shareholder and not the HUF, as per Explanation 3 to s. 2(22), any payment to a concern (i.e. the HUF) in which the shareholder (i.e. the Karta) has a substantial interest is also covered.

4. Sec. 2(22)(e) is not applicable in case of commercial transactions (CBDT Circular)

Whether Trade Advances Constitute 'Deemed Dividends' u/s 2(22)(e) – CBDT Circular No. 19/2017 dated 12 June 2017 Trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts /Tribunals may be withdrawn/not pressed upon.

5. Amount received for providing corporate guarantee, not deemed dividend u/s 2(22)(e)

Where assessee received certain amount from subsidiary company as advance towards security for providing corporate guarantee, it could not be brought to tax as deemed dividend under section 2(22)(e) as per the judicial pronouncement in the case of **DCIT vs. Accel Limited – [2020] 118 taxmann.com 103 (Madras)**

"10. The present appeal is relating to the assessment year 2002-03, questioning the sum of Rs. 3.00 Crores advance made by the subsidiary company to the respondent/holding company. The Commissioner of Income-tax (Appeals), referring to the decision rendered for the assessment year of 2004-05, held that a sum of Rs. 3.00 Crores shown in the balance sheet of the



respondent company for the assessment year 2002-03, is only an advance made by its subsidiary company, in the course of the business, for providing corporate guarantee by the respondent, and rejected the contentions of the department. As against the said order, the department has preferred an appeal before the Income-tax Appellate Tribunal Madras “C” Bench, Chennai in ITA No.144/Mds/2015 (for the assessment year 2002-03). The Tribunal has also passed its order in that appeal on 20-5-2016, holding that the Commissioner Income-tax (Appeals) have elaborately dealt with the facts of the case. Further, it has not found any error in the order passed by the Commissioner of Income-tax (Appeals). Therefore, the appeal of the Revenue in I.T.A.No.144/Mds/2015 was dismissed. As against the said order, the department has preferred the present appeal before this Court.”

6. Exclusions from the above section
 - a. Loans and advances received by shareholders out of the share premium account can not be treated as deemed dividends.
 - b. Loans given by companies whose nature of business is money lending.
 - c. Loans adjusted as dividend declared and distributed.
 - d. The paying company can not be the one, where the public are substantially interested
 - e. Loans given to shareholders who do not have a substantial interest in the company.

PRACTICAL ILLUSTRATION

In A Ltd. Mr. X hold 8% shares having voting power equivalent to 8%. Mr. X also holds 21% stake in B Ltd. Thereafter, A Ltd. has given loan to B Ltd. amounting to Rs. 1 Lakh.

Here in the above case, this is not covered u/s. 2(22)(e). But if Mr. X holds share in A Ltd. which is more than or equal to 10%. Then such a transfer will be considered as deemed dividend to the extent to which the company in either case possesses accumulated profits

CONCLUSION

Section 2(22)(e) Deeming fiction cannot be applied on mere suspicion. The intention behind enacting provisions of section 2(22) (e) are that closely held companies (i.e. companies in which public are not substantially interested), which are controlled by a group of members, even though the company has accumulated profits would not distribute such profit as dividend because if so distributed the dividend income would become taxable in the hands of the shareholders only if that shareholder is holding not less than 10% voting rights in the lending company or in the hands of the concern in which shareholding having not less than 10% voting rights of lending company is having substantial interest i.e at least 20% interest in the concern.

Disclaimer: The explanation provided herein are solely for information purposes and does not aim at solicitation of work.

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Appeals before CIT(A): Critical Aspects.

1. Introduction

1.1. Most of Indian law provides that any person aggrieved with decision arrived at by any person/authority, may file appeal before higher forum and seek review of order passed. Income-tax Act is also no exception to it. Section 246 of Income tax act provides appellate mechanism. In this paper we'll try to understand the first appellate mechanism provided under the act.

