



Congratulations!

CA. Aniket Talati
for being Elected as
Regional Council Member
for WIRC of ICAI

**Newsletter February
2016**

Preface

Dear Readers,

Welcome to the February Month's Newsletter of Talati and Talati.

It is a matter of great pleasure and moment of pride for us to inform you that CA Aniket Sunil Talati has been elected as Regional Council member for WIRC of Institute of Chartered Accountant of India and Talati & Talati Group is the knowledge Partner of International and Domestic Arbitration Centre (IDAC) India. Also, CA Manish Baxi, Practicing Chartered Accountant and Partner of the firm is the core Promoter for IDAC India.

Our this month newsletter consists topic on Internal Financial Control, Company Law Committee Recommendations on Companies Act, 2013, Circulars on 'Whether Hindu Undivided Family (HUF)/ its Karta can be become partner / Designated Partner (DP) in Limited Liability Partnership (LLP)', 'Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section 135 of the Companies Act, 2013' & Notifications on 'MCA notifies Central Registration Centre to process name approval applications', 'IEC code can now be applied with only Two Documents', Case Law on 'Actual date of transfer relevant for benefit u/s 54 if possession been given before sale deed', Comprehensive chart of penalties under Companies Act, 2013 and an article on IDAC India.

We hope to forward to you, on a regular basis, updating you on recent developments and other points of interest in our profession. Looking forward for your reviews, suggestions & feedbacks.

Happy Reading!!!!

Regards,
Editorial Team
Talati & Talati



Internal Financial Control

The apex body of chartered accountants - ICAI has issued detailed guidelines on audit of internal financial controls over financial reporting as required under the new companies' law. According to the guidance note, the auditor needs to obtain reasonable assurance to state whether an adequate internal financial controls (IFC) system was maintained and whether such internal financial controls system operated effectively in the company in all material respects with respect to financial reporting only.

Clause (e) of Section 134(5) of the Companies Act, 2013 requires that The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that:

(e) the directors, in the case of a *listed company*, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Section 143(3) (i) of the Act requires that auditor should state in his report that:

"Whether the Company has adequate internal financial controls system in place and the operating effectiveness of such controls"

Definition of Internal Control as defined in the Companies Act, 2013

The Companies Act, 2013 has defined internal control in two places. One definition is given under Section 134(5) (e). Another definition is given in Section 134(10) by way of inclusion of Standard on Auditing. Auditing Standards which are now part of the Companies Act, 2013, by virtue of Section 143(10) defines internal control as follows:

Definition as per Section 134(5) of the Companies Act, 2013	Definition as per Section 134(10) of the Companies Act, 2013
Explanation - For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;	Internal control – The process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, safeguarding of assets, and compliance with applicable laws and regulations. The term "controls" refers to any aspects of one or more of the components of internal control.

It may be noted that both the definitions are not similar at the same time they have vast coverage.

Further, it may be noted that both Management and the Auditor will need to follow both the definition as given in the charging Section 143 i.e. as per Standard on Auditing and also the definition given in Section 134(5). Standards on Auditing are applicable to all the companies and are mandatorily required to be followed.

Distinction between Internal Financial Control and Operating Control

It may be noted that Internal Controls and policies can be applied by the management for various operational activities of the Company.

A question arises whether auditor is required to comment on all the controls of the Company or only those which are related to Financial Controls. A close review of above definitions suggests that only the Financial Controls as required to be reported in SA 315 is the auditor's responsibility for reporting. This is also termed as 'Internal controls relating to financial reporting'.

Management on the other hand may have more controls relating to various operations of the Company viz. Shop Floor management etc. Unless they impact financial reporting they would not come under preview of above section.

Auditors Duty

Auditor while ascertaining the operating and effectiveness of control will have to comply with all the requirements enumerated in SA 315 and document his findings.

Documentation of Auditor should therefore need to be robust enough to demonstrate that he has looked into the Internal Controls for each assertion and mapped them to various risks in respect of account balances and each class of transaction.

Management's Responsibility

The approach of new Companies Act is of self-governance and in case of non-governance, stringent penalties are provided in the Act. Management should therefore, be cautious to take following steps to ensure that there exist a proper internal control system.

- Review existing process and map them with risks & controls and ensure that they are adequate
- Improve the process and controls wherever it is observed that process is slack
- Assess Fraud Risk and build processes around the same so that risk is minimized
- Test Internal controls so formed on regular basis and ensure that processes are working effectively
- In-house team may be assigned this task or a consultant may also be appointed in the first year of implementation.

What are the consequences when auditor concludes that internal controls were not effective?!?!

