

# The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)



## Bengaluru Branch of SIRC e-Newsletter

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English Monthly

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Tribute to our Respectful Great Leader on the 95<sup>th</sup> Birthday of  
Late **Shri Ramakrishna Hegde**  
Former Chief Minister of Karnataka (29<sup>th</sup> August 1926 – 12<sup>th</sup> January 2004)  
is the key person to allot the land of our existing  
Vasanthnagar, Bengaluru Branch premises.

### TAX AUDIT



### VIRTUAL CPE MEETINGS

- ⑤ **Taxation in the new normal**  
– navigating taxes during Covid'19  
9<sup>th</sup> September 2020
- ⑤ **Case Studies in Forensic Audit**  
10<sup>th</sup> September 2020
- ⑤ **Panel Discussion on Equalisation Levy**  
– Concerns and Solutions  
11<sup>th</sup> September 2020
- ⑤ **A Special Session on Co-operative Sector**  
1. Practical case studies in Gold Loan  
2. Comparison between  
Two Co-operative Acts in Karnataka  
16<sup>th</sup> September 2020
- ⑤ **Company Audit 2019 -20 and**  
Covid related Pronouncements of ICAI  
17<sup>th</sup> September 2020
- ⑤ **Intellectual Property Rights**  
18<sup>th</sup> September 2020
- ⑤ **1. Overview of RERA and Challenges**  
including formation of RWA & Conveyance  
2. Revival of Stalled projects through  
section 7 & 8 of RERA including availability  
of Alternative Investment Fund (AIF)  
23<sup>rd</sup> September 2020
- ⑤ **Impact of Faceless Assessments**  
including Role of CA's  
24<sup>th</sup> September 2020
- ⑤ **COMMON ERRORS (Statutory form**  
and Accounting standards)  
In Presentation and Disclosures of  
Private Limited Companies  
25<sup>th</sup> September 2020
- ⑤ **Recent technical developments in**  
GSTN portal including E – Invoicing  
30<sup>th</sup> September 2020

Pathway to Core Competence

# Chairman's Communique . . .



## My Dear Professional Colleagues,

This month, we are all aware that September is a month of commitments in fulfilling our responsibilities and it's the most zealous month for Chartered Accountants to complete the Tax Audit assignments and submit the Audit Report before the due date. The due date for filing of audit report for the assessment year 2020-21 has been extended from **September 30, 2020 to October 31, 2020**. The issues and various related challenges that we, Chartered Accountants need to be focussed and accurately should keep up the quality of our work and deliver during this unprecedented Covid-19 crisis.

On 5<sup>th</sup> September 2020, it is the occasion to remember teachers and applaud their contribution towards overall development of the students. Teachers' Day is a special day for the appreciation of teachers. Teachers inspire, motivate, enlighten and show the right path to life. Without teachers our life would have been a dark cave, it is from our teachers we learn and know about the world. Teachers are vital elements in everyone's lives, they touch the soul of our Chartered Accountant Students and bring the best in them. Our Chartered Accountants are the wonderful Teachers who

have put our budding students' lives by guiding them to achieve success in life and have brought more honour to the noble profession of teaching.

## The month that was August 2020 :

**On 15th August 2020, CA. R.E. Balasubramanyam, Senior Member of Bengaluru Branch** hoisted the flag on the occasion of 74<sup>th</sup> Independence Day Celebrations at Vasanthnagar Branch Premises, gave his informative address, filled with rich experience, which was an inspiration and motivation to all of us. I thank all the Chartered Accountant Members and Students for viewing this event on this day at our Bangalore Branch of SIRC of ICAI Youtube Channel.

In order to get updated, during this ongoing unprecedented COVID -19 virus all across the country, Bengaluru Branch of SIRC of ICAI organized the following Ten Jnana Dasoha – Virtual CPE Meetings as per the CPE Guidelines:

Sl. No.	Date	Topics	Speakers	No. of Members availed Structured CPE
1	08.08.2020	Negotiation and Arbitration	Adv. Kirit Javali, New Delhi & Adv. Rajalaxmi Ankalagi	440
2	12.08.2020	Principle of Natural Justice in Tax law	CA. Kapil Goel, New Delhi	491
3	13.08.2020	Planning & Strategies to Pass IBBI – Limited Insolvency Exams Insolvency & Bankruptcy Code – 2016	CA. Vinay Mruthyunjaya, Past Chairman – Bengaluru Branch & Treasurer – KSCA	571

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## Chairman's Communique . . .

◀ (Contd. from previous page)

Sl. No.	Date	Topics	Speakers	No. of Members availed Structured CPE
4	14.08.2020	Recent Changes in CSR – Company Law & Taxation	CA. Vijay Raja	713
5	19.08.2020	Audit Conclusions and Reporting with special reference to SMCs and SMEs (Covering SA 700, 701, 705 & 706)	CA. Chinnasamy Ganesan, Chennai	653
6	20.08.2020	Standards on Auditing – Audit Evidence (Covering SA 500, 501, 505 & 570)	CA R.S. Balaji, Chennai	587
7	21.08.2020	Valuation of Unquoted Equity Shares	CA. Premalata Daga, Nagpur	510
8	25.08.2020	Penalty under Sec. 271 AAD & New Form 26AS	CA. Naveen Khariwal .G	576
9	26.08.2020	Legal Issues in Tax Audit	CA. G. S. Prashanth	699
10	28.08.2020	Issues & Practical aspects in Tax Audit	CA. Deepak Chopra	654

I am glad to make a note that in the light of ongoing spurt of the COVID – 19 virus all across the country, to facilitate the members in discharging their duties on the professional updates, Bengaluru Branch of SIRC of ICAI is the first branch to conduct its first Webinar on 18<sup>th</sup> March 2020 and so on.

In this above said Virtual CPE Meetings, on Wednesday, 19<sup>th</sup> August 2020 it's a 50<sup>th</sup> Virtual CPE Meeting. CA. Babu Abraham Kallivayalil, Central Council Member – ICAI was the Chief Guest touched upon on the Covid

related relief announced by ICAI which was very informative. I thank CA. Chinnasamy Ganesan, Chennai an expert & eminent speaker for sharing his knowledge on technical deliberations of various Standards of Auditing of professional interest, a remarkable event in this month.

**Five Thousand Eight Hundred and Ninety Four** Members availed the benefit of Structured CPE in the month of August by truly viewing in the Jnana Dasoha - Virtual CPE Meetings. Apart from the Virtual Meetings, many members to enrich their knowledge also viewed in our YouTube Channel Bangalore Branch of SIRC of ICAI.

I thank all the above expert and eminent Speakers who shared their expertise in the above said Virtual CPE Meetings which was very informative for the benefit of our Members.

In this ongoing global pandemic of coronavirus, Bengaluru Branch of SIRC of ICAI is organizing a series of continuous Jnana Dasoha - Virtual CPE Meetings in the month of September also with no delegate fee for Members on varied topics of professional interests on Two Co-operative Acts, Company Audit, Intellectual Property Rights, RERA, Impact of faceless assessments, GSTN between 4.00 pm & 6.00 pm. The details of the Meetings are presented elsewhere in this newsletter.

Before concluding, Our Respectful Homage to a great Leader on the 95<sup>th</sup> Birthday of Late Shri Ramakrishna Hegde, Former Chief Minister of Karnataka (29<sup>th</sup> August 1926 – 12<sup>th</sup> January 2004) a Statesman, Gentleman and Nationalist to the core is the key person to allot the land of our existing Vasanthnagar, Bengaluru Branch premises.

I wish you all a very successful Audit season.

Stay Safe and Healthy.

**In Service of the Profession,**

**CA. Raveendra S. Kore**

Chairman

Bengaluru Branch of SIRC of ICAI



## CALENDAR OF EVENTS JNANA DASOHA - VIRTUAL CPE MEETINGS FOR THE MONTH OF SEPTEMBER 2020

DATE AND DAY	TOPIC / SPEAKER	TIME	STRUCTURED CPE HOURS
09.09.2020 Wednesday	<b>Taxation in the new normal – navigating taxes during Covid'19</b> CA. Pankil Sanghvi	4.00 pm to 6.00 pm	<b>2 hrs</b>
10.09.2020 Thursday	<b>Case Studies in Forensic Audit</b> CA. Chetan Dalal, Mumbai	4.00 pm to 6.00 pm	<b>2 hrs</b>
11.09.2020 Friday	<b>Panel Discussion on Equalisation Levy – Concerns and Solutions</b> Panelists : 1. CA. Sachin Kumar B.P 2. CA. Narendra J Jain 3. Mr. Bharath Lakshminarayana Moderator : CA. Cotha S Srinivas, Past Chairman, SIRC of ICAI	4.00 pm to 7.00 pm	<b>3 hrs</b>
16.09.2020 Wednesday	<b>A Special Session on Co-operative Sector</b> 1. <b>Practical case studies in Gold Loan</b> CA. Umesh Bolmal, Belagavi 2. <b>Comparison between Two Co-operative Acts in Karnataka</b> CA. Raveendranath B.V, Sagar	4.00 pm to 7.00 pm	<b>3 hrs</b>
17.09.2020 Thursday	<b>Company Audit 2019 -20 and Covid related Pronouncements of ICAI</b> CA. Jomon K George Past Chairman, SIRC of ICAI	4.00 pm to 6.00 pm	<b>2 hrs</b>
18.09.2020 Friday	<b>Intellectual Property Rights</b> Shri. Hari Prasad M.S, Advocate	4.00 pm to 6.00 pm	<b>2 hrs</b>
23.09.2020 Wednesday	<b>1. Overview of RERA and Challenges including formation of RWA &amp; Conveyance</b> CA. Ramesh S. Prabhu, Mumbai <b>2. Revival of Stalled projects through section 7 &amp; 8 of RERA including availability of Alternative Investment Fund (AIF)</b> CA. Amit Kumar Kedia, Jaipur	4.00 pm to 6.00 pm	<b>2 hrs</b>