2. Scheme of constitution

2.1. To master appellate proceeding, be it under income tax act or any act, one should have good command over hierarchy and machinery of regulator/administrator. Hierarchy of income tax department can be summarized as;

Designation	Remark	Function assigned.
PCCIT	State level head of department	Supervisory authority, Approval u/s 151 for reopen, Overall in-charge of department
CCIT	City level head of department	Supervisory authority, Approval u/s 151 for reopen, Overall in-charge of department
PCIT	Head of particular geographical area of city.	Approval u/s 151, Action u/s 263-264, 127, Grant/withdraw approval u/s 12AA-10(23C), Stay petition, Head of recovery function.
CIT(A)	Adjudication of dispute	Hearing appeals against order passed by officer mentioned below
Addl. CIT/JCIT	Range head	S. 144A direction, 271D/E/DA, Penalty approval



ACIT/DCIT	Assessment power	Frame asst. u/s 143(3), 147, 263
ITO	12	r.w relevant section , 153A, 153C (Erstwhile), Levying penalty specified in act.
Inspector	Assisting AO	Assisting AO

2.2. The person who is aggrieved with assessment order has following remedies available to him

- Rectification u/s 154.
- Revision application u/s 264
- Prefer appeal u/s 246A before CIT(A)

2.3. Though not expressly provided, the assessment/revision tools contained in act are mutually exclusive and one remedy cannot be substituted by another.

3. Rules of game

3.1. The prerequisite to file appeal (Form 35);

- Order specified u/s 246A are appealable. Mostly, order passed by ITO/ACIT/Addl CIT are made appealable before CIT(A)
- Needs to presented within 30 days from date of order. In case of delay, the CIT(A) has power to condone delay.
- Signed by person competent to verify return of income.
- Challan fees paid as specified.

3.2. Following is table of fees;

Income assessed	Appeal fees
Upto 1,00,000	250
From 1,00,001 to 2,00,000	500
From 2,00,001 onwards	1000
In case of loss or penalty.	250

3.2. For determination of appeal fees, what is to be seen is income assessed not returned income. The appeal fees is paid under code - (400) Type of assessment under head "others".

4. Statement of Facts

4.1. Appeal before CIT(A) is filed in Form 35. It, inter alia, requires to file statement of fact ("SoF")



and grounds of appeal (“GoA”). SoF and GoA believed to be soul of Form 35 and one should be extra careful while filing the form.

4.2. The statement of fact should narrate the vital chain of events from filing of return till the assessment order is passed. The facts contained in SoF are believed to be true and can only be varied only with help of affidavit. One should not mix submission/paper book with statement of fact. SoF should not be argumentative in nature. Though statement of fact cannot be standardised, nevertheless, there are certain common thread to it. Let's see the sample SoF;

1. Survey action is conducted on premises of assessee Mr. XXXXXXXXXXXX on dd.mm.yyyy. Unfortunately, Mr. XXXXXXXXXXXX died on dd.mm.yyyy. Mother cum Legal heir - Mrs. XXXXXXXX (Legal Heir or LH), intimated these facts to department during post survey inquiry dated dd.mm.yyyy and dd.mm.yyyy. Mrs. XXXXXXXX, in capacity of legal heir, electronically filed return of income of Late XXXXXXXX on dd.mm.yyyy, along with form 3CB-3CD, declaring total income of Rs. XXXXXX. The assessee was engaged in the business trading of scrap. The assessment order was passed, in name of deceased assessee, by ACIT, Central Circle, XXXXXXXX.

2. Amount, totalling to Rs XXXXXXXX, referred to in various document impounded during survey was explained that impugned amount included as purchases in return filed and duly suffered income tax and GST. In support thereof LH did file details and documents. However, as per findings given at para XX of assessment order, learned assessing officer made addition of Rs. XXXXXX on account of unexplained expenditure.

3. During survey physical stock of Rs. XXXXXXXX found whereas stock as per books stood at Rs. XXXXXXXX. It was explained that the books of account is not updated, hence difference of Rs. XXXXXXXX was observed by survey team. However, at para X of assessment order, Id AO inferred it to be unaccounted sales and estimated GP of Rs. XXXXXXXX thereon. In this process, Id AO at para X rejected books of account.

4. So far as the difference of Rs. XXXXXXXX in cash is concerned it is explained that books found during survey is incomplete one hence same cannot be relied upon. However, as per findings given at para X of assessment order, learned assessing officer made addition of Rs. XXXXXXXX u/s 69A.

