



SURAT BRANCH OF WIRC OF ICAI

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Celebration of 51st year of the

E - Newsletter

SURAT BRANCH

March 2022

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From Chairman's Desk:

Respected seniors and my professional colleagues,

This being my first communication with you, I would like to express my sincere gratitude towards all the members of Surat Branch for giving me valuable opportunity to serve our noble profession. I feel extremely privileged to take over the charge as 51st Chairman of our esteemed Surat Branch of WIRC of ICAI.

At first instance, I acknowledge the efforts and contributions made by all the leaders and members of Surat Branch who actively contributed and have made untiring efforts to convert the dream of our own well equipped Branch premises into a reality.

With this one shloka, I would like to present my Vision and Mission i.e. "UNITED WE CAN".

" ऐक्यं बलं समाजस्या तदभावे स दुर्बलः ।
तस्मात् ऐक्यं प्रशंसन्ति दृढं राष्ट्र हितैषिणः ॥ "

Unity is the strength of any society and it (society) is weak without it.
Hence those who wish the good of the nation strongly praise unity.

This elaborates to our theme of the year 2022-23 as:



Let's celebrate our 51st year in vibrant way with a shared Vision and Mission to enhance the image of Surat Branch. I urge all to give your best professional capabilities in various fields so as to achieve above goals. Looking forward for your active participation and suggestions for the betterment of our profession.

Kindly reach out to us on official Branch:-

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Best wishes and regards

CA. Nikesh Kothari
Chairman



The Institute of Chartered Accountants of India

Members of Twenty-Fifth Council and ICAI Secretary [as on 12th February 2022]



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*Late CA. Sunil Patodia, Central Council Member (12.02.22-18.02.22)

Team WIRC of ICAI Term 2022-2025



- 1st Row (L to R)** CA. Ketan Saiya, Chairman - (WICASA), CA. Shweta Jain, Secretary - WIRC of ICAI, CA. Murtuza Kachwala, Chairman - WIRC of ICAI, CA. Yashwant Kasar, Vice-Chairman - WIRC of ICAI, CA. Piyush Chandak, Treasurer - WIRC of ICAI,
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TEAM SURAT (2022 - 2025)



(L to R) CA. Preetesh Shah, CA. Joni Jain, CA. Ashwin Bhauwala, CA. Dushyant Vithlani, CA. Nikesh Kothari, CA. Arun Narang, CA. Shailesh Lakhankiya, CA. Manthan Chawat, CA. Chimpu Lapsiwala

Theme for the Year 2022 - 2023

United We
Create
Achieve
Nurture

United We Create



A Favourable, Positive, Friendly and Healthy environment amongst the members of Surat Branch.

A strong network between leaders who will lead e pave path for young Chartered Accountants to excel in professional responsibilities and provide various ways to reach at National and at International Forums.

A unique platform where Associate and Fellow Chartered Accountants can Connect, Interact and communicate with each other and explore themselves.

United We Achieve



Trust of the members of Surat Branch who continuously work for betterment of our profession

Healthy network of our Surat Branch at various forum of Government, semi-government agencies and other association.

Amicable environment for student in pursuing their study as well their practical training.

United We Nurture



The members by providing a knowledge bank platform with which they can create plethora of opportunities for themselves.

The aspirant members, who are future of our profession can carry the profession to newer heights and achieve milestones.

To join the hand, Grow together, Shine together, Enlighten together and Succeed together.



Important Due Dates for the month of March

Act	Compliance	Due Date for That
Guj RERA	In case of Promoter : Quarterly Return for Project to be filled with 7 days from the end of the Quarter allocated by RERA Authority	07th March 2022
Income Tax	Tax Deducted/Collected (TDS / TCS) during the month of February-22 to be deposited	07th March 2022
Income Tax	Filing of Income Tax return who covered under Tax Audit u/s 44AB for A.Y. 2021-22	15th March 2022
GST	GSTR-7 for the month of February-22 for persons required to deduct TDS under GST	10th March 2022
GST	GSTR-8 for the month of February-22 for e-commerce operator required to collect TCS under GST	10th March 2022
GST	GSTR-1 for the month of February-22	11th March 2022
GST	Filing of Invoice Furnishing Facility (IFF) for February-22 for taxpayers who opted for Quarterly Return Monthly Payment (QRMP) option	13th March 2022
GST	GSTR-6 for the month of February-22 for Input Service Distributor (ISD)	13th March 2022
GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of February-22	20th March 2022
GST	Payment of GST & Filing of GSTR-3B for the month of February-22 for monthly taxpayers	20th March 2022
GST	Payment of GST in form GST PMT-06 for taxpayers who opted for Quarterly Return Monthly Payment (QRMP) option for the month of February-22	25th March 2022
MCA	Extended due date for filing Form AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL for the year 2020-2021	15th March 2022
MCA	Extended due date for filing Form MGT-7 & MGT-7A for the year 2020-2021	31st March 2022
PF/ESIC	Payment of PF / ESIC for the month of February-22	15th March 2022



Assessment Under Income-Tax Act

Dear friends and members, with this article series I am try to discuss assessment under Income-tax Act, with hope that it may helpful to better understand and interpret. Your views and suggestions are highly appreciated.

1) Assessment

What is assessment:

As per Cambridge dictionary, assessment means- “the act of judging or deciding the amount, value, quality, or importance of something, or the judgment or decision that is made” and tax assessment means- “the process of calculating how much tax someone must pay, or the amount that must be paid”.

As per Webster dictionary assessment means- “the action or an instance of making a judgment about something, the act of assessing something”

In reference to tax assessment “an amount that a person is officially required to pay especially as a tax”.

Is word 'assessment' is specifically defined in Income Tax Act?

Section 2(8) defines “Assessment” include reassessment. Section 2(7) defines word “Assesse” and, section 2(7A) defines “Assessing Officer”. That means there is no specific definition of word assessment in Income Tax Act.

Word assessment are come into table of many courts in many cases from time to time. Hon. Supreme court in case of Addl.ITO v E.Alfred 44 ITR 442 (SC) says that “The word 'assessment' is bears different meanings, and in one sense it comprehends the entire process of computation and levy of tax”.