NO DELEGATE FEE FOR THE ABOVE VIRTUAL CPE MEETINGS

## CALENDAR OF EVENTS JNANA DASOHA - VIRTUAL CPE MEETINGS FOR THE MONTH OF SEPTEMBER 2020

DATE AND DAY	TOPIC / SPEAKER	TIME	STRUCTURED CPE HOURS
24.09.2020 Thursday	<b>Impact of Faceless Assessments including Role of CA's</b> CA. H. Padamchand Khincha	4.00 pm to 6.00 pm	<b>2 hrs</b>
25.09.2020 Friday	<b>COMMON ERRORS (Statutory form and Accounting standards) In Presentation and Disclosures of Private Limited Companies</b> CA. N. Nityananda, Past Central Council Member, ICAI & CA. Manohar P Gupta	4.00 pm to 6.00 pm	<b>2 hrs</b>
30.09.2020 Wednesday	<b>Recent technical developments in GSTN portal including E – Invoicing</b> CA. Annapurna D Kabra & Dr. B.V. Murali Krishna Additional Commissioner of Commercial Taxes (e-governance) Commercial Taxes Department, Bengaluru	4.00 pm to 6.00 pm	<b>2 hrs</b>

**Prior Registration is compulsory**

**NOTE :**

- As per HO Guidelines only Bengaluru Branch Members can avail CPE. Maximum 1000 Members registration is allowed on first come first serve basis.
- No. Delegate Fees.
- Registration link will be sent through SMS, one day prior to the Programme commencing date.

**NO DELEGATE FEE FOR THE ABOVE VIRTUAL CPE MEETINGS**

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**Advt. material should reach us before 22nd of previous month.**

EDITOR :  
**CA. RAVEENDRA S. KORE**

SUB EDITOR :  
**CA. SRINIVASA T**

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**JNANA DASOHA**



**BENGALURU BRANCH OF SIRC OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

**ORGANISING COACHING CLASSES & CRASH COURSE FOR  
CA FOUNDATION, CA INTERMEDIATE & CA FINAL STUDENTS  
FOR NOV. 2020 & MAY 2021 EXAMS**

**→ Stay Home → Stay Safe → Stay Prepared for Exam**

**ADMISSIONS OPEN FOR COACHING CLASSES & CRASH COURSE**

Course	Fees	Duration	Timings
CA Foundation	Rs. 7500/-	26 <sup>th</sup> Nov. 2020 to March 2021 (Tentative Dates)	04.30pm to 07.30pm (Monday to Sunday)
CA Intermediate	Rs. 12,500/- for Both Groups Rs. 8,500/- for Single Group Rs. 3,500/- for Single Subject	3 <sup>rd</sup> Sep. 2020 to March 2021 (Tentative Dates)	06.30am to 09.30am (Monday to Sunday)
CA Final	Rs. 14,000/- for Both Groups Rs. 9,000/- for Single Group Rs. 4,000/- for Single Subject	3 <sup>rd</sup> Sep. 2020 to March 2021 (Tentative Dates)	06.30am to 09.30am (Monday to Sunday)

**PRE-EXAM CRASH COURSE FOR NOV. 2020 EXAMS NEW COURSE  
IN MONTH OF SEPTEMBER & OCTOBER 2020**

Crash Course CA Foundation for Nov. 2020 Exams	Crash Course for CA Intermediate for Nov. 2020 Exams	Crash Course CA Final for Nov. 2020 Exams
Fee for Foundation Course: Rs.2200/- for All Subjects	Course Fee Both Groups : Rs.6500/- I Group Subjects : Rs.4000/- II Group Subjects: Rs.4000/- Single Subject: Rs.1500/-	Course Fee Both Groups : Rs.6500/- I Group Subjects : Rs.4000/- II Group Subjects: Rs.4000/- Single Subject: Rs.1500/-

**Note:** We request students registered for course to view our online coaching classes during the lockdown period. We will allow both online & classroom facility after the lockdown is withdrawn at our Vasanthnagar branch.

Schedule for all the subjects will be announced in due course.

Registration Fees - Mode of payment: Cash / Online [www.bangaloreicai.org](http://www.bangaloreicai.org)

For further details please contact: Tel: 080 - 4394 4868 / 4876 Mob: 9606913003 / 3004

Email: [blrstudentevents@icai.org](mailto:blrstudentevents@icai.org) | Website: [www.bangaloreicai.org](http://www.bangaloreicai.org)

**CA. Raveendra S. Kore**  
Chairman

**CA. Srinivasa T.**  
Secretary

Bengaluru Branch of SIRC of ICAI  
"ICAI Bhawan", 16/O, Miller's Tank,  
Bed Area, Vasanthanagar,  
Bengaluru - 560052

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**JNANA DASOHA**



**BENGALURU BRANCH OF SIRC OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

**ORGANISING ONLINE COACHING CLASSES FOR  
CA FINAL STUDENTS FOR MAY 2021 EXAMS – MORNING BATCH**

**ADMISSIONS OPEN FOR ONLINE SUBJECTWISE COACHING**

**→ Stay Home → Stay Safe → Stay Prepared for Exam**

**Schedule from: 3<sup>rd</sup> Sep. 2020 to 16<sup>th</sup> March 2021 (Tentative Dates)**  
Tentative scheduled faculty may change due to non availability at that point of time

Sl no	Subject	Duration	Faculties
1	Paper-1: Financial Reporting	03.09.2020 to 14.10.2020	CA. Murali Nagaraj & CA. Kaleshwara Prasad
2	Paper-3: Advanced Auditing and Professional Ethics	15.10.2020 to 03.11.2020	CA. Vikas Oswal
3	Paper-2: Strategic Financial Management	04.11.2020 to 09.12.2020	CA. Chinmaya Hegde
4	Paper-4: Corporate and Economic Laws	10.12.2020 to 13.01.2021	CA. Ankith Kumar Jain
5	Paper-5: Strategic Cost Management and Performance Evaluation	14.01.2021 to 05.02.2021	CA. V. Venkata Sivakumar, Chennai & CA. Ashwini K
6	Paper-6: Direct Tax Laws and International Taxation	06.02.2021 to 28.02.2021	CA. Deepak Copra
7	Paper-8: Indirect Tax Laws	01.03.2021 to 16.03.2021	CA. Raghavendra T. N. & CA. Dilip Rajpurohith

Course	Fees	Duration (6 Months)	Timings
<b>CA Final</b>	Rs. 14,000/- for Both Groups Rs. 9,000/- for Single Group Rs. 4,000/- for Single Subject	3 <sup>rd</sup> Sep. 2020 to March 2021 (Tentative Dates)	06.30am to 09.45am (Monday to Sunday)
<b>Registration Fees - Mode of payment: Cash / Online</b> <a href="http://www.bangaloreicai.org/home/online_registration">http://www.bangaloreicai.org/home/online_registration</a> <b>For further details please contact: Tel: 080 - 4394 4868 / 4876 Mob: 9606913003 / 3004</b> <b>Email: <a href="mailto:blrstudentevents@icai.org">blrstudentevents@icai.org</a>   Website: <a href="http://www.bangaloreicai.org">www.bangaloreicai.org</a></b>			

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**Chairman**

**CA. Srinivasa T.**  
**Secretary**

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**Bengaluru Branch of SIRC of ICAI**  
**"ICAI Bhawan", 16/O, Miller's Tank, Bed Area, Vasanthanagar, Bengaluru - 560052**





**JNANA DASOHA**



**BENGALURU BRANCH OF SIRC OF  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

**ORGANISING ONLINE COACHING CLASSES FOR CA INTERMEDIATE  
STUDENTS FOR MAY 2021 EXAMS – MORNING BATCH**

**ADMISSIONS OPEN FOR ONLINE SUBJECTWISE COACHING**

**→ Stay Home → Stay Safe → Stay Prepared for Exam**

**Schedule from: 3<sup>rd</sup> Sep. 2020 to 3<sup>rd</sup> April 2021 (Tentative Dates)**

**Tentative scheduled faculty may change due to non availability at that point of time**

Sl.no	Subject	Duration	Faculties
1	Paper -1: Accounting (Gr-1)	03.09.2020 to 27.09.2020 & 26.10.2020 to 03.11.2020	CA. Murali Nagaraj & CA. Nikhil Saraf
2	Paper-5: Advanced Accounting	28.09.2020 to 25.10.2020	CA. Vinutha Hegde
3	Paper-6: Auditing and Assurance	04.11.2020 to 22.11.2020	CA. Vikas Oswal & CA. Anjan Babu
4	Paper-2: Corporate and Other Laws	23.11.2020 to 13.12.2020	CA. Mridul Agarwal
5	Paper-3: Cost and Management Accounting	14.12.2020 to 06.01.2021	CA. Modassar Irfat & CA Ashwini K
4	Paper-4: Taxation - Direct Tax Laws	07.01.2021 to 28.01.2021	CA. Prashanth Bharadwaj & CA. Guruprasad Kasarvalli
5	Paper-4: Taxation - Indirect Tax Laws	29.01.2021 to 14.02.2021	CA. Venkata Krishna Kothari & CA. Raghavendra T. N.
8	Paper-7: Enterprise Information Systems & Strategic Management	15.02.2021 to 09.03.2021	CA. Anand P Jangid
9	Paper -8: Financial Management & Economics for Finance	10.03.2021 to 21.03.2021 22.03.2021 to 03.04.2021	CA. Chinmaya Hegde & Dr. Seema Goel