- The Auditor report will include a qualified opinion. Not only merely for internal control, but

also under section 143(3)(f) of the Act as non-existence of appropriate internal control can also have adverse affect on the functioning of the Company

- It can be safely concluded that non existence of internal control would imply that existence of Fraud cannot be effectively monitored and the financial statements would lack credibility
- Credit rating agencies will take it negatively also it may affect negotiation power of the entity with borrowers.

Conclusion

The requirement of internal control is now legally mandated. In respect of the listed companies, it is by virtue of Section 134(5) of the Companies Act, 2013. Private limited companies are covered by inclusion of Standard on Auditing, in the Companies Act and reporting requirement by auditors. It is therefore, suggested that all the companies should re-visit the existing internal controls and strengthen them to ensure that whenever they are tested will not fail.



Company Law Committee Recommendations on Companies Act 2013

The Companies Law Committee has presented its report to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 as well as on the recommendations received from Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies.

Some of the key changes proposed are listed below:

1. Managerial remuneration to be approved by shareholders. [s. 197, 198]
2. Modify definition of associate company and subsidiary company to ensure that 'equity share capital' is the basis for deciding holding-subsidiary relationship rather than "both equity and preference share capital". [s. 2]
3. Private placement process to be substantially simplified, doing away with separate offer letter, making valuation details public, details/record of applicants to be kept by company and to be filed as part of return of allotment only, and reducing number of filings to Registrar. [s. 42]
4. Incorporation process to be made easier and allow greater flexibility to companies: An unrestricted objects clause to be allowed in the Memorandum of Association dispensing with detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors; changes also in various Forms. [s. 4, 7]
5. Provisions relating to forward dealing and insider trading to be omitted from Companies Act. Listed companies are covered under SEBI Act/Regulations. [s. 194, 195]
6. Companies may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement. [s. 185]
7. Restriction on layers of subsidiaries and investment companies to be removed. [s. 2(87), 186(1)]
8. Change in the definition of term 'relative' for determining disqualification of auditor [s. 141]
9. Rationalize penal provisions with reduced liability for procedural and technical defaults. Penal provisions for small companies to be reduced. [various sections]
10. No filing fees if financial statements and annual returns filed within prescribed time. [s. 403]

11. Auditor to report on internal financial controls with regard to financial statements. [s. 143]
12. Frauds less than Rs. 10 Lakh to be compoundable offences. Other frauds to be continued to be non-compoundable. [s. 447]
13. Reducing requirement for maintaining deposit repayment reserve account from 15% each for last two years to 20% during the maturing year.
14. Foreign companies having insignificant/incidental transactions through electronic mode to be exempted from registering and compliance regime under Companies Act, 2013. [s. 379]
15. Disclosures in the Directors' Report to be simplified and duplications with SEBI's disclosure requirements and financial statements to be removed while retaining the informative content for shareholders. [s. 134, Rules]
16. Increased threshold for unlisted companies for compliance in context of requirement for Independent Directors (IDs), Audit Committee and Nomination and Remuneration Committee. [s. 149, 177, 178]
17. Test of materiality to be introduced for pecuniary interest for testing independence of ID; thresholds for relatives' pecuniary interest to be revised to make it more practical. [s. 149]
18. Requirement for a managerial person to be resident in India for twelve months prior to appointment to be done away with. [Schedule V]
19. Disclosures in the prospectus required under the Companies Act and SEBI Regulations to be aligned, with a view to make these simpler, by allowing prescriptions to be as per SEBI Regulations. [s. 26]
20. ESOPs to be allowed to promoters working as employees/directors [s.62, Rules]
21. Limit on sweat equity to be raised from 25% of paid up capital to 50% for start-ups. [s.54]
22. Recognition of the concept of beneficial owner of a company proposed in the Act. Register of beneficial owners to be maintained by a company, and filed with the Registrar. [new section]
23. Provisions with regard to consolidation of accounts to be reviewed and those with respect to attachment of standalone accounts of foreign subsidiaries to be relaxed in certain cases. [s. 129, 136]
24. Re-opening of accounts to be limited to 8 years. [s. 130]
25. Mandatory requirement of taking up some items only through postal ballot to be relaxed in case of a company that is required to provide electronic voting at its General Meetings. [s. 110]
26. Requirement for annual ratification of appointment/continuance of auditor to be removed. [s. 139]



General Circular No. 2/2016

F.No.1/13/2012 CL – V

Government of India

Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan

Dr. R.P. Road, New Delhi – 110001

Dated: 15th January, 2016

All the RDs,

All the ROCs/OLs,

All Stakeholders,

Subject: Whether Hindu Undivided Family (HUF)/ its Karta can be become partner / Designated Partner (DP) in Limited Liability Partnership (LLP).

Sir,

Reference is invited to General Circular No. 13/2013 wherein, in paragraph 2, it has been clarified that 'as per section 5 of LLP Act, 2008 only an individual or body corporate may be a partner in a Limited Liability Partnership. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its Karta cannot become partner or designated partner in LLP.