In another case of S.Sankappa v ITO 68 ITR 760 (SC) says that “The word 'assessment' is used in Income-tax Act in a number of provisions in a comprehensive sense and includes all proceedings, starting with the filing of the return or issue of notice and ending with determination of the tax payable by the assessee. Though in some sections, the word 'assessment' is used only with reference to computation of income, in other sections it has the more comprehensive meaning mentioned above.

Hon. Bombay high court in case of CIT v V.D.Saraf (HUF) 75 Taxman 152/207 ITR 217 (Bom.) says that “The word 'assessment' is” used in the Act sometimes as meaning the computation of income, sometimes determination of the amount of tax payable, and sometimes the whole procedure laid down in the Act for imposing the liability on a taxpayer”.

Therefore if we try to understand what is assessment under income tax act then we may define that assessment is the process of collecting the information from assessee through their income tax returns and subsequently through notices directly to assessee or use information received from other than assessee, to reviewing information, analysing, comparing, and resulting thereof estimating income of assessee for that assessment year and computing tax thereon as per applicable rate of tax, cess, surcharge, penalty as per applicable provisions of the various sections of the Income-Tax Act.

2) Type of assessment:

There is various type of assessment procedure laid down in Income-tax Act, which may bifurcated as follows:

i) Self-assessment:

Income tax to be calculate on income declared in return after making all adjustment, deductions available as per applicable to the particular assessment year to particular assessee, and so calculated tax has been paid and declared into return filed by assessee itself, then tax so paid is called self-assessment tax and action of the assessee is called self-assessment.

Provisions of self-assessment is inserted U/s.140A into Income-tax Act by Finance Act, 1964 and it is amended time to time according to changes in other provisions of the Income-tax Act.

As per provision of section 140A(1) every return to be filed u/s.139 or 142 or 148 or 153A or 115WD/ 115WH/ 158BC, shall accompanied tax payment proof after deducting prepaid income tax, TDS, TCS, relief u/s.89, 90, 90A, 91, tax credit u/s. 115JAA, 115JD, tax and interest u/s. 191(2), and so assessed tax include interest and fees payable for delay filing of return and interest payable for default in advance tax. Tax so calculated and paid is falls short, then it shall be adjusted first towards late fees payable, than interest payable and balance shall be adjusted towards tax. Tax so paid is also treated as tax deemed to have been paid towards regular assessment.

What if self-assessment tax not paid?

If any assessee fails to pay the whole or any part of such tax, interest or fee u/s. 140A(1), he shall, be deemed to be an assessee in default in respect of the tax, interest or fee remaining unpaid, and all the provisions of this Act shall apply accordingly including penalty u/s.221.

There must be reasonable cause for non-payment of tax along with return under self-assessment.

It was held by Hon. Madras high court in case of Govinda Chetty v CIT 231 ITR 615, that for avoiding penalty assessee is require to show reasonable cause for non-payment of tax within time.

Same view taken by Hon. Delhi high court in case of CIT v M L Narang 247 ITR 718, that after several opportunities granted to assessee, but failed to indicate the reasons for not paying the admitted tax during the stipulated time. Merely because the order imposing penalty was not passed on that date and between the last date of hearing and the date of order the tax was paid, that does not dilute the consequences flowing from non-compliance with the requirements of section 140A.

Other type of assessment we discussed in next article.

Thanks

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CA. Kamlesh Pandya



TAXATION OF COOPERATIVE SOCIETIES

DEFINATION: A cooperative society is judged by SEC 2(19) of the Income Tax Act'1961 or under any other law for the time being in force in any State for the registration of the cooperative societies.

In order to get various tax reliefs, a cooperative society must set up a process for tax compliance, tax management and tax planning.

There is no threshold limit for taxability of income in case of a co-operative society. However, the Tax Slab rates are as follows:

Tax Slab (in Rs.)	Tax Rates
Upto 10000	10%
10001-20000	20%
Above 20000	30%

❑ Special tax rates applicable to a Co-operative society: -U/s 115BAD

Taxable Income	Tax Rate
Any Income	22%

Surcharge @12%, if Total Taxable Income > Rs. 1 crore, & Health & Education Cess@4%.

(A). The resident co-operative societies have an option to opt for taxation under newly Section 115BAD of the Act w.e.f. Assessment Year 2021-22. The option once exercised under this section cannot be subsequently withdrawn for the same or any other previous year.

(B). If the new regime of Section 115BAD is opted by a co-operative society, its income shall be computed without providing for specified exemption, deduction or incentive available under the Act.

(C). The Total income of the co-operative society has been computed:

(i) Without any deduction under:

- Section 10AA
- Section 32(1)(ia)
- Section 32AD
- Section 32AB
- Section 33ABA
- Section 35(1)(ii)/(ia)/(iii), Section 35(2AA)
- Section 35AD
- Section 35CCC
- Under any provisions of Chapter VI-A other than:
 - Section 80JJAA
 - Section 80LA (ii) Without set off of any losses carried forward or depreciation from any earlier assessment year if such loss or depreciation is attributable to any of the deduction referred to in clause (i) and



(iii) After considering the depreciation u/s 32 [other than depreciation u/s 32(1)(iia)] in the manner as may be prescribed.

Taxability of the Receipts by Co-operative Society:

Sr. No.	Incomes from	Instances	Is it Taxable?	Reason
1	Member's contribution	Maintenance charges, Municipal Taxes, Electricity / water Charges	X	Exempted, based upon concept of mutuality.
2	Interest Charged on Outstanding dues of members	Interest on O/s income receivable	X	Exempted, based upon concept of mutuality.
3	Interest Income Earned on Investments made in Other Co- operative Bank	Interest earned on deposits made with other Coop.Banks	X	100% deductible, u/s 80P(d).
4	Interest Income Earned on Investments made in Other Investments	Interest earned on deposits made with other nationalized Banks	✓	Fully Taxable
5	Dividend Income recd from Indian Co.	Dividend earned on TATA Steels – Exempt u/s 10(34) till A.Y. 2020-21.	✓	Fully Taxable [from A.Y 2021-2022.]
6	Dividend Income recd from other Co-op banks	Dividend recd from other Co-op banks	X	100% deductible, u/s 80P(d).
7	Rental income from advertisement Hoardings	Affixing Advertisement banner over roof top	✓	Fully Taxable either U/H of PGBP or IOS. Note: expenses incurred can be claimed as deduction on proportionate basis
8	Rental income from mobile/ cable towers	Mobile tower affixed in premises of CHS	✓	Fully Taxable. U/H of IFHP. Note: Assessee can claim the benefit of std. deduction @30% u/s 24(a), & also over Interest on borrowed capital.



