

# NEWS LETTER

# JUNE - 2020

## INCOME TAX BAR ASSOCIATION, RAIPUR



Please join 48th AGM (Virtual Mode) on  
27th June, 2020 at 6.15 P.M.

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**INCOME TAX BAR ASSOCIATION, RAIPUR**



# President's communiqué

CA. B. Subramanyam,  
President  
Income Tax Bar Association

Dear Members,

Friends, every crisis is a challenge and every challenge is an opportunity. Our country is facing COVID-19 pandemic crisis. Time will tell how India shall convert this challenge to an opportunity and put an example before the world for its administrative as well as technical skills to fight against such unprecedented pandemic and come out of this crisis by reviving its economy and taking it to next level.

I am of the firm opinion that, process of delivering justice in any matter cannot be prolonged for substantial period by the judicial system under any circumstances as it is said that "justice delayed is justice denied". Amidst COVID-19 pandemic the judicial Authorities cannot stop and hold delivering justice.

Recently, The Chief Justice of India Hon'ble S. A. Bobde said tax judiciary plays a very important role in resource mobilization of the country and expressed concern over pendency of cases. The Hon'ble Chief Justice of India further said that "A just and speedy dispute resolution is perceived as a tax incentive by the taxpayer. To the tax collector, an efficient tax judiciary assures that demands arising out of legitimate assessment are not strangled in delayed litigation," He further said that people should know what is due from them and government should know what is due to them that can be achieved through early disposal of cases

The Chief Justice said that while tax evasion is a social injustice to the fellow citizens, arbitrary or excessive tax also results in social injustice by a government.

Referring to ancient laws in India around taxation, the Chief Justice said that tax should be collected from people like honey bee draws nectar from flowers without harming it.

Hon'ble Chief Justice of India further emphasised on the use of next generation technology artificial intelligence to expedite the process with caution that it should not replace the human discretion required for delivering justice.

The Hon'ble Chief Justice of India further said that "I am firmly of the view based on experience of systems that have used artificial intelligence that it is only the repetitive area or decision making that is rates of taxation etc or something which is invariably the same which is in a sense mechanical that must be covered by artificial intelligence. I do not believe that artificial intelligence should ever be allowed to substitute the human discretion which is necessary for a just decision making," he said.

Friends, time has come for India to convert this COVID-19 crisis to an opportunity. Facing boldly pandemic challenge, we are now forced to enter into new era of digitization, faceless assessments, and Video conferencing which will make our country more transparent and corruption free and simultaneously speedy delivery of justice without any compromise. Now, the time is not to resist changes for Indian citizens, rather time to accept changes without paying any big price in the form of lives of human beings due to this virus COVID-19.

# President's communiqué

Friends, through this column, this is my last communiqué as President of this esteemed Association. It has been almost one full year since the present Governing Body assumed charge. The tenure of the present Governing Body is coming to an end this month.

The year which went by, has been full of enriching experience and eventful for me which will be always remembered and cherished. I have been able to discharge my duties as President of this esteemed Association only because of the whole hearted support and cooperation which was extended to me by my committee members, sub-committee members, Past Presidents, senior members and all other members of the Bar Association. Had it not been for such support and cooperation, I would not have been able to discharge my duties.

I want to thank you all for privilege of allowing me to represent you in the past year. I have learned in this brief 12 months period that the Income Tax Bar Association is one of the most highly respected professional organizations in this Capital City. As a President, you get an opportunity to express your ideas and beliefs in a way that has authority, precision and can be heard in various forums. To the best of my ability, I have sought to speak for all of us, and I hope that I have accomplished the task to your satisfaction. I have tried to be that one voice and principles that have made us strong and bounded us together throughout the year. I feel so proud and honoured to have been able to lead and part of this excellent team.

I sincerely hope that today a greater leader would make a bold move to step up and take over the new leadership and it is the time for me to make way for new rising stars. In order to raise our IT Bar Association to greater heights, we need new ideas and fresh energy to run and improvise this organization.

As outgoing President of this esteemed organization, at this juncture I take this opportunity to welcome the new Team with warmest gesture. I wish good luck and a successful tenure to incoming new team of our Association.

Keeping the high tradition of lending helping hand to the President of the Association by all the Past Presidents, I also promise that I would be at the disposal of my successors and their teams and assure them that they would not find me lacking in cooperation and support.