5. During survey, Id AO observed that books of account is showing creditors of Rs. XXXXXXXX. Apart from filing details/documents, it is stated by assessee that since books found during survey is incomplete one and hence cannot be used to make additions. However, as per findings given at para X of assessment order, learned assessing officer made addition of Rs. XXXXXXXX being difference between sundry creditors Rs. XXXXXXXX at dd.mm.yyyy and Rs. XXXXXXXX at dd.mm.yyyy.

4.3. One should try to mention only undisputed facts in SoF. Wherever disputed fact is stated, version of assessee as well as AO is summarily mentioned.

5. Grounds of Appeal

5.3. Grounds of appeal should be drafted in such manner that reader would come to know about issue which require adjudication. It is akin to question of fact/law which require intervention of CIT(A). How the GoA is drafted before CIT(A) is not prescribed, however, Rule 8 of ITAT Rules state that GoA should be concise and precise. While drafting GoA, following is kept in mind;

➤ Submission or filing of paper book is separate from GoA. It should not be mixed.



- It should not be argumentative in nature.
- Legal grounds should be in top order.
- Since admission of additional grounds require leave of CIT(A) to entertain, it should be drafted keeping in mind all possible scenario or arguments.
- The person who can envisage the content of paper-book can draft better GoA.

5.4. Let's see what could be possible GoA for SoF stated above.

1. That on the facts and circumstances of the case as well as law on the subject, learned assessing officer erred in framing assessment in violation of various of provisions of the income tax act.
2. Learned AO erred in law and on facts in issuing notice and/or framing assessment in name of deceased assessee when the fact about death of assessee is in knowledge of department.
3. That on the facts and circumstances of the case as well as law on the subject, Id AO erred in invoking section 69A and 69C of the act.
4. That order passed by Id AO is barred by limitation and deserves to be quashed as such.
5. That on the facts and circumstances of the case as well as law on the subject, learned assessing officer erred in passing assessment order on dictation of Addl. CIT.
6. That on the facts and circumstances of the case as well as law on the subject, learned assessing officer erred in making addition of unaccounted purchase of Rs. XXXXX.
7. That on the facts and circumstances of the case as well as law on the subject, learned assessing officer erred in making estimation of GP of Rs. XXXXX on account of unaccounted sales.
8. That on the facts and circumstances of the case as well as law on the subject, learned assessing officer erred in making addition of unexplained cash of Rs. XXXXX that too u/s 69A.
9. That on the facts and circumstances of the case as well as law on the subject, learned assessing officer erred in making addition of sundry creditors of Rs. XXXXX.
10. On facts and in law Id AO erred in assessing total income at Rs. XXXXX against returned income of Rs. XXXXX.
11. It is therefore prayed that assessment order be annulled or the above additions of Rs. XXXXX made by learned assessing officer may please be deleted/reduced.
12. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.

6. Concluding remark

- 6.3. The drafting of Form 35 has long lasting implication more particularly in light of Rule 27 of ITAT Rules which states that assessee respondent can support the order of CIT(A) on any grounds which is decided against him. Hence, Form 35 should be filed with utmost care.

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CA Milan Rameshbhai Vekariya.

Theme on Market for 2023.

BASIC FUNDA ABOUT MARKET :

SHAREMARKET INCREASE AS EXPECTED. MOST OF THE SHARES ARE TRADE IN HOGHER VALUATION. AT THE SAME TIME MANY OF SHARES ARE TRADED AT THE 52 WEEKS LOW. CURRENT TIME IS FOR CHECK YOUR PORTFOLIO IN DEPTH AND ACCURATLY.THE INVESTOR WHO INVEST IN MUTUAL FUND, HE CAN CONTINUE WITH THEIR INVESTMENT AS IT IS. SIP IS FOR LONG TERM IN ADDITION TO WHEN MARKET IS FOLLING MAKE SOME LUMPSUM INVESTMENT TOO.

IMPORTANT POINTS IN PORTFOLIO IS THAT REMOVE SHARE WHICH IS UNDER PERFORMANCE FROM YOUR PORTFOLIO AND ADD SOME OUTSTANDING PERFORMING SHARES. WHO IS WINNER OF MARKET SHARES, ACCUMULATE THAT ONE AND REMOVE OTHER SHARE FROM PORTFOLIO. THIS IS VERY EASY TO PLAN AND VERY HARD TO IMPLEMENT. BUT EVERY PEOPLE HAS TO ACCEPT HIS MISTAKE AND DO GO AHEAD.

