

# JIG न्युवइव

Vol. V | No. I | September 2023

Your Quarterly Companion on Tax & Allied Topics



Estd. 1926

ज्ञानं परमं बलम्

**The Chamber of Tax Consultants**

Mumbai | Delhi

[www.ctconline.org](http://www.ctconline.org)



Estd. 1926  
ज्ञानं परमं बलम्

## THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020

Phone : 2200 1787/2209 0423/2200 2455 • E-Mail: [jou@ctconline.org](mailto:jou@ctconline.org)

Website : [www.ctconline.org](http://www.ctconline.org)

MANAGING COUNCIL	
<b>President</b> Haresh Kenia	
<b>Vice President</b> Vijay Bhatt	
<b>Hon. Treasurer</b> Mehul Sheth	
<b>Hon. Jt. Secretaries</b> Neha Gada • Vitang Shah	
<b>Imm. Past President</b> Parag Ved	
<b>Members</b>	
Abhitan Mehta	Jayant Gokhale
Ameya Kunte	Ketan Vajani
Anish Thacker	Kirit Dedhia
Ankit Sanghvi	Kishor Vanjara
Ashok Mehta	Mahendra Sanghvi
Ashok Sharma	Niyati Mankad
Dharan Gandhi	Paresh Shah
Dinesh Tejwani	Premal Gandhi
Hemang Shah	Tejas Parikh
Hinesh Doshi	Vipul Choksi - Editor (The Chamber's Journal)
<b>Special Invitees</b> Gopal Kandarpa • Hitesh R. Shah	

STUDENT COMMITTEE	
<b>Chairperson</b> Niyati Mankad	
<b>Vice-Chairperson</b> Charmi G. Shah	
<b>Ex-officio</b> Haresh Kenia • Vijay Bhatt	
<b>Convenors</b> Charmi A. Shah • Viral Shah	
<b>Past Presidents</b> A. S. Merchant • Hitesh R. Shah Parimal Parikh • Vipul Choksi	
<b>Advisor</b> Ajay Singh	<b>Office Bearer</b> Vitang Shah
<b>Past Chairperson</b> Varsha Galvankar	
<b>Managing Council Member</b> Ankit Sanghavi	
<b>Members</b>	
Ananya Gupta	Mallika Devendra
Ashish Mehta	Priti Savla
Bhavik Shah	Radha Halbe
Bhavya Sundesha	Rahul Hakani
Chirag Vajani	Raj Khona
Hrudyesk Pankhania	Sachin Maher
Jai Lodha	Sashank Dundu
Jas Sanghavi	Shashank Mehta
Jignasha Hemani	

STUDENT INVITEE MEMBERS				
Akash Shirore	Dhruv Shah	Disha Jain	Mahika Kandarpa	Nishtha Gada

### NOTE

"Opinions, views, statements, results, replies etc. published in *Jignyasa* are of the respective authors and contributors. Neither the Chamber of Tax Consultants nor the Authors/Contributors are responsible in any way whatsoever for any personal or professional liability arising out of the same."

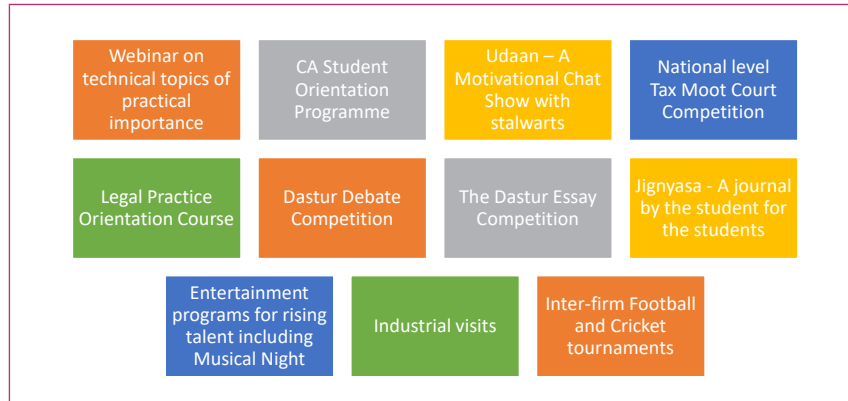
"No part of this publication may be reproduced or transmitted in any form or by any means without the permission in writing from the Chamber of Tax Consultants."

### READER'S SUGGESTIONS AND VIEWS

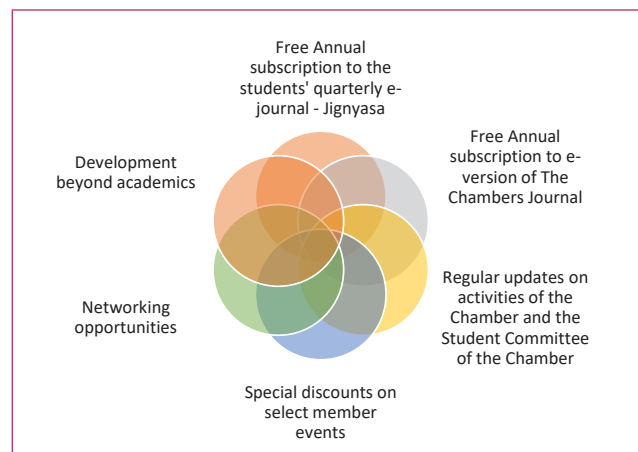
We invite the suggestions and views from readers for improvement of *Jignyasa*.  
Kindly send your suggestions to [jou@ctconline.org](mailto:jou@ctconline.org)

## Become a Student Member of The Chamber of Tax Consultants

### What are the initiatives/programs organised by the Chamber for Students?



### What are the benefits of becoming a student member of the Chamber?



### Who can become a Student Member?

Any person, who:

- ✓ has completed 18 years of age;
- ✓ is not otherwise eligible to be a member of the Chamber;
- ✓ is pursuing his/her education as a student and has enrolled as a student of Law, Chartered Accountancy, Cost and Management Accountancy, Company Secretary, Chartered Financial Analysts, Business Management or Management Accountancy or Masters in Commerce or such other course approved for this purpose by the Managing Council shall be eligible to be a Student Member.

### What are the fees for becoming a Student Member?

The fees for becoming a student member is merely Rs. 590/- [Rs. 500/- + Rs. 90 (GST @ 18%)]

### How can one enroll as a Student Member?

You may download the membership form using the below mentioned link

Link : <https://rb.gy/rw3xde>

You can also get in touch with the Chamber's office at:

Address : 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020

Email : [jou@ctconline.org](mailto:jou@ctconline.org)

For any queries, you can also get in touch with Mr. Hitesh Shah (Manager) at:

Mobile : 7977258507

## **POLICY FOR CONTRIBUTION OF ARTICLES FOR JIGNYASA**

### **Who can contribute?**

The Student Members of The Chamber of Tax Consultants shall be allowed to contribute articles to the students' e-journal "*Jignyasa*"

### **For which columns shall contributions be accepted?**

Every issue of Jignyasa shall have the following four columns for contributions from students:

1. Information Technology
2. Current topics related to the profession
3. SOP on subjects that are related to upcoming due dates
4. A general topic that is relevant to the student members of the Chamber

### **What is the selection process of the article for publishing?**

The selection of the articles to be published shall be based on the following parameters:

1. The topics should be relevant to the Students Members of the Chamber covering the various areas of practice.
2. The Article to be published should be original and must adhere to strict originality guidelines of the Chamber. A declaration to this effect should be submitted to the Chamber.
3. Subjects related to current topics or subjects which are related to the due dates falling in the next quarter shall be given preference.

### **What are the technical requirements for the article?**

1. The article should contain an executive summary of around 100 words.
2. The list of references should be submitted at the end of the article.
3. A photograph of the author should be provided along with the article.
4. The article should be shared only in word format. No other format shall be accepted.
5. There is no specific restriction on the number of words for the article, but preference shall be given to a well written, the most technically correct, complete and concise article.

### What is the review process?

The student is advised to approach a member of the Chamber to be his/her mentor for the article. If the interested student cannot find a mentor, the committee shall help him/her approach the members.

Each article shall then be forwarded to an expert for vetting and verification.

The article post vetting and verification shall be forwarded to the author with suggestive changes. Once approved by the author, the amended article shall be forwarded for publishing.

The articles received which are not published in the current issue of Jignyasa shall be parked in the Chamber's locker for the next issue.

Articles that are not found suitable for publication, communication to the Author of the article shall be made to that effect.

### *Invitation to STUDENT MEMBERS to contribute articles for Jignyasa*

The Student Committee of the Chamber invites the **Student Members** to contribute articles for the e-journal for Students – **Jignyasa**. The objective of the committee is to make a major section of the journal - for the students by the students. The students can contribute articles on latest updates in the tax and allied laws, Standard Operating Procedures that can be used for the upcoming due dates, current scenarios in various industries or any other topic. You can send through your article in word format on [jou@ctconline.org](mailto:jou@ctconline.org) along with your name, firm name/college name and a photograph. From among the articles received, the ones approved by the committee shall be published.

## INDEX

<b>Sr. No.</b>	<b>Particulars</b>	<b>Student Contributors</b>	<b>Page No.</b>
1	President & Chairperson's Message		7
2	Various forthcoming programs of the Chamber relevant for Students		10
3	Impounding and Seizure of Passport: Perplexing Realities? Mentor : Kavita Solunke, Advocate Editor : Shruti Desai, Advocate	Anuja Pawar	11
4	Corporate Social Responsibility under The Companies Act, 2013 Mentor & Editor : CS Archana Pareek	Kayva Prabhu / Ameesha Kohli	17
5	Fostering Innovation and Growth: Tax Incentives for Startups in India Mentor : CA Vishal Shah Editor : CA Anish Thacker	Priyanandan Kumar	26
6	Withdrawal of Application Under IBC Post - Admission Mentor : Priyal Savla, Advocate Editor : CA Rajendra Ganatra	Neha Londhe	31
7	Transfer Pricing Implications for Specified Domestic Transactions: A Comprehensive Analysis Mentor : CA Chirag Vajani Editor : CA Natwar Thakrar	Tushar Khatri	34
8	Direct Tax Amendments under the Finance Act, 2023 Mentor : CA Ankit Sanghavi Editor : CA Charmi G. Shah	Sailee Kambli / Summaiya Shaikh	40
9	Report on "6th The Dastur National Moot Court Competition, 2023" Editor: CA Charmi G. Shah	Nishtha Gada	45
10	Report on "The Dastur Essay Competition, 2023" Editor: CA Viral Shah	Akash Shirore	47
11	Report on "The New Scheme of CA Education & Training" Editor: CA Charmi A. Shah	Mahika Kandarpa	49
12	Insights from the "Income Tax Returns, AIS & TIS – Do's & Don'ts' Webinar" Editor: CA Viral Shah	Nishtha Gada	51
13	Report on "Webinar on Tax Audit – Student Perspective" Editor: Niyati Mankad, Advocate	Akash Shirore	53
14	Summary of Udaan Episode 5 with Mr. Vikram Nankani, Senior Advocate Editor: CA Viral Shah	Akash Shirore	55
15	A Report on the "E-Certificate Course on The Key Compliances under The Companies Act, 2013" Editor: CA Viral Shah	Mahika Kandarpa	59

## President and Chairperson's Message



### UNLOCKING YOUR POTENTIAL: A JOURNEY IN LAW, ACCOUNTANCY, AND COMPANY SECRETARYSHIP

Dear Ambitious Students,

In the pursuit of greatness, there are few journeys as challenging and rewarding as those in the fields of law, chartered accountancy, company secretaryship, and allied professions. Whether you're part of the Student Committee of the Chamber of Tax Consultants, or are independently navigating your path, we wholeheartedly appreciate and encourage each one of you.

#### **A Shared Aspiration**

As students on this path, you have embarked on a noble quest for knowledge, excellence, and professional fulfillment. Your choice to pursue law, chartered accountancy, company secretaryship, or related disciplines is a testament to your ambition and dedication. It is a choice that carries the promise of a rewarding career that can make a substantial impact on society.

#### **Inspiration and Motivation**

The journey ahead may seem daunting, filled with long hours of study, demanding exams, and rigorous practical training. Yet, remember that challenges are but stepping stones to success. It's essential to stay inspired and motivated throughout your academic and professional pursuits. Here are a few reminders to keep you going:

**Passion and Purpose:** Let your passion for your chosen field be your guiding star. When you love what you do, the journey becomes less about the destination and more about the joy of learning and growing.

**Resilience:** Embrace setbacks as opportunities for growth. Success often comes to those who persevere through difficulties and emerge stronger on the other side.

**Continuous Learning:** In these dynamic fields, knowledge is ever-evolving. Make learning a lifelong commitment. Stay updated with the latest trends, regulations, and technologies.

**Community Support:** Seek mentorship and connect with peers who share your aspirations. The Chamber of Tax Consultants, offers a valuable platform for networking and knowledge sharing.



As you embark on this journey, it's important to remember the wisdom imparted in the Bhagavad Gita (Chapter 4, Verse 7):

"सर्वयोनिषु कौन्तेय मूर्तयः सम्भवन्ति याः ।  
तासां ब्रह्म महद्योनिरहं बीजप्रदः पिता ॥"

*Translation:* O son of Kunti, all forms of life are My creation, and I am the seed-giving father.

This shloka reminds us that knowledge and learning are essential for our growth and evolution. Just as Lord Krishna is the seed-giving father of all life, knowledge is the seed that nurtures your professional and personal development.

Additionally, consider the wisdom of another verse from the Bhagavad Gita (Chapter 4, Verse 33):

"श्रेयान्द्रव्यमयाद्यज्ञाज्ज्ञानयज्ञः परंतप ।  
सर्वं कर्माखिलं पार्थ ज्ञाने परिसमाप्यते ॥"

*Translation:* O chastiser of the enemy, sacrifice in knowledge is superior to any material sacrifice. After all, O Partha, all sacrifices of work culminate in transcendental knowledge.

This verse underscores the importance of knowledge, emphasizing that it surpasses material wealth and is the culmination of all endeavors. Your pursuit of knowledge in the fields of law, chartered accountancy, and company secretaryship is a sacred and noble sacrifice that leads to enlightenment and success.

While your commitment to your studies is crucial, it's equally important to maintain a healthy work-life balance. Burnout can hinder your progress, so take time for yourself, your family, and your hobbies. A well-rested and balanced individual is better equipped to excel both academically and professionally.

## **Joining the Chamber of Tax Consultants**

For those of you who are not yet members of the Chamber of Tax Consultants, we encourage you to consider becoming a part of this esteemed community. Membership offers numerous benefits:

**Networking Opportunities:** Connect with industry experts, experienced professionals, and like-minded peers who can guide and inspire you on your journey.

**Learning and Development:** Access to seminars, workshops, and events that enhance your knowledge and skills, making you a more competitive professional.

**Exposure and Recognition:** Membership lends credibility to your profile and opens doors to career opportunities.

## **Thank You to Our Student Members**

To our dedicated student members, we extend our gratitude for choosing to be a part of the Chamber of Tax Consultants. Your active participation enriches our community, and your enthusiasm drives us to



continue supporting your growth. Together, we strive for excellence in the field of taxation and related disciplines.