If you find that the present team has not fulfilled any of its responsibility, it is me who is responsible and I would accept any such failure with apology. I take this opportunity to also thank all my teammates because of whose cooperation, I have a smooth sailing throughout the year.

Friends, from the day I took the charge as President of this Association, I tried to work keeping in mind the famous quote of Henry Ford:

**“Coming together is a beginning;  
Keeping together is progress;  
Working together is success.”**

And during the tenure, at any juncture if you feel, I failed to maintain togetherness amongst members I sincerely apologize from the bottom of my heart.

# President's communiqué

I take this opportunity to also thank and put appreciation on record towards Raipur Branch of CIRC of ICAI, Federation of CG Income Tax Bar Associations and Income Tax Department for extending help and joining hands to various programs organized by this association during the period 2019-20.

Friends, still our county is not out of the clutches of COVID-19 pandemic. Relaxation is given only by the Government. CORONA has not given any Relaxation. Please take care, stay at home and be safe.

Thank You all and Good Bye!

I Remain,  
Yours sincerely,

CA. B. Subramanyam.  
President, IT Bar, RAIPUR



# Letter of Appreciation

**CA. Gulab Chandra Kedia**  
**Chairman News Letter Editorial Board,**  
**Income Tax Bar Association, Raipur**

Dear Members,

It was a great privilege and honour for me to accept the role as chairman of news letter editorial Board of Income Tax Bar Association Raipur, and I express my deep gratitude to all the members for the same.

First of all I wish all of you and your families a very safe and healthy life and i strongly believe that all of us will come out as a winner through this pandemic Covid 19.

I heartily appreciate my fellow members for the coordination and the humble attitude they have shown to serve the organization jointly.

I wish to convey my special thanks to CA Praveen Jain and members of news letter editorial board for the knowledgeable and insightful articles & contribution for the news letter.

**CA. Gulab Chandra Kedia**

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# Letter of Appreciation

Adv. Praveen Sharma  
Secretary, Income Tax Bar Association, Raipur

सम्मानित सदस्यों,

सर्वप्रथम आप सभी का आभार, जिन्होंने वर्षभर हमारी कार्यकारिणी को प्रत्यक्ष या अप्रत्यक्ष रूप से सहयोग किया। साल भर हमारा प्रयास रहा कि हम सदस्यों और उनके सहयोगियों के लिए, ज्ञानवर्धक कार्यक्रम समय-समय पर आयोजित करें। हम इसमें सफल भी रहे। यहां तक कि कोविड-19 की महामारी के दौरान जब सभी कार्य रुके हुए थे, तब भी हमने अपने सदस्यों के हित में यह कार्य ऑनलाइन जारी रखा। मैं आभारी हूँ, हमारे आयकर बार के उन सभी सदस्यों का, जिन्होंने स्टडी सर्किल मीटिंग, सेमिनार और वेबिनार में वक्ता के रूप में हमें सहयोग प्रदान किया। मैं आभारी हूँ, उन सभी सदस्यों का, जिन्होंने कार्यक्रम में उपस्थित होकर इसे सफल बनाने में अपनी महत्वपूर्ण भूमिका निभाई।

हमने इस वर्ष स्थानीय स्तर, राज्य स्तर पर और आयकर विभाग के साथ विभिन्न खेल प्रतियोगिताएं भी आयोजित की, जिसमें आयकर बार के सदस्यों ने उत्साहपूर्वक हिस्सा लेकर, इसे सफल बनाया, साथ ही खिलाड़ियों के उत्साह वर्धन के लिए आयकर बार के सदस्य भी उपस्थित रहे। मैं उन सभी प्रतिभागियों और दर्शकों के प्रति भी हृदय से आभारी हूँ। सी. ए. ब्रांच रायपुर के साथ हमने पारिवारिक माहौल में होली मिलन के कार्यक्रम का आनंद उठाया।

आयकर विभाग के साथ हमारे सदस्यों ने आयकर दिवस, स्वतंत्रता दिवस, गणतंत्र दिवस सामूहिक रूप से मनाया। सदस्यों की समस्याओं को हमने वरिष्ठ सदस्यों के सहयोग से, आयकर विभाग के उच्च अधिकारियों के सामने प्रमुखता से रखी। उनमें से अधिकांश समस्याओं का निराकरण भी हो गया। आयकर विभाग ने भी अपनी नई योजनाओं के संबंध में हमसे विचार-विमर्श कर हमारे बार एसोसिएशन का मान बढ़ाया।

