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Chairman's desk:

Dear All,

Happy New Year

The year 2021 has now arrived giving hopes to all of us and to the whole world on vaccine against covid which is still continuing unabated. Let's hope that covid vaccine will be roled out soon in our country and will usher in a Covid-mukth Bharath soon, where everyone will be able to mingle with people as freely as they were prior to covid. Let the economy restart with full swing in 2021 itself.

The profession of CA is undergoing lots of introspection as to its future positioning in the country as well as the world at large. Recently I happened to read an article written by the present Chairman of NFRA which was supposed to be his speech at the inauguration of a conference held by WIRC of ICAI, for which he could not participate. However, the proposed speech was placed in the official website of NFRA.

In that speech, he has stated that auditors of today and future cannot take refuge in the argument that "we are only watchdogs and not blood hounds". This decision in the Kingston Cotton Mills case which was decided more than a century ago is outdated and has lost its relevance to the expected level of audit today.



The auditors are expected to unearth fraud since in all cases where fraud has occurred, they were entirely due to non-application of basic audit procedures – like getting confirmation of bank balances directly from the concerned banks, fund diversion to sister concerns (which are now grouped under related party transactions), auditor dependent on fees received from non-audit servicers (thereby sacrificing his independence), not scrutinizing the Ledger Accounts properly, etc. etc. He is of the view that, just by following the Standards of Auditing [SAs] both in letter and spirit, the auditors can unearth frauds happening in an organisation.

The future of the profession largely depends on how the expectation gap between the stakeholders and the auditors can be reduced. I implore upon you to learn and understand all the SAs our Institute has so far issued and put them into practical application and thereby enhance the quality of audit.

Regards,
Mahadevan

I. Internal Audit – Reconciliations: [Continued from previous issue]

(b) Supplier Reconciliation :

All major suppliers accounts shall be scrutinized and reconciled by the Internal Audit Team. Ledger accounts of the respective supplier shall be collected and cross checked with the books of account of the client – transaction wise and not merely on the closing balances. It is very important to verify each transaction in the supplier account – purchases, payments, debit notes, etc. with the books of account. Entry to Entry, need to cross match with both the books of accounts. In case of any differences / omissions observed, the same should be reported in the Internal Audit Report and steps should be suggested to reconcile such differences and reconciliation entries should also be provided

Internal Audit Team can also go for direct confirmation by visiting the supplier directly. This will help the team to identify whether the suppliers are real and that there are no bogus entries created in books of accounts. This may be done mainly for service suppliers like, repairs and maintenance, etc., to see if the expenses booked are real and the payments effected in this regard are genuine. Lots of manipulation are found in these areas and cash is wiped out by the personnel, by creating bogus bills and suppliers. Hence it's one of the important area of the Internal Audit Team to cross check the existence and genuinity of these suppliers, through direct confirmation and help the management to find whether any fraud / manipulation are being carried out in the organization.

(C) Debtor's Reconciliation :

Like suppliers, all major debtor's accounts also to be reconciled by the Internal Audit Team. All sales, sales returns, receipts and other credit notes to be cross verified with the ledger account of respective debtors. It is very essential to verify each transaction of debtor's account with the account statement of respective debtor's, since there are chances of booking bogus sales at the month end and reversing the same in the next month beginning to achieve the sales targets and thereby the sales incentives.

Also the credit notes and the receipts accounted in the debtor's ledger to be cross checked, since there are chances of issuing credit notes to the debtors to set off their outstanding and there by manipulating the collection received from debtors.

Similarly direct visit to debtor's place is also necessary, in order to verify the genuinity of such debtors and that they are in no way related to any staff or sales personnel of the organization. Just like suppliers, direct confirmations from large debtors should also be called for and checked.

The veracity of quantitative and value wise schemes to be checked with the ledgers to ensure that the same is disbursed, as per the circulars and to the eligible debtors only.