In closing, remember that your chosen path is not just a career; it's a calling. Embrace it with passion, dedication, and an unwavering commitment to your dreams. Also, remember that you are part of a community that values excellence and dedication. The journey may be challenging, but the rewards are boundless and with the right mindset and support, you can achieve greatness.

We have immense faith in your abilities and potential. The Chamber of Tax Consultants, is here to support and guide you every step of the way. Together, we can create a brighter future for the professions, and you are an integral part of that vision.

We wish you success, fulfillment, and endless inspiration on your remarkable journey ahead.

Warm regards,

**CA Haresh Kenia**

*President*

**Niyati Mankad, Advocate**

*Chairperson*

*Student Committee*

## FORTHCOMING PROGRAMMES

Sr. No.	Event	Tentative Months
1.	Udaan Episodes	2023-24
2.	E-Webinar on GST Annual Return and GST Reconciliation Statement	November, 2023
3.	Mediation Act, 2023 Webinar/Workshop	November/December, 2023
4.	CTC National GST Moot Court Competition	January, 2024
5.	3rd Tech Series	December, 2023
6.	The Dastur Debate Competition	January, 2024
7.	Legal Practice Orientation Course	January/February, 2024
8.	Orientation on Real Estate Laws	February/June, 2024
9.	The Dastur Essay Competition	February, 2024
10.	Industrial Visit	January/February, 2024
11.	The Dastur National Tax Moot Court Competition 2023-24	2024
12.	CA Student Orientation Course	March, 2024
13.	Bank Audit	March, 2024
14.	Webinars on Opportunities – global as well as domestic in the field of Law, CA, CS, etc	

## Impounding and Seizure of Passport: Perplexing Realities?



Anuja Pawar  
Student of Government  
Law College, Mumbai



Kavita Solunke  
Advocate



### INTRODUCTION

We read in the newspaper in legal columns "X's passport is seized", or "Y's passport is impounded". So let us see today what the difference between these two words. Why these two different terminologies is used by lawyers and or reporters in specific different words that have similar connotations in layman's language?

Many times, there is uncertainty between the terms 'seizing of a passport' and 'impounding of a passport'. Though there is a minor and minimal difference between them in the English language, but in law there is a significant difference between the two as they are dealt with by different Acts and different authorities are empowered for the action. This article will be helpful in clearing these perplexities.

Now let us see what is *seizure* of a passport and when an authority seizes one's passport:

**Definitions explained:** In general parlance, the meaning of the word '**Seize**' is to forcibly take possession (of a person or property)<sup>1</sup>. A seizure happens when someone is caught at the border for doing illegal acts. Like (i) entry without visa, or immigration papers (b) the holder of a passport or travel document is in wrongful possession. (c) If the passport was obtained by suppression or on the basis of wrongful information. (d) If it is necessary to protect the sovereignty, integrity, security, friendly relations or public order in India. (e) smuggling of contraband goods. When a person or authority takes custody of anything that was previously out of their possession, it is considered to have been seized at that specific

1. The Law Lexicon, a Legal Dictionary of Legal Terms and Phrases Judicially Defined, by Justice T.P Mukherjee (Fifth and Enlarged Edition)

time. Seizures are, therefore, forcefully carried out at a specific time. "Seizing" also describes the ongoing action of the police taking or seizing the goods that have been brought in illegally at the border. The action of firmly grasping anything. For example, At the border, the cops are seizing the contraband.

While the definition of the word "impound" is "to place a suspected document in the custody of the law, when it is produced at trial." Therefore, the term "impounding" refers to keeping a good or document that has been confiscated in possession. The phrase "impound" is widely used in the legal context to refer to the action of a government entity or law enforcement agency taking possession of someone's property, frequently as a result of a legal dispute, a criminal investigation, or a legal infringement. For example, The Court is currently considering whether to impound the documents as evidence in the case. The impounding of a passport is by virtue of a court order.

## LAW PROVIDING SEIZURE OF A PASSPORT

Seizing a passport refers to the act of taking immediate possession of the passport, often in urgent or critical situations, with the intention of preventing an individual from leaving the country or taking certain actions. Passport seizure is usually associated with more serious and urgent scenarios, such as suspected involvement in criminal activities, national security risks, terrorism, or imminent threats.

Section 102(1) of the Code of Criminal Procedure, 1973 ("CrPC") deals with the powers of the police officers to seize certain property which reads as under:

**"102. Power of police officers to seize certain property. (1) Any police officer, may**

*seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence."*

The police officer in the course of an investigation can seize any property under this Section if such property is alleged to be stolen or is suspected to be stolen or is an object of the crime under investigation or has a direct link with the commission of the offence for which the police officer is investigating into. It validates the power of police officers to seize certain property.

In one of the landmark cases namely, in **M.T. Enrica Lexie and Ors. vs. Doramma and Ors.**<sup>3</sup>, the Apex Court held that: -

*"13. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. **A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other.***

The term 'any offence' as used in this Section 102 is wide enough to cover offences created by the Defence of India Rules, or even non-cognizable offences<sup>4</sup>. Moreover, only a police officer has the power to seize under this Section and no other person/officer. Accordingly, in the case of **Badku Jyoti Savant vs. State of Mysore**<sup>5</sup>, it was held that an officer appointed under the Central Excise and Salt Act is not a police officer and cannot seize any property under Section 102. The term

2. The Law Lexicon with Legal Maxims by P. Ramanatha Aiyar (Reprint Edition 1993)

3. *M.T. Enrica Lexie and Ors. vs. Doramma and Ors.* (02.05.2012 - SC): MANU/SC/0409/20

4. *Babulal Agarwalla vs. Province of Orissa And Ors.* AIR 1954 Ori 225

5. *Badku Jyoti Savant vs. State of Mysore* AIR 1966 SC 1746

'any property' is said to include a passport as well.

Apart from this Section 102 which empowers any police officer to seize a passport, similar powers are also provided in Section 14 of the Passport Act, 1967 which deals with the **Power of search and seizure**, and reads as under: —

**"14. Power of search and seizure. —**

- (1) *Any officer of customs empowered by a general or special order of the Central Government on this behalf and any officer of police or emigration officer not below the rank of a sub-inspector may search any place and seize any passport or travel document from any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 12.*
- (2) *The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures shall, so far as may be, apply to searches and seizures under this section."*

Section 12 of the Passport Act lays down various punishable offences under the Act such as contravention of a provision of Sec.3, knowingly furnishing of false information for obtaining passport/ travel document or altering or attempt to alter entries in passport/travel document, or failure in getting passport/ travel document inspected, or using passport/travel document of another, etc. This, Section 14 empowers not only police officer or emigration officer but also an officer of customs who is empowered by a general or special order of the Central Government to search any place and seize any passport or travel document from any person against whom there is a reasonable suspicion that he has committed an offence punishable under Section 12 of the Passports Act, 1967.

**LAW PROVIDING IMPOUNDING OF A PASSPORT**

If a passport or document is kept after being seized and retained for a certain amount of

time, this retention is equivalent to keeping the property or document impounded. Impounding a passport is different from impounding other documents. Impounding of a passport involves the process of formally taking possession of the passport for legal or administrative reasons, typically involving a long-term holding of the document. Illegal or wrongful impounding of a passport may result in infringing a person's right to travel abroad which is a fundamental right guaranteed under Article 21 of the Constitution of India hence, the same is taken very seriously and exercised only when all the criteria as laid down in Section 10 of the Passport Act are satisfied.

Passport authority is established under the Passport Act which is an officer or authority empowered under rules made under this Act to issue passports or travel documents and includes the Central Government.

Sec. 10(3) of the Passport Act, 1967 deals with the power of the Passport Authority to impound or cause to be impounded or revoke a passport or travel document, which reads as under:

**"10. Variation, impounding and revocation of passports and travel documents**

.....

- (3) *The passport authority may impound or cause to be impounded or revoke a passport or travel document, -*
  - (a) *if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;*
  - (b) *if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;*

*Provided that if the holder of such passport obtains another passport the passport authority shall also*



*impound or cause to be impounded or revoke such other passport]*

- (c) *if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;*
- (d) *if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;*
- (e) *if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.*
- (f) *if any of the conditions of the passport or travel document has been contravened;*
- (g) *if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;*
- (h) *if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has*

*been so issued or an order has been so made."*

According to the aforementioned section, the Passport Authority may use its discretion to impound or revoke the passport or travel document in the above condition i.e., if the passport is in wrongful possession, if the wrong information is provided by the passport holder, if the holder has been convicted by a court in India for any offence, if any conditions of passport is contravened etc. For Example, Dr Vijay Mallya, an Indian business magnate and former lawmaker, has been experiencing several legal troubles, including the revocation/ impounding of his passport by Indian officials. After leaving the country in April 2016, Dr Vijay Mallya's passport was revoked by Indian authorities on suspicion of financial misdeeds and loan defaults associated with his now-defunct Kingfisher Airlines. He is charged with owing a sizable sum of money to several Indian banks.

In certain cases, some of the entries found in the passport are sought to be used as evidence of some fact that is relevant for deciding a case, in such cases, for that purpose, the passport need not be impounded, much against the provisions of the Passport Act dealing with the impounding of passport, xerox copies or typed copies of the passports can be prepared and the same can be certified by the Court and retained in the case bundle to be used as evidence<sup>6</sup>.

### **DISTINCTION- OBITER DICTUM**

Seizing a passport is a more immediate and urgent action taken to prevent someone from leaving the country or engaging in dangerous activities. On the other hand, impounding a passport is a formal and usually lengthy process done for legal or administrative reasons to enforce compliance or address specific issues related to the individual's circumstances. The Supreme Court

6. *S.Narmadha vs. The State, 2012 SCC OnLine Mad 1231*

in the case of **Suresh Nanda vs. CBI** has clearly explained the difference between the seizure of a passport and the impounding of a passport. It was held<sup>7</sup> that the Passports Act, 1967 was a Special Act and its provisions overrode the provision of Section 104 of the Criminal Procedure Code (which gives the court power to impound documents) by noting the provisions of Section 10(3)(e) of that Act as well as the rulings of two Constitution Benches in **Satwant Singh Sawhney vs. D. Ramarathnam, Assistant Passport Officer**<sup>8</sup> and **Maneka Gandhi vs. Union of India**<sup>9</sup>. The Court also made clear the difference between merely seizing a passport and impounding it. The Supreme Court emphasised that while the Police may have the jurisdiction to seize a passport under Section 102 of the Criminal Procedure Code (subject to the conditions/ circumstances mentioned therein), it does not have the authority to retain, hold or impound the same for long periods. The Court categorically held that even the court does not have the power to impound a passport and it can only be done by the Passport Authorities. The Court further stated that the Police must write a letter to the Passport Authority along with any passports they seize under Section 102 of the Criminal Procedure Code which explicitly states that the passport should be held for any of the reasons listed in Section 10(3) of the Passport Act<sup>10</sup>. Then it is for the Passport Authority to make the final decision. Since the impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding of a passport.

However, in the case of **Jignesh Prakash Shah vs. Central Bureau of Investigation and Ors**<sup>11</sup> the

Bombay High Court relying on the decision of the Madras High Court in the case of **Veenita Gupta vs. State (Cri. R.C. No. 1062 of 2010, decided on 02.11.2010)** directed the CBI to return the passport to the Petitioner and granted liberty to the Passport Authority to initiate the proceedings for impounding the passport in accordance with Section 10(3)(e) of the Passport Act, 1967. The court refused to allow the CBI to send the passport to the Passport Authorities for action u/s 10(3)(e) of the Passport Act as the CBI was guilty of retaining the passport for a lapse of 3 years and Court could not allow illegality to continue in perpetuity.

In **Vinod Kumar Asthana vs. Joint Secretary (PSP) & Ors.**<sup>12</sup>, the Petitioner (Vinod Asthana) had filed the Petition impugning the Orders passed by the Joint Secretary (PSP) & Chief Passport Officer (Central Government) and the Regional Passport Officer impounding the Petitioner's passport under Section 10(3)(e) of the Passports Act, 1967. The Petitioner filed an application before the concerned Court seeking permission to travel abroad and accordingly, sought release of his passport. This application was allowed. In this case, the Court was of the view that in the given facts of the case, impounding the passport was not merited as the petitioner had already been summoned to deposit it with the relevant Court. Furthermore, the petitioner has already been granted permission to travel abroad. It is worth noting that the petitioner's passport had not been cancelled. Given that the petitioner has previously been granted permission to travel abroad, the Court believed that it is appropriate to direct the Respondents to set aside the impugned orders impounding the petitioner's passport.

7. *Suresh Nanda vs. C.B.I (24.01.2008 - SC): MANU/SC/7020/2008*

8. *Satwant Singh Sawhney vs. D. Ramarathnam and Ors. (10.04.1967 - SC): MANU/SC/0040/1967*

9. *Maneka Gandhi vs. Union of India (UOI) and Ors. (25.01.1978 - SC): MANU/SC/0133/1978*

10. *Suresh Nanda vs. C.B.I (supra); Mohammed Tasnim vs. State of Karnataka and Ors. (0-07.2015 - KARHC) : MANU/KA/1787/2015*

11. *Jignesh Prakash Shah vs. Central Bureau of Investigation and Ors: MANU/MH/1150/2018*

12. *Vinod Kumar Asthana vs. Joint Secretary (PSP) and Chief Passport Officer and Another, 2019 SCC OnLine Del 8138 : (2019) 262 DLT (CN 18B) 18*



The petitioner would be free to go abroad on his present passport as long as he followed the requirements imposed by the learned Special Judge.

The aforesaid decision was followed by this Court in **Siddhartha Ashish Dey vs. Union of India & Ors. WI (C) 7339/2015**<sup>13</sup>, decided on 25th May 2015, in which the court had reiterated its view that "pendency of a criminal case is not ipso facto a ground under Section 10(3)(e) of the Passports Act for impounding of the "passport".

## CONCLUSION

Though there is a marginal difference in the meaning of the terms "seize" and "impound" in the English language, but there is a significant difference in their meaning under the law. Therefore, while dealing with these two powers, it is necessary for people to know the difference between them, particularly to the concerned authorities as they must be cautious while dealing with impounding as misinterpretation of it may lead to infringement of fundamental rights i.e., right to travel of the person.

---

13. *Siddhartha Ashish Dey vs. Union of India, 2015 SCC OnLine Del 969*





## Corporate Social Responsibility under The Companies Act, 2013



*Kayva Prabhu*  
Student of SVKM'S  
NMIMS, Navi Mumbai



*Ameesha Kohli*  
Student of SVKM'S  
NMIMS, Mumbai



*CS Archana Pareek*

Corporate Social Responsibility (CSR) is a moral obligation for companies as they impact society. It has become a prevalent term in corporate circles, signifying a commitment to social welfare, ethics, and the environment. CSR involves activities that benefit society, is crucial for positive societal change, builds customer trust, and is made mandatory for certain corporations by the Companies Act of 2013 in India. Overall, CSR is an integral aspect of a nation's governance, gaining importance in recent years.