अपने सामाजिक कर्तव्यों के निर्वहन में, सदस्यों के सहयोग से हमने स्कूल के बच्चों के लिए आवश्यक संसाधनों और रेल्वे स्टेशन पर यात्रियों की सुविधा के लिए एक वाटर कूलर भी प्रदान किया। देश में कोविड-19 महामारी के दौरान जब लॉकडाउन हुआ तब भी सामाजिक संस्थाओं के माध्यम से गरीब परिवारों को भोजन की व्यवस्था भी करवाई गई।

# Letter of Appreciation

Adv. Praveen Sharma  
Secretary, Income Tax Bar Association, Raipur

यह सभी कार्यक्रम हमारे बार के अध्यक्ष सी.ए. बी. सुब्रमण्यम के कुशल नेतृत्व में और कार्यकारिणी के सभी सदस्यों की मेहनत से सफल रहे। मुझे आशा ही नहीं वरन पूर्ण विश्वास है कि आप सभी का सहयोग इसी तरह निरंतर प्राप्त होता रहेगा। यदि किसी प्रकार की कोई भूल चूक हो गई हो तो मैं आप सभी सदस्यों से क्षमा चाहता हूँ। अंत में एक बार फिर, सभी का हृदय से आभार।

ऐडवोकेट प्रवीण शर्मा  
सचिव, आयकर बार एसोसिएशन रायपुर

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# Letter of Appreciation

CA Kishore Baradia  
Chairman, Raipur Branch of CIRC of ICAI



**Dear CA B. Subramanyam, President and Governing body Members,**

Being a member of ITBA ,let me start by wishing you and all the members of Income Tax Bar Association, Raipur by good health and humour. I am pleased to note that ITBA is spreading knowledge among members by way of e-newsletter. In the present situation in Covid era; it has wide relevance and need of hour.

During your tenure as President, we have seen enormous growth in our Income Tax Bar Association . Your skill in handling the situation was especially appreciated, I certainly learned a lot from you about how to manage and handle the adverse situation because you always said , no one can predict which side the camel will sit on.

Your entire management committee have been tirelessly given their time and resources as well. On both a professional and a personal level, I am grateful for the time we spent together as a office bearer of the similar professional society.

Through this e- newsletter I would say to our members to develop work from home culture in our offices as well as at client offices. It will not only increase efficiency but also effectiveness of our team.

I would also Congratulate & Best Wishes to new team for the year 2020-21.

#Stay safe n healthy

Yours sincerely

CA Kishore Bardia

Chairman-Raipur branch of CIRC of ICAI

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# Letter of Appreciation

CA Rajesh Golechha

Secretary, Federation of Chhattisgarh IT Bar Associations

## Appreciation Words.....

Dear CA B. Subramanyam, President and Governing body Members,

On behalf of Federation of Chhattisgarh Income Tax Bar Association, we would like to place few appreciation words for the excellent job you and your entire team have done all the round your tenure. It was an enormous undertaking to smoothly and efficiently cover multicorners say Educational Activities, Social Activities, Sports Activities, Co-Operation among members and many more .

You with your team organized a number of educational seminars and webinars to diffuse the useful knowledge base among the members, have donated water cooler at Raipur Railway station and organized Blood donation camp to fulfill the social responsibilities, have organized sports activities among members recognizing health is wealth notion, have given a larger part of opportunities to young members to generate powerful speakers and leaders from among us to relay the future race on a faster track .

One thing which I must make a special mention here is you have superbly and splendidly established a mass cooperation and coordination between Federation and various Bars in the wake of jointly organised useful webinars and seminars that has resulted in a ever seen healthy relationship among members across the state.

Thanks to your leadership and dedication combined with your teamwork and energy, we wish you reach new heights and lead us in a more enthusiastic and energetic ways in accomplishing the noble.