Course	Fees	Duration (6 Months)	Timings
<b>CA Intermediate</b>	Rs. 12,500/- for Both Groups Rs. 8,500/- for Single Group Rs. 3,500/- for Single Subject	22 <sup>nd</sup> August 2020 to March 2021 (Tentative Dates)	06.30am to 09.45am (Monday to Sunday)
<b>Registration Fees - Mode of payment: Cash / Online <a href="http://www.bangaloreicai.org/home/online_registration">http://www.bangaloreicai.org/home/online_registration</a></b> <b>For further details please contact: Tel: 080 - 4394 4868 /4876 Mob: 9606913003 / 3004</b> <b>Email: <a href="mailto:blrstudentevents@icai.org">blrstudentevents@icai.org</a>   Website: <a href="http://www.bangaloreicai.org">www.bangaloreicai.org</a></b>			

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**"ICAI Bhawan", 16/O, Miller's Tank, Bed Area, Vasanthanagar, Bengaluru - 560052**



## FRAUDS / MISAPPROPRIATION IN CO-OPERATIVE SOCIETIES AND CO-OPERATIVE BANKS DUTIES AND RESPONSIBILITY OF AUDITORS



CA. Umesh Bolmal, Belagavi

### Introduction

Incidence of frauds and misappropriation in any Co-operative Society / Co-operative Bank is quite common, since the societies and bank deal in finance. As per section 63(17) of KCS Act it shall be the duty of auditor is to comment on the frauds and misappropriation detected during the course of audit. The auditor shall follow the following procedure when he detects frauds of misappropriation.

1. The loss sustained by the Co-operative Society / Co-operative Bank should be computed.
2. The auditor should issue notice to the concerned person for whose negligence the society incurred the loss. After receiving the reply in writing the auditor shall form an opinion regarding fixing of accountability and responsibility on concerned persons.
3. All particulars of frauds and misappropriation detected by the auditor and the modus operandi of the same shall be incorporated in the audit report in detail. In the report, the auditor shall fix the responsibility for such misappropriation or fraud on the members of the board or on the employees of the society as case may be.
4. The auditor should submit an interim report to the Director of Audit even before he submits the final audit report, explaining in detail the modus operandi of the fraud and the amount involved.

### Various types of frauds and misappropriation

#### **(a) Loss due to shortage in closing stock:**

The auditor shall compute the shortage in closing stock as under.

Actual value of Closing Stock as on 22-06-2020 as per Stock taken by the Auditor		Rs. 15,00,000
<u>ADD:</u> Cost of sales from 01-04-2020 to 22-06-2020	Rs. - - -	
<u>Less:</u> Gross Profit Margin	Rs. - - -	Rs. 10,00,000
		Rs. 25,00,000
<u>LESS:</u> Purchases from 01-04-2020 to 22-06-2020		Rs. 5,00,000
<b>Value of closing stock as on 31-03-2020</b>		<b>Rs. 20,00,000</b> =====

The Trading A/c of the society for the year ending 31-03-2020 shows the value of closing stock at Rs. 25,00,000/-. The difference of Rs. 5,00,000/- can be considered as loss due to shortage in closing stock. On further enquiry, it was found that Mr. X is responsible for the loss, the same should be recovered from him.

In order to disclose the loss due to misappropriation by Mr. X the following entries should be passed in the books of accounts of the society, in the year 2019-20

1. Shortage in Stock		
recoverable from Mr. X	Rs. 5,00,000	
To, Trading A/c		Rs. 5,00,000
2. Profit and Loss A/c	Rs. 5,00,000	
To, Provision towards shortage in stock		Rs. 5,00,000

Assuming that the society is able to recover Rs. 2,00,000/- from Mr. X. in the year 2020-21, the following entries are to be passed.

1. Cash / Bank A/c	Rs. 2,00,000	
To, Shortage in stock recoverable from Mr. X		Rs. 2,00,000



2. Provision towards		
Shortage in stock	Rs. 2,00,000	
To, Profit and Loss A/c		Rs. 2,00,000

**(b) Loss due to shortage in cash balance:**

While conducting the audit of a Co-operative Society / Co-operative Bank, the auditor detected that, there is a misappropriation in handling the cash to the extent of Rs. 2,00,000/-. On further enquiry the auditor found that, the cashier of the society Mr. X is responsible for this fraud. Now, in order to disclose this loss due to misappropriation, the following entries are to be passed in the books of accounts of the Society / Bank, in the year 2019-20

1. Mr. X A/c	Rs. 2,00,000	
To, Cash		Rs. 2,00,000
2. Profit and Loss A/c	Rs. 2,00,000	
To, Provision for		
misappropriation in cash		Rs. 2,00,000

Assuming the society is able to recover Rs. 75,000/- in the year 2020-21 the entries need to be passed.

1. Cash A/c	Rs. 75,000	
To, Mr. X A/c		Rs. 75,000
2. Provision for		
misappropriation in cash	Rs. 75,000	
To, Profit & Loss A/c		Rs. 75,000

**(c) Loss due to inflating the expenditure:**

While conducting the audit of a Co-operative Society the auditor detected that, there is a misappropriation to the extent of Rs. 5,00,000/- by debiting excess expenditure to the account of "Repairs and Painting of the Building A/c". On further enquiry, it was found that, the Mr. X, chairman of the society / bank is responsible for this misappropriation. Now in order to disclose this loss, the following entries are to be passed in the books of accounts of the society / bank, in the year 2019-20

1. Mr. X A/c	Rs. 5,00,000	
To, Repairs and		
Painting of the Building		Rs. 5,00,000
2. Profit and Loss A/c	Rs. 5,00,000	
To, Provision towards		
misappropriation in		
"Repairs and Painting		
of Building A/c"		Rs. 5,00,000

Assuming the society is able to recover Rs. 2,00,000/- from the chairman, Mr. X in the year 2020-21, the following entries need to be passed.

1. Cash A/c	Rs. 2,00,000	
To, Mr. X A/c		Rs. 2,00,000
2. Provision for		
misappropriation in		
"Repairs & Painting of		
Building A/c"	Rs. 2,00,000	
To, Profit & Loss A/c		Rs. 2,00,000

**(d) Loss due to sanctioning of gold loans by pledging the fake gold ornaments:**

It is very difficult for an auditor to verify the purity of gold ornaments pledged as security, since he is not competent to do this job. Only a gold appraiser can decide whether the gold ornaments pledged are genuine or not. Therefore, it is suggested that, an auditor should invite another gold appraiser other than one who is appointed by the Society / Bank to verify the purity of gold ornaments on random basis. During the course of such examination, if the auditor detects that, some gold loans are sanctioned on the security of fake gold ornaments, this fact should be reported in his audit report. For example if on verification the gold loans to the extent of Rs. 10,00,000/- are sanctioned on the security of fake ornaments, he should conduct a detailed enquiry to fix the accountability. If he comes to a conclusion that, the gold appraiser is involved in this fraud the following entries are to be passed in the books of accounts and this fact should be disclosed in the financial statements of the society / bank, in the year 2019-20.

1. Gold Appraiser A/c	Rs. 10,00,000	
To, Gold Loan A/c		Rs. 10,00,000
2. Profit and Loss A/c	Rs. 10,00,000	
To, Provision for loss		
due to loan sanctioned		
on fake Gold Ornaments		Rs. 10,00,000

Assuming the society / bank is able to recover Rs. 6,00,000/- from the Gold Appraiser in the year 2020-21, the following entries need to be passed.

1. Cash / Bank A/c	Rs. 6,00,000	
To, Gold Appraiser A/c		Rs. 6,00,000
2. Provision for loss due to		
Loan sanctioned on fake		
Gold Ornaments	Rs. 6,00,000	
To, Profit & Loss A/c		Rs. 6,00,000





## FINTECH & BANK FRAUD - LEARN TO LIVE

**CA. V.S. Kumar** FCA, CFE, CIA  
EFTRAC Canada Inc, Canada

**“WE need banking, but we don’t need banks anymore”- Bill Gates, 25 years ago.**

It is appropriate to sync **APJ Abdul Kalam’s** statement for young generation **“Dream is not that which you see while sleeping, it is something that does not let you sleep”**. It is a rare coincidence that the new Gen (GEN X) who are in Fintech world have truly translated Abdul Kalam’s words into action! **Fintech** is the abbreviation of Financial Technology. Fintech describes any company that provides banking & financial services through software or other technology, including its delivery through Apps & smartphones.

### **Fintech’s tsunami entry**

Traditional banks, although unassailable until last decade, lacked its charm due to its steep service charges & inordinate delay in its services, opened the flood gates to Fintech penetration. What was visualized long ago about banks is becoming a reality. “Banking is necessary, but banks are not” and Bill Gates goes on to say, “bank is not the future... banking as a service will be”.

Without brick and mortar traditional bank, Fintech had linked direct banking service access to consumers through technology & smartphones. It is a triple win for customers; fintech companies and investors. While clients could get the best timely service with convenience at minimal cost, fintech companies had

seen savings in costs, both fixed and variable and a great cocktail for private equity and VCs with low cost; high return along with huge customer base.