Sr. No.	Incomes from	Is it Taxable, if the income is received from	
		Members	Non Members
9	Rental from use of Open Space/ Terrace	×, based upon concept of mutuality.	✓, U/H of IFHP. Note: Assessee can claim the benefit of std. deduction @30% u/s 24(a), & also over Interest on borrowed capital.
10	Non-Occupancy Charges	✓, as concept of Mutuality is not fulfilled.	N. A.
11	Parking Charges	×, based upon concept of mutuality.	✓, U/H of IFHP. Note: Assessee can claim the benefit of std. deduction @30% u/s 24(a), & also over Interest on borrowed capital.

❖ SECTION 80P: Deductions in Respect of Income of Co-op Soc.:

(A) : Where 100% deduction is allowed:

1. Profits earned out of certain activities:

- a) Banking business or providing facilities to its members
 - b) Cottage industry
 - c) Marketing of agriculture produce grown by its members.
 - d) Purchase of agriculture implements used for agricultural activities for the purpose of supplying them to its members.
 - e) Processing, without the help of power, of the agriculture produce of its members.
 - f) Collection & disposal of the labor of its members.
 - g) Fishing or the allied activities.
2. Profits earned by the Cooperative society engaged in activity of supplying milk, oilseeds, fruits or vegetables, raised or grown by its members to:
- a) Other federal Cooperative soc.
 - b) Government or local authority
 - c) Government or local authority engaged in supplying milk or oilseeds, fruits or vegetables to the General public.
3. Interest or the dividend Income earned by the Cooperative society from its investments with any other Cooperative Society.
4. Income from letting of godown or warehouse for storage, processing or facilitating the marketing of the commodities

AND



(A): General deductions:-

Condition	Amount (Rs.)
where the cooperative Soc is the Consumer Coop Soc	Rs. 100000
In any other case.	Rs. 50000

❖ Income Tax Compliances:

A Cooperative Soc is required to file its ROI in ITR 5 by 30th September of the Assessment Year. If Cooperative Society files the "Loss Return" then:-

Condition	Amount (Rs.)
If return is filed within the stipulated time,	Losses Under Head "Capital Gains", "Business Losses" can, only then be, carried forward.
If return is not Filled at all	Losses U/H House property, & unabsorbed depreciation cannot be carried forward.

❖ Tax Audit requirements:

- 1). Tax audit is compulsory if turnover of society (engaged in business) is more than Rs. 1 crore (w.e.f. A.Y. 2013-14). [not applicable to societies which do not carry on any business.]
- 2). A cooperative society falling u/s 44AA is required to maintain books of accounts and other documents as per provisions of IT Act, 1961. Also it is required to get its accounts audited by CA u/s. 44AB, irrespective of the fact that its accounts are already audited by its administrative department.
- 3). A Co-operative Society is subjected to audit as per Co-operative Societies Act under which it was registered. If such Society gets the accounts of such business or profession audited under such law and furnish that Audit report and a further report by an accountant it shall be sufficient compliance with the provisions of Section 44AB.
- 4). It is to be noted that the statutory requirement is the submission of report of audit conducted under the Co-operative Societies Act and a further report by an accountant in the form prescribed under the Section.
- 5). the report of audit of the accounts of a person required to be furnished under section 44AB shall:-
 - a). in the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;
 - b). in the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.
- 6). The particulars which are required to be furnished under section 44AB shall be in Form No.3CD."

❖ TDS Compliances:

Chart Showing liability to Deduct Tax at source:

Entity making Nature of Payment	Co-operative BANK	Co-operative society having turnover > Rs.50 Crores	Co-operative society having turnover < Rs.50 Crores
TDS on payment of interest to other co- operative societies.	Amount exceeding Rs 40,000*	Amount exceeding Rs 40,000*	Not required
TDS on payment of interest to members (Including Nominal Members)	Amount exceeding Rs 40,000*	Amount exceeding Rs 40,000*	Not required
TDS on payment of interest to non members.	Amount exceeding Rs 40,000*	Amount exceeding Rs 5,000	Amount exceeding Rs 5,000

*The limit of Rs 40,000 to be read as Rs 50,000 in case the payment is made to a senior citizen.

- As per Finance Act 2020, TDS has to be deducted u/s 194A by a co-operative society having gross receipts > Rs 50 Cr in case of payment of interest to its members and also to other co- operative societies irrespective of the fact that whether it is engaged in the business of banking or not.

It is bound to obey the TDS provisions excepting few:

- No tax shall be deducted from any interest payable on debentures issued by any cooperative society u/s 193.
- TDS provisions u/s 194A are not applicable for interest other than interest on securities, if such income is credited or paid by a cooperative society to a member thereof or to any other cooperative society
- Though a cooperative society is not covered u/s 115-O i.e. not required to pay tax on distributed profit like domestic companies, TDS provision for dividends u/s 194 is not applicable
- Compliances of other TDS provisions like time limit for deposit of TDS, electronic filing TDS returns, issuance of NSDL generated Form 16A etc are all applicable for cooperatives.

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KNOW YOUR FORMS IN GST - PART 1

Dear professionals,

We are in the 5th year of GST and yet, we are seeing frequent changes in GST through notifications, amendment in act, clarification by way of circular etc. While the authorities have certainly tightened the belts for timely compliance and revenue targets, as professionals, there is a need to know the procedures prescribed under GST law. With each procedure, there is a manner for adhering such procedure, which is called “Forms” in the law. In GST law as well, there are various type of forms, which are important to know for us as a professional. Therefore, we are starting this series called “Know Your Forms in GST”, wherein we will elaborate the provisions associated with each form in a particular chapter.