CA Rajesh Golechha

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# Measures under Companies Act 2013 in Covid 19



CA Ramesh Kumar  
Agrawal

COVID-19 is likely to materially impact the financial position and statutory compliances of many companies in India. It is therefore important for directors to assess before they sign off on financial statements and report by the Board of Directors (“**Board**”) for the financial year (**FY**) 2019-20. Especially companies which have investments from private equity funds / strategic investors or have financing arrangements from lenders / financial institutions need to pay attention while drawing up financials for FY 2019-20 due to COVID-19.

Due to lockdown and consequent slowdown in the businesses across sectors, various companies may also be facing risks of ceasing to be going concern. Some companies have already faced defaults on financial and other related covenants and may not find support from their shareholders. In these tough times, a tighter check is expected of the directors and the management to present the true picture of the state of affairs of the company which are reflected in the financials of the company.

Non-compliance of statutory norms in relation to financials of a company may trigger penalties and fine which may be imposed on the company and officers.

To reduce the impact of COVID-19, the Government is providing certain temporary relaxations / exemptions / modifications vis-à-vis statutory compliances, for example,

1. Companies (Auditor’s Report) Order, 2020 which earlier scheduled to be applicable for financials from FY 2019-20, has **now been made applicable from FY 2020-21**.
2. Various matters which could not be transacted through video conferencing (**VC**) or other audio-visual means (**OVAM**) have been allowed to be transacted through VC/OVAM.
3. Mandatory requirement of holding board meetings has been relaxed by a period of 60 days for the next two quarters.
4. If a company director is unable to comply with the minimum residency requirement of 182 days in India, it will not be treated as a violation.
5. Spending / contribution for combating COVID-19 related activities has been qualified as **expenses eligible for corporate social responsibility (CSR)**.
6. Independent directors are required to hold at least one meeting without the attendance of Non-independent directors and members of the management (**As per point no. VII. of Schedule IV of Companies Act, 2013**), however for the FY 19-20, if the independent directors of a company have not been able to hold such a meeting, the same shall not be viewed as a violation.
7. Requirement of sec 73(2)(c) of CA-13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30<sup>th</sup> April, 2020 is allowed to be complied with till 30<sup>th</sup> of June, 2020.
8. Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of the amount of debentures maturing in specified methods of investments or deposits before 30<sup>th</sup> April 2020, may be complied with till 30<sup>th</sup> June, 2020.

# Measures under Companies Act 2013 in Covid 19

9. Newly incorporated companies will get an additional 6 months to file declaration for the commencement of business.
10. With respect to MCA 21 Registry, moratorium has been issued from April 1 to September 30, 2020 and no additional fees will be levied for late filing.

India Inc. has just seen the closure of FY 2019-20, and thus, any regulatory change / business environment change due to COVID-19 may have radical impacts on the financials of a company. Directors and management need to be careful of while giving a green signal to the financials under the Companies Act, 2013 (“**Act**”) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR**”).

**CA Ramesh Kumar Agrawal**

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# Article 142 of Constitution in Covid 19

CA Prafulla Pendse

## INTRODUCTION:

COVID-19 pandemic is much more than simply a health crisis. By knocking the door of every country it touches, it has the potential to create catastrophic social, economic and political crises that definitely will leave deep scars. The COVID-19 pandemic is the defining global health crisis of our time and the certainly one of the greatest challenges we have faced till date. Basically a pandemic refers to an epidemic that has spread over several countries or continents, usually affecting a large number of people. Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered or may be invented virus which does not have proper and appropriate medication till date. Under these circumstances the best way to prevent and slow down its transmission is to be well informed about the cause and spread of the disease and to protect ourselves from its infection by proper sanitization, using of face masks and most important by maintain social distance in all walks of life. In a revered country like Bharat (India) the density of population (जनसंख्या का घनत्व) is 464 per Km<sup>2</sup> while that of America is 36 per Km<sup>2</sup> and that of Italy is 206 per Km<sup>2</sup>, as per [www.worldometers.info/world-population](http://www.worldometers.info/world-population). In spite of having extremely huge density of population of more than 2 times that of Italy and 13 times that of America, it is firstly, the divine grace of the Almighty on all of us and secondly the positive result of farsighted & forethoughtful measures taken by the Central as well as State Government, Police, Medical Staff, Para Medical Staff, Scavengers, Sevadars across the country that situation is well within control. In spite of strict lockdown for almost more than 2-3 months the Judiciary has stood up proactively to further the case of dispensation of justice by recourse to article 142 of the constitution the importance and also implications of which has been discussed in ensuing paragraphs.