Fintech is disrupted technology on financial services industry (use of technology & smartphones bundled in mobile App) like AMAZON did to retail industry and UBER disrupted the transportation industry. The threat is real to traditional banks considering the speed of its entry like Tsunami with customer friendly innovative banking services through Apps & smartphones. With estimated half the global population would be middle class by end of this decade, coupled with penetration of smartphones and greater access to internet, the future of Fintech is galvanized so as the disruption of “traditional banking”. With investors pumping lavish funds into this new Gen industry, its growth from B2C to B2B is endless. Fintech companies are mostly start ups with founders belonging to first generation Gen X and its market cap is skyrocketing.

Although it is high time for traditional banks to handshake with the Fintech companies, for them to survive, this view does have its own caveat & real threats it poses to be addressed even before a handshake is considered. Globally over 70% of large banks and asset management firms have expressed that cybersecurity is the top risk associated in partnering with the Fintech firms.

### **Convenience come with risks - Cybersecurity & market disruption**

Digitization of data by Fintech companies coupled with automation of processes make the systems vulnerable and make it easy for hackers to attack. *“Simply put, given the growth, dynamism, and complexity of the digital financial ecosystem, it is inevitable that some solutions will be insufficiently secure against cyberattacks. And, it’s highly likely that those vulnerabilities will be found and exploited,” said cybersecurity expert John Villasenor to Forbes.*

The risks attached to a security breach in financial services are even more damaging than in any other industry, as it is the user’s money that it is at stake. “In addition to causing immediate financial losses,” says John Villasenor, “breaches can undermine longer term confidence in new solutions, leading to lower adoption rates - particularly among users with less experience engaging with digital services.”

Examples of Fintech industry’s deep penetration into traditional banking; investment and insurance industry:

- 1) Mobile App payments
- 2) Banking services from A/c opening to Deposits
- 3) Loans and commercial lending
- 4) Insurance products from Auto to Life insurance
- 5) Investment Apps robot advice
- 6) Crowdfunding platforms
- 7) Cryptocurrency
- 8) Blockchain
- 9) Stock-trading and budgeting Apps



etc. Big names in fintech includes: Paypal, Alipay, Chime, Simple, Stripe etc.

#### **App. - is it a Trap! Cyber security Tips**

Being an already disgruntled bank customer with disposable funds in your account, you are the best target from both ends: genuine fintech companies to sell their products and bad guys waiting on the wings to grab your personal account. Never click on any offers received in your email or SMS messages such as "Get Rs 500 with instant sign up" "Refer your friend & get paid" etc. As cyber threat is inbuilt in Fintech due to its vulnerability, with lack of stringent banking regulation and non-compliance of established security protocols in their mobile Apps. risk is higher. Watch for red flags in linking your bank accounts and handle risks associated with both mobile phone fraud and cyber threat of all sorts:

##### **a) Your smart phone & your data:**

Phishing literally means "asking you to attack yourself" as you oblige to the commands of bad guys. For majority of data compromise, unfortunately it is you, who open the flood gates to the fraudsters and scammers to enter your smartphone in different forms. It is your responsibility to physically protect your phone with strong password and allow validated Apps only. Do not respond to apps that facilitate allowing third party Apps.

##### **b) Senseless password is gateway to fraud –** It is senseless if you are sharing the same password of your social media to your online banking too. Recently Twitter was hacked compromising credentials of large

number of individuals that was used to rip off their bank accounts. Recently Canadians were subjected to such "credential stuffing". Using common sense by having strong passwords; frequently changing the same and not sharing the passwords with anyone, including your trusted ones and protect your accounts and finance.

##### **c) Incognito mobile site:** For all financial transactions use only genuine websites and not to click on any links that would lead to "so called" genuine sites. Ensure the sites are secure and encrypted with valid security certificate. At times, websites show up in the Play store direct you to mobile version for better view with a link to App. which could be camouflaged website / incognito mobile sites. In Download settings choose "Always ask" option instead of "Always Allow" to stop threatening Apps.

##### **d) Keep your urge in check:** It is not mandatory that you open all mails and SMS you receive. Be shrewd and apply your mind to judge by practice which one to be open & be deleted. Need not listen to all the incoming calls fully: cut short the call immediately once you sense it is aimed towards seeking money. By being on the phone, scammers would rob your bank account using sob stories.

##### **e) Money is not in the bank anymore:** Yes, it is now in your smartphone and laptop. So protect it safely with anti-virus software; strong Wi-Fi passwords and data back-up unless you are a billionaire with amount to spare for charity.

##### **f) You can be without your identity:** Yes, already your digital identity had replaced your identity. If a fraudster gets your digital identity, there is no need for him to know who you are to wipe your wealth. Protect all sources of your identity safely and use it wisely. Shredding of your expired driving licence; credit cards; all bank statements and your letters with tax authorities is vital, being source of your digital IDs. Do not share your ID details in the social media as it is the most damaging source of ID theft.

Fintech is here to stay despite it is not regulated mostly with cyber threat leading the way to rampant on-line fraud. It is high time banking regulators dealt with iron hand to protect the innocent victims globally as regulators have much more to do in the Fintech domain, than to allow the increased incidence of on-line fraud and slam the scam. Every day new research comes out like no password validation & unique global ID like in Switzerland etc.

#### **Regulators - use your tools - halt the toll**

From my experience as a global banking regulator, protecting global citizens is paramount. Sans border cyber threat is stoppable using the tools available in the arsenal of regulators & governments more than building real time fraud detection tools. Until then, you, as a citizen, mould your attitude: When you are in Rome be a Roman & when you are in the midst of fraudsters & scammers, never trust the most trusted to protect your hard-earned wealth.





# EXEGESIS AND PARSING OF DRACONIAN PENALTY PROVISION OF SECTION 271AAD

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## 1. Prelude

If chapter XXI of penalties imposed in Income Tax Act, 1961 (Act) is analysed then it would be clear that in last few finance acts scope of penalties has been enlarged and widened to embrace penalties like section 269ST (penalty for Rs 2lac or more specified transaction done in cash mode ; penalty levied in section 271DA Subject to exception of "good and sufficient reasons for contravention of section 269ST"); 271J (penalty of Rs 10K for each certificate/report of accountant (CA) etc as found to be incorrect subject to section 273B : reasonable cause); penalty u/s 269SU (for non providing of facility of payment in prescribed mode by person engaged in specified business : penalty levied in section 271DB subject to exception of "good and sufficient reasons for contravention of section 269SU") and penalty in section 269SS/271D for acceptance of specified sum in cash etc (like advance for sale of immovable property: subject to reasonable cause in section 273B). Further on careful look to section 270A where concept of under reporting and mis reporting is introduced ,in provision of section 270A(9) where items of misreporting are spelt (penalty @ 200% of underlying tax) in said provision , one may find that false entry and omitted entry cases are directly covered which are now also penalised in new section 271AAD.

Further if one looks to prosecution provisions which is very old in income tax act that is section 276C dealing with tax evasion prosecution, in explanation of section 276C on items which are tagged under tax evasion, false entry and omitted entry can be very well located there also. When penalty and prosecution was already there in income tax act for stated offense and default of false and omitted entry which could also covers fake invoice cases , the reason to bring this section 271AAD in addition to section 270A(9) and section 276C already covering stated cases is unfathomable and is subject matter of guess. This arguments gets support from para 6.8 of Hon'ble FM budget speech for 2020 and clause 98 of Finance Bill 2020 where nothing is discernible on overlapping and existing provision for default of false and omitted entry. So when somebody would contest in constitutional courts the vires/validity of new section 271AAD there we may have more on it as in humble opinion of author constitutional validity of section 271AAD remains in zone of legal quandary as dealt in succeeding para in this paper. Nature of this provision remains penalty provision (which penalty cant be treated at par with tax and interest as per settled law) so sagacious words of Hon'ble Apex court constitution bench are apposite before diving deep into the horizon of section

271AAD which in authors humble opinion must goad and prick revenue authorities on invocation of section 271AAD:

*The following observations by the Constitution Bench of this Court in Pannalal Binraj v. Union of India [(1957) 31 ITR 565 : AIR 1957 SC 397] are apt:*

*'A humane and considerate administration of the relevant provisions of the Income Tax Act would go a long way in allaying the apprehensions of the assessee and if that is done in the true spirit, no assessee will be in a position to charge the Revenue with administering the provisions of the Act with 'an evil eye and unequal hand'." (relied by Apex court in case of Commissioner of Income Tax, Bhopal v. Hindustan Electro Graphites, Indore, (2000) 3 SCC 595. & Commnr. Of Income Tax, Gauhati & ... vs M/S. Sati Oil Udyog Ltd. & Anr on 24 March, 2015),*

*Further reference may be made to constitution bench verdict in case of Dilip Kumar case 9 SCC 1 (2018) where it is observed that: "In construing penal statutes **and taxation statutes, the court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary***



**decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature...."**

Also reference may be made to guiding words of Apex court in case of Kum A.B.Shanti reported at 255 ITR 258 where constitutional validity of section 269SS was in issue before Apex court and same was upheld inter-alia with following observations :

*"The next contention urged by the counsel for the appellant is that original Section 276DD is draconian in nature as penalty imposed for violation of Section 269SS is imprisonment which may extend to two years and shall also be liable to fine equal to the amount of loan or deposit. This Section was subsequently omitted and a new Section 271D was enacted. The penalty of imprisonment was deleted in the new Section. The new Section 271D provides only for fine equal to the amount of loan or deposit taken or accepted.*