Any variances / anomalies observed in the reconciliation of accounts of both the suppliers / debtor's to be reported immediately to the management, since it has a direct impact on the revenue leakage and internal control of the organization. Hence, 'Reconciliation' of accounts whether banks, debtors or suppliers plays a vital role in the Internal Audit verification and any omissions from the Internal Audit Team will seriously affect the future of the organization. So the same should be reconciled with utmost care and not be considered or done as a clerical job of matching the figures in the account statement of both the parties.

Srikala Renjith

II. TAXATION :

PENALTY FOR FALSE ENTRY, etc. IN BOOKS OF ACCOUNT : Sec. 271AAD :

This provision has been explained in an article in our First Issue. Since this has far reaching implications, the same has once again explained in a more detailed manner.

The Finance Act, 2020 inserted a new section [271AAD] in the Income-tax Act, 1961 with effect from **01.04.2020**. This section has got **far reaching consequences** as far as the assessee are concerned and one has to go through this section in as comprehensive and detailed manner as possible.

Let's start with what the section says :

"Sec : 271AAD : Penalty for false entry etc. in books of account" :-

(1) *Without prejudice to any other provisions of this Act, if during any proceedings 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 Subsection (1), the Assessing Officer may direct that any other person, who causes the person referred to in subsection (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 –

(a) *forged or falsified documents such as a false invoice or, in general, a false pieces 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 does not exist.*

We have to analyse the provisions of this section in as detailed manner as possible. The analysis is done as under :

1. Effective Date of Application :

Section 1 (2) of the Finance Act, 2020 provides that :

"(2) Save as otherwise provided in this Act –

(a) Sections 2 to 104 shall come into force on the 1st day of April, 2020;

(b) Sections 116 to 129 and section 132 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

Section 271AAD is inserted by Sec. 100 of the Finance Act, 2020 and accordingly will be construed as to be effective from the **1st day of April, 2020** and is applicable for assessment year 2020-21 and subsequent assessment years.

But, the confusion is Assessment Year. Whether it is 2020-21 or 2021-22. If it is assessment year 2020-21, then any false entry or omission entry in the books of account for the financial 2019-20 will also be considered. However, if it is assessment year 2021-22, then, false entry or omission entry in the books of account during the financial year 2020-21 will be considered.

Since, this provision was inserted in the Finance Act, 2020 to be effective from 1.4.2020, it can be safely intended that this provision will apply from assessment year 2021-22 and subsequent years only.

Varied interpretations can be made regarding from which assessment year this provision can be made applicable, as we will see while analyzing the provisions of this section in detail.

2. Without prejudice to any other provisions of this Act

Coming to the provisions of this Act, it may be seen that the section starts with the words.

“Without prejudice to any other provisions of this Act”

which means, as we all know, this penalty can be levied along with penalties or taxes that can be levied under any other provisions of this Act.

For eg: any false entry or omission of an entry in the books of account can be considered under reporting or misreporting of income and penalty can be levied u/s 270A in addition to Taxes due on such under reported or misreported income.

Similarly, the same amount can be taxed u/s 115BE by including the amount u/s 68, 69, 69A to 69B and also penalizing u/s 271AAC.

With the result that the assessee ends up by paying nearly 200% of the aggregate amount of false entry or omission of entry detected by the Assessing Officer.

There is a principle of law which states that a person shall not be punished for the same offence more than once. This is called **Doctrine of Double Jeopardy**. But, it is learnt that this is applicable in criminal proceedings only. On going through various case laws it is observed that this doctrine of double jeopardy doesn't apply to income-tax proceedings.

Which means the Assessing officer is well within his rights to levy penalty u/s 271AAD and also tax and penalty under other Sections of the Income-tax Act towards the same amount detected. One has to see whether there is scope for any further litigation in this regard.

3. During any proceedings under this Act :

This section goes on to state that :

“if during any proceedings under this Act”

There are different types of proceedings under the Act, like assessment proceedings, TDS proceedings, appeal proceedings, survey, search proceedings, etc.