2. However, the clarification inadvertently does not mention partner in the last sentence of the paragraph quoted above which has been pointed out by a stakeholder. It is hereby clarified that a HUF or its Karta cannot become partner or designated partner in LLP.

3. This issues with the approval of the Secretary, MCA.

Yours Faithfully,

(Kamna Sharma)

Deputy Director

General Circular No. 01/2016

No. 05/19/2015- CSR

Government of India

Ministry of Corporate Affairs

**5th Floor, 'A' Wing,
Shastri Bhawan, Dr. R. P. Marg
New Delhi – 110 001**

Dated: 12th January, 2016

To,
All Regional Director,
All Registrar of Companies,
All Stakeholders

Subject: – Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section 135 of the Companies Act, 2013.

Sir,

Section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies CSR Policy Rules, 2014 read with General Circular dated 18.06.2014 issued by the Ministry of Corporate Affairs, provide the broad contour within which eligible Companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest. While complying with the Corporate Social Responsibility (CSR) provisions of the Act, Board of the eligible companies are empowered to appraise and approve their CSR policy including CSR projects or programmes or activities to be undertaken. In this connection, Ministry has been receiving several queries and references seeking further clarifications on various issues relating to CSR provision of the Act.

2. In continuation to this Ministry's General Circular dated 18th June, 2014 and 17th September, 2014, a set of FAQs along with response of the Ministry is provided*for facilitating effective implementation of CSR:

Frequently asked questions on Corporate Social Responsibilities

Sr. No.	FAQs
1.	Whether CSR provision of the companies act, 2013 is applicable to all companies?
	CSR provisions of the companies act 2013 is applicable to every company registered under the companies act 2013 and any other previous companies law having Net worth of rupees five hundred crore or more, or Turnover of rupees one thousand crore or more or A net profit of rupees five crore or more during any financial year

Sr. No.	FAQs
2.	What is meaning of ‘any financial year’ mentioned above?
	“any financial year” referred under sub-section (1) of section 135 of the act read with rule 3(2) of companies CSR rule, 2014 implies any of the three preceding financial years (refer general circular no. 21/2014, dated: 18.06.2014)
3.	Whether CSR expenditure of a company can be claimed as business expenditure?
	The amount spent by a company towards CSR cannot be claimed as business expenditure. The finance act, 2014 provides that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the companies act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.
4.	Whether the ‘average net profit’ criterion for section 135(5) is net profit before tax or net profit after tax?
	Computation of net profit for section 135 is as per section 198 of the companies act, 2013 which is primarily profit before tax (PBT).
5.	Can the CSR expenditure be spent on the activities beyond schedule vii?
	<u>General circular no. 21/2014 dated June 18, 2014</u> of MCA has clarified that the statutory provision and provisions of CSR rules, 2014, is to ensure that activities undertaken in pursuance of the CSR policy must be relatable to schedule vii of the companies act, 2013. The entries in the said schedule vii must be interpreted liberally so as to capture the essence of the subjects enumerated in the said schedule. The items enlisted in the schedule vii of the act, are broad-based and are intended to cover a wide range of activities. The general circular also provides an illustrative list of activities that can be covered under CSR. In a similar way many more can be covered. It is for the board of the company to take a call on this.
6.	What tax benefits can be availed under CSR?
	No specific tax exemptions have been extended to CSR expenditure per se. The finance act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to prime minister’s relief fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc. Which find place in schedule vii, already enjoy exemptions under different sections of the income tax act, 1961.
7.	Which activities would not qualify as CSR?
	<ul style="list-style-type: none"> • The CSR projects or programs or activities that benefit only the employees of the company and their families. • One- off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. • Expenses incurred by companies for the fulfilment of any other act/ statue of regulations (such as labour laws, land acquisition act, 2013, apprentice act, 2013, apprentice act, 1961 etc.) • Contribution of any amount directly or indirectly to any political party. Activities undertaken by the company in pursuance of its normal course of business. • The project or programmes or activities undertaken outside India.