*It is important to note that another provision, namely Section 273B was also incorporated which provides that notwithstanding anything contained in the provisions of Section 271D,*

*no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of Section 273B in the Act. If there was a genuine and bona fide transaction and if for any reason the tax payer could not get a loan or deposit by account-payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power. In that view of the matter, we do not think that Section 269SS or 271D or the earlier Section 276DD is unconstitutional on the ground that it was draconian or expropriatory in nature."*

In present case penalty u/s 271AAD is more expropriatory/draconian in nature as here penalty is equivalent to "aggregate of false and omitted entry" amount and here section 273B does not include section 271aad; so section 271AAD needs more conservative and responsible and cautioned approach. It is now a well-settled principle of law that more stringent the law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See P.N. Krishna Lal and Others v. Govt. of Kerala and Another, 1995 Supp (2) SCC 187]

Also Delhi high court decision in New Holland Tractors vs CIT has observed on levy of penalty u/s 271(1)(c) that

*"In assessment proceedings, we are primarily concerned with the assessment of income i.e. quantification and computation of total income as per the provisions of the Act, whereas in penalty proceedings we are primarily concerned with the conduct of the assessee.. referring to old Apex court verdict in case of Commissioner of Income Tax, West Bengal I, and Anr. Vs. Anwar Ali [1970] 76 ITR 696 (SC)". (Also refer Delhi high court in 393 ITR Page 1 on conscious default)*

*Also old dictum of Apex court in Vegetable products case reported at 88 ITR 192 has observed that "...If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty."*

*Observations of Apex court in case of Sree Krishna Electricals v. State of Tamil Nadu & Anr. [(2009) 23VST 249 (SC)] as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee .Apex Court, therefore, observed:*

*"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items*



*in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."*

So here was the case where penalty was deleted by Apex court because account books of assessee/dealer contained those items which here in section 271AAD may be branded as false entry liable to penalty therein. (relied in 322 ITR 158 Reliance Petro case)

*With above introduction and rules for interpreting penalty provision being discussed, next aspect which is taken up the mischief behind section 271AAD and applicability of contemporanea expositio (framer know better).*

2. Legislative object to introduce section 271AAD as mentioned in budget speech of Hon'ble FM and explanatory memorandum are mentioned first before proceeding to correlate the same with present text of section 271AAD as passed in Finance Act 2020.

Relevant extract of explanatory memorandum of Finance Bill 2020

*Penalty for fake invoice. In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act. Therefore, it is proposed to*

*introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also proposed to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed to include use or intention to use – (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or (b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or (c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist. This amendment will take effect from 1st April, 2020. [Clause 98]*

**Relevant extract of Hon'ble FM Budget speech of 2020**

6.8 To discourage taxpayers to manipulate their books of accounts by recording false entries including fake invoices to claim wrong input credit in GST, it is proposed to provide for penalty for these malpractices.

Hon'ble Apex Court in the case of K. P. Varghese v. Income Tax Officer, Ernakulam reported in 131 ITR 597 (1981) 4 SCC 173, while considering the

binding nature on the circulars issued by the Central Board of Direct Taxes on the department, has also observed that the Rule of construction by reference to contemporanea expositio is a well established rule for interpreting a statute by reference to exposition it has received from contemporary authorities, though it must give way where a language of the statute is plain and unambiguous. It is useful to refer to the observation made by the Court, which reads as under:

*"These two circulars of the Central Board of Direct Taxes are, as we shall presently point out, binding on the Tax Department in administering or executing the provision enacted in sub-section (2), but quite apart from their binding character, they are clearly in the nature of contemporanea expositio furnishing legitimate aid in the construction of sub-section (2). The rule of construction by reference to contemporanea expositio is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction (1940 Edn.) where it is stated in paragraph 219 that "administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive."*



More decisions where *K.P.Varghese* decision (*supra*) is recently followed and relied in various subsequent cases are enlisted here:

i) **Apex court decision in case of Sati Oil Udyog Held . (2015) 7 SCC 304.**

That where it had occasion to consider elaborately the provisions of Section 143(1-A), its object and validity. There was a challenge to the retrospectivity of the provisions of Section 143(1-A) as introduced by Finance Act, 1993. The Gauhati High Court had held that retrospective effect given to the amendment would be arbitrary and unreasonable. The appeal was filed by the Revenue in this Court in which appeal, this Court had occasion to examine the constitutional validity of the provisions. This Court in the above judgment held that object of Section 143(1-A) was the prevention of evasion of tax. In paragraph 9 of the judgment following has been laid down:

*"9. On a cursory reading of the provision, it is clear that the object of Section 143(1-A) is the prevention of evasion of tax. By the introduction of this provision, persons who have filed returns in which they have sought to evade the tax properly payable by them is meant to have a deterrent effect and a hefty amount of 20% as additional income tax is payable on the difference between what is declared in the return and what is assessed to tax."*

Notably relying on earlier judgment of Apex Court in *K.P. Varghese v. ITO, (1981) 4 SCC 173*, apex Court in the above case held that

provisions of Section 143(1-A) should be made to apply only to tax evaders

ii) Apex court decision in case of Rajasthan State electricity board decision of 19/03/2020 in CIVIL APPEAL NO.8590 of 2010 followed *Sati oil Udyog at length*

iii) Apex court decision in case of Southern Motors case of 18/01/2017 in CIVIL APPEAL NOS.10955-10971 OF 2016

*Held after reviewing entire law on interpretation that in Para 35*

*That "35. In Seaford Court Estates Ltd. vs. Asker [1949] 2 All ER 155 hallowed by time, outlining the duty of the Court to iron out the creases, it was enunciated, that whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise and even if it were, it is not possible to provide for them in terms free from all ambiguity, the caveat being that the English language is not an instrument of mathematical precision. It was held that in an eventuality where a Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that or have been guilty of some or other ambiguity, he ought to set to work on the constructive task of finding the intention of the Parliament and that he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise*

*to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give "force and life" to the intention of the legislature."*

iv) Further one may refer to illuminating discussion on heydon rule in Apex court decision in case of *Ms Era vs Govt of NCT of delhi* wherein it is held that:

*"24. It is thus clear on a reading of English, U.S., Australian and our own Supreme Court judgments that the 'Lakshman Rekha' has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon, where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon's case, which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid 1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon's case."*

While so holding the Hon'ble Supreme Court has emphasised that "Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual".

On Income Tax Act, in above apex court decision of *Ms Era (supra)*, one criticism which was made by the court is worth noting here:

*"13. The Indian Income Tax Act, 1960 has also been the subject matter of judicial criticism. Often, amendment follows upon amendment making the numbering and the meaning of its sections and sub-sections both bizarre and unintelligible. One such criticism by Hegde, J. in Commissioner of Income Tax v. Distributor (Baroda) (P) Ltd., (1972) 4 SCC 353, reads as follows:*

*"We have now to see what exactly in the meaning of the expression "in the case of a company whose business consists wholly or mainly in the dealing in or holding of investments" in the main Section 23-A and the expression "in the case of a company whose business consist wholly or mainly in the dealing in or holding of investments" in clause (i) of Explanation 2 to Section 23-A. The Act contains many mind-twisting formulas but Section 23-A along with some other sections takes the place of pride amongst them. Section 109 of the 1961 Income Tax Act which has taken the place of old Section 23-A of the Act is more understandable and less abstruse. But in these appeals we are left with Section 23-A of the Act." (Para 15)*

*14. All this reminds one of the old British ditty: "I'm the Parliament's draftsman, I compose the country's laws, And of half the litigation I'm undoubtedly the cause!".."*

v) Then on above rule was also recognized in *Baleshwar Bagarti v. Bhagirathi Dass* ILR 35 Cal. 701 where Mookerjee, J. stated the rule in these terms: It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. and this statement of the rule was quoted with approval by this Court in *Deshbandhu Gupta & Co. v. Delhi Stock Exchange Association Ltd.* [(1979) 4 SCC 565]. It is clear from these two circulars that the Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub-section (2) as limited to cases where the consideration for the transfer has been understated by the assessee and this must be regarded as a strong circumstance supporting the construction which we are placing on that sub-section."

vi) Further one may refer to decision in the case of *R & B Falcon (A) Pty Ltd. v. Commissioner of Income Tax* wherein interpretation given by the Central Board of Direct Taxes (CBDT) to a particular provision was held binding on the tax authorities. The Apex Court in *R&B Falcon* has explained this principle in the following manner: "33. CBDT has the requisite jurisdiction to interpret the provisions of the Income Tax Act. The interpretation of the CBDT being in the realm of executive construction, should ordinarily be

*held to be binding, save and except where it violates any provisions of law or is contrary to any judgment rendered by the courts. The reason for giving effect to such executive construction is not only same as contemporaneous which would come within the purview of the maxim contemporanea expositio, even in certain situation a representation made by an authority like Minister presenting the Bill before Parliament may also be found bound thereby. 34. Rules of executive construction in a situation of this nature may also be applied. Where a representation is made by the maker of legislation at the time of introduction of the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight. 35. In this regard, we may refer to the decision of the House of Lords in *R. (Westminster City Council) v. National Asylum Support Service* (2002) 1 WLR 2956: (2002) 4 All ER 654 (HL) and its interpretation of the decision in *Pepper v. Hart* 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL) on the question of "executive estoppel". In the former decision, Lord Steyn stated: (WLR p. 2959, para 6) "6. If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before*





a court.” 36. A similar interpretation was rendered by Lord Hope of Craighead in *Wilson v. First County Trust Ltd. (No. 2)* (2004) 1 AC 816: (2003) 3 WLR 568 : (2003) 4 All ER 97 (HL), wherein it was stated: (WLR p. 600, para 113) “113. ...As I understand it [*Pepper v. Hart* 1993 AC 593 : (1992) 3 WLR 1032 : (1993) 1 All ER 42 (HL)], it recognised a limited exception to the general rule that resort to Hansard was inadmissible. Its purpose is to prevent the executive seeking to place a meaning on words used in legislation which is different from that which ministers attributed to those words when promoting the legislation in Parliament.” 37. For a detailed analysis of the rule of executive estoppel useful reference may be to the article authored by Francis Bennion entitled “Executive Estoppel: *Pepper v. Hart* Revisited”, published in *Public Law*, Spring 2007, p. 1 which throws a new light on the subject-matter.”