### MEANING OF CSR

The Companies Act, 2013 does not define the term CSR but the same has been defined by the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("Rules"). As per Rule 2(d) of the Rules, the term "**Corporate Social Responsibility (CSR)**" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely: -

- (i) activities undertaken in pursuance of normal course of business of the company. However, any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for

financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act;
- (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;
- (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
- (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- (iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
- (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;



## CSR APPLICABILITY

Under Section 135 of the Companies Act 2013 in India, CSR has been mandated for certain companies. It obligates the companies to contribute to society and address social and environmental challenges.

Every company having

- net worth of Rs.500 crore or more, or
- turnover of Rs. 1000 crore or more or
- a net profit of Rs. 5 crore or more

during the immediately preceding financial year shall constitute a CSR Committee of the Board consisting of three or more Directors, out of which at least one director shall be an independent director. However, where a company is not required to appoint an independent director under section 149(4), it shall have in its Corporate Social Responsibility Committee two or more Directors.

Furthermore, as per Rule 3(1) of the Rules, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Act having its branch office or project office in India which fulfills the criteria specified in Section 135(1) of the Act shall comply with the provisions of Section 135 of the Act and the Rules.

However, the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities

Where the amount to be spent by a company under section 135(5) does not exceed Rs. 50 lakhs, the requirement under section 135(1) for constitution of the CSR Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

The Act establishes a comprehensive framework for businesses to select and implement CSR projects that are in line with their core capabilities, commercial objectives, and social requirements. CSR efforts should be developed and carried out with a long-term vision, sustainability, and measurable impact in mind. enterprises might participate in direct project implementation, partner with other enterprises, or donate to government-led initiatives or registered non-governmental organizations (NGOs). They may also encourage their employees to participate in volunteer activities in order to maximize the good consequences of CSR programs.

## CSR EXPENDITURE AND OPENING OF UNSPENT CSR ACCOUNT

The Board of every such company covered by Section 135, shall ensure that the company spends, in every financial year, at least 2% of the average net profits<sup>1</sup> of the company made during the 3 immediately preceding financial years or where the company has not completed the period of 3 financial years since its incorporation, during such immediately preceding financial years, in pursuance of its CSR Policy.

1. **As per Rule 2(h) of the Rules, “net profit”** means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-
  - (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
  - (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act: Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

The “net profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. However, the net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of section 381(1) (a) and section 198 of the Act.

As per Rule 7 of the Rules, the Board shall ensure that the administrative overheads<sup>2</sup> shall not exceed 5% of total CSR expenditure of the company for the financial year.

If the company fails to spend the mandated amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), **transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.**

However, if the company spends an amount in excess of the requirements provided under this sub-section, such company may **set off such excess amount** against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed.

Any amount remaining unspent under section 135(5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled

bank to be called the “**Unspent Corporate Social Responsibility Account**”, and such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of 3 financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the 3rd financial year.

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Where a company spends an amount in excess of requirement provided under section 135(5), such excess amount may be set off against the requirement to spend under section 135(5) up to immediate succeeding 3 financial years subject to the conditions that -

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of Rule 7.
- (ii) the Board of the company shall pass a resolution to that effect.

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -

- (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects

2. As per Rule 2(b) of the Rules “**Administrative overheads**” means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme;

and CSR Registration Number under sub-rule (2) of rule 4; or

- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority

However, any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

## CSR ACTIVITIES COVERED BY SCHEDULE VII

Activities which may be included by companies in their CSR Policy as listed in Schedule VII to the Act are as under:—

- (i) Eradicating hunger, poverty and malnutrition, “promoting health care including preventive health care” and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry,

conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
- (vi) measures for the benefit of armed forces veterans, war widows and their dependents, 9[ Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;
- (vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports
- (viii) contribution to the prime minister’s national relief fund or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- (ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and (b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha

and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

- (x) rural development projects
- (xi) slum area development. ('slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force).
- (xii) disaster management, including relief, rehabilitation and reconstruction activities.

### CSR COMMITTEE

As stated above, every company covered by Section 135 of the Act shall constitute a CSR Committee of the Board consisting of three or more Directors, out of which at least one director shall be an independent director (subject to section 149(4) of the Act). However, a private company having only two directors on its Board shall constitute its CSR Committee with two such directors<sup>3</sup>. Similarly, with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

The **CSR Committee** shall, —

- (a) formulate and recommend to the Board, a CSR Policy<sup>4</sup> which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (c) monitor the CSR Policy of the company from time to time.

The Rule 5(2) of the Rules further elaborates the role of the CSR Committee in formulating and recommending to the Board on its CSR Policy as under:

- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company;

However, the Board has the power to alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

3. As per Rule 5(1)(ii) of the Rules

4. As per Rule 2(f) of the Rules, "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;

## BOARD'S RESPONSIBILITIES

The Board of every company referred to in Section 135(1) shall,—

- (a) after taking into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
- (b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

## BOARDS REPORT

The Board's report under section 134(3) shall disclose the composition of the CSR Committee.

As per Section 134(3)(o) of the Act, the Board Report shall include the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year

Further, if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

## CSR IMPLEMENTATION AND FORM CSR-1

As per Rule 4 of the Rules, the Board shall ensure that the CSR activities are undertaken by the company itself or through, –

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80G of the Income Tax

Act, 1961 (43 of 1961), established by the company, either singly or along with any other company; or

- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Every entity, covered above, who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 1st April, 2021. However, this sub-rule shall not affect the CSR projects or programmes approved prior to the 1st April, 2021.

Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice. On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies

are in a position to report separately on such projects or programmes in accordance with these rules.

The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and yearwise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

### **CONSEQUENCES FOR NON-COMPLIANCE OF SECTION 135(5) & (6)**

If a company is in default in complying with the provisions of section 135(5) or (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.1 crore, whichever is less, and every officer of the company who is in default shall be liable to a penalty of 1/10th of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs. 2 lakhs, whichever is less.

The Central Government has the power to give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

### **CSR VIS-À-VIS GST ACT**

Companies can invest in CSR by making contributions or by building hospitals, schools, and roads, or by encouraging education and

rural sports. When businesses participate in CSR programmes, they require inward supplies of products or services that may be liable to GST. The question is whether corporations can claim ITC for GST paid on these CSR expenses under GST laws.

To respond, it is critical to recognise that ITC is only payable for expenses made in the conduct or furtherance of business. For example, if an FMCG company like HUL develops a school or hospital as part of CSR, it's unclear whether these costs are directly related to the company's business activities. Furthermore, unless they fall under particular areas, CSR expenses are not deductible under the Income Tax Act.

According to Section 135 of the Companies Act (2013), CSR expenses are not considered business expenses under the Income Tax Act (1961). If these expenses were tax deductible, the government would essentially subsidise a major percentage of these costs through tax expenditure. As a result, the government may refuse ITC on such CSR expenses under the GST Act, claiming that they are not in the conduct or furtherance of business. This issue raises concerns regarding the GST regime's eligibility for GST on CSR expenses.

The conditions for claiming Input Tax Credit (ITC) are outlined in Section 16(1) of the Central Goods and Services Tax Act (CGST Act, 2017). It enables registered persons to claim a tax credit for taxes paid on goods or services used for business purposes. While the Act defines "business," it does not explain what constitutes "in the course or furtherance of business." The definition of "furtherance" in the dictionary refers to efforts that promote or advance a business, assuring its continuance and stability.

Corporate Social Responsibility (CSR) expenses, as required by Section 135 of the Companies Act, are critical for legal compliance and the upkeep of a company's reputation. These costs are essential for corporate operations and are indirectly related to business promotion. However, eligibility for

ITC is also subject to other conditions outlined in Section 17(5) of the CGST Act, which limits credit for certain categories of expenses, including works contract services related to immovable property construction, goods or services used for property construction, and goods given away as gifts or samples. ITC for CSR expenses is available unless these expenses specifically fall under the categories mentioned in Section 17(5) of the CGST Act, ensuring alignment with the law's provisions.

As on date, there are Rulings by the Advance Authority on whether ITC of GST paid on inputs for CSR Expenditure is available or not. The summary of the questions raised before the Authorities and the Rulings passed by them are as under:

***In Re: Shriram Pistons and Rings Limited (09.12.2022) by AAR, Uttar Pradesh:***

**Question: Whether the company can avail Input Tax Credit (ITC) for GST paid on services/ expenses related to CSR activities.**

**Answer:** CSR activities, as per CSR Policy Rules, are excluded from the normal course of business and are not eligible for ITC under Section 16(1) of the CGST Act.

***In Re: Dwarikesh Sugar Industries Ltd. (22.01.2020) by AAR, Uttar Pradesh:***

**Question 1: Whether expenses incurred for CSR under the Companies Act qualify for ITC under Section 16 of the CGST Act.**

**Answer 1:** Yes, CSR expenses qualify for ITC.

**Question 2: Whether free supply of goods as part of CSR activities is restricted.**

**Answer 2:** No, it is not restricted.

**Question 3: Whether goods and services used for construction of a school building, not capitalized in books, are restricted.**

**Answer 3:** ITC is not available to the extent of capitalization.

***In Re: Bambino Pasta Food Industries Private Limited (20.10.2022) by AAR, Telangana:***

**Question: Whether ITC is available on CSR expenditure.**

**Ruling:** Expenditure made for corporate responsibility under the Companies Act is considered an expenditure in furtherance of business, making the tax paid on purchases eligible for input tax credit under CGST and SGST Acts.

Corporate Social Responsibility (CSR) in India, encouraged by the Companies Act of 2013, has become an integral part of business strategy. It involves companies addressing social and environmental issues alongside financial goals. Engaging in CSR can lead to a positive brand image and enhanced stakeholder trust.

## KEY IMPACTS OF CSR ON BUSINESSES AND BRAND VALUE

- a. **Enhanced Brand Image:** Companies that actively participate in CSR projects are seen as responsible corporate citizens, leading to increased trust and loyalty from customers and stakeholders. This positive image attracts a larger client base.
- b. **Competitive Advantage:** Customers are increasingly choosing brands aligned with their values, making CSR initiatives a source of competitive advantage. Companies demonstrating genuine commitment to social and environmental issues can experience increased sales and market share.
- c. **Cost-Effective Publicity:** CSR initiatives garner media attention without the expenses of traditional advertising. Positive social activities help in creating a positive brand image and reaching a broader audience, beyond the regular consumer base.
- d. **Brand Value Improvement:** Active involvement in social and environmental projects strengthens a company's brand



- equity. Consumers associate the brand with positive attributes like social responsibility and ethical behavior, leading to customer retention and advocacy.
- e. **Customer Relationships:** CSR fosters emotional connections between customers and the brand. This connection can result in improved customer retention and advocacy, with customers becoming brand ambassadors through word-of-mouth referrals.
- f. **Legal Recognition:** Courts and tribunals have recognized CSR expenses as business-related, making them eligible for tax benefits and credits, emphasizing the importance of CSR in a company's overall strategy.
- g. **Starbucks Example:** Starbucks is a prominent example of effective CSR. They focus on three core pillars: Community, Ethical Sourcing, and the Environment. Their commitment to community investment, ethical sourcing, and sustainability has garnered consumer support and positively impacted their business.

In conclusion, CSR is more than just charity; it's a critical aspect of a company's strategy that can improve brand value, customer trust, and long-term viability. Meaningful CSR efforts can lead to substantial positive impacts on both communities and businesses.



## Fostering Innovation and Growth: Tax Incentives for Startups in India



Priyanandan Kumar  
Student of SVKM's NMIMS –  
Kirit P. Mehta School of Law



CA Vishal H. Shah

### ABSTRACT

This study explores the complex system of tax incentives for new businesses in India with an emphasis on how they promote innovation and economic growth. Despite India's developing startup ecosystem, obstacles like funding access and regulatory complexity still exist. This paper examines the variety of tax incentives put in place by the Indian government to support start-ups, assesses how they affect the environment for entrepreneurship, and offers thorough recommendations for policy improvements.

### INTRODUCTION

India is competing to create an environment for innovation and entrepreneurship on a global scale. However, there are many obstacles to overcome along the way, starting from the conception of an innovative idea to the establishment of a successful business, such as obtaining sufficient funding, navigating complex regulatory issues, and competing in fast-moving markets. The Indian government has introduced a variety of tax incentives for start-ups in order to address these issues and promote innovation. In-depth analysis of these tax benefits will be provided in this paper, along with a critical assessment of how well they support innovation and expansion within the Indian start-up ecosystem.

## 1. TAX INCENTIVES FOR START-UPS IN INDIA

### 1.1. The "Startup India" Initiative

The Government of India's flagship programme, Startup India, aims to promote startup culture and create a robust, inclusive ecosystem for innovation and entrepreneurship in India. Since its launch on January 16, 2016, Startup India has released a number of initiatives with the goal of assisting entrepreneurs and transforming India into a nation of job creators rather than job seekers.

A dedicated Startup India Team, reports to the Department for Industrial Policy and Promotion (DPIIT) and oversees the extensive range of Startup India's programmes, which are described in the Action Plan below. The 19-Point Action Plan includes the following types of startup support, among others:

- o Improved infrastructure with the addition of incubation centres.
- o Simplified Intellectual Property Rights (IPR) support, including streamlined patent filing processes.

- o A more favourable regulatory environment, encompassing tax incentives, simplified compliance procedures, enhanced company establishment procedures, expedited exit mechanisms, and more.
- o An economic boost through INR 10,000 crore Fund of Funds managed by SIDBI, aimed at expanding funding opportunities.
- o The Startup India Portal, a comprehensive website providing valuable resources and an extensive networking database for entrepreneurs and other stakeholders in the startup ecosystem.
- o A toll-free helpline and efficient email support for swift resolution of startup-related queries.

Within this initiative, several key tax incentives were introduced:

#### 1.1.1. Tax Holiday Provisions

Under Section 80-IAC of the Income Tax Act<sup>1</sup>, eligible start-ups are entitled to a tax holiday for any three consecutive assessment years out of their first ten years since incorporation. This exemption has significantly empowered nascent start-ups, allowing them to reinvest their profits into expanding their businesses and driving innovation.

Eligible Start-up who can apply for income tax exemptions under section 80 IAC are-

- The startup must be formed after April 1st, 2016 but before April 1st 2024.
- The startup's total turnover must be less than INR 100 crore in the year for which the exemption is be claimed.

- The startup holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified.
- Startups must be formed as a private limited company or as a limited liability partnership (LLP).

#### 1.1.2. Long-term Capital Gains Tax Exemption

Investors who have held shares in eligible start-ups for a minimum of two years can avail capital gains tax exemption upon selling those shares. This incentivizes angel and venture capital investments in the start-up ecosystem, facilitating the influx of crucial capital.

The Income Tax Act has introduced a new section 54 EE, that allows eligible start-ups to claim an exemption from paying tax on long-term capital gains if they invest all or a portion of those gains in a fund that has been approved by the Central Government within six months of the asset's transfer date.

The maximum amount that can be invested in the specified fund in a financial year is Rs. 50 lakh. The investment in the specified funds will be subject to a lock-in of 3 (three) years and the exemption claimed will be revoked in the year when the fund is transferred within three years of its acquisition.

#### 1.1.3. Exemption of capital gains form transfer of residential property if net sale consideration is invested in shares of an eligible company (including a start-up).