Sr. No.	FAQs
8.	Whether a holding or subsidiary of a company which fulfils the criteria under section 135(1) has to comply with section 135, even if the holding and subsidiary itself does not fulfill the criteria.
	Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfills the criteria.
9.	Whether provisions of CSR are applicable on section 8 company, if it fulfills the criteria of section 135(1) of the act.
	Section 135 of the act reads “ every company..... ”, i.e. No specific exemption is given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions.
10.	Can contribution of money to a trust/ society/ section 8 companies by a company be treated as CSR expenditure of the company?
	<p><u>General circular no 21/2014 of MCA dated June 18, 2014</u> clarifies that contribution to corpus of a trust/ society/ section 8 companies etc. Will qualify as CSR expenditure as long as:</p> <ol style="list-style-type: none"> 1. The trust/ society/ section 8 company etc. Is created exclusively for undertaking CSR activities or 2. Where the corpus is created exclusively for a purpose directly relatable to a subject covered in schedule vii of the act.
11.	Whether display of CSR policy of a company on website of the company is mandatory or not?
	As per section 135(4) the board of directors of the company shall, after taking into account the recommendations of CSR committee, approve the CSR policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company’s website, if any (refer rule 8 & 9 of CSR policy, rules 2014).
12.	Whether reporting of CSR is mandatory in board’s report?
	The board’s report of a company qualifying under section 135(1) pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in annexure. (refer rule 9 of CSR policy, rules 2014).
13.	Whether it is mandatory for foreign company to give report on CSR activity?
	In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an annexure regarding report on CSR.
14.	Whether contribution towards disaster relief qualifies as CSR or not?
	(May please refer point no. 7 to the annexure to general circular dated 18.06.2014 issued by ministry of corporate affairs).
15.	Whether contribution in kind can be monetized to be shown as CSR expenditure?
	Section 135 prescribes “..... Shall ensure that company spends.....” The company has to spend the amount.

Sr. No.	FAQs
16.	<p>If a company spends in excess of 2% of its average net profits of three preceding years on CSR in a particular year, can the excess amount spent be carried forward to the next year and be offset against the required 2% CSR expenditure of the next year?</p>
	<p>Any excess amount spent (i.e., more than 2% as specified in section 135) cannot be carried forward to the subsequent years and adjusted against that year's CSR expenditure.</p>
17.	<p>Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?</p>
	<p>The board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year's CSR allocation equivalent to at least 2% of the average net profit of the company of the immediately preceding three years.</p>
18.	<p>What is the role of government in monitoring implementation of CSR by companies under the provision of the companies act, 2013?</p>
	<p>The main thrust and spirit of law is not to monitor but to generate conducive environment for enabling the corporate to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country.</p> <p>The existing legal provisions like mandatory disclosures, accountability of the CSR committee and the board, provisions for audit of the accounts of the company etc., provide sufficient safeguards in this regard. Government has no role to play in monitoring implementation of CSR by companies.</p>
19.	<p>Whether government is proposing to establish any mechanism for third parties to monitor the quality and efficacy of CSR expenditure as well as to have an impact assessment of CSR by companies?</p>
	<p>The main thrust and spirit of law is not to monitor but to generate conducive environment for enabling the corporate to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country.</p> <p>The existing legal provisions like mandatory disclosures, accountability of the CSR committee and the board, provisions for audit of the accounts of the company etc., provide sufficient safeguards in this regard. Government has no role to play in monitoring implementation of CSR by companies.</p>
20.	<p>Can CSR funds be utilized to fund government scheme?</p>
	<p>The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resource gaps in government scheme. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies. In-principle, CSR fund of companies should not be used as a source of funding government schemes. CSR projects should have a larger multiplier effect than that under the government schemes.</p> <p>However, under CSR provision of the act and rules made thereunder, the board of the eligible company is competent to take decision on supplementing any government scheme provided the scheme permits corporates participation and all provisions of section 135 of the act and rules thereunder are complied by the company.</p>

Sr. No.	FAQs
21.	Who is the appropriate authority for approving and implementation of the CSR programmes/projects of a company? What is government's role in this regard?
	Government has no role to play in this regard. Section 135 of the act, schedule vii and companies CSR policy rules, 2014 read with general circular dated 18.06.2014 issued by the ministry of corporate affairs, provide the broad contour within which eligible companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest. Therefore, all CSR programmes/ projects should be approved by the boards on the recommendations of their CSR committees. Changes, if any, in the programme / project should also be undertaken only with the approval of the committee / board.
22.	How can companies with small CSR funds take up CSR activities in a project/ programme mode?
	A well designed CSR project or programme can be managed with even small fund. Further, there is a provision in the CSR policy rules, 2014 that such companies can combine their CSR programs with other similar companies by way of pooling their CSR resources. (refer rule 4 in companies (CSR policy) rules, 2014.
23.	Whether involvement of employees of the company in CSR project/ programme of a company can be monetized and accounted for under the head of 'CSR expenditure'?
	Contribution and involvement of employees in CSR activities of the company will no doubt generate interest/ pride in CSR work and promote transformation from corporate social responsibility (CSR) as an obligation to socially responsible corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of pro bono services of employees would not be counted towards CSR expenditure.

3. This issues with the approval of Competent Authority.

Yours faithfully,

(Seema Rath)
Deputy Director (CSR-Cell)

NOTIFICATION

MCA notifies Central Registration Centre to process name approval applications

Government of India

Ministry of Corporate Affairs

Notification

New Delhi, the 22 January 2016

S.O. 218 (E) – In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013) (herein after referred to as the Act), the Central Government hereby establishes a Central Registration Centre (CRC) having territorial jurisdiction all over India, for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of the said Act.