In part 1 of this series, we are starting with the first step in GST called “GST registration”. In this part, we have elaborated utility of each form under the chapter “Registration”.

Associated Section	Associated Rule
Chapter VI S. 22 to 30	Chapter VIII S. 8 to 26

Form Number	Form Name
GST REG-01	Application for Registration

- This is the form for applying GST registration by taxpayers other than
 - Non-resident Taxable person
 - Person required to deduct TDS
 - Person required to collect TCS
 - Person supplying OIDAR service
- Therefore, this form is to be used by regular taxpayers, composition taxpayers and Casual Taxable Persons only
- Care to be taken while filling this form
 - PAN data in “partner / promoter” and “Authorised Signatory” tab is to be checked with “CBDT database” and not as per what is appearing on “PAN card”
 - It is important to ensure that the name as per CBDT database and UIDAI database is completely matching. In case of any mismatch, it should be rectified before proceeding for registration application.

GST REG-02	Acknowledgment
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- Upon filing of application, the acknowledgment consisting ARN shall be issued by the GSTN system, specifying the jurisdiction in which the application has been transmitted.



GST REG-03	Notice for Seeking Additional Information / Clarification / Documents relating to Application for <<Registration/Amendment/Cancellation>>
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- This form is issued by the jurisdictional officer in case of an application for fresh registration or amendment in existing registration application or application for cancellation of registration has been filed.
- Such form is required to be issued within 7 working days by the proper officer, failing which the application shall be deemed to be approved.

GST REG-04	Clarification/additional information / document for << Registration / Amendment / Cancellation >>
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- Against the queries raised in REG-03, the applicant is required to file clarification within 7 working days (the last date of reply will be specified in the REG-03), failing which the application shall be deemed to be rejected.
- It is worthwhile to note that after expiry of 7 working days, the GSTN portal will not allow the applicant to file response against the notice issued in REG-03. No condonation of delay is permitted in this case.

GST REG-05	Order of Rejection of Application for < Registration / Amendment / Cancellation / >
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- If no response is filed by the applicant within stipulated time or if the response is found to be unsatisfactory, then the proper officer shall pass an order for rejection of application for registration / amendment / cancellation of registration

GST REG-06	Registration Certificate
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- If the response filed by the application in REG-04 found to be satisfactory, then the proper officer shall approve the application and issue registration certificate in REG-06

GST REG-07	Application for Registration as Tax Deductor at source (u/s 51) or Tax Collector at source (u/s 52)
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- The person required to deduct tax or collect tax at source are required to file an application for separate registration for TDS / TCS in particular state / UT in form REG-03.
- It is not a pre-requisite that the person should have regular registration in such state / UT.
- It is also not necessary to have a place of business in such state / UT for this type of registration.
- The proper officer is required to grant the registration within 3 working days. There is no provision to raise an query against this application

GST REG-08	Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source
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- If the proper officer is of the view that the registered person is no longer liable to deduct or collect tax, then he may order for cancellation of the number.
- For such cancellation of registration, the proper officer is required to issue an SCN in REG-17 and provide an opportunity to submit reply against such SCN within 7 working days.



GST REG-09	Application for Registration of Non Resident Taxable Person
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- Application to be filed at least 5 days prior to commencement of business
- Application should be supported by
 - Self-attested copy of passport;
 - PAN issued by Government of India;
 - If PAN is not available, then the similar Tax Identification Number issued by Government of other country in which it is incorporated;
 - Authorised signatory should be a person resident in India who must be holding valid PAN issued by Government of India;
 - Tax is to be deposited in advance
- Provisions of REG-01 to REG-06 shall be applicable in this case as well.

GST REG-10	Application for registration of person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person.
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- Person supplying OIDAR service are required to obtain registration by filing this form
- The supplier shall take registration at Principal Commissioner of Central Tax, Bengaluru West who has been the designated for grant registration in such cases
- Further details regarding OIDAR service can be accessed from CBIC flyer
<https://www.cbic.gov.in/resources//htdocs-cbec/gst/OIDAR.pdf>

GST REG-11	Application for extension of registration period by casual / non-resident taxable person
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- CTP & NRTP are granted registration for only 90 days.
- Therefore, if they intends to extend the validity of registration, then the same may be extended for a further period of not more than 90 days, subject to advance payment of tax

GST REG-12	Order of Grant of Temporary Registration/ Suo Moto Registration
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- Pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG- 12
- The person to who such temporary registration has been granted has to apply for registration the manner provided in REG-01 to REG-06 within a period of 90 days from such temporary registration.
- If the person has filed appeal against such temporary registration, then the application for registration is to be filed within 30 days from the date of order of appellate authority requiring him to obtain registration
- GST number issued by virtue of these provisions shall be effective from the date of temporary registration granted by the proper officer

GST REG-13	Application/Form for grant of Unique Identity Number (UIN) to UN Bodies/ Embassies /others
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- UIN is to be issued on basis of letter issued by Ministry of External Affairs, Government of India within 3 working days of making an application;
- No provision for issuance of SCN is there in this case.