From this it is clear that doctrine of contemporenea expositio (framer know better) and mischief based interpretation based on Heydon rule, is fairly well settled where further due consideration needs to be given to legislative intent targeted on tax evasion. **So applying these three interpretation rules to section 271AAD where legislative intent primarily targeted on mischief of fraudulent and manipulative practices in issuing fake invoice etc, in authors humble opinion said mischief and legislative intent must be appropriately fulfilled and coalesced while**

### **deciding providence and horizon of section 271AAD.**

3. Now it may be appropriate to peek into text of section 271AAD once we have undertaken exercise on applicable interpretation principles and relevance of legislative intent behind section 271AAD.

*‘271AAD. (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is— (i) a false entry; or (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.*

*(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.*

*Explanation.—For the purposes of this section, “false entry” includes use or intention to use— 50 (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or 55 (b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or 55 (c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.’.*

4. Now it may be apposite to refer to jurisdictional fact present in section 271AAD which must be first established by revenue to be existing in given case as sine qua non to invoke said provision with authority of law (apart from legislative intent/mischief ingredients). For relevance and importance of jurisdictional fact one may allude to Apex court verdict in case of *Raza Textile* 87 ITR 539 wherein it is observed that “No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can “decide either way”” (Same are observations of Madras high court decision in *Karti Chidambaram* order dated 2/11/2018 held that “169. If the jurisdictional fact exists, the authority can proceed further and exercise his power and take a decision in accordance with law. No Court or tribunal, statutory authority can assume jurisdiction, in respect of a matter which the statute does not confer on it. Error on jurisdictional fact, renders the order, ultra vires and bad.”)

So on careful glance to section 271AAD following striking jurisdictional facts may emerge therefrom:

- i) Firstly said provision requires valid and existing proceedings to be there wherefrom specified default in sec. 271AAD of false or omitted entry can be traced out;
- ii) Secondly it requires person to be there (refer section 2(31) in Act for definition of person)
- iii) Thirdly it requires finding in the proceedings by *Assessing Officer* (refer section 2(7A) for definition of assessing officer)
- iv) Fourthly it requires books of account maintained wherein default of false or omitted entry can be found; (refer section 2(12A) for definition of books of account)
- v) Fifthly it requires presence and existence of false and/or omitted entry as respectively defined and explained in section 271AAD dealt later in this paper;

Since discretion is given in section 271AAD to levy penalty as evident from phrase "may direct" which phrase on studied scrutiny of income tax act provisions would divulge that section 158BFA(2) dealing with penalty in block assessment search cases where also same phrase was used, on implication of same, various high courts (refer 323 ITR 626, 315 ITR 172, 336 ITR 8 etc) has held penalty to be directory and imposed only in deserving cases. Likewise section 271AAA/271AAB and section 271AAC also uses same phrase (may direct) on which various benches of ITAT in country has unanimously held penalty to be discretionary in nature and levied only in deserving cases (refer Vizag bench

ITAT in Marvel case 170 ITD 353) and its prodigee). So once it is abundantly clear that penalty in section 271AAD is discretionary and directory in nature, then what kind of show cause notice is to be issued in section 271AAD is cogitated next.

If in show cause notice to be issued u/s 274 of the Act before levy of penalty in section 271AAD by competent authority (AO) any of above ingredient is missing that is any jurisdictional fact is lacking, same may be retorted as without authority of law (refer article 265 of Indian constitution) and further it may be appropriately challenged in appeal proceedings u/s 246A or in writ proceedings under article 226 of Indian constitution depending upon the facts of the case. Requirement of valid show cause notice in context of section 271AAD is very important and reference may be drawn to Apex court decision in case of Oryx Fisheries vs UOI (29.10.2010) Held that "...31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-

*judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.* 32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.* 33. *The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."* Even precise charge of penalty in section 271AAD whether for false entry or omitted entry must be clearly spelt item wise in show cause notice to be issued in authors humble opinion and for this reference may be made to decisions of ITAT benches in section 271AAB penalty wherealso requirement of specific show cause notice is insisted in various orders and vague and mechanical notice in section 271AAD might not be good enough. **For this reference may be made to Apex court decision in amrit food case 13 SCC 419 (2005) where in last paragraph it is held by apex court that where a penalty provision contain multiple clauses, it is must that authority issuing show cause notice must specify clearly exact charge and limb in which penalty is proposed (false and/or omitted entry :item wise) to be levied sans which said notice shall be invalid.**

5. Since this penalty in section 271AAD starts with phrase "without prejudice to any other provisions of this Act"



as held by Apex court in cases of *Ajay canu vs UOI* (AIR 1988 SC 2027) ; *Shiv Kripal Singh vs V.V.Giri* (1970 2 SCC 567); *Eli Lily company* (312 ITR 225) it is stated that implication of said phrase means that given provision would apply in addition to other general provisions (here possible penalty of section 270A etc). Leading decision in this regard is of Privy council referred as *King emperor vs Sibnath Banerjee* AIR 1945 PC 156 to understand scope of phrase “without prejudice to....”.

6. Now in this portion attempt is made to discuss implication of word proceedings in section 271AAD for which reference may be made to Bombay high court decision in case of *D.B.S Financial Services Pvt Ltd* reported as 207 ITR 1077 wherein it is held that reference to word proceeding in section 133 of the Act means some existing proceedings and which can be further understood in light of **Apex court decision in case of Jai Lakshmi Rice Mills 379 ITR 521** wherein context of section 269SS (loan/deposit etc ) penalty it is laid down that same can emanate from valid satisfaction being made in assessment order only so applying same analogy here one may confidently submit that section 271AAD penalty can be initiated validly only through proper satisfaction/direction in assessment order only as authority competent to levy penalty is Assessing officer here also.

7. Now we may examine requirement of books of account having been maintained which is a positive fact and cant be assumed by AO to levy penalty in section 271AAD like if in a given case there are no books of account and penalty in other applicable section 271A for non maintenance of books

is levied then extant penalty of section 271AAD might not survive or exist on account of non existence of books of account which is important jurisdictional fact in section 271AAD. Even books of account in section 271AAD those books of account which are available at stage of examination in assessment proceedings should be subject matter of consideration to decide default of false or omitted entry and not books available at stage of search/survey proceedings in authors humble opinion as search and survey in section 132 and section 133A cant be called as qualifying proceedings for section 271AAD in authors humble opinion. It is an issue which is not free from doubt. Now in cases of assessee where there is no requirement in section 44AA rule 6F to maintain books of account and also there is no books maintained for income tax purposes, only on basis of books maintained for other legislation, in author humble opinion, penalty of section 271AAD might not be leviable. Word **maintained** after books of account is of crucial importance. On judicial interpretation of books of account one may allude to detailed observation of Bombay high court in *Sheraton Apparels* case and Madras high court in *Taj Browllers* cases from which relevant portion is reproduced next.

**From Bombay high court in Sheraton Apparel case reported in 256 ITR 20:**

“29. In different legislations the concept of books of account has been employed. One of such oldest legislation is the law of evidence. Section 34 refers to the words “entries in books of account”. Section 34 has been interpreted by various High Courts including the apex court. The Supreme Court in the

recent judgment delivered in the case of *Ishwar Dass Jain v. Sohan Lal*, has observed as under (headnote) :

“Under Section 34 sanctity is attached in the law of evidence to books of account if the books are indeed ‘account books’, i.e., in original if they show, on their face, that they are kept in the ‘regular course of business’.”

30. So, the accounts under Section 34 means accounts which are maintained in the regular course of business.

31. The income-tax legislation has been using the term “book” or “books of account” right from its inception. But, these terms are defined in the Act for the first time by the Finance Act, 2001, with effect from June 1, 2001. Section 2(12A) defines the said terms to mean : “(12A) ‘books or books of account’ includes ledgers, day-books, cash books, account books, and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device.”

32. Then above definition appears to have been framed by the Legislature keeping in view the development of computer technology. If the newly inserted definition of books of account inserted in the Income-tax Act is examined in contrast to the definition given under Section 34 of the Evidence Act, it will be clear that the stringent requirements of Section 34 are not to be found in the said definition. Obviously, for the simple reason that the purpose of both the legislations are different.

Therefore, when books of account are tendered for claiming the benefit of Explanation 5 to Section 271(1)



(c) of the Act, it must be shown to be a book, that book must be a book of account, and on the top of it that must be one maintained for the purposes of drawing the source of income under the Income-tax Act. These essential requirements must be carefully observed while implementing tax legislation in the country where secret and parallel accounts based on frauds and forgery are extremely common and responsibility of keeping and maintaining accounts for the purposes of the tax legislation is honoured in the breach rather than the observance."