2. The CRC shall function under the administrative control of Registrar of Companies, Delhi (ROC Delhi), who shall act as the Registrar of the CRC until a separate Registrar is appointed to the CRC. The CRC shall process applications for reservation of name i.e., e-Form No. INC-1 filed along with the prescribed fee as provided in the **Companies (Registration of Offices and Fees) Rules, 2014**.
3. Processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the **Companies Act, 2013 as per the provisions of the Act and the rules made thereunder**.
4. The CRC shall be located at Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.
5. This notification shall come into force from 26th January, 2016.

[F. No. A-42011/03/2016-Ad.II]

(Manoj Kumar)

Joint Secretary to the Govt. of India

IEC code can now be applied with only Two Documents

(To be published in the Gazette of India Extraordinary Part-II, Section – 3, Sub-Section (II))

**Government of India
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Foreign Trade
New Delhi**

Notification No. 34/2015-20, Dated: January 29, 2016

Subject: Amendment in para 2.05 (c) of Foreign Trade Policy (2015-20)

In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph

1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the existing para 2.05 (c) of Foreign Trade Policy (2015-20) and introduces a new provision, part (d) under para 2.05. The existing para reads as under:

2.05 Importer-Exporter Code (IEC)

(c) Briefly, following are the requisite details /documents (scanned copies) to be submitted/ uploaded along with the application for IEC:

(i) Details of the entity seeking the IEC:

- (1) PAN of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms).
- (2) Address Proof of the applicant entity.
- (3) LLPIN /CIN/ Registration Certification Number (whichever is applicable).
- (4) Bank account details of the entity. Cancelled cheque bearing entity's preprinted name or Bank certificate in prescribed format ANF-2A (I).

(ii) Details of the Proprietor/ Partners/ Directors/ Secretary or Chief Executive of the Society/ Managing Trustee of the entity:

- (1) PAN (for all categories)
- (2) DIN/DPIN (in case of Company /LLP firm)

(iii) Details of the signatory applicant:

- (1) Identity proof
- (2) PAN
- (3) Digital photograph

2. After amendment para 2.05 (c) would read as under:

2.05 Importer-Exporter Code (IEC)

(c) Only the following are required to be uploaded along with the application for IEC with immediate effect:

- (1) Digital photograph of the signatory applicant;
- (2) Copy of the PAN card of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms);
- (3) Cancelled cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF-2A(I)

3. The new insertion, part (d) under Para 2.05 would read as under:

(d) Only online application for IEC /modification in IEC can be made by applicants through digital signature (Class-II or Class-III) with effect from 1.4.2016.

4. Effect of this Notification: From the date of this notification only two documents are required to be uploaded /submitted along with the digital photograph while applying for IEC. Further, applications for IEC/ modification in IEC can be made only in online mode by applicants through digital signatures with effect from 1.4.2016.

[F.No.01/89/180/20/AM-13/PC-2 (B)]

(Anup Wadhawan)
Director General of Foreign Trade



Case Law

Actual date of transfer relevant for benefit u/s 54 if possession been given before 'Sale Deed'

Citation –

Smt. Shashi Gupta vs. I.T.O (ITAT Delhi), ITA No.6109/Del./2012, Date of Decision: 24-11-2015, A.Y. 2007-08

Brief of the case -

In the case of Shashi Gupta vs. ITO, the Delhi Tribunal while considering the effective date of transfer of immovable property for the purpose of taking benefit of time limit specified u/s 54 of the Act considered the date of 'agreement to sell' of an immovable property as effective date of transfer of property taking the view expressed by Hon'ble Apex Court on the word 'transfer' in the case of Sanjeev Lal & Anr. Vs. CIT & Anr, wherein the Apex court held that 'looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred.'

Fact of the case –

The Assessee own 1/4th share in the residential house at B-30, Geetanjali Enclave, New Delhi – 110 030 along-with the other three co-owners, which was sold for a consideration of Rs.49,50,000/- under a sale deed dated 05-09-2006. The assessee declared long term capital gain of Rs. 43,27,615/-. In respect of this gain, the assessee claimed exemption of Rs.20,40,600/- under section 54 of the Act on the ground that she has purchased a new house property at Ramprastha, Ghaziabad vide registered deed dated 04-08-2005. The A.O. observing that the purchase of property was one year before the date of sale of her share in the residential property i.e., 05-09-2006 sought to disallow the exemption claimed. The assessee in respect of the above observation of the AO contended that she had entered into an agreement to sell dated 16.04.2006 and, therefore, the claim was in accordance with section 54 of the Act. However, the AO disagreed with the said contention of the assessee and rejected her said claim. On appeal by the assessee, the CIT (A), however, turned down the appeal and upheld the disallowance on the ground that there are many glaring contradictions as well as inconsistencies in the argument and documents presented by the assessee, to the extent that document i.e. agreement to sell i.e. 16.04.2006 appears to be concocted just for the purpose to meet the valid objections raised by the AO. The assessee filed the appeal before the Tribunal against the disallowance of exemption claimed u/s 54 of the Act.