GST REG-14 Application for Amendment in Registration Particulars

- Application for amendment to be filed by the person specified in
 - REG-01
 - REG-07
 - REG-09
 - REG-10
 - REG-13
- Application is to be filed within 15 days from the date of occurrence of changes (such as change in name, partners, directors, place of business etc.)
- In case of change in following details, the proper officer shall, after due verification, approve such changes within 15 working days
 - Change in legal name of business;
 - Address of principal place or additional place of business;
 - Addition / deletion / retirement of any partner / director / Karta / Managing Committee / CEO etc.
- For rest of the details, there shall be deemed approval upon filing of application (such as change in bank details, authorised representative details, HSN details etc.)
- Change in Email & mobile number shall be carried out through EVC verification only;
- If the effective date of change as mentioned in the application is earlier than 15 days, then the particulars shall be amended only with the order of the commissioner
- In case the officer is of the opinion that the documents are incomplete or incorrect, then the proper officer shall issue SCN in REG-03 within 15 working days. If no action is taken within 15 working days, then the application shall be deemed to be approved
- The applicant is required to submit response against the said notice within 7 working days
- The proper officer is required to pass an order against such reply filed by the applicant within 7 working days, failing which the application shall be deemed to be approved

GST REG-15 Order of Amendment

- If the proper officer finds the details submitted for amendment satisfactory, then he shall pass an order of amendment

GST REG-16 Application for Cancellation of Registration

- Any person other than following can apply for cancellation of registration
 - Person to whom temporary registration has been granted in REG-12
 - UIN holders
- Application is to be made within 30 days from the event warranting cancellation of registration
- Details of inputs held in stock, inputs contained in semi-finished or finished goods held in stock, capital goods held in stock on the date on which cancellation is sought is to be declared
- GST is to be discharged on such inputs by using electronic credit ledger or electronic cash ledger, as the case may be.
- After discharging the liability, if there is any balance left unutilised in the credit ledger shall lapse.



GST REG-17	Show Cause Notice for Cancellation of Registration
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- If the proper officer has “Reason to believe” that the registration is liable to be cancelled in terms of section 29 such as
 - Business has been discontinued or transferred fully;
 - Change in constitution of business;
 - Taxable person no longer liable to be registered under the act;
 - Registered person has contravened any of the provisions of the act;
 - Composition dealer has not furnished return in GSTR 4 within 3 months from the due date
 - Other than composition dealer has not furnished return for 6 consecutive tax period [proposed amendment in Finance Bill, 2022 – “for such consecutive tax period as may be prescribed”]
- The registered person is required to file response within 7 working days from the date of SCN
- If the registered person has made an application for cancellation in REG-16, to whom SCN in REG-17 has been issued, has filed response within 7 working days and the reply is found to be satisfactory, then the application for cancellation shall be approved within 30 days from the date of such reply. If no response is filed within 7 working days, then the application for cancellation shall be rejected and the GSTIN shall stand active. However, there is no deeming provision, if after filing response; no action is taken by the proper officer. Therefore, the approval the proper officer is necessary for cancellation of GSTIN.
- If the proper officer has issued SCN for suo moto cancellation of GSTIN and the registered person has filed response

GST REG-18	Reply to the Show Cause Notice issued for cancellation for registration
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- SCN can be issued by the proper officer in following cases
 - Application for new registration;
 - Application for amendment in existing registration;
 - Suo moto cancellation of GST registration by the proper officer;
 - Application for revocation of cancelled GST registration
- The applicant / registered person is required to submit response within 7 working days such notice issued

GST REG-19	Order for Cancellation of Registration
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- Such order can be issued by the proper officer in following cases
 - Upon application by the registered person for cancellation of GSTIN, which is complete in all manner;
 - Upon reply to the SCN issued by the proper officer against the application by the registered person for cancellation of GSTIN, wherein the details sought for has been submitted by the registered person;
 - Upon non-submission of the reply against SCN issued by the proper officer for cancellation of GSTIN;
 - Upon submission of the reply against the SCN issued for cancellation of GSTIN, which found to be unsatisfactory.
- Such order shall be issued within 30 days from the date of submission of reply or in case of non-submission of reply, within 30 days from the last date by when the reply should have been submitted



GST REG-20 Order for dropping the proceedings for cancellation of registration

- Such an order shall be issued by proper officer in following cases
 - If the registered person files all pending returns till date, when the notice was issued on account of non-filing of returns. [as per the provisions, it should be dropped automatically. However, at present there is no mechanism for auto dropping of such notices. As per the current development, GSTN is working on it to make it automatic and it is expected that the same will be implemented in 2-3 months.
 - Upon submission of the reply against the SCN issued for cancellation of GSTIN, which found to be satisfactory.
 - SCN issued in REG-27 against application filed in REG-26 for enrolment of by existing taxpayers for GST registration

GST REG-21 Application for Revocation of Cancellation of Registration

- This application is to be filed by the applicant when the GSTIN has been cancelled by the proper officer on account of non-compliance with any of the provisions of the act
- It is to be filed within 30 days from the date of service of order.
- The period of 30 days can be further extended to 30 or 60 days [i.e. in total maximum 90 days] by AC or JC/Commissioner.
- Before making an application, the registered person is required to file all the pending returns till the effective date of cancellation of GSTIN
- Upon activation of GSTIN, the registered person is required to file all the pending returns till date within 30 days from the date of activation
- The proper officer is required to take an action (i.e. approve or reject) on the revocation application filed by the registered person within 30 days from the date of application. However, before rejecting the application, an opportunity of being heard must be given (i.e. SCN must be issued)

GST REG-22 Order for revocation of cancellation of registration

- Such an order can be issued in following cases:
 - If the application filed by the registered person in REG-21 found to be satisfactory;
 - If the reply filed by the registered person against SCN issued in REG-23 is found to be satisfactory
- Such an order is to be passed within 30 days from the date of application for revocation or from the date of submission of reply against SCN in REG-23

GST REG-23 Show Cause Notice for rejection of application for revocation of cancellation of registration

- When the application filed by the registered person in REG-21 is found to be incomplete or unsatisfactory, then the proper officer shall require the registered person to show cause as to why the application should not be rejected.
- No time limit is prescribed for issuance of such SCN. Although, in general parlance, it can be construed that when a proper officer is required to take an action within 30 days from the date of application, the SCN should be issued within 30 days. Moreover, no deeming provision is there that in case of non-action by the proper officer within 30 days, the application shall be deemed to be accepted. Therefore, the approval of the proper officer is necessary for activation of GSTIN

**GST REG-24** Reply to the notice for rejection of application for revocation of cancellation of registration

- In case of notice issued in REG-23, the registered person is required to submit the response within 7 working days from the date of issuance of the notice
- In case of non-submission of reply, the application shall be deemed to be rejected
- The proper officer is required take an action (i.e. approve or reject) on the revocation application filed by the registered person within 30 days from the date of application.