From Madras high court in *Taj Browsers* case reported in 291 ITR 232 (in context of section 68 of income tax act where revenue treated P&L account /balance sheet as books of account) Held:

"...the Assessing Officer was of the view that the accounts of the assessee-firm are in the form of Profit and Loss Account and Balance Sheet and held that they are the books of account. One of the issues here is, whether the Profit and Loss Account and Balance Sheet are books of account or not.

6. In the judgment reported in 184 ITR 450 in the case of *S.Rajagopala Vaidyar Vs. Commissioner of Income-tax*, this Court has taken a view that Profit and Loss Account does not form part of the books of account and held as follows:

"We may point out that that is not the situation here, as it had not been disputed by the assessee right through that no account books at all had been maintained. The Supreme Court, in *CIT v. National Syndicate* [1961] 41 ITR 225, dealing with section 10(2)(vii) of the Indian Income-tax Act, 1922, laid

down that in order to claim deduction of the loss sustained under that provision, one of the essential conditions to be fulfilled was that the loss should have been brought into the books of the assessee and written off as provided by the first proviso to section 10(2)(vii) of the Indian Income-tax Act, 1922. At page 234, the Supreme Court has catalogued the four conditions required to be fulfilled and the fourth condition, according to the Supreme court, to be fulfilled is that in the books of account of the assessee, the loss should have been brought in and written off. It follows, therefore, that if this requirement is not fulfilled, the assessee is not entitled to the relief of allowance of the loss. We may now refer to the decision of this court in *P.Appavu Pillai v. CIT* [1965] 58 ITR 622. In that case, the Tribunal took the view that relief under section 10(2)(vii) of the Indian Income-tax Act, 1922, could be given only in cases where the assessee maintains regular books of accounts and the loss had been written off in the books and that as the assessee did not keep any accounts, the allowance was rightly refused. The court found that though there is no indication in section 10(2)(vii) of the Indian Income-tax Act, 1922, as to the particular type of account book which should be maintained by the assessee, if accounts are produced, in which the relevant entry with regard to the allowance appeared, that would be sufficient compliance with the first proviso to section 10(2)(vii) of the Indian Income-tax Act, 1922. In that case, the assessee produced before the assessing authority the daily collection and expenditure account and notwithstanding the absence of a day-book and a ledger, the

Income-tax Officer was satisfied that the obsolescence allowance claimed could be granted. But a contrary view was taken by the Appellate Assistant Commissioner and the Tribunal that the loss could be allowed only if such amount is actually written off in the books of the assessee and that books in that context would mean the books of account maintained by the assessee in the course of the business. However, the court took the view that though the accounts maintained by the assessee may be defective in that the entries therein do not lead to a correct assessment of the income profit and gains of the business, that has nothing whatever to do with the allowance that can be granted under section 10(2)(vii) of the Indian Income-tax Act, 1922, if such accounts are available in which the relevant entry with regard to the allowance appears, that would be sufficient compliance with the requirement of the proviso and in that view, it was held that the details in the accounts produced in that case would be sufficient to comply with the requirements of the first proviso to section 10(2)(vii) of the Indian Income-tax Act, 1922. We may, in this connection, point out that the argument of the Revenue in that case that the profit and loss account is the account which can be said to be a book of account was rejected and it was characterised as a statement representing the state of business as at the end of the accounting year with details culled from other books of account, which may be characterised as the primary books which a businessman generally maintains. In other words, according to that decision, a profit and loss account is not a book of account.



We are, therefore, of the view that merely by relying upon the profit and loss account, the assessee in this case cannot claim the benefit of allowance of loss sustained on the sale of the cars."

The word "books of account" is not defined during the relevant assessment year. Later, Section 2 (12A) was introduced in the Act defining "books or books of account" by the Finance Act, 2001 with effect from 01.06.2001 and the same reads as follows:

"(12A) "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;"

The above definition is inclusive definition and it includes not only ledgers, day- books, cash books, account-books and other books, but also the print-outs of data stored in a floppy disc, tape or any other form of electro-magnetic data storage device. P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition 2005, also defines "Books of account" as follows:

"Books in which merchants, businessmen, and traders generally keep their accounts. "Books of Accounts" mean such books of account as are usual in the business, and do not extend to "letters, cheques, and vouchers from which books of account can be made up"(Per CAVE, J., Re Winslow, 55 LJQB 238)"

"If the word 'account' is to be given wider meaning to include a record of financial transactions reckoned, a book containing a statement of monetary transaction would attract the definition

of 'book of account' under Section 34 of the Act. CBI v. V.C.Shukla, (1998) 3 SCC 410, para 23. [Indian Evidence Act (1 of 1872), S.34]"

"Company's books in which business transactions are recorded, often consisting of journals, ledgers and various other records of accounts. They are normally held to be legal documents and should indicate the financial position of the business at any time. (International Accounting; Business Term)"

So, the books of account is defined as any book which forms an integral part of system of book keeping employed in any particular business and consequently includes both the ledger and the books of original entry. The Profit and Loss Account of a trade is the statement wherein the various items of profit and revenue on the one hand and the losses and expenditure on the other hand, are collected and offset, the one class against the other, that is, in compiling such an account being - debit all the losses, credit all the gains. The resulting balance of this account represents the Net Profits or the Net Losses for the period under review. The object of a Profit and Loss Account is to ascertain the income of a business and by offsetting the expenses of earning that income, to ascertain the net increase (profit) or decrease (loss) in the traders' "net worth" for the period. Balance Sheet lists the assets and liabilities and equity accounts of the company. It is prepared 'as on' a particular day and the accounts reflect the balances that existed at the close of business on that day. By following the judgment of the Madras High Court cited supra and taking note of the definition of the

books or books of account in the Income-tax Act as well as in P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition 2005, and also the meaning of the Profit and Loss Account and Balance Sheet, we can safely conclude that the Profit and Loss Account and the Balance Sheet are not the books of account as contemplated under the provisions of the Act. The learned Standing Counsel for the Revenue has not placed any authority or any case law or any other material or evidence to show that the books of account includes Profit and Loss Account and Balance Sheet."

So on basis of above two detailed decisions of Madras and Bombay high courts in section 271AAD penalty one may plead that anything other proper books maintained in regular course by assessee himself for income tax act purposes would not be counted as books within meaning of section 271AAD in authors humble opinion.

8. Now we may turn to ambit of false entry in section 271AAD wherein emphasis on word FALSE is of primordial importance to which in authors opinion one may straightway refer to leading decision of Apex court in case of Commissioner of sale tax UP vs Sanjiv Fabric (10/09/20100 where entire conundrum of implication arising from phrase False in pari-materia provision of penalty in sale tax law (section 10,10A etc) is adumbrated with lucidity in following words, which in authors humble opinion should act as guide in section 271AAD penalty also:

"11. Therefore, what we are required to construe is whether the words "falsely represents" would cover a mere incorrect representation or would embrace only such representations

which have been made knowingly, wilfully and intentionally.

18. It is true that the object of Section 10(b) of the Act is to prevent any misuse of the registration certificate but the legislature has, in the said Section, used the expression "falsely represents" in contradistinction to "wrongly represents." Therefore, what we are required to construe is whether the words "falsely represents" would cover a mere incorrect representation or would embrace only such representations which are knowingly, wilfully and intentionally false.

19. According to the Black's Law Dictionary (6th Edition), the word "false" has two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident, or honestly after the exercise of reasonable care. A thing is called "false" when it is done, or made, with knowledge, actual or constructive, that it is untrue or illegal, or is said to be done falsely when the meaning is that the party is in fault for its error.

20. Likewise, P. Ramanatha Aiyar in Advance Law Lexicon (3rd Edition, 2005) explains the word "false" as:

"In the more important uses in jurisprudence the word implies something more than a mere untruth; it is an untruth coupled with a lying intent.....or an intent to deceive or to perpetrate some treachery or fraud. The true meaning of the term must, as in other instances, often be determined by the context'."

21. In Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore & Ors. 15, a similar question

fell for consideration of this Court. In that case, a penalty under Section 43 of the Madhya Pradesh (1980) 1 SCC 71 General Sales Tax Act, 1958 and Section 9(2) of the Act was imposed on the dealer on the ground that he had furnished false returns by not including the amount of freight in the taxable turnover disclosed in the returns. Allowing the appeal of the dealer, this Court had observed as under:

"What Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 requires is that the assessee should have filed a 'false' return and a return cannot be said to be 'false' unless there is an element of deliberateness in it. It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the Court may, in a given case, infer deliberations and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it would not be right to condemn the return as a 'false' return inviting imposition of penalty."

The Court finally held that it was elementary that Section 43 of the State Act which provided for imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the section cannot be invoked for imposing penalty. It was emphasised that if the view canvassed by the Revenue were to be accepted, the result would be that even if a dealer raises a bona fide contention that a particular item was not liable to be included in the taxable

turnover, he will have to show it as forming part of the taxable turnover in his return and pay taxes upon it on pain of being held liable for penalty in case his contention is ultimately found by the Court to be not acceptable. That surely could never have been the intention of the Legislature.