Contention of Assessee -

The Ld. AR filed a synopsis of the events related to the ownership associated with the property. He submitted that all the four Co-owner having equal share agreed to sell the said property to Shri Ramesh Chandra Kalra s/o Shri K. L. Kalra, B-49, Shivalik Colony, New Delhi and Shri Ashish Rajpal s/o Shri G. D. Rajpal, B-1/53, Malviya Nagar, New Delhi-17 for a sum of Rs.1.98 Crores as per the terms and conditions mentioned in agreement dated 16.04.2006 and received the advance payment. As per the agreement the sale transaction was to be concluded on/or before 01.10.2006, by that time, the second party shall pay the remaining consideration amount. The assessee has already received a sum of Rs. 20,00,000/- vide cheque no.759207 on 16.01.2005 as part consideration for her 1/4th share in the property. The sale deed could not be registered because of family dispute and the balance consideration could not be received. The assessee had purchased a new residential house property B-195, Ramprastha Surya Nagar, Ghaziabad for Rs. 20,00,000/- + 40,600/- vide registered deed dated 04.08.2005. Therefore the money received from Sh. Ramesh Chandra Kalra as part sale consideration was invested in purchase of new house. He further submitted that Mr. Kalra had taken the possession from the assessee on the terms and conditions as specified in agreement dated 16.04.2006 and committed to the assessee that the balance amount of Rs.29,50,000/-will be paid on or before 6 months from 16.04.2006 and/or on registered deed in favour of the Sh. Ramesh Chander Kalra and Sh Ashish Rajpal or their nominee(s) whichever is earlier. On 04.09.2006 the assessee had received the balance amount of Rs.29,50,000/- and signed the registered deed on 04.09.2006 which is registered in the name of Sh. Ashok Seth and Smt. Poonam Seth who are the nominee(s) of Sh. Ramesh Chander Kalra and Sh. Ashish Rajpal Therefore, the transaction of sale was completed in the following manner:-

- 1.Firstly, the assessee has received an advance of Rs.20,00,000/- on 16.01.2005 from Mr. Ramesh Chandra Kalra which was invested in purchase of new house property at Ghaziabad on 04.08.2005.
- 2.Secondly, on 16.04.2006 an agreement was signed between the assessee along with other joint holders of the property. In this agreement, Mr. Ramesh Chandra Kalra assured the assessee to pay balance amount for her share in the property i.e. the effective date of sale of share in the property of the assessee.
- 3.Thirdly, the registered sale deed was signed on 04.09.2006 and the assessee has received the balance sale consideration amount of Rs.29,50,000/-

Contention of Revenue –

The Ld. DR supported the order of the Ld. CIT (A).

Held by Tribunal -

The Tribunal held that it is not disputed that assessee sold her share in the property for a consideration of Rs.49,50,000/- which was received in the following manner :-

- (i) Received cheque no.759207 dt. 16.01.2006 Rs. 20,00,000/-
- (ii) Received DD no.039172 dt. 04.09.2006 Rs. 19,50,000/-
- (iii) Received cheque no.394334dt. 04.09.2006 Rs. 10,00,000/-

From the aforesaid facts, it is apparent that substantial consideration was received by the assessee even 15 months prior to the agreement of sale dated 16.04.2006. Moreover, the agreement dated 16.04.2006 is signed by all the four co-owners and the Vendee, Shri Ramesh Kalra and also is duly witnessed. The agreement further specifically states as under:-

“And whereas the balance sale consideration has been agreed to be paid by the second party to the first party. Time to time or at the time of sale transaction within six month of this date and whereas Smt. Shashi Gupta one of the owner of the said property (first party) handed over the vacant possession of her $\frac{1}{4}$ share of the property to the second party today / on this date. NOW this agreement witnesses as under:

1. That the second party shall pay the balance sale consideration of Rs.1 Crore 67 Lacs 50 thousands to the first party as follows:
 1. Shri Mahendra Prakash Gupta Rs.46 Lacs
 2. Shri Shiv Prakash Gupta Rs.46 Lacs
 3. Shri Ram Prakash Gupta Rs.46 Lacs
 4. Smt. Shashi Gupta Rs.29.5 Lacs
2. That the sale transaction shall be concluded on or before 01.10.06. By that time, second party shall pay the remaining consideration amount of Rs. 1 Crores 67 Lacs 50 thousands to the first party and the first party shall simultaneously execute the sale deed with respect to the property in favour of the second party or his nominee(s) and shall also handover the vacant and peaceful $\frac{3}{4}$ balance possession of the said property to the second party or their nominee(s).”