If the Assessing Officer is in charge of the proceedings, he can initiate penalty proceedings or he can direct the concerned Assessing Officer to initiate action.

It may also be noted that the Assessing Officer can direct **any other person** also to pay by way of penalty the same amount, if he finds during the assessment proceedings that such other person also was involved directly or indirectly in the fake entry or omission of an entry in the books of account of the assessee.

4. It is found that in the books of account maintained by any person :

In order to levy penalty, the Assessing Officer should detect false entry or omission of an entry, **in the books of account maintained by any person**. Hence, it can be safely assumed that maintenance of books of account is a pre-condition for levy of penalty u/s 271AAD.

Sec. 2 (12A) of the Income-tax Act, 1961 defines what constitute “books or books of account”. It states as follows :

“Sec. 2 (12A) : “book or books of account” includes ledger, 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.”

There are situations where one is required by law to maintain books account, say Sec. 44AA of the Income-tax act, 1961, but the assessee fails to do that and the assessment is completed based on other records made available. Under such circumstances, the assessing officer cannot levy penalty under this Section since maintenance of books of account is a mandatory condition for levy of penalty. The same reasoning applies in cases where the assessee opts for presumptive taxation.

Similarly, there can be a situation where **fake invoices** were found but not entered in the books of account maintained by the assessee. In this case also, since the assessee has not

entered the fake invoices in his books of account, no penalty shall be leviable. But, there is a risk that the assessing officer will try to make out a case that the assessee had intention to use the fake invoices by entering in his books of account and straddle the assessee with levy of penalty u/s 271AAD.

The section, however, is wide enough to charge any person with penalty if a false entry or omission of an entry is detected in the books of account of any person. It means that, if such an entry or omission is detected in the books of account of a person (say, the assessee) and if he also finds that any other person, like the Accountant (full-time, part-time or outsourced) or the Auditor who has colluded with the assessee in that false entry or omission, he can also be charged with penalty, irrespective of whether he maintain books of account or not.

5. "False Entry" :

What constitute 'false entry', has been given by way of "Explanation' in the said section. The Explanation says as follows :

"false entry" includes 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) invoices in respect of supply or receipt of goods or services or both to or from a person who does not exist.

Clause (a) talks about forged or falsified documents which to include invoices as well as false piece of evidence. This has got wide ramifications like loans, gifts, addition to capital, creditors and even expenses which cannot be proved to the satisfaction of the Assessing Officer are likely to be interpreted as 'false entry' under this clause.

Clause (b) is regarding fake GST invoices against which GST Department has taken a very serious note of and actions are being taken. Data obtained from GST Department will be used by the Assessing Officer to unearth false entry/entries in the books of account maintained by the assessee.

Clause (c) regarding supply of goods or services or both to or from a person who does not exist. The Assessing Officer normally checks the accounts of the assessee after a period of one or two years, by which time the other person may not be in existence (business closed or left India for employment abroad or even death). In such circumstances, the assessee will have to prove with documentary evidences that the said other person, in fact, existed at the time the transaction took place. Otherwise, it will be considered as 'false entry' and penalty will be levied.

6. Whether penalty u/s 271AAD is discretionary or mandatory :

The section says, *"the Assessing Officer may direct that"*

This is similar to the wordings used in Section 270A wherein it is discretionary on the part of the Assessing Officer whether to levy or not. However, the Assessing Officer should exercise this discretion judiciously and taking into consideration the full facts based on documentary evidences and also related circumstances.

We have seen that, wherever there has been additions to the income due to whatever may be the reason during assessment proceedings, the Assessing Officers have invariably issued penalty notices u/s 270A towards under-reporting/mis-reporting of income. The discretionary powers are rarely exercised. The same thing can happen in the case of levy of penalty u/s 271AAD also.

7. Omission of any entry – what it constitutes :

Sec. 271AAD (1) (ii) states :

"an omission of any entry which is relevant for computation of total income of such person, to evade tax liability".