GST REG-25 Certificate of Provisional Registration

- This is applicable only in case of person was registered under erstwhile laws, which were merged into GST.

GST REG-26 Application for Enrolment of Existing Taxpayer

- The person registered under erstwhile laws, who has been allotted provisional registration and is desirous to get the registration in GST is required to file an application in REG-26 within 3 months or within such extended period.
- In case of non-action by the proper office till 15 days, the registration shall be deemed to be granted.

GST REG-27 Show Cause Notice for cancellation of provisional registration

- In case the application filed by existing taxpayer (i.e. under erstwhile laws) is not complete in all manner, the proper officer shall serve such SCN within 15 days from the date of filing REG-26
- If after affording an opportunity of being heard, the proper officer can withdraw the said notice in REG-20, if he found that no such cause exist for which notice was issued

GST REG-28 Order for cancellation of provisional registration

- If the reply submitted by the existing taxpayer is found to be unsatisfactory, then the proper officer shall pass an order for cancellation of provisional registration

GST REG-29 Application for cancelation of registration of migrated taxpayers

- If the existing taxpayer, to whom provisional registration has been granted, who is not liable to get himself registered in GST, may apply for cancellation of provisional registration

GST REG-30 Form for Field Visit Report

- Field visit can be conducted when the proper officer is satisfied that field visit of the place of business is required
 - Due to failure of AADHAAR authentication while application for new registration;
 - Non-opting of AADHAAR authentication while application for new registration;
 - Any other reason after grant of registration
- Verification report including photograph is to be uploaded on common portal within 15 days of the visit

GST REG-31 Intimation for suspension and notice for cancellation of registration

- When the registered person applies for cancellation of GSTIN, the GSTIN shall be deemed to be suspended with immediate effect;
- When the proper officer has reason to believe that the registration is liable to be cancelled as per section 29 [refer form REG-17 hereinabove for the reasons]
- When the proper officer has reason to believe that the registration is liable to be cancelled as per rule 21 i.e.
 - Does not conduct business from the place declared in GST registration;
 - Issues invoice / bill of supply without actual supply of goods / services;



- Violates section 171 [Anti-profiteering measures];
 - Avails ITC in contravention of Section 16 and rules made thereunder;
 - Does not update the bank account within 45 days from the date of granting of registration or before filing first GST return, whichever is earlier in accordance with rule 10A;
 - Value of outward supplies declared in GSTR 1 is in excess of that declared in GSTR 3B for one or more tax period;
 - Violates rule 86B mandating at least 1% payment of tax through cash ledger in certain cases
- No opportunity of being heard shall be given before suspending the GSTIN;
 - Registered person shall not make any taxable supply during the period of suspension of GSTIN. Moreover, the registered person shall not be allowed to file refund application during the period of suspension;
 - The registered person shall be communicated the grounds for suspension by way of an SCN and is required to submit reply against the same within 30 days against such SCN as to why his registration shall not be cancelled
 - Upon revocation of the suspension, it shall be effective from the date of suspension itself, meaning thereby the supplies, if any, affected during such period shall be deemed to be valid and even the refund due, if any, for such period can also be claimed.

Conclusion:

So, this was the insight about the GST registration process and the care to be taken while replying to any communication issued for registration, suspension, revocation of cancelled registration, cancellation and other incidental matters thereto. I trust that you will find this article useful, as obtaining GST registration has become very difficult process and utmost care is required to be taken while applying GST registration. See you all next month with another exciting part of this series called “Know Your Forms in GST”.

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CA Mihir Modi






Brief Analysis of Latest GST Cases

S.N.	PARTICULARS	QR Code for Original Order
01	<p>Issues: Where the assessee has provided the bond to the satisfaction of the authority along with payment of tax & Penalty, can revenue ask for bank guarantee?</p> <p>Answer: No</p> <p>The departmental officers generally force a tax payer to offer Bank Guarantee in order to get his goods released provisionally. The Hon'ble Court in this matter analysed Rule 140 alongwith Section 67(6) and have clearly observed that where the tax and penalty is paid there is no need of any bond also therefore bank guaranteed is out of question. Since the bond has already been issued by the petitioner and tax & penalty also is paid therefore the Court directed the goods to be released. This is certainly a welcome order specially in those cases where the officers force to give bank guarantee for provisional release of the goods.</p>	
02	<p>Issues: Whether the respondents can withhold the refund on zero rated supply where some investigation is going on against the assessee?</p> <p>Answer: No</p> <p>The best part of this order is that without going into the merits of the matter the Hon'ble court has directed to process the refund application and duty drawback within a stipulated time limit and in case any pending investigation at the least process the provisional refund to be processed.</p>	
03	<p>Issues: Whether the assessee is allowed to file the amendment in Form GST TRAN-1 physically where the assessee could not do the same due to technical glitches?</p> <p>Answer: Yes</p> <p>This issue of TRAN 1 credit has been under dispute since the implementation of GST. Majority of the taxpayers faced issues in filing the Form TRAN-1 due to the technical glitches of the GST portal. Thousands of writ petitions were filed and argued before various HCs and majority of the Courts believed that the time limit prescribed for filing Form TRAN-1 is a recommendatory provision and not mandatory. The courts have allowed the credit to the petitioner taxpayers either by getting the form TRAN-1 opened electronically or by filing the same physically. This issue has finally travelled to the Hon'ble Apex Court in the case of Brand Equity, and we are waiting for the pronouncement of the Hon'ble SC so that the issue gets settled once forever.</p> <p>In the present matter the issue was revision of the Form TRAN-1 which was filed originally where the entire credit could not be claimed.</p>	