From the above, it is vivid that the possession to the extent of $\frac{1}{4}$ th share of the assessee's house in that house stood transferred on 16.04.2006 itself. The Tribunal also noted that in the affidavit, the vendee has specifically affirmed as under:-

“I. R.C. Kalra S/o K.L. Kalra R/o B-49, Shivalik Colony, Malviya Nagar, New Delhi do hereby confirm as under :-

1. That vide agreement to sale dated 16.4.2006 between me and Smt. Shashi Gupta and others for purchase of $\frac{1}{4}$ share of her portion in the house located at B-30, Geetanjali Enclave, New Delhi.
2. I have taken possession of $\frac{1}{4}$ share of the house as on 16.4.2006 against consideration as agreed upon detailed in the sale agreement dt. 16.4.2006.
3. That I have option to get the sale deed executed in my name or in the name of my nominee as per cl.2 of the referred agreement.”

The observation of CIT (A) that in the sale deed, the possession of the property was taken on 05.09.2006 cannot be seen in isolation because in the agreement to sale on 16.04.2006 suggested by the affidavit of the Vendee clearly buttress the claim of the assessee, that she has handed over her share of the property to Vendee. Having regard to the above factual position, tribunal was of the opinion that possession of the property stood handed over on

16.04.2006. Furthermore on facts of the case, the tribunal held that the Hon'ble Apex court in the case of Sanjeev Lal & Anr. Vs. CIT & Anr. (2014) 365 ITR 389(SC), held as under:-

"In normal circumstances by executing an agreement to sell in respect of an immoveable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforesaid question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:

"2(47) "transfer", in relation to a capital asset, includes,-....

(ii) the extinguishment of any rights therein; or....."

Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset."

Having regard to the above binding precedent, the Tribunal rejected the conclusion of the Id. CIT (A) that agreement to sell is a mere start of the sale and cannot become the act of sale for section 54 of the Act. Moreover, the tribunal further observed that it needs to be appreciated here that a hyper technical approach cannot be adopted to an incentive granting provision. Here is a case, where the assessee is a widow who has received advance in June 2005 against sale of her share and thereafter, purchased a residential property in August 2005, but yet exemption is not held eligible on the ground that the sale is in September 2006. According to the Revenue, had the sale deed be executed in August 2006, everything will be in order. We do not subscribe to such a pedantic application of the incentive provision. It was on account of such an approach, the Hon'ble Apex Court in Sanjeev Lal & Anr. Vs. CIT & Anr. has held as above.

Thus, in view of the aforesaid, the Tribunal allowed the ground raised by the assessee.



Comprehensive Chart of Penalties under Companies Act 2013

Sr. No.	Section Number	Section Name	Penalty Heading	Penalty Description
151	Section 178	Nomination and remuneration committee and stakeholders relationship committee	Default in complying with the provisions related to this section	The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees or with both
152	Section 179	Powers of Board	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
153	Section 180	Restrictions on powers of Board	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
154	Section 181	Company to contribute to bona fide and charitable funds, etc	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Sr. No.	Section Number	Section Name	Penalty Heading	Penalty Description
155	Section 182	Prohibitions and restrictions regarding political contributions	Making any contribution in contravention of the provisions of this section concerning prohibition and restrictions regarding political Contributions	The company shall be punishable with fine which may extend to 5 times the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to 6 months and with fine which may extend to 5 times the amount so contributed
156	Section 183	Power of Board and other persons to make contributions to national defence fund, etc	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
157	Section 184	Disclosure of interest by director	Contravention of the provisions relating to mandatory disclosure of interest by the director.	Where a director contravenes such provisions he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with both.
158	Section 185	Loan to directors, etc.	Default in complying with any requirement under this section	The company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees or with both.
159	Section 186	Loan to directors, etc.	Default in complying with any requirement under this section	The Company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees.