It may be noted that the word “omission” of any entry will cover every situation where mismatch is observed, like unexplained or unrecorded investments, expenditures, sales, etc. etc. Even if such omissions were unintentional on the part of the assessee, there is every likelihood that such omissions will be considered as intentional on the part of the assessee to evade tax liability. Mis-match in Form No. 26AS, GST Returns, SFT transactions, Bank statements, Creditors statements, etc. Every such statement can become a ground to charge the assessee with ‘omission’ to evade tax. It is a highly fertile ground for large litigations that are likely to happen in future.

8. Any other person covered u/s 271AAD (2) :

This section covers all other persons who has caused the assessee to make a false entry or an omission of an entry in his books of account. Whoever has helped the assessee in making such entries are also liable for penalty under this section. They include person like middlemen, the supplier, the receipt of goods or services or both, the Accountants (full-time, part-time, or outsourced person) and even auditors.

This also seems to be a very dangerous trend in implicating all those who are part of this false entry or omission of an entry. The Assessing Officer has got every wide powers in this regard. He can direct every such other person or persons to pay penalty under this section. So, this sub-section has got multitude of consequences affecting all persons involved in the chain. Each person in the chain will have to prove his innocence. How it can be done is a matter of concern. This is a grey area to be explored. Everyone in the chain will be considered as a ‘criminal’ till innocence is proved.

9. Quantum of Penalty :

Once the Assessing Officer has used his discretion to levy penalty under Section 271AAD, then the quantum specified under this section has to be levied. There is no discretionary minimum and maximum. The penalty to be levied is “a sum equal to the aggregate amount of such false or omitted entry”.

If there is an omission of a sales entry of Rs. 10 lakhs, on comparison with GST Returns, the penalty will be Rs. 10 lakhs. If the related purchase entry is also omitted, there the aggregate amount of such purchases will also be levied as penalty. Same is the case with other entries also.

10. No Reasonable Cause :

Section 273B provides a beneficial provision to the assessee in that “if the assessee proves that there was reasonable cause for the said failure, no penalty shall be impossible on the person or the assessee.” **But, the said benefit is not available to the assessee for default u/s 271AAD.** So, Section 273B cannot be invoked by the assessee. May be due to the reason that the penalty u/s 271AAD is levied for a false entry to evade tax and there cannot be a reasonable cause for an illegality.

11. Appealability :

The order levying penalty u/s 271AAD is appealable before the Commissioner (Appeals) u/s 246A.

12. Brief Summary :

1. Power to levy penalty u/s 271AAD vests with the Assessing Officer at his discretion which is to be exercised judiciously and taking into consideration all the facts, evidences and also circumstances.
2. Penalty is leviable on the assessee for any false entry or omission of an entry in the books of account maintained by him.
3. The quantum of penalty is the aggregate amount representing false / omitted entries.
4. Penalty can also be levied on any other person who has caused facilitating such false/omitted entries, resulting in the same amount of penalty.
5. “No reasonable cause” is not applicable for this section.
6. The penalty order under this section is appealable.

III. GST Case Laws :

1. Ushabala Chits (P) Ltd.

Classification of Services :

Facts :

Interest / Penalty collected for delay in payment of monthly subscription by the members – whether constitute a ‘supply’ under GST.

Held :

It is classifiable under Sl. No. 15 of Heading 9971 Financial and related services chargeable to GST @ 12%.

2. Calculation of threshold limit :

The AAR, Gujarat Bench has held the following an application filed by Shree SawaiManoharlalRathi :

- 1) Whether interest received from PPF, Personal Loans, Advances to family / friends and Savings bank A/c, etc. would be considered for the purpose of calculating the threshold limit of Rs. 20 lakhs for registration under GST Law?

Ans : Yes. All the above types of interests received will have to be considered.

IV News :

GST Assessee with turnover upto Rs. 5 Cr. will need to file only 8 Returns in a year :

With effect from **1st January, 2021** GST assesses will have to file just **4** returns in GSTR-3B and **4** returns in GSTR-1 instead of 12 returns each. The scheme applies to those assessee whose aggregate annual turnover is upto Rs. 5 Cr. The returns are to be filed on a quarterly basis.