The government has also introduced a section 54GB wherein the capital gains arising from the transfer of a residential property can be claimed as an exemption

1. Income Tax Act, 1961, S. 80 IAC.

if the net sale proceeds are invested in the shares of an eligible company, who utilised this amount for purchase of a new asset, subject to the conditions specified in the said section. This exemption will also help start-up to secure funding at the initial stage.

#### 1.1.4. *Relaxation of provisions related to carry forward losses*

The provisions of section 79 of the Income Tax Act, restrict the carry forward of losses in case of an unlisted company, where the shareholding of atleast 51% is not the same shareholding as in the year when the loss was incurred. However, this condition has been relaxed in case of an eligible start-up.

### 1.2. **Angel Tax Reforms**

The infamous 'angel tax,' which had long been a vexation for start-ups, underwent substantial reforms in 2023. An amendment to Section 56(2)(vii)(b) of the Income Tax Act ushered in exemptions for eligible start-ups, shielding them from the scrutinizing lens of tax authorities, provided they satisfy certain criteria. Accordingly, eligible start-ups (fulfilling the required conditions) can issue shares at a higher rate than the value noted in the books, without attracting the provisions of section 56(2)(vii)(b).

## 2. **IMPACT ASSESSMENT**

### 2.1. **Galvanizing Start-up Registrations & Growth**

The Startup India initiative has sparked an unprecedented surge in start-up

registrations. In the fiscal year 2020-21, India witnessed a historic high in the number of start-ups officially recognized by the Department for Promotion of Industry and Internal Trade (DPIIT). The tax incentives, especially the tax holiday, have galvanized budding entrepreneurs to formalize their ventures.

India's startup ecosystem has experienced remarkable growth in recent years. The count of officially recognized startups in the nation surged from 471 in 2016 to an astonishing 72,993 in 2022, marking an incredible growth rate of over 15,400%<sup>2</sup>. India now ranks as the world's third-largest startup ecosystem, and it's projected to sustain an annual growth rate of 12-15%.

In 2018, India was home to approximately 50,000 startups, out of which approximately 8,900 to 9,300 were technology-driven. The year 2019 alone witnessed the birth of 1,300 new technology startups, signifying the emergence of 2-3 tech startups every day<sup>3</sup>.

India has solidified its position as the third-largest global startup hub, following the United States and China. A record-breaking 44 Indian startups achieved unicorn status in 2021, bringing the total count of Indian startup unicorns to 83, with a predominant presence in the services sector, according to the survey<sup>4</sup>.

The number of startups in this sector increased from 11 in 2019 to 47 in 2021, as per the survey's findings. In recent times, Delhi has overtaken Bengaluru as the primary startup hub in India. Between April 2019 and December 2021, Delhi saw the addition of over 5,000 officially recognized

2. <https://www.fortuneindia.com/macro/india-sees-15400-growth-in-startups-in-6-yrs/109064>.

3. <https://www.startupindia.gov.in/content/sih/en/international/go-to-market-guide/indian-startup-ecosystem.html>.

4. Ibid

startups, while Bengaluru added 4,514. Maharashtra leads the pack with the highest number of officially recognized startups, totalling 11,308, according to the survey's data<sup>5</sup>.

## 2.2. Amplifying Investment Inflows

The exemption from capital gains tax for investors has served as a magnet, drawing more investments into the Indian start-up ecosystem. This substantial influx of capital has empowered start-ups to embark on ambitious expansions, invest robustly in research and development, and acquire top-tier talent. In April-November 2021, Rs 89,066 crore was raised through 75 IPO issues, much higher than in any year in the last decade<sup>6</sup>.

## 2.3. Challenges and Criticisms

Notwithstanding the manifold benefits of these tax incentives, several criticisms and challenges persist:

### 2.3.1. Elusive Eligibility Criteria

The criteria for categorizing start-ups as eligible and the conditions to avail tax benefits remain intricate, fostering ambiguity and disputes. Simplifying these criteria is imperative to democratize access to the incentives.

### 2.3.2. Navigational Complexities in Implementation

The practical implementation of tax incentives has at times been labyrinthine, marked by protracted approval processes and unwarranted delays. Streamlining these procedures is paramount to ensuring expeditious access to these benefits.

### 2.3.3. Sectoral Disparities

While the tax incentives have been a boon for technology-focused start-ups, other sectors such as manufacturing and agriculture yearn for similar support. Expanding the ambit of these incentives to encompass a wider range of industries is indispensable for holistic economic growth.

## 2.4 DRIVERS OF STARTUP ECOSYSTEM<sup>7</sup>

### 2.4.1 Corporate Connect

Businesses are partnering with and investing in startups as they become more aware of their disruptive potential. Instances of corporate assistance:

- o The top 5 selected startups received cash grants from Facebook and Startup India totalling \$50,000 each.
- o The Goldman Sachs 10000 Women programme offers women business owners from around the world access to capital, mentoring, and business and management education.
- o 16 startups have recently been accepted into India's Microsoft Ventures Accelerator Programme.

### 2.4.2 Government Support

The Indian government is becoming more aware of the benefits of collaborating with disruptive innovators across the value chain and utilising their innovations to enhance the provision of public services.

- o In collaboration with Startup India, the Department of Animal Husbandry and Dairy has held a major competition to award the top startups in five categories with 10 lakh INR each.

5. Ibid

6. Ibid

7. <https://www.startupindia.gov.in/content/sih/en/international/go-to-market-guide/indian-startup-ecosystem.html>.

- o Over 26 states in the nation have startup policies.
- o The Small Industries Development Bank of India has launched a programme to help small and medium-sized businesses that are already operating but need capital for expansion.

### 3. RECOMMENDATIONS FOR POLICY ENHANCEMENT

To further amplify innovation and growth in the Indian start-up ecosystem, the following policy enhancements are proposed:

#### 3.1. *Simplification of Eligibility Criteria*

The government should embark on a journey to simplify the criteria used to classify start-ups as eligible and the requisites for availing tax benefits. This simplification would not only diminish ambiguity but also democratize access to these incentives.

#### 3.2. *Streamlined Implementation Processes*

Concerted efforts should be directed towards streamlining the implementation of tax incentives, thereby ameliorating administrative bottlenecks and minimizing unwarranted delays. This will ensure that start-ups can harness these benefits in a more efficient manner.

#### 3.3. *Diversification of Sectoral Support*

While technology-driven start-ups have been the primary beneficiaries of these incentives, there is an acute need to extend this support to encompass a broader spectrum

of sectors, including manufacturing, agriculture, and traditional industries. This diversification will catalyze comprehensive economic growth.

### CONCLUSION

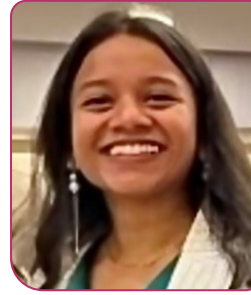
In India's developing start-up ecosystem, tax incentives have become crucial tools for promoting innovation and growth. The "Startup India" initiative has encouraged entrepreneurship formalisation, attracted sizeable investments, and facilitated expansive business development. It has also been paired with reforms in angel taxation. However, issues with implementation, sectoral inclusivity, and eligibility standards still exist. The government must make eligibility requirements easier to meet, make implementation procedures more efficient, and increase sectoral inclusivity in order to fully realise the potential of these incentives. By addressing these problems, India can maintain a dynamic startup ecosystem that stimulates both economic growth and technological advancement.

### REFERENCES

- [1] Department for Promotion of Industry and Internal Trade (DPIIT). (2021). Annual Report 2020-21. Government of India.
- [2] Ministry of Finance, Government of India. (2021). Income Tax Act, 1961.
- [3] Press Information Bureau, Government of India. (2019). Angel Tax Exemption to Boost Startups.
- [4] Startup India. (n.d.). About Startup India. Government of India.



## Withdrawal of Application Under IBC Post - Admission



*Neha Londhe*  
*Student of Symbiosis*  
*Law School, Pune*



*Priyal Savla*  
*Advocate*

The Insolvency and Bankruptcy Code, 2016 (“The Code”) seeks to maximize value of assets of the company, ensure availability of credit and balance the interests of the stakeholders and most importantly, conclude the insolvency resolution process in a time bound manner. However, according to the World Bank’s Ease of Doing Business Report of 2016<sup>1</sup>, it took 4.3 years in India for a creditor to get payment from an insolvent company. Nevertheless, it is pertinent to note that this duration for credit recovery is confined to metropolitan cities only. The actual picture is much more dismal. This deduction is backed by the fact that the Reserve Bank of India permits Asset Restructuring Companies (ARCs) a maximum of eight years for resolution after unsuccessful attempts by banks. Therefore, in context of the entire country, it would not be incorrect to say that the average credit recovery period could possibly be eight to ten years.

Given this scenario, the prospect of out of Court settlements between parties (debtors and creditors) appears not like an unlikely alternative but is rather a favourable or an advantageous one. Starting from 2001, the RBI attempted out- of court settlements through Corporate

Debt Structuring (CDR) and also introduced the Scheme for Sustainable Structuring of Stressed Assets (S4A Scheme) in 2016. Unfortunately, they were unsuccessful and subsequently withdrawn in February 2018.

This alternative of withdrawal of application and conciliating outside Court is provided under section 12A of the Code and Rule 8 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016<sup>2</sup>. As per the said Rule, an insolvency application submitted by a financial creditor, operational creditor, or corporate applicant may be retracted upon request, subject to approval by the Adjudicating Authority. Prior to 2018, there were no provisions regarding the withdrawal of the insolvency application after it had been admitted.

In 2017, the landmark judgement of **Lokhandwala Kataria Constructions Private Limited vs. Nisus Finance and Investment Managers LLP**<sup>3</sup> delivered by the Supreme Court, changed this scenario. In exercise of its power under Article 142 of the Constitution of India, the Hon’ble Supreme Court allowed the parties involved to reach a compromise even after admission of the insolvency application. Moreover, the

1 World Bank Group, Doing Business 2016, Measuring Regulatory Quality and Efficiency, 2016.

2 The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Rule 8, 2016.

3 (2018) 15 SCC 589.



Hon'ble Supreme Court in ***Uttara Foods and Feeds Private Limited vs. Mona Pharmachem***<sup>4</sup> elaborated that the National Company Law Tribunal or National Company Law Appellate Tribunal does not have inherent power to allow withdrawal of insolvency application. In the same case, the Supreme Court recommended legislative amendments to enable the aforesaid tribunals to have jurisdiction in deciding of the said applications.

In view of this judgement, the Insolvency and Bankruptcy Board of India was proposed with the inclusion of an amendment to allow withdrawal of an application for insolvency even after its admission. The Insolvency and Bankruptcy Board of India Report of 2018<sup>5</sup> indicates an emerging trend of the parties to the insolvency application reaching a settlement after admission, and on this basis, along with the intent to fulfil the object of the Code, the Committee decided to amend the Code by addition of the Section 12A. It reads as,

*"The Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors in such manner as may be prescribed"*

According to this provision of the Code, applications for insolvency made under Section 7, Section 9, or Section 10 may be withdrawn by the applicants at any time if there is approval of 90% of the Committee of Creditors in favour of withdrawal.

In event of such unanimity, the Adjudicating Authority ("AA") may allow such an application.

However, the use of "may" in the provision indicates that the AA is not obligated to allow the withdrawal application. The AA must consider the facts of each case and exercise vigilance for the best interests of all parties involved. The withdrawal application under this provision is permissible at any stage subsequent to its admission. The application may be withdrawn before the Committee of Creditors (CoC) is constituted and, in case the CoC is constituted, the applicant or a Resolution Professional can make an application to the Adjudicating Authority after obtaining the approval from the CoC through a 90% majority.

Section 12A of the Code read with the Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Personas) Regulations, 2016<sup>6</sup> allows the parties to reach an amicable settlement and end the winding up process of the same. In the annual year of 2018-19, with the introduction of this provision, there had been 88 withdrawals under Section 12A. This figure has only increased since, 259 in 2019-20<sup>7</sup>, 411 in 2020-21<sup>8</sup>, and 586 in 2021-22<sup>9</sup>. The primary causes for these withdrawals predominantly entail settlements with the applicants or the creditors, agreements to settle in the future, applicants refraining from pursuing CIRP due to high cost, corporate debtors cannot be traced or have been struck off the Register.

The provision has gone through scrutiny from the judiciary. The section 12A was challenged for being arbitrary, discriminatory, and violative of Article 14 of the Constitution of India<sup>10</sup>. In *Swiss Ribbons*<sup>11</sup>, it was alleged that the requirement of 90% approval of CoC was discriminatory. However,

4 (2018) 12 SCC 587.

5 Ministry of Corporate Affairs, Report of the Insolvency Law Committee, Government of India, 2018.

6 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Personas) Regulations, 2016.

7 Insolvency and Bankruptcy Board of India, Annual Report of 2019-20.

8 Insolvency and Bankruptcy Board of India, annual Report of 2020-21.

9 Insolvency and Bankruptcy Board of India, Annual Report of 2021-22.

10 INDIA CONST.art 14.

11 (2019) 4 SCC 17.



the Hon'ble Supreme Court in its comprehensive 150-page judgement decided against the allegations of being discriminatory in nature and held it to not be violative of Article 14. The Hon'ble Court clarified that the CIRP (proceeding) operates as a "proceeding in rem", requiring consultation with the overseeing authority before any specific corporate debtor is permitted to resolve its claim.

Additionally, the Court said that the consent of all financial creditors is necessary for such a withdrawal as an all-encompassing settlement involving all creditors is deemed preferable under the circumstances.

With the guidance of abundance of judicial pronouncements, the understanding and usage of this recently amended provision has evolved. In **Brilliant Alloys Private Limited vs. S. Rajagopal & Ors**<sup>12</sup>, it was held that Section 12A read with Regulation 30A is a directive and not a mandatory provision, and the nature of the same depends on the facts of the case. Further, in **Amit Katyal vs. Meera Ahuja**<sup>13</sup>, it was clarified that the withdrawal of application may also take place after the constitution of CoC. In **Arun Kumar Jagatramka vs. Jindal Steel & Power Limited**<sup>14</sup> (2021), the Hon'ble Supreme Court articulated that withdrawal of an insolvency application under Section 12A must be regarded as conciliation or in the nature

of a settlement between the parties, and distinct from a Resolution Plan as given under Section 31 of the Code. This withdrawal must also be differentiated from a 'Scheme' authorized under Section 230 of the Companies Act, 2013.

### Conclusion

The 2018 amendment, which introduced the provision allowing for the withdrawal of insolvency applications after their admission, has proven to be a mutually advantageous arrangement for all stakeholders involved, encompassing both the parties concerned and the adjudicating tribunals and courts. It has afforded the parties an opportunity to amicably settle the matter beyond judicial institutions, thereby alleviating the courts and tribunals from handling proceedings that could have been resolved among the parties themselves. Furthermore, the resolutions under the Code are governed by the National Company Law Tribunal functioning as a Consent Order and has higher legal risks on default (unlike RBI schemes). This results in significantly higher likelihood of successful resolution under Section 12A of the Code as compared to the restructuring schemes of the RBI. In the light of this, it can be asserted that by the virtue of this provision, the Code has taken a noteworthy stride towards realizing its objectives.