Sr. No.	Section Number	Section Name	Penalty Heading	Penalty Description
160	Section 187	Investments of company to be held	Default in complying with any requirement under this section	The Company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-thousand
161	Section 188	Related party transactions	Default in complying with any requirement under this section	Any director or other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,— (i) in case of listed company, be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees, or with both.
162	Section 188	Related party transactions	Default in complying with any requirement under this section	Any director or other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,— (i) in case of any other company, other than listed company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees.
163	Section 188	Register of contracts or arrangements in which directors are interested	Failure to comply with the provisions of this section by Director	Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.
164	Section 189	Register of contracts or arrangements in which directors are interested	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues

Sr. No.	Section Number	Section Name	Penalty Heading	Penalty Description
165	Section 190	Contract of employment with managing or wholtime directors	Default in complying with any requirement under this section	The company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default
166	Section 191	Payment to director for loss of office, etc., in connection with transfer of undertaking,	Default in complying with any requirement under this section by Director	Where any director contravenes any of the provisions of this section, he shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
167	Section 191	Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues
168	Section 192	Restriction on noncash transactions involving directors	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
169	Section 196	Appointment of managing director, whole-time director or manager	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
170	Section 197	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits	Default in complying with any requirement under this section	Every person who contravenes the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakhs rupees.

Sr. No.	Section Number	Section Name	Penalty Heading	Penalty Description
171	Section 206	Power to call for information, inspect books and conduct inquiries	Failure to furnish any information within the time or extended time provided, called by the registrar with respect to the power furnish under Section 206	Where a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.
172	Section 206	Power to call for information, inspect books and conduct inquiries	Where business of a company has been or is being carried on for a fraudulent or unlawful purpose	Every officer of the company who is in default shall be punishable with imprisonment for a term which shall not be less than six months but which may extended to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud but which may extend to three times the amount involved in fraud
173	Section 207	Conduct of inspection and inquiry	Default in complying with the directions issued by the Registrar or the inspector in exercise of the powers under the provisions Sec. 207.	The director or the officer shall be punishable with imprisonment which may extend to 1 year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
174	Section 207	Conduct of inspection and inquiry	Convicted of committing offence under this section	The director or the officer shall, on and from the date on which he is convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.
175	Section 209	Search and seizure	Default in complying with any requirement under this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

important date

February

-
- 5** **Service Tax**
Service Tax payments by Companies for January
-
- 6** **Central Excise**
Due Date for payment of Excise Duty for all Assessee (other than SSI Units)
-
- 7** **Income tax**
TDS Payment for January
-
- 10** **Central Excise**
Filling ER-1 Return(Other than SSI Units)
Filling Quarterly Return ER-2 by 100% EOUs.
Filling monthly ER-6 Returns by specified class of Assesseees regarding principal inputs
-
- 15** **P.F.**
P.F. Payment for January
-
- 20** **MVAT**
TDS Payment of January
-
- 21** **E.S.I.C.**
E.S.I.C. Payment for January
MVAT*
Monthly payment of January
MVAT Monthly Returns for January.(TAX> 1000000)
-
- 28** **Prof.Tax**
Payment for January

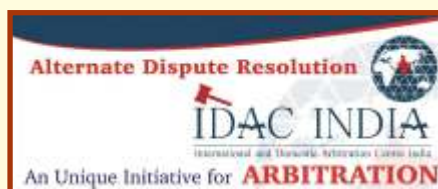
*If payment of MVAT made as per time prescribed, additional 10 days are given for uploading e-return

The Bulletin Board

In the recently announced Results of Elections to the Central Council of The Institute of Chartered Accountants of India (ICAI) and the Western India Regional Council (WIRC) of ICAI, CA Dhinal Shah from Ahmedabad has been re-elected as Central Council member. CA. Aniket Talati, CA Purushottam Khandelwal and CA Priyam Shah from Ahmedabad have been elected to the Western India Regional Council. The Central Council of ICAI consists of 32 elected Members and 8 Nominated members of the Central Government. The Western India Regional Council (WIRC of ICAI) which is located at Mumbai is the largest Regional Council of Institute of Chartered Accountants of India amongst the five Regional Councils with a Network of 31 branches, catering to the membership of more than 85,000 Chartered Accountants and about 2,25,000 CA students & consists of 22 Elected Members from three states of Maharashtra, Gujarat, Goa and the Union Territories of Daman, Diu and Nagar Haveli. The Institute of Chartered Accountants of India (ICAI) is a statutory body established by an Act of Parliament viz., The Chartered Accountants Act, 1949 for regulating the profession of Chartered Accountants in the country. ICAI functions under the administrative control of Ministry of Corporate Affairs and has 5 Regional Councils and 150 branches covering the length and breadth of the country. In addition, it has also set up 26 chapters outside India.

WIRC India





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Why IDAC India?

- IDAC India is a registered Non-profit Institutional Arbitration Centre.
- The Centre is managed by a group of experienced, qualified professionals.
- The Centre ensures speedy resolution for disputes (Normally 6 to 12 months)

- The Charges of the Arbitrator & centre are reasonable and fees schedule is fixed and transparent.
- Centre can handle International as well as arbitrations.
- The Centre has a well experienced panel of arbitrators. The panel comprises of the experts from various discipline to handle any complex commercial dispute.
- The Centre has all international standard modern facilities and Infrastructure.
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