Although returns are to be filed on quarterly basis, the assessee can upload invoices on a monthly basis to enable the assesses to take credit for ITC.

[Source : Business Line : 08.12.2020]

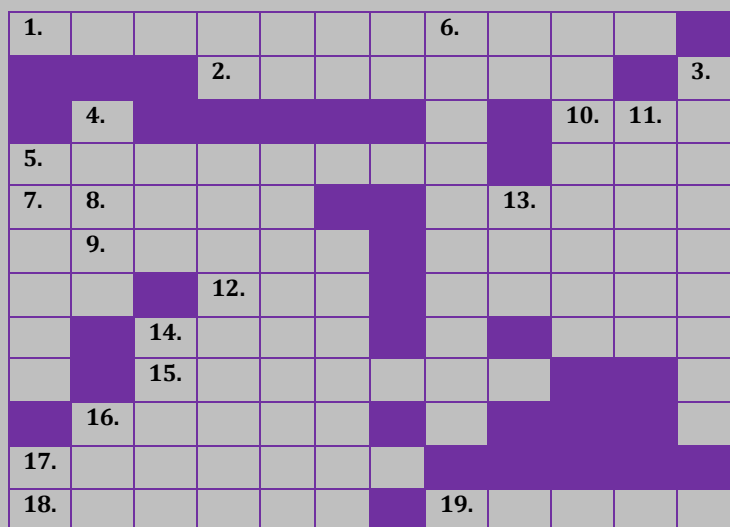
V. Save the Dates – JANUARY 2021

STATUTORY DATES	
INCOME TAX	
07/01/2021	Due date for E-payment of TDS deducted for November, 2020
10/01/2021	Return of income for the assessment year 2020-21(FY 19-20) for all assessee other than :
	(a) corporate-assessee or
	(b) non-corporate assessee (whose books of account are required to be audited) or
	(c) Partner of a firm whose accounts are required to be audited or
15/01/2021	(d) An assessee who is required to furnish a report under section 92E.
	Due date for furnishing of various audit reports including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21.
15/01/2021	Quarterly statement of TCS for the quarter ending December 31, 2020
31/01/2021	Quarterly statement of TDS for the quarter ending December 31, 2020
GST	
Due Date	Statement/Return/Certificates to be issued/Furnished
11/01/2021	Due date of filing GSTR 1 for the month of December 2020
13/01/2021	Due date of filing Quarterly return GSTR 1 for the period of October 2020 to December 2020
18/01/2021	CMP 08 filing for the period of October to December 2020
20/01/2021	Taxpayers having an aggregate turnover of More than Rs. 5 Crores (> Rs 5 Cr) or opted to file Monthly Return of GSTR 3B (December2020)
22/01/2021	Taxpayers having an aggregate turnover of upto 5 Crores or opted to file Monthly Return of GSTR 3B (December 2020)