22. In view of the above, we are of the considered opinion that the use of the expression "falsely represents" is indicative of the fact that the offence under Section 10(b) of the Act comes into existence only where a dealer acts deliberately in defiance of law or is guilty of contumacious or dishonest conduct. Therefore, in proceedings for levy of penalty under Section 10A of the Act, burden would be on the revenue to prove the existence of circumstances constituting the said offence. Furthermore, it is evident from the heading of Section 10A of the Act that for breach of any provision of the Act, constituting an offence under Section 10 of the Act, ordinary remedy is prosecution which may entail a sentence of imprisonment and the penalty under Section 10A of the Act is only in lieu of prosecution. In light of the language employed in the Section and the nature of penalty contemplated therein, we find it difficult to hold that all types of omissions or commissions in the use of Form 'C' will be embraced in the expression "false representation". In our opinion, therefore, a finding of mens rea is a condition precedent for levying penalty under Section 10(b) read with Section 10A of the Act."

Why aforesaid dictum applies with more stronger force in section 271AAD, reasons thereof in authors opinion are:





- i) Use of phrase “intent” in explanation to section 271AAD defining false entry; (for meaning of word intent one may gainfully refer to Kerala high court in 240 ITR 539 wherein it is succinctly said that intent can be equated with object and objective so it may be required for revenue here to establish that deliberate purpose behind making of entry or omission of entry in section 271AAD to levy penalty therein)
- ii) Use of phrase “to evade tax liability” in omission of entry clause in section 271AAD(1);
- iii) Legislative intent, mischief and background behind section 271AAD
- iv) Penalty in section 271AAD is discretionary in nature;

So without the establishment of fact that tax payer/assessee concerned has deliberately/willfully/knowingly and intentionally made false entry or omitted the stated entry, in authors humble opinion penalty in section 271AAD might not pass legal muster.

9. Now three illustrative clauses mentioned for false entry in explanation defining false entry in section 271AAD it may be relevant to peek into three pigeonholes of said explanation. First pigeonhole focus on forged or falsified documents such as false invoice or false piece of documentary **evidence**; here taking a pause, it is ingeminated that required falsity and forged character of a document must be first conclusively established by revenue (as in section 271AAD primary burden/onus lies on revenue to establish its case). then in second pigeonhole of definition of false entry, **actual supply of goods/**

**services** vis a vis corresponding invoice is focussed (so here one can ask whether in a case where no 3rd party voucher is there for certain expenses debited/claimed in P&L account for good/services supply like in construction sector etc can it be inferred that it is false entry because of no actual supply of goods/services; in authors humble opinion, on mere absence of third party voucher in genuine cases where it is inherently difficult to obtain voucher/invoice etc given special circumstances, charge of no actual supply of goods/services to infer false entry in section 271AAD might not survive given legislative intent/mischief etc and absent any fraudulent/manipulative intent on part of assessee concerned). On last pigeonhole in definition of false entry, it is referred that where person does not **exist** in respect of invoice for supply of goods/services same would be false entry, where how to infer a person does not exist, is an important aspect where existence of a person may means its legal existence and also its actual existence. So exist word in explanation to section 271AAD, may be required to be interpreted in light of overall context of section 271AAD that is where a person is no where found existing then only inference of false entry (given other ingredients of false word and legislative intent present) may be drawn validly. Mere non response to enquiry notice u/s 133(6) might not establish factum of non existence of a person in authors humble opinion in context of section 271AAD draconian penalty. Non existence on which date (whether on date of concerned entry in books or on date when penalty in section 271AAD is launched in assessment order or at stage

of final penalty levy in section 271AAD) is again a legal quandary, to which in authors view, if on date when entry was made in books, the person is proved was existing by assessee concerned, but later not found for certain reasons beyond control of assessee, may help to plead favorable view given legislative intent/mischief and absent deliberate intent on assessee part.

10. Apropos omission of entry clause of penalty in section 271AAD(1), meaning of omission may be referred from Calcutta high court decision in 30 ITR 535 wherefrom one may argue that omission in section 271AAD requires deliberate/intentional/wilful/conscious omission and not which is inadvertent and accidental omission only like a mere punching/clerical error (refer SC in Pricewaterhouse case 348 ITR 306). This is more so because omission referred in section 271AAD is attached with **phrase to evade tax liability** which requires positive and clear evasive intent on part of concerned assessee. Further omission referred here is one which has **direct bearing to computation of total income and not any omission which is tax neutral in nature.**

11. Lastly most serious part of section 271AAD sub section 2 dealing with penalty levy **on any other person** who **has caused** first person as referred in sub section 1 (in whose books false or omitted entry are found) to make false entry or cause omission of entry, then penalty of amount of entry may be levied on said other person also. Here implication of **word cause to make/omit** must be understood in contextual sense that is unless revenue establish with reasonable certainty that stated other person has **caused that entry**

to be made (which is false entry) or has caused to omit said entry (which is omitted entry), penalty in section 271AAD(2) might not kick start as proximate cause and effect relationship is to be firstly established in section 271AAD(2) by revenue given its caustic/strident nature/implication. Even when it comes to initiation of second tier/layer penalty in section 271AAD(2) in consequence to first layer/tier penalty of section 271AAD(1), it seems that first main penalty of section 271AAD(1) needs to be *finally* concluded adversely then only any possible case of penalty of section 271AAD(2) might be initiated, qua other person, in authors humble opinion. Competent authority to levy final penalty on other person in section 271AAD(2), although debatable from both sides, in authors humble

opinion, looks to be concerned and jurisdictional AO of such other person in section 2(7A) of the Act and not AO of main person in section 271AAD(1) although valid reference and trigger to initiate penalty in section 271AAD(2) has to mandatorily come from AO of main person in section 271AAD(1) only. On all this material, in authors view, said other person when show caused in section 271AAD(2) would be mandatorily required to be confronted/ supplied with all reference material relied to initiate said penalty in section 271AAD(2) sans which entire penalty in sub

section 2 can be argued to be jurisdictionally defective.

#### 12. Closing words

*I would just refer to : Late Hon' ble M r. Nani P alkhiwala who in the concluding paragraph of his Preface to the eighth edition of his monumental work S.R.JOSHI*

*56 of 61 WP1877-2013-.sxw "The Law and Practice of Income Tax" observed:- "Every Government has a right to levy taxes. But no Government has the right, in the process of extracting tax, to cause misery and harassment to the taxpayer and the gnawing feeling that he is made the victim of palpable injustice"*



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In this connection, it is hereby informed that the Bengaluru Branch is not responsible for any kind of help extended to him and it will be the sole responsibility of such person who deals with him in any manner.

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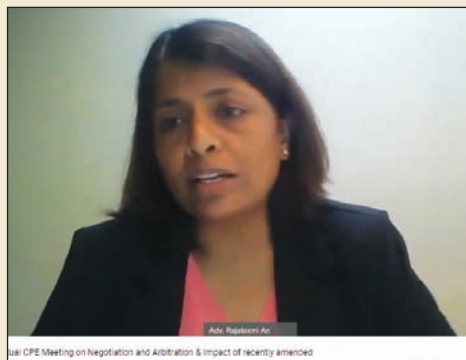




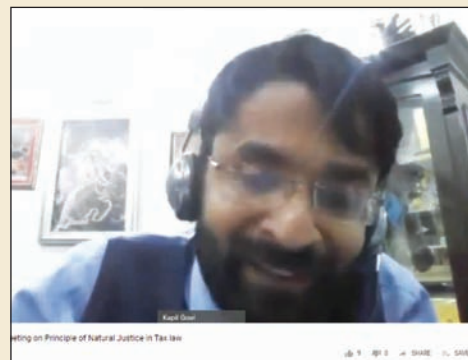
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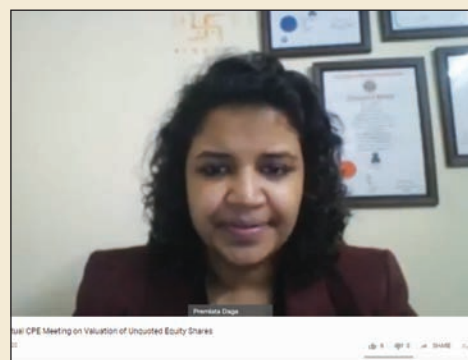
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CA. Premalata Daga, Nagpur  
**Valuation of Unquoted Equity Shares**



CA. Raveendra S Kore, Chairman, Bengaluru Branch of SIRC of ICAI  
hounoured during KSCAA AGM held on 27<sup>th</sup> August 2020



Congratulating to Newly elected KSCAA President - CA. Kumar S Jigajinni &  
Executive Committee team for the year 2020-21





# 74<sup>th</sup> Independence Day Celebration on 15<sup>th</sup> August 2020, Bengaluru Branch of SIRC of ICAI at Vasanthnagar



Flag Hoisting



Felicitation to Chief Guest CA. R.E. Balasubramanyam, Senior Member of Bengaluru Branch



Chairman welcoming Chief Guest and CA. Geetha A.B.



Welcome Address By  
CA. Raveendra S Kore, Chairman,  
Bengaluru Branch of SIRC of ICAI

Address by Chief Guest  
CA. R.E. Balasubramanyam,  
Senior Member of Bengaluru Branch



Staff Members with Chief Guest and Chairman



Members and Students with Chief Guest and Chairman



## JNANA DASOHA VIRTUAL CPE MEETINGS - MEMBERS PROGRAMMES



CA. Naveen Khariwal. G  
Penalty under Sec. 271 AAD  
& New Form 26AS



CA. Prashanth G.S  
Legal Issues in Tax Audit



CA. Deepak Chopra  
Issues & Practical aspects in Tax Audit

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