12 (2022) 2 SCC 544.

13 (2022) 8 SCC 320.

14 (2021) 7 SCC 474.

## Transfer Pricing Implications for Specified Domestic Transactions: A Comprehensive Analysis



Tushar Khatri  
Student of  
K.C. Law College



CA Chirag Vajani

### ABSTRACT

The related party transactions have always been under the close scanner of the Tax Authorities and it is believed that such transactions are by far the most convenient way of shifting profits to lower tax jurisdictions or to domestic companies enjoying tax advantage. . The detailed Transfer Pricing provisions relating to “international transactions” were first introduced by the Finance Act, 2001 with effect from 1.04.2002 under Chapter X of Income Tax Act, 1961 (‘Act’).

Prior to introduction of transfer pricing provisions for the specified domestic transactions, provisions of Section 40(A)(2) prescribed for disallowance of expenditure in respect of payments to related parties which was excessive as compared to the fair market value. The detailed transfer pricing provisions for certain Specified domestic transactions were brought under Chapter X of the Act through Finance Act 2012 with effect from 1.4.2013 including expenditure in respect of which payment has been made or is to be made to persons referred to in Section 40A(2)(b) under clause(i). Clause (i) was subsequently omitted by the Finance Act, 2017 with effect from 1.4.2017.

This research paper delves into the intricacies of Transfer Pricing Provisions governing Specified Domestic Transactions (SDT) in India with an aim to shed light on the challenges and ambiguities surrounding these provisions elucidate four unique issues that warrant attention.

The relevant statutory provisions as amended by the Finance Act, 2023 relating to the Specified Domestic Transactions (SDT) are reproduced below:

### 1. Section 92BA – Meaning of Specified Domestic Transaction

*For the purposes of this section and sections 92, 92C, 92D and 92E, “specified domestic transaction” in case of an assessee means any of the following transactions, not being an international transaction, namely: -*

- (i) [\*\*\*]
- (ii) any transaction referred to in section 80A;
- (iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;
- (iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;
- (v) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
- (va) any business transacted between the persons referred to in sub-section (6) of section 115BAB;

(vi) any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees.

**2. Section 80A(6) - Transfer of Goods & Services between Eligible Business & Any Other Business carried on by the assessee**

Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter under the heading "C.—Deductions in respect of certain incomes", where any goods or services held for the purposes of the undertaking or unit or enterprise or eligible business are transferred to any other business carried on by the assessee or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the undertaking or unit or enterprise or eligible business and, the consideration, if any, for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of any deduction under this Chapter, the profits and gains of such undertaking or unit or enterprise or eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

*Explanation.* —For the purposes of this sub-section, the expression "market value," —

- (i) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;
- (ii) in relation to any goods or services acquired, means the price that such goods or services would cost if these

were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any;

- (iii) in relation to any goods or services sold, supplied, or acquired means the arm's length price as defined in clause (ii) of section 92F of such goods or services, if it is a specified domestic transaction referred to in section 92BA.

**3. Any Business Transacted between the assessee and other person as referred to in Section 80-IA(8) & (10)**

- (8) Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

*Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.*

*Explanation.* —For the purposes of this sub-section, "market value," in relation to any goods or services, means—

- (i) the price that such goods or services would ordinarily fetch in the open market; or
- (ii) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.

.....

- (10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

*Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F."*

#### **4. Any business transacted between the person referred to in Section 115BAB(6)**

- (6) Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than

*the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:*

*Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:*

*Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.*

5. Any business transacted between the person referred in section 115BAE (4):

- (4) Where it appears to the Assessing Officer that, owing to the close connection between the assessee to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

*Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:*

Let us break down these provisions in simpler chart form –

<b>Provision</b>	<b>Understanding</b>
Section 92BA	Defines the scope of Specified Domestic Transactions (SDT) which shall be subject to the Transfer Pricing (TP) rules when their aggregate value exceeds INR 20 Crores in a Fiscal year.
Section 80A (6) Defines the scope of Specified Domestic Transactions (SDT) which shall be subject to the Transfer Pricing (TP) rules when their aggregate value exceeds INR 20 Crores in a Fiscal year.	When goods & services are transferred between different units or businesses of the assessee and the consideration for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, the profits and gains of such undertaking or unit or enterprise or eligible business for the purpose of deduction shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date. The provisions of Domestic Transfer Pricing are extended for determination of market value and the amount eligible for deduction.
Section 80-IA (8)	Where goods and services move between an eligible business and another business of the same assessee, Domestic Transfer provisions are extended to examine whether the consideration matches the market value of such goods or services and to the amount of deductions under Section 80-IA of the IT Act shall be determined accordingly.
Section 80-IA (10)	When due to close connection, the course of business between the eligible business and another person it is likely to results in more than ordinary profits for the assessee, TP rules can be invoked and the powers are given to the AO to reasonably determine the profits by application of the provisions.
Section 115BAB (6)	Like Section 80-IA (10), if the course of business is between a person eligible under Section 115BAB and another person leads to excess profits due to close connection, TP rule apply. The Assessing Officer can determine reasonable profits, and the excess profit so determined is treated as taxable income.
Section 115BAE (4)	Where it appears to the Assessing Officer that, owing to the close connection between the assessee to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such business and the arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F. The amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the assessee and the income-tax payable in respect of the income, in such case shall be computed at the rate of thirty per cent.

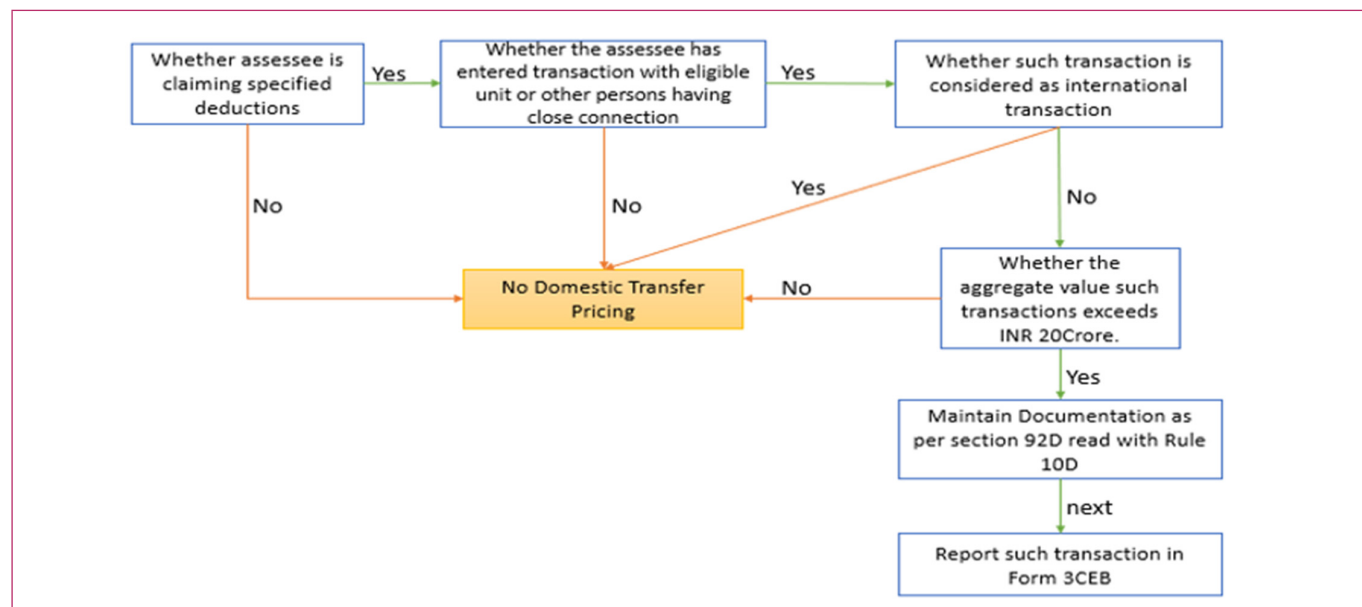
Once transfer pricing provisions are applicable reporting transactions in Form3CEB, benchmarking of SDT, maintaining detailed documentation, etc. are required to be adhered to avoid penalty for non-compliance. to avoid penalty for non-compliance.

## Penalties for non-compliance:

Section	Nature of Failure	Amount of Penalty
271AA	Failure to report any transaction in report. i.e., in Form 3CEB.	2 percent of the value of specified domestic transaction.
	Failure to maintain documentation as specified under section 92D.	
	Furnishes incorrect information or documentation.	
271BA	Failure to furnish report under section 92E. i.e., Form 3CEB	Rs. 1,00,000.
271G	Failure to furnish documentation to AO.	2 percent of the value of specified domestic transaction.

**Note:** The above penalties are in addition to penalty leviable under section 270A for under reporting of income.

A flow chart of determining the domestic transfer pricing is provided below for ease of understanding:



Following are four unique issues related to Transfer Pricing Provisions for Specified Domestic Transactions (SDT) in India, along with explanations and relevant provisions attached to it –

### Issue 1: Inconsistent Application of TP Rules for SDT

**Explanation:** Tax authorities sometimes apply Transfer Pricing rules inconsistently for Specified Domestic Transactions (SDT). This inconsistency can lead to disputes and confusion for businesses.

**Relevant Provisions:** This issue relates to Section 92BA of the Income Tax Act, which defines SDT and brings them under the purview of TP rules when their aggregate value exceeds INR 20 crores. The inconsistency may arise in how these rules are applied by different tax authorities.

### Issue 2: Lack of Clear Guidance on Market Value

**Explanation:** Determining the market value of goods or services in SDT can be challenging, especially when there are no clear guidelines and

limited judicial. This lack of clarity can result in disputes between taxpayers and tax authorities.

**Relevant Provisions:** Section 80A(6) and Section 80-IA (8) of the Income Tax Act require that the consideration for SDT should correspond to the market value. However, the Act does not provide a detailed methodology for calculating market value and hence will have to resort to the concept of arm's length price to justify the value of the transaction.

### Issue 3: Subjectivity in Assessing Exceptional Difficulties

**Explanation:** Section 80-IA(8) allows Assessing Officers to use a reasonable basis to compute profits and gains when exceptional difficulties are present. The subjectivity in determining what constitutes "exceptional difficulties" can lead to inconsistent assessments.

**Relevant Provisions:** Section 80-IA(8) states that Assessing Officers can use a reasonable basis if they believe that the usual method presents exceptional difficulties. However, the Act doesn't define or provide clear criteria for what qualifies as "exceptional difficulties."

### Issue 4: Ambiguity in Close Connection and Excess Profits

**Explanation:** The criteria for identifying a "close connection" between businesses and determining

what constitutes "excess profits" under Section 80-IA(10) and Section 115BAB(6) are not explicitly defined in the Act. This ambiguity can lead to disputes and uncertainty.

**Relevant Provisions:** Section 80-IA(10) and Section 115BAB (6) deal with situations where the course of business between connected entities results in more than ordinary profits. However, the Act does not provide clear guidance on what defines a "close connection" or how to calculate "excess profits."

These unique issues highlight the need for clearer guidelines, consistent application of TP rules, and more explicit definitions in the Income Tax Act to address challenges and ambiguities in the context of Specified Domestic Transactions.

Summarily, the research on Transfer Pricing Provisions for Specified Domestic Transactions (SDT) in India highlights four significant issues, including inconsistent rule application, market value ambiguity, subjective assessments, and uncertain criteria regarding close connections and excess profits. Resolving these concerns is essential for fostering transparency, reducing disputes, enhancing compliance, and promoting fairness in taxation. Achieving clarity and consistency in SDT Transfer Pricing is an ongoing effort that requires attention, collaboration, and adaptability in India's evolving tax landscape.



## Direct Tax Amendments under the Finance Act, 2023



Sailee Kambli  
Student of M.L.  
Dahanukar College of  
Commerce



Summaiya Shaikh  
Student of Smt. M. M.  
K. College of Commerce  
& Economics



CA Ankit Sanghavi

### Introduction

The Union Budget 2023 was presented by the Hon'ble Finance Minister Smt. Nirmala Sitharaman in the Parliament on 1st February, 2023.

The Finance Bill, 2023 was subsequently passed by both the houses of Parliament and it received the President's assent on 31st March, 2023.

The key amendments introduced by the Finance Bill, 2023 are summarized hereunder:

#### 1. Changes relating to New Tax Regime.

##### a. New Tax regime to be the default tax regime starting from the 1st April 2023.

- The Centre has made the New Tax Regime as the default tax regime from FY 2023-24.
- However, taxpayer has the option to be governed by the earlier regime.

##### b. Basic exemption limit hiked in New Tax Regime.

- The major change proposed in Budget 2023 is change in slab rates under New regime.

Slab	Tax rates
Upto Rs. 3,00,000	Nil
3,00,001- 6,00,000	5%
6,00,001-9,00,000	10%
9,00,001-12,00,000	15%
12,00,001-15,00,000	20%
More than 15,00,000	30%

##### c. Reduced surcharge for high-net-worth individuals (HNIs) under new tax regime.

- Under the New Tax Regime, the highest surcharge of 37% will be lowered to 25% for those earning more than Rs. 5 crores.

##### d. Standard deduction benefit extended to the New Tax Regime.

- The standard deduction of Rs. 50,000 on salary income was earlier not allowed in the New Tax Regime until FY 2022-23 (AY 2023-24).
- However, from FY 2023-24 (AY 2024-25) this benefit of a standard deduction will now be allowed for salaried employees and pensioners opting under the New Tax Regime as well.



e. Tax rebate limit raised from Rs. 5 lakhs to Rs. 7 lakhs under new tax regime.

- The government has increased the tax rebate limit u/s 87A from Rs. 5 lakhs to Rs. 7 lakhs under the New Tax Regime.
- In short, any person whose income under the New Tax Regime is less than or equal to Rs. 7 lakhs, need not invest anything to claim any sort of exemption as the entire income would be tax-free irrespective of the quantum of investment made in such cases.

## 2. Changes relating to salaried employees

### a. LTA encashment limit raised from Rs.3 lakhs to Rs.25 lakhs for Government Employees.

- The leave encashment for government employees is exempt up to a certain limit.
- This LTA encashment limit was Rs. 3 lakh for two decades (since 2002).
- It has now increased to Rs. 25 lakhs w.e.f. FY 2023-24.

### b. LTA encashment limit raised from Rs.3 lakhs to Rs.25 lakhs for Non-Government Employees.

- The leave encashment for non-government employees is exempt up to a certain limit.
- This LTA encashment limit was Rs. 3 lakh for two decades (since 2002).
- It has now increased to Rs. 25 lakhs w.e.f. FY 2023-24.

### c. Reduced TDS on EPF withdrawal.

- Employees Provident Fund (EPF) is a retirement fund for salaried employees.
- Every month, 12% of the employee's basic salary is contributed to the EPF account.

- TDS rates are reduced from 30% to 20% w.e.f. 1st April, 2023 on the taxable portion of EPF withdrawal in non-PAN cases.