S.N.	PARTICULARS	QR Code for Original Order
04	<p>Issues: Whether the issuance of the pre-consultation notice at evening wherein the assessee was asked to appear on next day is fulfilling the very objective for which the pre-consultation notice is required to be issued?</p> <p>Answer: No</p> <p>As per the master circular issued by the CBEC where the amount of liability exceeds Rs 50L, the officer is bound to issue the pre-consultation notice and then thereafter issue the SCN if need be. Issuance of pre-consultation is mandated so as to reduce the unnecessary issuance of SCNs and the expected litigation. But the officers are complying with this requirement merely as a formality and are not giving sufficient time to the taxpayers to submit and present themselves and their merits before the officers. Therefore the petitioner has approached the Hon'ble Court.</p>	
05	<p>Issues: Can officers provisionally attach the Cash Credit Account of the assessee?</p> <p>Answer: No</p> <p>In this case the Hon'ble High Court was very annoyed with the comment of the Pr. Commissioner in his order passed against the objection raised in Rule 159(5). The manner in which he tried to distinguish was not at all acceptable by the Hon'ble Court. Court has clearly said that this is contempt and therefore asked the Pr. Commissioner to submit on record why and under what circumstances he has not followed the orders of the jurisdictional court.</p>	
06	<p>Issues: After issuing an order under section 129, whether the officer can recover by way of invoking the bank guarantee immediately?</p> <p>Answer: No</p> <p>Under the provisions of GST law, the taxpayer, against whom an order is issued, has the right to file appeal against the order by which the taxpayer is aggrieved. The time limit to file appeal u/s 107 is 3 months and 1 month condonation of delay. Besides this Section 78 of the CGST Act provides that the recovery cannot be initiated by the authorities against the order immediately. If the taxpayer fails to pay tax for the period with in which he can file appeal, then only recovery can be done. In other words, till the time limit for filing appeal does not expire, the recovery cannot be initiated.</p>	
07	<p>Issues: Can Electronic Credit Ledger be remained blocked even after the expiry of period of 1 year?</p> <p>Answer: No</p> <p>The blockage of ITC in Electronic Credit ledger after the expiry of 1 year is not permitted by the law i.e., Rule 86A. Therefore, the Hon'ble Court was pleased to allow the release of the blocked ITC. Another very important and pertinent aspect of this order of the Hon'ble Court is warning to the tax officers that in case in future same things continue then the</p>	



S.N.	PARTICULARS	QR Code for Original Order
08	<p>concerned authority may be held to be personally liable to make good the loss of the tax payer. Issues: Whether the officer is right in not granting the refund even after the period prescribed under the law?</p> <p>Answer: No</p> <p>The sad part is even when the officers are aware that the claim of the refund is genuine, they refrain from sanctioning the same merely on some technical or procedural grounds. Time and again it has been held by the Hon'ble Courts that due to procedural lapses the substantive rights cannot be declined. Therefore, in my view the Government Officers must be fair enough and act accordingly.</p>	
09	<p>Issues: Whether the assessee is eligible to claim the refund where the assessee has mistakenly paid the tax twice on single supply? And whether the time barring will apply in such circumstance also?</p> <p>Answer: Yes</p> <p>This is really unfortunate, that even in such circumstance where clearly two times the payment has been made on one single invoice. As per me there should not be any time limitation for claiming in refund in such genuine circumstance as this certainly lead to unjust enrichment. I appreciate that time limitation is needed to maintain discipline otherwise things will become uncontrollable.</p>	
10	<p>Issues: Whether in some extraordinary or exceptional circumstance, a refund application can be permitted to be filed manually?</p> <p>Answer: Yes</p> <p>This judgment is another example of providing the benefits provided in the statutes by way of ignoring the inadvertent mistake. Also, it shows that something which is legally permissible cannot be restricted because of procedural lapse. I would also like to state here that these things must be taken care of by the executive (officers of the department) and such issues must not reach the Hon'ble Courts by way of exercise of writ jurisdiction.</p>	

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Adv. CA. Avinash Poddar

STATUS OF CLAIM POST APPROVAL OF RESOLUTION PLAN

INTRODUCTION

The main objective of the Insolvency and Bankruptcy Code, 2016 (Code) was to protect the interest of creditors of a company, while also ensuring that the insolvency resolution process is completed in a time-bound manner. The Corporate Insolvency Resolution Process ('CIRP') is a recovery mechanism for the creditors of a corporate debtor.



Claims under IBC

“Claim” means –

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

In accordance with Regulation 12(2) of CIRP Regulations, 2016 the creditor can submit the claim within 90 days of commencement of CIRP. Regulation 12 is mentioned as hereunder for reference :

“12. Submission of proof of claims.”

- (1) Subject to sub-regulation (2), a creditor shall submit [claim with proof] on or before the last date mentioned in the public announcement.
- (2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.
- (3) Where the creditor in sub-regulation (2) is a financial creditor under regulation 8, it shall be included in the committee from the date of admission of such claim:

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.”

The creditor may submit claim on or before the ninetieth day of the insolvency commencement date.

In the matter of Standard Surfa Chem India Pvt. Ltd. Vs. Kishore Gopal Somani, Liquidator of Advanced Surfactants India Ltd.- NCLAT New Delhi it was held that model Timeline under IBC Regulations is only a

directory in nature, it cannot be considered a deadline.

In the matter of Twenty-First Century Wire Roads Ltd., an application was filed by one AMA Agencies Pvt. Ltd. before the Hon'ble Principal Bench of the NCLT, New Delhi for condonation of delay in filing their claim. When the application was being heard, the CoC was still in the process of considering the resolution plans submitted. Therefore, the Hon'ble NCLT was pleased to condone the delay and direct the RP to consider the claim.

Claims after the approval of Resolution of Plan.

“The claims could not be considered after the approval of Resolution Plan.”

Hon'ble Supreme Court of India, on 25th February, 2022 held in the matter of M/s. Ruchi Soya Industries Ltd. Vs. Union of India & Ors that all claims which are not the part of approved resolution plan does not survive.

In the matter of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd Hon'ble Supreme Court held that post-approval of the resolution plan, no creditor including any government or tax authority will have any claim against the corporate debtor.