STAY AWAY FROM THE IPO WHO HAS BUSINESS MODEL, WHICH WE CAN NOT UNDERSTAND.

STAY AWAY FROM LOSS MAKING COMPANY TOO.

INDIAN RETAIL AND HNI INVESTORS HAD BEEN MADE LOSS OF RUPEES 8500 CROSS FROM OCTOBER 2021 UPTO TILL DATE. MOST OF THEM IS IT SECTOR IN TODAY'S WORLD.

LESS FOCUS ON MICRO HIKE :

LONG TERM INVESTMENT IN PORTFOLIO IS THE WAY FOR STOPPING LOSS. SOMETIME GOOD DAYS IN MARKET IS FOLLOWED BAD DAYS. THAT'S WHY, WHEN HEAVY SELLER ARE IN THE MARKET AVAILABLE WE HAVE TO BE READY FOR PICK THOSE SHARES. BE PREPARED MENTALLY. FOR EXAMPLE...

- IN 2023 NIFTY BREAK LEVEL AT 10% - AT THAT TIME YOUR SHARES PRICE REDUCED 30%, AT THAT TIME YOU HAVE TO DO MORE ACCUMUALATION.
- IF YOU THINKING ABOUT LIKE THAT, THEN YOU CAN DO AT THAT TIE ACTUAL HAPPENING.
- ITS NORMALLY HAPPENED, WHEN YOU SOLD THE SHARES VERY NEXT DAY IT INCFREASE MORE AND VICE VERSA. BUT YOU HAVE TO BE VERY CLEAR ABOUT YOUR TARGETED PRICE FOR SELL AND BUY. SO THAT YOU CAN NOT REALISED THAT WHAT HAPPENDED TO NEXT.

FOR 2023 :

- OIL AND FERTILIZER PRICE ARE INCREASE DUE TO HIGH INFLATION AND BALANCE OF PAYMENT IN DOLLAR MAY BE PRESSURISE IF US UNDER BOOM SITUATION.
- ITS NOT A GOOD NEWS FOR INDIA IF THERE IS AN RECESSION ON ALL OVER WORLD. SINCE INDIA MAKE 20% EXPORT OF HIS GDP. INDIAN SHARES PRICE ARE FALL BECAUSE OF FOREIGN SHARES PRICE ARE FALLEN, REASON BEING THERE ARE SYNCRONISATION BETWEEN INDIAN



EQUITY WITH FOREIGN EQUITY MARKET.

- CRUDE PRICE ARE HIGH, GOLD PRICE ARE HIGH AND RAIN IS ABOVE NORMAL LEVEL IT'S A SYMBOL OF INFLATION IN CONSUMER PRICE INDEX (CPI) 6.8% IN FY 2023. IT CAN PREDICTED INFLATION FALL IN FY 2024 UPTO 5.2%
- MOST OF THE MATERIAL DON'T REDUCE HIS PRICE. COMMODITY PRICE REDUCE ITS MEANS INFLATION IN CONTROL.
- FY 2021-22 CURRENT ACCOUNT DEFICIT (1.2% OF GDP) WHICH IS IN 2022 3.3% OF GDP. PREDICTED IN 2024 3% OF GDP. ITS PRESSURISE RUPEES.
- IF IPO/FPO/OFS ARE INCREASE IT MEANS IT TAKES MONEY OUT OF SECONDARY MARKET.

THEMES FOR THE 2023 :

- HIGH INFRA AND CAPITAL EXPENDITURE BY GOVERNMENT
- RAILWAY, ROAD, DEFENCE AND PLI CAPEX
- GOOD RETURN IN REAL ESTATE
- INVESTMENT BASED ON PLI
- INVESTMENT IN SUSTAINABLE SECTOR
- FOR THE GENERATION OF ALPHA SMALL CAP IS GENERATING THE PERFORMANCE. BECAUSE WITH COMPARE TO LARGE CAP SMALL CAP HAS CHEAP VALUATION.
- THERE IS AN STOP IN INCREASE RATE CYCLE IN 2023, WHICH IS MORE POSITIVE FOR SMALL CAP WITH COMPARE TO LARGE CAP.
- SERVICES ARE MORE EXPENSIVE WITH COMPARE TO GOODS WHICH IS BENEFICIAL FOR SMALL CAP. SMALL CAP SHARES ARE MORE BENEFICIAL REGARDING CAPEX AND RESOURING.