## 3. Changes relating to Business and Profession

### a. Deduction u/s 43B on Timely payment to MSMEs.

- Section 43B of the Income Tax Act of 1961 is amended in Clause 13 of the Finance Bill 2023 to encourage prompt payments to MSMEs.
- As per the amendment, where payments made to 'micro' or 'small' vendor registered under MSME Act, is not made within period specified u/s 15 of MSME Act, 2006 (maximum period that is allowed for payment to be made is 45 days from the date of delivery of goods or receipt of services), the expense from MSME shall not be allowed under Income tax laws.

### b. Presumptive Tax Scheme Limits Increased us/ 44AD & 44ADA.

- The government has hiked the threshold limits for presumptive taxation schemes for eligible businesses under section 44AD (MSMEs/Small Businesses) and section 44ADA (Professionals).
- The turnover u/s 44AD has increased from Rs. 2 crores to Rs. 3 crores and for professionals' u/s 44ADA from Rs. 50 lakhs to Rs. 75 lakhs.
- The enhanced new limits will take effect if total cash receipts for the year do not exceed 5% of total gross receipts or turnover.

### c. Ease in claiming deduction on amortization of preliminary expenses.

- Section 35D of the Act provides for amortization of certain preliminary

expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit.

- This includes expenditure in connection with preparation of feasibility report, project report etc., which would need to be carried out either by the assessee himself or by a concern which is approved by the Board.
- Therefore, section 35D is amended to ease the process of claiming amortization of these preliminary expenses.
- As per the amendment, the condition of activity in connection with these expenses to be carried out by a concern approved by the Board is removed. Instead, the assessee shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

#### 4. Changes relating to Capital Gains

##### a. No more LTCG Tax benefit on Debt Mutual Funds

- Regardless of the holding period investments in mutual funds on or after 01/04/2023 where not more than 35% is invested in equity shares of a domestic companies (i.e., debt funds, international funds and gold funds) will now be deemed to be short term capital gains i.e., it will be liable to be taxed as per slab rate with no indexation benefits.
- If the investor falls under the highest income tax bracket of 30%, they will have to pay 35.8% (including surcharge and cess) on their gains without any indexation benefit.

- Under existing regime, if it was redeemed after 2 years of holding, it was classified as Long Term and 20% tax was levied on capital gains after indexation.

- This brings the taxation treatment for debt funds on a par with any other bank fixed deposits, where the capital gains are added to the investor's income and taxed at slab rates.

##### b. Conversion of Physical Gold to Electronic Gold Receipt to become Tax Free.

- The government has excluded the conversion of physical form of gold into EGR and vice versa by a SEBI registered Vault Manager from the purview of 'transfer' for the purposes of Capital gains i.e., no capital gains tax implication if physical gold is converted to Electronic Gold Receipt (EGR) or the vice-versa.
- The amendment seems to be aimed at encouraging the purchase of electronic gold.

##### c. Section 50AA in case of market linked debentures or unit of specified mutual fund.

- New section 50AA in the Income-tax Act with effect from April 1, 2023.
- It provides for a special provision for the computation of capital gains in the case of Market Linked Debenture.
- As per the section, the full value of the consideration received or accruing from the transfer, redemption, or maturity of a Market Linked Debenture will be deemed to be the capital gains arising from the transfer of a short-term capital asset.
- This is subject to the reduction of the cost of acquisition of the debenture and the expenditure incurred in connection

with such transfer or redemption or maturity.

**d. Amendments under Section 54 and Section 54F.**

- Background:
  - Section 54 relates to deduction when assessee being individual or HUF, transfers a residential house property (LTCA) and invests the capital gains in a new residential house the amount of gain or amount invested, whichever is lower, shall be exempted.
  - Section 54F relates to deduction when assessee being individual or HUF, transfers a capital asset other than residential house property (LTCA) and invests the net sales consideration in a new residential house, the amount of gain shall be exempted if the whole consideration is invested, however, if the full consideration is not invested, the proportionate gains shall be exempt.
- Position after Amendment:
  - Section 54 the maximum deduction that can be claimed is now restricted to 10 cr. If the cost of new asset purchased is more than 10cr. cost will be deemed to be 10 cr.
  - Section 54F The maximum amount of deduction is now 10 cr. So, the investment over that will be ignored. A proviso is inserted to provide that the amount of net consideration in excess of Rs. 10 cr. will not be taken into account for the purposes of computing exemption under this section.

**e. Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property.**

- The government has observed that some assesseees have been claiming double deduction of interest paid on borrowed capital for acquiring, renewing or reconstructing a property.
- Firstly, it is claimed in the form of deduction from income from house property under section 24, and in some cases the deduction is also being claimed under other provisions of Chapter VIA of the Act.
- Secondly, while computing capital gains on transfer of such property this same interest also forms a part of cost of acquisition or cost of improvement under section 48 of the Act.
- In order to prevent this double deduction, the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA.

**5. Changes relating to Other Sources**

**a. Tax on Online Gaming**

- A new section, 115BBJ, is introduced to tax the winnings from online games.
- All forms of winnings, such as cash, kind, vouchers, or any other benefit, from online gaming, will attract tax at a flat 30%, which will be deducted for every rupee earned, net of entry fees (if any).

**b. Maturity proceeds of life insurance policies (except ULIPs) with annual premium of over Rs 5 lakh to be taxed.**

- With effect from 1st April, 2023, if aggregate of premium for life insurance



policies issued on or after 1st April, 2023 is above Rs. 5 Lakhs, proceeds from such policies over the annual premium of Rs. 5 lakhs would be taxable (i.e., Up to Rs. 5 lakhs shall be exempt) at the applicable rates.

## 6. Changes in Set off and carry forward of losses.

### a. Amendment under section 72A

- The definition of 'strategic disinvestment' in Section 72A has been modified to include the sale of shares by the Central or State Governments, or

by a public sector company in another public sector company resulting in a reduction of its shareholding below 51% and transfer of control to the buyer.

### b. Amendment under section 72AA

- It is amended to allow the carry forward of accumulated losses and unabsorbed depreciation in the case of the amalgamation of a banking company with another banking company within five years of the strategic disinvestment.



## 6th The Dastur National Moot Court Competition, 2023

— Nishtha Gada

*Student of Government Law College, Mumbai*

The Chamber of Tax Consultants in association with Government Law College, Mumbai held the Valedictory Function of 6th The Dastur National Moot Court Competition, 2023. It was held in a hybrid mode on the 27th of May and 10th of June, 2023.

The Moot Proposition of the competition was drafted by experts in the field and dealt primarily with the issues relating to technology driven transactions as well as concepts of residential status, assessment jurisdiction, and capital receipts while also highlighting the emerging legal landscape.



*Hon'ble ITAT Members with Team CTC*

The Moot Court Competition was conducted over two days where the 16 participating teams went through two Preliminary Rounds of Arguments, Quarter-Final Rounds of Arguments, the Semi-Final Rounds of Arguments and ultimately, the Final Round of Arguments. Eminent Indian lawyers and Judges of the highest standing, academicians and experts in the field of Tax laws converged to adjudicate the various rounds of the Competition.

The Quarter Final Rounds were judged by CA Ketan Vajani, Mr. Prakash Sinha, Advocate, CA Paras S. Savla, CA Shailesh Bandi, CA N. C. Hegde, Mr. Anil Harish, Advocate, Prof. Kishu Daswani and Mr. Paras K Savla, Advocate.



*Final Round*

The Semi Final Rounds were judged in the ITAT Court Rooms by the sitting members of the Hon'ble Income Tax Appellate Tribunal – Hon'ble Mr. Aby T. Varkey, Judicial Member, Hon'ble Mr. Amarjit Singh, Accountant Member, Hon'ble Mrs. Kavitha Rajagopal, Judicial Member and Hon'ble Mrs. Padmavathy S., Accountant Member.

The two teams in the final round; Institute of Law, Nirma University and Government Law College, Mumbai were judged by Hon'ble Sitting Judges of the Bombay High Court – Hon'ble Shri Justice Abhay Ahuja and Hon'ble Dr. Justice Neela Gokhale. After a stellar round of mooting, Government Law

College, Mumbai was declared the winner of the prestigious moot.

The Valedictory Ceremony was graced by the Principal of Government Law College, Mumbai - Dr. Asmita Vaidya, the President of the Chamber of Tax Consultants- Mr. Parag Ved, the Chairman of the Student Committee- CA Vitang Shah and several members of The Chamber of Tax Consultants and members of the Income Tax Appellate Tribunal Bar along with the judges of the Final Rounds.

Following awards were declared during the Valedictory Ceremony:

- Best Team – Abdulkadir Jawadwala, Himangi Raswant and Mansi Thakur from Government Law College, Mumbai
- Second Best Team – Riya Sharma, Kanika Saxena and Shruti Darak from Institute of Law, Nirma University
- Best Memorial – Chiraag Agarwal, Sougata Banik and Alishan Hossain from St. Xavier's University, Kolkata
- Best Speaker - Tresshaa Dutt from National Law University, Jodhpur
- Second Best Speaker - Mohammed Raqim from University Law College Bangalore University

These two days of intense mooting definitely facilitated the students with a fun- learning and memorable experience!



*Winning Team Government Law College, Mumbai*



*Final Round Judges: Hon'ble Mr Justice Abhay Ahuja & Hon'ble Dr. Neela Kedar Gokhale Judges of Hon'ble Bombay High Court*

## Report on The Dastur Essay Competition, 2023

— Akash Shirore  
Student of MNLU, Mumbai

The Committee organised 12th Dastur Essay Competition-2023 for Students of Law & Accountancy including Article trainees pursuing CA Course, being its annual feature. The competition featured three thought-provoking topics, each of which invited participants to delve deep into critical aspects of Indian society and governance. The topics included:

- 1) Do Indian Labour Laws require to be reformed and, if so how?
- 2) After 75 years of Independence, what should be India's vision for the next 75 years?
- 3) To have smarter and Success oriented students, should our school/college syllabi be changed and, if so in what manner?



CA Anish Thacker (Past President) felicitating Ms. Linda Biju John, 1st winner of The Dastur Essay Competition, 2023



Winners of The Dastur Essay Competition, 2023

The Dastur Essay Competition, 2023, was a remarkable event that showcased the intellectual prowess and analytical abilities of numerous participants. This annual competition attracted a total of 122 registrations, demonstrating a keen interest in critical issues facing our society. Out of these registrations,

33 essays were submitted for evaluation.

A panel of esteemed judges, comprising CA Nishtha Pandya, CA Dinesh Tejwani, CA Namrata Dedhia, CA Atul Suraiya, CA Jigar Saiya, CA Apurva Shah, CA AS Merchant, and CA Atul Bheda, carried out the initial evaluation of all 33 essays. Their dedication and expertise ensured a thorough assessment of the submissions, which were undoubtedly insightful and well-researched.

The top ten essays that emerged from this initial evaluation underwent a rigorous evaluation process by the sitting judge of Hon'ble Bombay High, Hon'ble Shri. Justice Kamal Rashmi Khata, Court. The final assessment was undoubtedly a testament to the high standard of the competition and the quality of submissions.

The winners of the Dastur Essay Competition, 2023, who demonstrated exceptional insight and understanding of the chosen topics, were:

1st Prize Winner: LINDA BIJU JOHN

2nd Runner-Up: VAISHALI JITENDRA LUND

3rd Runner-Up: NEHA MARIA ANTONY

These winners were acknowledged for their outstanding contributions with trophies, merit certificates, and cash prizes. The breakdown of prizes was as follows:

1st Prize: Trophy, Merit Certificate, and a cash award of Rs. 10,000/-

2nd Runner-Up: Trophy, Merit Certificate, and a cash award of Rs. 7,500/-

3rd Runner-Up: Trophy, Merit Certificate, and a cash award of Rs. 5,000/-

Additionally, the 4th to 10th place participants received certificates and a memorable pen as tokens of appreciation. For all other participants, issued Participation Certificates to recognize their contribution to the competition were issued.

The Dastur Essay Competition, 2023, not only promoted critical thinking and in-depth research but also celebrated the diverse perspectives and innovative ideas of the participants. The competition's success was a testament to the dedication of the organizers, the diligence of the judges, and the enthusiasm of the participants.

We look forward to witnessing more engaging and thought-provoking discussions in the future as we continue to explore and address the pressing issues facing our society.

Congratulations to all the winners and participants for their exemplary contributions to this intellectually stimulating event



*From left to right: Adv. Niyati Mankad, Chairperson (Student Committee) Hon'ble Mr. Justice Kamal R. Khata, Bombay High Court (Final Round Judge) and CA Vitang Shah, Jt. Secretary, CTC*



## A Report on The New Scheme of CA Education & Training

— Mahika Kandarpa  
Student of MNLU, Nagpur

### Introduction

The Student Committee of the Chamber of Tax Consultants organized its inaugural program on the "New Scheme of CA Education and Training." The program aimed to provide valuable insights into this new scheme and its implications for aspiring Chartered Accountants. Esteemed speakers, CA Priti Paras Savla, Central Council member of ICAI, and CA Daya Nivas Sharma, Vice Chairman of the Board of Studies at ICAI, graced the event. It attracted tax professionals, students, and representatives from various professions.

### Opening Remarks

The program was hosted by the Convenor of the Student Committee, CA Charmi A. Shah. She invited Ms. Varsha Galvankar, Past Chairperson of the Student Committee, to commence with a brief prayer. This was followed by opening remarks from CA Haresh Kenia, the President, who underscored the critical role of education in shaping any profession's future and provided an overview of the Chamber and its activities. Mrs. Niyati Mankad, Advocate and Chairperson of the Student Committee, extended a warm welcome to the distinguished speakers and participants. She emphasized the Chamber of Tax Consultants' significance in promoting professional development and networking among tax professionals, encouraging attendees to become members and seize the opportunities it offers. CA Charmi G. Shah, Vice Chairperson and CA Raj Khona then formally introduced the distinguished speakers.

### Address by CA Priti Paras Savla

CA Priti Paras Savla, one of the Chief Guests, expressed her gratitude to Mr. Haresh Kenia ji, President of the Chamber of Tax Consultants, and all esteemed attendees. She explained that the new scheme aims to provide a comprehensive framework for chartered accountancy education, including two years of articleship and uninterrupted articleship. The Board of Studies played a significant role, gathering feedback through over 100 outreach meetings and compiling more than 25,000 suggestions from stakeholders, members, and students. After

extensive deliberation and discussions at the council, the scheme received approval from the Ministry of Corporate Affairs and officially launched on July 1, 2023. CA Savla emphasized the world-class nature of the new scheme and the ICAI's commitment to support its members and students, including through initiatives like the SAHAYTHA helpline. The program aimed to provide clarity on the new scheme and address any questions or concerns from students and members.