VI. TEST YOUR SKILL :

1. Every person who is subject to Tax Audit under Section 44AB shall obtain a statement of particulars in form no.....on or before due date of filing return under Section 139(1) of the Act.
 - a. 3CEB
 - b. 3CEC
 - c. 3CD
 - d. None of the above
2. Advance money forfeited by the assessee, in the course of negotiation on transfer of capital asset, is :
 - a. Taxable in the year of forfeiture under the head "Income from Other Sources"
 - b. not taxable at all.
 - c. to be reduced while computing capital gain on transfer of capital asset
 - d. Considered as casual income and liable to tax@ 30%.
3. The consideration received by a shareholder on buy-back of shares by a company is treated as
 - a. Exempt
 - b. Income from other sources
 - c. Capital Gains
 - d. Business income
4. As per Sec 115JB, the tax rate @ ___as per MAT provision
 - a. 30 %
 - b. 15%
 - c. 40 %
 - d. 25 %
5. As per explanation 1 of section 115JB(2) , for the purposes of computing book profit, the profit shall be increased by the following items if debited to statement of profit and loss account.
 - a. Income-tax paid or payable
 - b. Amount carried to any reserves
 - c. Amounts set aside to provisions for meeting liabilities other than ascertained liabilities
 - d. All of the above
6. Which of the following sums are allowed as deduction only on the basis of actual payment within the time limits specified in section 43B.
 - a. Any sum payable by the assessee to the Indian Railways for use of Railway assets
 - b. Interest on any loan or advance from a scheduled bank or co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank on actual payment basis
 - c. Any sum paid by the assessee as an employer in lieu of earned leave of his employee.
 - d. All the above
7. Section 40(b) provides remuneration paid to a working partner, authorised by a partnership deed and falling after the date of the deed in excess of the on first Rs.3,00,000 of book profit or in case of loss the quantum of deduction shall be _____
 - a. Rs.1,50,000
 - b. 90% of book profit
 - c. Either A or B which is higher
 - d. Either A or B which is lower
8. In relation to a capital asset being goodwill of a business or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, the cost of improvement shall be taken to be_____
 - a. difference between fair market value and bookvalue
 - b. Fair market value
 - c. Nil
 - d. None of the above
9. Long-term capital gains arising from the transfer of a capital asset, being unlisted securities or shares of a company not being a company in which public are substantially interested, would be calculated at the rate of _____-% on the capital gains in respect of such asset without giving effect to the indexation provision under second proviso to section 48 and currency fluctuation under first proviso to section 48.
 - a. 10
 - b. 15c
 - c. 20
 - d. 30
10. A deduction of a sum equal to 331/3 percent of such income or _____, whichever is less, is allowable in case of income in the nature of family pension
 - a. Rs 15,000
 - b. 10,500
 - c. Rs 7,000
 - d. Rs 7,500
11. As per PMLA Act Every reporting entity u/s 12 (Banking Company, Financial institution, Intermediary or a person carrying on a designated business or profession) is required to maintain records after the end of an relationship with a client for
 - a. 1 year
 - b. 3years
 - c. 5years
 - d. 10years
12. Section 12 of the Prevention of Money Laundering Act, 2002 lays down following obligations on banking companies, financial institutions and intermediaries
 - a. Maintain a record of all transactions
 - b. Verify and maintain the records of the identity of all its clients
 - c. Furnish information of transactions referred to in clause (a) to the Director
 - d. Allthe above

VII. CROSSWORD PUZZLE



ACROSS

- Smart phones will be taxed at under GST.
- On receipt of the notice from the Assessing officer to pay tax, if the taxpayer's estimate is lower than the estimate of the Assessing officer, then he has to send intimation in form No.28A to the Assessing officer.
- Investor buying a unit from the scheme is called a transaction.
- Section 194I under Income Tax Act is related to deduction of tax from
- Is the first state to ratify GST Bill.
- The transfer of old movable assets will be tax-free if it is used for Years.
- Banks are regulated by RBI. Mutual funds are regulated by?
- Which state first implement VAT in India?
- Country has the maximum GST tax slab.
- GST formation based on Article number 279A

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- For an employee in receipt of expenditure allowance for his 3 children, the maximum annual allowance exempt under section 10(14) is Rs.7200
- The death Cum retirement gratuity received by the government employee or employee of local authority is exempted.

Downward

- Of 10 percent is payable by an individual where the total income exceeds 10 lakhs.
- area means any area which is outside two kilometers from the local limits of the jurisdiction of a municipality or a cantonment board, if the population of municipality is more than 10,000 but not exceeding 1,00,000.
- SIP is a method of regular
- As per section 52 of the companies act, amount collected as premium on securities cannot be utilized for purchase of asset.
- Pension received by a widow of a member of the armed forces where the death of the member has occurred in the course of the operational duties, is totally exempted under section 10(19)
- On the recommendation of committee, VAT was levied in India.
- Around hundred countries adopted GST.

AmruthaThilakan- Article