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Library & Reading Room Facility at Branch

Dear Professional Colleague,

The Surat Branch of WIRC of ICAI with great pleasure announces the opening of Reading Room/Library at our Branch Premises for our CA Students to enable them for studying in a Positive and Healthy environment and stay connected to the Branch as well. The Reading Room/Library is fully Air Conditioned and provides a Hygienic and positive environment to our Students of Surat City and will facilitate them in their learning journey.

Library Fees:

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- Quarterly - 1299/-
- Half Yearly - 2499/-
- Yearly - 4999/-

With Best wishes from :

CA Manthan Chawat

Chairman

(Library & Reading Room Committee)

CA Shailesh Lakhankiya

Co - Chairman

(Library & Reading Room Committee)





Managing Committee Meeting Attendance

Sr. No.	Name	Meetings Date													
		26-02-2022	16-03-2022	01-04-2022	21-04-2022	11-05-2022	31-05-2022	10-06-2022	11-07-2022	02-08-2022	13-09-2022	03-10-2022	12-11-2022	12-12-2022	11-01-2023
1	CA. Nikesh Kothari - Chairperson	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
2	CA. Arun Narang - Vice Chairperson	Present	Present	Present	Present	LOA	Present	Present	Present	Present	Present	Present	Present	Present	Present
3	CA. Dushyant Vithlani - Secretary	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
4	CA. Ashwin Bhauwala - Treasurer	Present	Present	LOA	Present	Present	Present	Present	Present	Present	Present	Present	Present	LOA	Present
5	CA. Shailesh Lakhankiya - MCM	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present	Present
6	CA. Manthan Chawat - MCM	Present	Present	Present	Present	LOA	LOA	Present	Present	Present	LOA	Present	LOA	Present	LOA
7	CA. Preetesh Shah - MCM	Present	Present	LOA	Present	Present	LOA	Present	Present	Present	Present	Present	Present	Present	LOA
8	CA. Chimpu Lapsiwala - MCM	LOA	Present	LOA	Present	Present	LOA	Present	Present	Present	LOA	Present	Present	Present	LOA
9	CA. Joni Jain - MCM	Present	Present	LOA	LOA	Present	Present	Present	LOA	Present	Present	Present	Present	LOA	Present





Event Snapshot



MCM CA. Preetesh Shah Felicitated Past Chairman CA. Kishor Gheewala



Past Chairman CA. Bhavin Hingar & Secretary CA. Dushyant Vithlani Felicitated CA. Murtaza Ghadiali - Mumbai



Past Chairman CA. Hardik Patel Felicitated CA. Anand Jangid - Bengaluru



Past Chairman CA. Kishor Gheewala Felicitated CA. Abhishek Jain - Ahmedabad



Past Chairman CA. Rasesh Shah, Secretary CA. Dushyant Vithlani, & MCM CA Shailesh Lakhankiya Felicitated CA. Bhinag Tejani - Surat



RCM CA. Ishvar Jivani, Chairman CA. Nikesh Kothari, Vice Chirman CA. Arun Narang & Treasurer CA. Ashvin Bhauwala Felicitated Special Guest Shri Sagar Bagmar IPS-DCP Zone -3, Surat Police



Event Snap Shot

74th Republic Day celebration & Felicitation of Newly Qualified CAs at Surat Branch

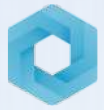




Event Snap Shot

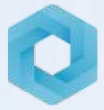
Articleship placement Program held at Surat Branch





Event Snap Shot





Event Snap Shot

National CA Woman Conference





Upcoming Events of Surat Branch

Date & Day	Event Name	Time	CPE Hours
February	One Day Program on Peer Review	Full Day	6
February	S Vaidyanath Aiyar Memorial Lecture	-	2
February	Post Budget Analysis of Union Budget	-	2

Vishal Madhavani

☎ 98254 94919

Sameer Madhavani

☎ 98252 88968



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EXCLUSIVE CHANNEL PARTNER





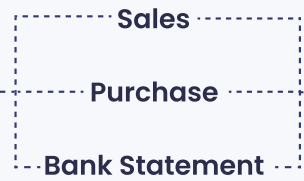
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