## Address by CA Daya Nivas Sharma

CA Daya Nivas Sharma, the second Chief Guest, discussed the implementation of the new scheme of CA education and training. He began by expressing gratitude and compliments to the organizing team and participants of the Outreach meetings. He also thanked the Ministry of Corporate Affairs for their positive response to the Outreach program. Sharma highlighted the efforts to redesign the curriculum, involving academicians, and ensuring it meets international standards. The new scheme emphasizes uninterrupted practical training, self-paced learning, ethics, and technology integration in all subjects. He mentioned the recognition of Business Accounting Associates and the introduction of country-specific international curriculum. He emphasized the importance of technology in the profession's future and urged everyone to trust and believe in the Institute's vision. Sharma summarized the significant changes and improvements in the new scheme of CA Education and Training, designed to provide a world-class curriculum aligned with international standards, uninterrupted practical training, and self-paced learning. New topics like ethics, technology, and integrated business solutions prepare future chartered accountants better. Sharma highlighted the benefits of the new syllabus, including the country-specific international curriculum and opportunities for international industrial training. He urged everyone to trust and believe in the Institute's vision, assuring that the changes are for the profession's betterment and the future of aspiring chartered accountants.



## Question and Answer Session

Following these insightful speeches, a productive question-and-answer session between the participants and the esteemed Chief Guests ensued. The Chief Guests promptly shared their knowledge on the subject, guiding the students effectively.

## Closing Remarks & Vote of Thanks

The program concluded with closing remarks from Smt. Varsha Galvankar, who expressed gratitude to the esteemed speakers and all participants for making the event a success. The session successfully achieved its goal of providing a quick insight into the new scheme and addressing attendees' queries. This was followed by a formal vote of thanks from Ms. Ananya Gupta, Advocate & Solicitor. The Student Committee eagerly anticipates hosting more enriching programs in the future, contributing to the growth and development of aspiring Chartered Accountants and tax professionals.

## Insights from the 'Income Tax Returns, AIS & TIS – Do's & Don'ts' Webinar

— Nishtha Gada

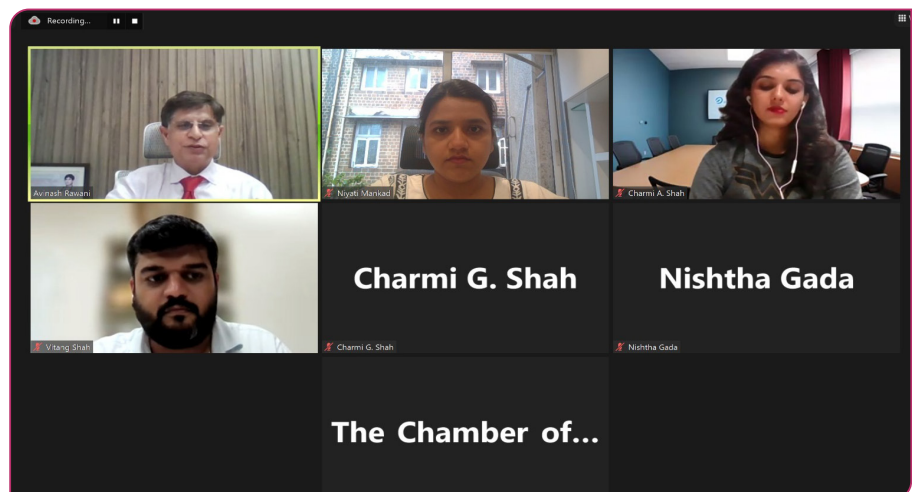
*Student of Government Law College, Mumbai*

On July 19, 2023, a webinar titled 'Income Tax Returns, AIS & TIS – Do's & Don'ts' was organized via Zoom, shedding light on the practical aspects of filing income tax returns and providing an overview of the Income Tax Act. The session, led by CA Avinash Rawani, a seasoned professional in the field of Direct Tax, Audits, and Company Law, delivered valuable insights and guidance to students and participants.

CA Rawani began by emphasizing the significance of accurately filing income tax returns, highlighting that it serves as proof of income for various purposes, including obtaining loans and visas. He discussed the provisions of the Income Tax Act and the consequences of not filing or filing false returns, stressing the importance of compliance.

During the session, CA Rawani covered a range of topics, including:

- 1) **The Accountability of Third Parties:** CA Rawani explained that third parties, such as intermediaries or professionals, are responsible for ensuring the accuracy of the information provided on income tax returns. Any incorrect information by a third party can lead to accountability.
- 2) **Income Taxpayers Charter:** He mentioned the Income Tax Taxpayers Charter, outlining the duties of both taxpayers and the income tax department. Taxpayers should receive courteous and professional assistance from the department and be treated as honest.
- 3) **Privacy and Confidentiality:** The importance of maintaining the privacy and confidentiality of taxpayer information was underscored.
- 4) **E-verification:** CA Rawani discussed the significance of e-verification in the filing process and its advantages.
- 5) **ITR Forms:** He explained the different ITR forms and their applicability, ensuring participants understood the appropriate form for their specific income sources.





- 6) AIS (Annual Information Statement): CA Rawani detailed the AIS, including its contents and relevance in filing income tax returns. He explained the use of data analytics and artificial intelligence for processing this information and highlighted the government's efforts to improve communication through online feedback and mobile applications.
- 7) Changes in the Filing Process: CA Rawani updated participants on changes in the filing process, AIS, and TIS (Transaction Information Statement).
- 8) Reporting Non-Income Items: He addressed specific issues related to the income tax portal, such as reporting non-income items and raising grievances.

Throughout the webinar, CA Avinash Rawani provided practical insights and valuable tips to ensure a smooth and accurate income tax return filing process. His expertise and willingness to answer audience questions simplified the complex world of income tax returns for all participants.

## Report on Webinar on Tax Audit – Student Perspective

— Akash Shirore  
Student of MNLU, Mumbai



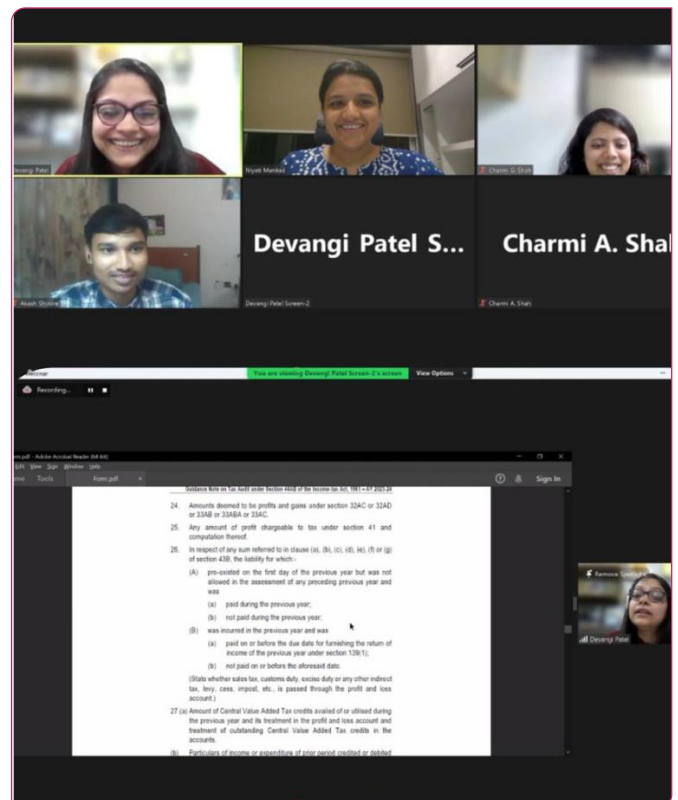
The "Webinar on Tax Audit – Student Perspective," conducted on the 8th and 9th of August 2023, was a two-day event tailored for students, newly qualified professionals, and individuals interested in tax auditing. This webinar aimed to provide a comprehensive overview of tax audits, the impact of auditing standards on tax audits, and an in-depth examination of the relevant provisions of the Income Tax Act, accompanied by a clause-by-clause analysis of the Tax Audit Report. The event was hosted on the Zoom online platform and garnered

the participation of over 100 attendees across both days.

On the first day of the webinar, keynote speaker CA Pradip Kapasi laid the foundation by offering fundamental insights into tax audits. He stressed that the primary goal of auditing is scrutiny, and auditors must consistently adhere to the facts when confronted with discrepancies. CA Kapasi emphasized the role of auditors in not only assisting clients but also educating them, stating, "A proficient professional goes beyond the minimum requirements." He discussed how 90% of compliance obligations are straightforward and can be comprehended and appreciated by clients when auditors execute their duties effectively. CA Kapasi also emphasized the necessity for CA articles to undergo proper training in auditing practices when involved in audit work and to learn and adhere to Standard Auditor Practices.

Thereafter, CA Devangi Patel delved into the Tax Audit Report. She commenced by elucidating clauses 1 through 17 of the report, providing a meticulous analysis of the pertinent provisions of the Income Tax Act.

At the conclusion of Day 1, CA Priti Savla, a member of the student committee and central council member of ICAI, provided valuable insights on averting disciplinary proceedings resulting from misconduct during tax audits. She emphasized the significance of the sessions, enhancing the overall value of the event with her closing remarks.



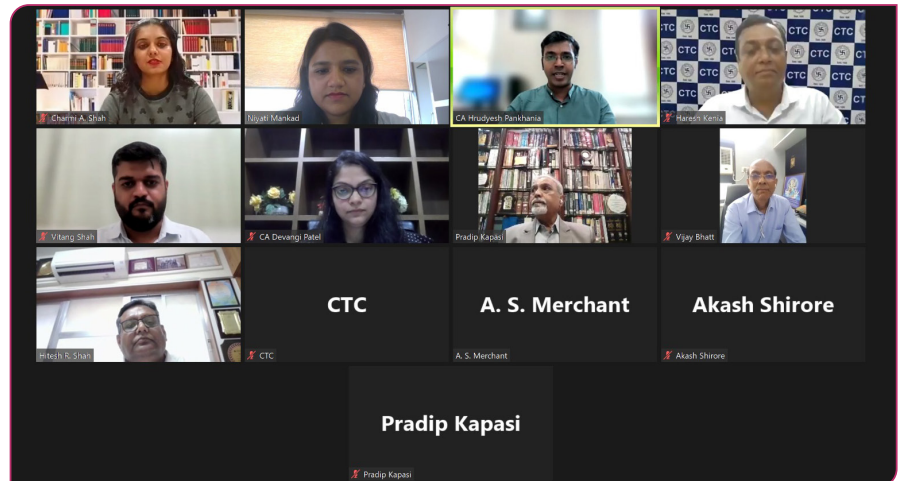
Continuing on the second day, CA Devangi Patel covered clauses 18 through 44, offering a comprehensive understanding of the Tax Audit Report. CA Patel underscored the significance of adhering to Standard Auditing Practices for a successful tax audit. She introduced the golden rule that "work not documented is work not done" and recommended the utilization of comprehensive checklists, client questionnaires, and AI to enhance the audit process. Furthermore, she emphasized that tax audits necessitate a profound understanding not only of tax laws but also of related laws such as accounting standards, laws on sale of goods and transfer of property, IT Laws, GST, MSME, among others.

The sessions encompassed a broad range of topics, from highlighting the basics of PAN card initials to addressing complex matters like capital gains taxation and adjustments mandated for compliance with the Income Computation and Disclosure Standards (ICDS) under Section 145(2) of the Income Tax Act.

Throughout both days, participants actively engaged with the speakers, posing a myriad of questions. The speakers responded with insightful answers, enriching the learning experience for all attendees.

In summary, the "Webinar on Tax Audit – Student Perspective" delivered an enlightening and invaluable experience by presenting in-depth discussions of the relevant provisions of the Income Tax Act and a meticulous clause-by-clause analysis of the Tax Audit Report. The key takeaways, such as the importance of documentation and adherence to standard auditing practices, are expected to have a lasting impact on all participants. This webinar has significantly contributed to broadening the understanding of tax audits for both CA article students and professionals alike.

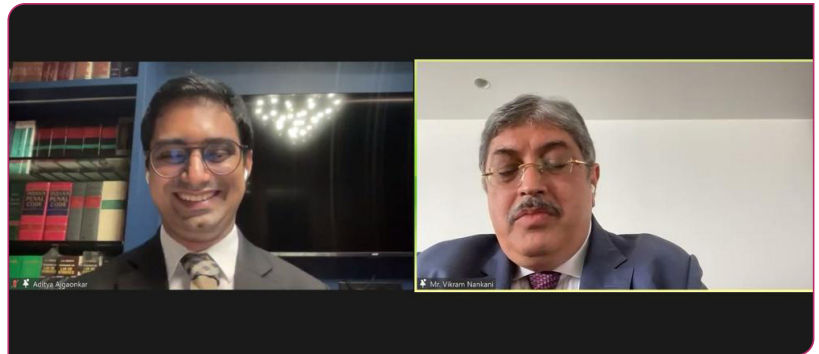
Overall, the "Webinar on Tax Audit – Student Perspective" can be deemed a resounding success.



## Summary of Udaan Episode 5 Mr. Vikram Nankani, Senior Advocate

— Akash Shirore  
Student of MNLU, Mumbai

In the latest episode of Udaan – Learning Today... Leading Tomorrow, Mr. Vikram Nankani, Senior Advocate was invited to enlighten one and all about his journey in law. The session was moderated by Advocate Aditya Ajgaonkar who reads law in Nankani sir's Chamber. Mr. Vikram Nankani, Senior Advocate is known for his vast knowledge and experience of the law and has a practice that straddles a variety of diverse legal subjects. He is briefed regularly on matters in many Courts and Quasi-judicial bodies across the Country.



**Question: what inspired you to take up law? If you could just enlighten us on that.**

**Answer:** I chose to pursue a career in law because it ran in my family, with my father and extended relatives being lawyers. Although I briefly considered theater and even worked as a radio show host for a while, I realized that the real drama unfolded in the courtroom. I also had a passion for teaching and briefly lectured in economics at Jai Hind College. However, my father's influence ultimately led me to choose a career in law.

**Question: What does a typical day in your life look like, given your frequent travel between Bombay, Delhi, and various courts across the country, where the workload is substantial?**

**Answer:** Each day is unique, and time management is crucial. You apply what you learn in law school to yourself every day that is you live to fight another day. Hard work is essential in a profession that requires constant reading and preparation. There's no fixed formula for the number of hours to work, as it varies based on an individual's personality and priorities. Planning and prioritizing tasks are key to making effective use of time in a profession where each day brings different challenges.

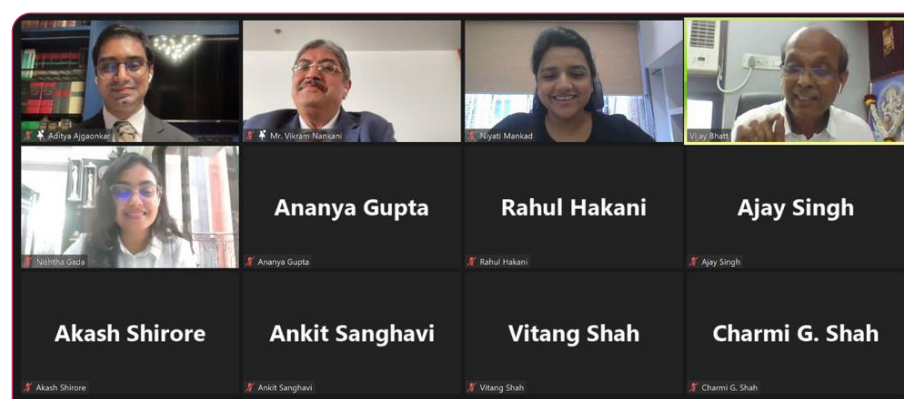
**Question: Would you recommend to the audience that they should put in a substantial amount of hard work throughout the day, even on weekdays?**

**Answer:** I don't know whether we can say hard work because sometimes hard work is a negative expression. So it's not just about hard work, but rather about enjoying what you do with passion and dedicating quality time to it. When you have a genuine passion, even the most challenging tasks become manageable and fulfilling. It's about not getting tired of what you do, regardless of your age or experience. The day you get tired, regardless of your age, I think that's the time to quit.