CASE LAW : M/S. RUCHI SOYA INDUSTRIES LTD. VS. UNION OF INDIA & ORS



BRIEF FACTS OF THE CASE

1. The application of the Standard Chartered Bank under Section 7 of the IBC for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the “CIRP”) came to be admitted by the learned Adjudicating Authority on 15th December, 2017.
2. After the procedure, as required under the various provisions of the IBC was completed, an application under Section 30 (6) of the IBC came to be filed by the Resolution Professional for the grant of approval of the Resolution Plan of the successful Resolution Applicant Vide order dated 24th July, 2019 read with order dated 04th September, 2019, the application of the Resolution Professional for the grant of approval of the Resolution Plan of the successful Resolution Applicant came to be allowed. As such, the management of the appellant came to be vested in the successful Resolution Applicant.

MAJOR ISSUE

Whether the claims could be considered post approval of Resolution Plan..?



ARGUMENTS

ARGUMENTS BY LEARNED SENIOR COUNSEL OF THE APPELLANT

Senior Counsel had submitted that the present case is squarely covered by the law laid down by this Court in the case of Ghanashyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. He submitted that as a matter of fact, the office of the respondent no. 2 at Mangalore itself had lodged a claim before the Resolution Professional in respect of one of their demands. However, so far as the demand, which is the subject matter of the present proceedings is concerned, no claim was lodged in respect thereof, and as such, in view of the law laid down by this Court while interpreting Section 31 of the IBC, the respondents are now not entitled to claim any amount, which is not a part of the Resolution Plan.

ARGUMENTS BY LEARNED SENIOR COUNSEL OF THE APPELLANT

Learned counsel for the respondent no. 2/Revenue, on the contrary submitted that no notice was issued to the Authority at Mangalore. It was further submitted that there was certain confusion as to whether the operational debt as defined under Section 5(21) of the IBC would cover the claim of the respondent no. 2/Revenue. It was, therefore, submitted that in view of said confusion, there is a possibility that the office of the respondent no.2 might not have lodged the claim with respect to the present proceedings.

JUDGEMENT

Hon'ble Supreme Court holds that the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent no. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the Resolution Plan, would survive. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive.

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 9374081166



CA IP Pradeep Kumar Kabra



Event Snap Shot



CA. Nikesh Kothari taking charge as a Chairman of the Branch



CA. Arun Narang taking charge as a Vice Chairman of the Branch



CA. Dushyant Vitlani taking charge as a Secretary of the Branch



CA. Ashwin Bhauwala taking charge as a Treasurer of the Branch



Team Surat Branch felicitating Radhika Beriwal 1st Rank Holder of CA Final Exam



Team Surat Branch with Family of Radhika Beriwal



Event Snap Shot



Chairman CA Nikesh Kothari & Secretary CA. Dushyant Vitlhani with Radhika Beriwal & her Family 1st Rank Holder of CA Final



RCM CA. Ishwar Jivani & Chairman CA. Nikesh Kothari along with Vice Chairman CA. Arun Narang and Secretary CA Dushyant Vitlhani felicitate Past Chairman CA. Rupin Pachchigar with Diary and PEN



1st Past Chairman meet for the year 2022 - 2023



Past Chairman of Surat Branch with Managing Committee Member



Chairman CA. Nikesh Kothari & Secretary CA. Dushyant Vitlhani as a Chief Guest with GST Commissioner Shivaji Rao Dange on occasion of Central Excise Day



Chairman CA. Nikesh Kothari with GST Commissioner Shivaji Rao Dange



Event Snap Shot



Shri Vijay Jhalani Sir (CCM-Govt. Nominee) delivering sessions on Advertising and Website Guidelines for CA Firms



Chairman CA. Nikesh Kothari & Past CCM CA. Jay Chhira felicitate CCM (Govt. Nominee) Shri Vijay Jhalani, Advocate Speaker on Advertising and Website Guidelines for CA Firms



Speaker CA. Maitreyee Roy delivering session on Revised Code of Ethics Important Provisions in front of Members of Surat Branch



Treasure CA. Ashwin Bhauwala & MCM CA. Shailesh Lakhankiya felicitate CA. Maitreyee Roy Speaker on Revised Code of Ethics Important Provisions



Vice Chairman CA. Arun Narang Felicitate RCM CA. Ishwar Jivani



Secretary CA. Dushyant Vitlani & MCM CA. Preetesh Shah felicitate CA. Govind Jhavar Speaker on Opportunities in Investment Advising - Strategy & Taxation



SURAT BRANCH SHIKSHA ABHIYAN

"The best of the charity is to teach"

Surat Branch of WIRC of ICAI had started "Surat Branch Shiksha Abhiyan" with the supports and collaboration with Surat Municipal Corporation. The program primarily focuses on providing educational assistance to students of Classes 11th Standard and 12th Standard under Surat Municipal Corporation.

Mission and Vision

Surat Branch Shiksha Abhiyan is guided by twin objectives - empowering students through educational assistance and the overall development of adolescent girls and boys through career guidance and life skill development.

With This Mission and Vision Surat branch continue the "Surat Branch Shiksha Abhiyan" and seek supports of Members of Surat Branch for achieving this milestone.

CONTACT

For questions and want to join CSR initiative, please write to us at: surat@icai.org

Here are glimpse of the "Surat Branch Shiksha Abhiyan"





Forth Coming Sessions / VCM for the month of March

Date & Day	Event Name	Time	CPE Hours
8th March Tuesday	Celebration of Woman's Day	10:00 AM to 01:00 PM	3 Hrs.
12th March Saturday	Bank Branch Audit	08:30 AM to 03:30 PM	6 Hrs.
13th March Sunday	Marathon for 'Say NO to Drugs' - Association with Surat District Cricket Association	05:00 AM Onwards	
21st March Monday	Felicitation of Newly qualify CA's	10:00 AM to 12:00 PM	
26th March Saturday	Investment opportunities in Hedging & Importance of risk Management in Life & Trade.	05:00 PM to 07:00 PM	2 Hrs.
27th March Sunday	Celebration of Sports Day	---	
28th March Monday	VCM on Practical Aspects of Bank Branch Audit	05:00 PM to 07:00 PM	2 Hrs.

Vishal Madhavani

☎ 98254 94919

Sameer Madhavani

☎ 98252 88968



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