**Question: Could you share some insights about your experience during your juniorship, including what it was like working with your senior and any interesting anecdotes from that time?**

**Answer:** During my juniorship, two individuals greatly influenced my professional development: Mr. Ashok Desai, a senior counsel and former Solicitor General and Attorney General of India, and Mr. Anand Bhat, a senior partner at Wadiya Gandhi. Despite a relatively short time with Mr. Desai, his teachings remain invaluable. Firstly, he emphasized being impartial to both the client and the case, prioritizing one's duty to the court and the profession. Winning or losing a case didn't matter; what mattered was giving one's best. Secondly, He also taught me not to obsess over others' actions, but to focus on my path and opportunities. Lastly, Mr. Desai's ability to switch effortlessly between professional and personal life was remarkable. He maintained composure and diverse interests, from music to Buddhism, which enriched his character and practice. Though our time together was brief, the lessons I learned from him continue to guide my career.

**Question: In the Bombay Bar, juniors often spend considerable time in senior chambers, learning from their seniors about various aspects of practice, including how to present themselves, argue cases, and prepare briefs. Did you also go through a similar learning process during your early years, where you absorbed these nuances from your seniors?**



**Answer:** I cannot comment if my juniors have picked up something or not. However, my senior, Mr. Desai was unique in many ways. His mannerisms, his courtcraft, his advocacy. For example. During a case with a recent Supreme Court judgment against us, Mr. Desai cleverly turned the tables. When the opposing counsel cited the judgment, Ashok acted as

though it supported our side, catching them off guard. The bench decided to hear our arguments first, and Mr. Desai's skillful advocacy ultimately led to a favorable outcome. His ability to turn a disadvantage into an advantage was remarkable.

**Question: Could you share your insights on the current generation of young lawyers and what they should anticipate when joining a law firm? Additionally, could you shed light on the evolution of law firms and the journey from your early days to their establishment today, as it may inspire those looking to start their firms?**

**Answer:** Young lawyers have diverse career paths to choose from in the legal profession, including litigation and corporate work. The choice depends on personal interests and passion. I began as a counsel, focusing on litigation. However, some colleagues opted for corporate law and excelled in transactions like conveyances and collaborations. Success can be achieved in both areas. For me, it was a transition from a large law firm to establish my practice as a senior counsel, providing me with the opportunity to handle various types of cases.

I often hear that there's a glamor only on the corporate side. But I think that's a mistake. That's a myth. Glamour is on both sides, litigation as well as corporate. The key is to be clear about your career path



and do what you love. Specialization is an option, but even specialists should have a solid foundation in fundamental laws like contract law and the evidence act, as this knowledge often proves invaluable in their practice. Success in a specialized field can be complemented by a broad understanding of the legal fundamentals. Effective communication is vital in all aspects of legal practice, whether in negotiations, litigation, or specialized fields.

**Question: Transitioning from Partner at Economic Law Practice (ELP) to becoming a Counsel brought about changes in your legal practice. Could you describe how this transition felt? Did it feel like a natural extension, or were there new challenges to overcome?**

**Answer:** In any relationship, there's a give and take, and this applies to being a partner in a law firm. It comes with added responsibilities, such as ensuring your team stays busy and their skills are utilized to the fullest. As a partner, you have to manage your time between lawyering and firm-related activities, including knowledge-building and management. Despite the extra functions, I enjoyed every moment in the firm, and it was a valuable period in my career. For young professionals considering their career path, whether solo, in a law firm, or as a counsel, understanding your role and fulfilling it sincerely is key to success.

**Question: For those interested in setting up a successful tax practice as a lawyer, what advice would you give, especially for someone starting out like a second-year law student? Is pursuing certification courses or specialization necessary, or can a broader legal foundation also lead to success in this field?**

**Answer:** Starting a successful tax practice, or any practice for that matter, should begin without the pressure of immediate success. Focus on doing what is fundamentally right and success will follow naturally. For tax practice, constant knowledge-building is crucial, as tax laws are constantly evolving. Unlike chartered accountants, lawyers don't have formal training programs like CPAs, so it's vital to stay updated.

Lawyers can't advertise their services, so your reputation is built through word of mouth and performance. The first break often comes when you confidently make a point, even if you're unsure about its correctness. Seize every opportunity that comes your way and make your presence felt. Success is relative and should not be the primary goal. Instead, aim to stand out and catch the attention of potential clients, colleagues, or seniors. If you make an impact, you will be noticed, and that is the start of a successful journey.

**Question: Is the role of junior counsel still relevant in today's legal landscape, given the growth of in-house litigation teams in law firms and the changing dynamics in the legal profession? In Delhi, it seems that the institution of junior counsel doesn't exist, and lawyers handle their own matters until they gain enough seniority and notice. Can you shed light on the role of junior counsel in today's legal practice, especially for aspiring lawyers like us who admire first-generation lawyers like you?**

**Answer:** "The only thing to fear is the fear itself", a quote by President Roosevelt. Junior counsel still plays a vital role in today's legal landscape. They have a unique advantage when it comes to understanding the judge's pulse and courtroom dynamics. Being in court every day gives them an edge in knowing how to connect with the judge effectively. It's crucial to build that rapport with the judge, as losing a client or case can happen, but losing the judge's favor should be avoided. So, aspiring lawyers should not fear the decline of junior counsel roles; instead, they should focus on honing their courtroom skills and gaining experience. You will get your glory under the sun. Just stick around.



**Question: How do you efficiently prepare for such a diverse range of legal matters, considering the broad spectrum of subjects you handle, especially beyond just relying on legal texts?**

**Answer:** To prepare for a wide range of legal matters, remember two key aspects: First, Master Your Facts: Thoroughly understand the facts of the case. Knowing the facts allows you to identify your strongest and weakest points. Once you know your strongest point, you can confidently present it, putting pressure on the other side.

Second, Consider Multiple Perspectives: Put yourself in the shoes of the opponent. Don't have a one-track mind. Anticipate what the other side might argue. This can only be done effectively if you know the facts well. Knowing your case inside out enables you to sequence your arguments effectively, starting with the strongest points and covering the weaker aspects strategically.

In essence, knowing the facts inside out and being able to approach the law from multiple angles is key to preparing for diverse legal matters.

**Question: Which senior counsel or lawyers have significantly influenced your legal career and advocacy style?**

**Answer:** Several senior counsels have influenced me in various aspects of my legal career. They taught me how to read judgments, maintain composure in court, and consider percentage success realistically. About percentage success: Not every case results in 100% victory. Identify where the client needs relief, even if the main relief isn't granted. Balance your role as an officer of the court and a representative of the client.

**Question: Any recommendation for books for the professionals of tomorrow then?**

**Answer:** I would suggest engaging in diverse activities outside of law, like reading biographies, music, theater, and sports. Destress shall be the objective. Keep your mind refreshed for new challenges.

**Question: Any advice for first-generation lawyers or those with a different language background? Tips for handling clients as young professionals?**

**Answer:** Firstly, don't label yourself as a "first-generation lawyer"; focus on being a good lawyer. You are a lawyer and you must aspire to be a good lawyer. You're fortunate to have great educational institutions and opportunities today. Regarding retaining clients, deliver quality service, build trust, and remember clients choose you for your skills, not just your background.

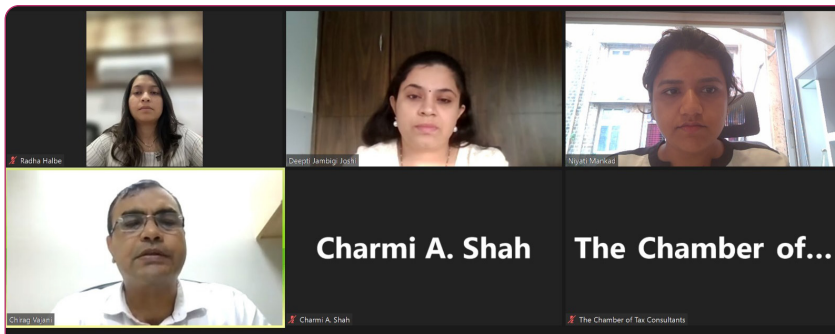
Handle client relationships like any other personal relationship. Focus on honesty, preparation, and managing expectations. Be realistic about the case's strengths and weaknesses from the start.

**Question: Is there a recommended timeframe for law students or aspiring lawyers to train under an experienced lawyer before considering starting their practice, especially if they don't secure positions in law firms or senior chambers?**

**Answer:** In summary, if you don't secure a position in a big law firm or senior chamber, don't be discouraged. Keep yourself busy and relevant in the legal field. There are numerous avenues for learning and growth, and success can be achieved through dedication and mastering your skills, even if it takes time. So, even if you don't get into a big law firm if you don't get into a senior chamber, you could still be an Eklavya who is dedicated to mastering what he's best at.

## A Report on The E-Certificate Course on The Key Compliances under The Companies Act, 2013

— **Mahika Kandarpa**  
Student of MNLU, Nagpur



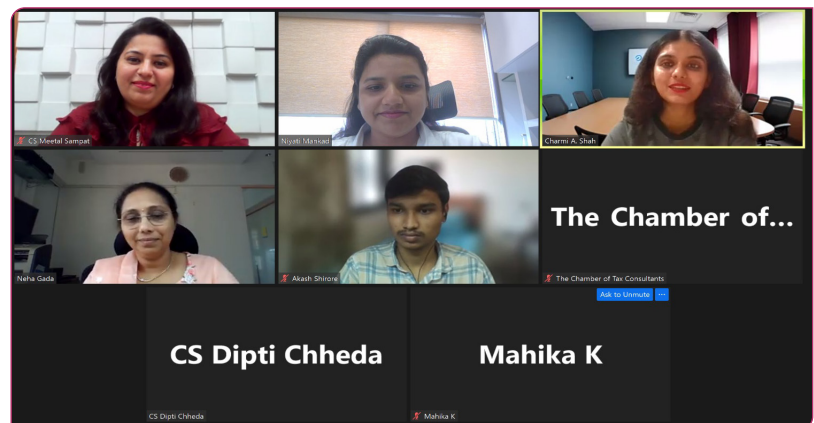
The Student Committee of the Chamber of Tax Consultants, Mumbai, organized a comprehensive e-certificate course focusing on key compliances under the Companies Act, 2013. The event spanned three days, from September 4th to September 6th, 2023, held in a virtual format. This enlightening program

featured four sessions, each led by distinguished speakers, aiming to provide invaluable insights into Companies Act compliance.

Esteemed speakers, including CS Meenal Sampat, CS Dipti Chedda, CS Raj Kapadia, and CS Deepthi Jambigi Joshi, guided participants through various aspects of Companies Act compliance, catering to the needs of aspiring Chartered Accountants and professionals from diverse backgrounds.

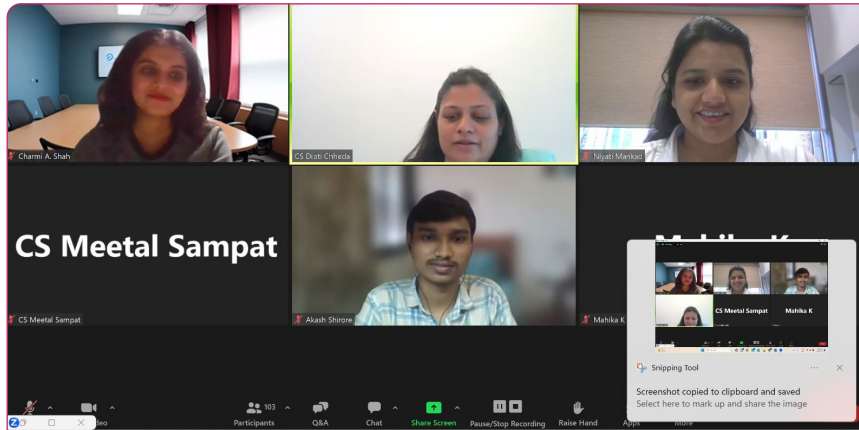
The event commenced with a warm welcome from CA Charmi.A.Shah, Convenor of the Student Committee, followed by an introduction by CA Niyati Mankad, Chairperson of the Student Committee, who emphasized the Chamber of Tax Consultants' role in professional development and networking opportunities.

Attendees received an overview of the Chamber of Tax Consultants, a non-profit organization with a rich history dating back to 1926. With 97 years of service, it boasts over 4,000 members nationwide, dedicated to promoting member interests through knowledge exchange and interactive seminars.



Day 1 featured CS Meenal Sampat and CS Dipti Chedda, who covered compliance overviews, timely compliance tips, the role of in-house counsel, incorporation processes, and post-incorporation formalities.

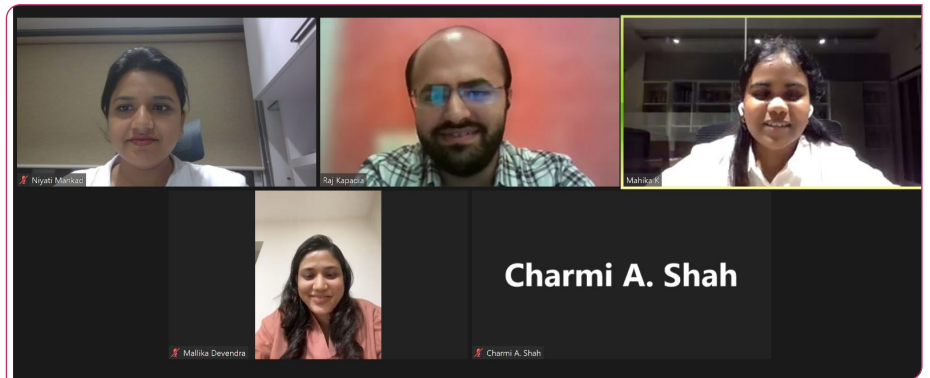
Day 2's speaker, CS Raj Kapadia, delved into annual compliances, including AGMs, director appointments, key disclosures in directors' reports, DIR KYC, and auditor appointments.



Day 3 saw CS Deepti Jambigi Joshi discussing event-based compliances such as securities issues, acceptance of deposits, registration of charges, payment of dividends, and more. She also touched on SEBI's Listing Obligations and Insider Trading requirements.

The workshop's success relied on the dedication of participants, organizers, and the expertise

of speakers. Each session was followed by interactive Q&A, enriching attendees' understanding of the Companies Act. The Student Committee looks forward to hosting more programs for the growth of aspiring Chartered Accountants and tax professionals in the future.



# The Chamber of Tax Consultants



Estd. 1926

## Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur**, Senior Advocate on 30th January, 2008.