## ARTICLE 142 OF THE CONSTITUTION :

The concept of 'complete justice' is deeply embedded in article 142 of the constitution. The Indian Judiciary based on article 142 ensures that each and every citizen of India gets complete justice. This article grants the power to the Apex Court to pass any decree in order to render complete justice in any case or in any matter. On perusal of various decisions, we find that the Supreme Court ensures to intervene in critical cases related to the history, religion, public cause, environment where the current laws were insufficient for the current scenario. In order to better understand Article 142, firstly, let us read the definition which is mentioned below :

***"142. Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc.-***

*(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing **complete justice** in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. (emphasis supplied by us)*

# Article 142 of Constitution in Covid 19

Most recently the Hon'ble Apex Court has invoked this article while passing a unanimous judgment on Ayodhya case wherein the bench handed over the disputed land of 2.77 acres to a trust to be formed by the Central Government within three months for the construction of a Prabhu Sri Ram Temple, under the Acquisition of Certain Area at Ayodhya Act, 1993 while another 5 acres of land was allotted for the construction of a mosque in Ayodhya. This relief was not at all demanded by any of the opposite parties contesting the title suit but the Apex Court considered it suo-moto that it was necessary to pass such **"decree or order as it was necessary for doing complete justice between the parties"**. Therefore, it invoked its power under Article 142 to direct the central government to grant an alternate site measuring 5 acres to the opposite party in order to render complete justice.

The extra ordinary powers under the article was brought about to bridge the gap created by an insufficient Law so as to meet the ends of justice, grant of which is met out by passing an 'enforceable decree or order' by the Honourable Supreme Court. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to Equity over the Law. It is a justice oriented approach as against the strict rigors of the Law. It is with this object in mind this article has also affected a few areas of the income tax act, 1961 directly and also indirectly. At this juncture it is imperative to mention that Article 142 is specifically kept outside the purview of article 141 as its implementation changes based upon the facts of each case. Accordingly, as it does not constitute ratio decidendi and thus, loses its basic premise of making it a binding precedent. The directions issued can widely be interpreted as a grant of relief while that of article 141 as the declaration of Law. The Hon'ble Supreme Court in the case of Arjun Khiamal Makhijani v. Jamnadas C. Tuliani (1989) 4 SCC 612 has held that, Article 142 does not contemplate doing justice to one party by ignoring mandatory statutory provisions and thereby doing complete injustice to the other party by depriving such party of the benefit of the mandatory statutory provisions, thereby laying thrust on the concept of complete justice.

## **LAWS AFFECTED BY ARTICLE 142 :**

### **1. EXTENSION OF PERIOD OF LIMITATION :**

The Apex Court invoked its plenary powers under Article 142 of the Constitution to extend limitation period of appeals on account of coronavirus (COVID-19) pandemic vide its order dated 23.03.2020. A bench of Hon'ble Chief Justice S. A. Bobde and Justices L. N. Rao and Surya Kant held that the Court has taken suo-motu cognizance of the situation arising out of the challenge faced by the country because of Covid-19 virus. As a result of the covid19, difficulties may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State), the Apex Court in order to obviate such difficulties stated *"it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings"*. The Hon'ble Apex Court used this power under Article 142 **read with** Article 141 of the Constitution of India and declared that this order was a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. Although the order does not cover appeals to be filed before CIT(A) or submissions to be made before tax authorities specifically but the use of the phrase 'authorities' justifies its applicability to direct tax laws as well. However, the introduction of The Taxation and Other Laws (Relaxation of Certain Provisions)

# Article 142 of Constitution in Covid 19

Ordinance, 2020 has provided the much need clarity especially in respect of limitation for filing of appeals under tax laws though it has created conflict as regards date which has been discussed below.

## 2. FURTHER EXTENSION OF PERIOD OF LIMITATION :

Considering the extension of lockdown till 17.05.2020 and also considering the difficulties faced by assesses / practitioners due to COVID-19, the Apex Court further modified its earlier order on 06.05.2020 directing that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders. The Hon'ble Court further clarified that in case the limitation expires after 15.03.2020, then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises, shall be extended for a period of 15 days after the lifting of lockdown. This order has extended the period of limitation from 15.03.2020 till further orders with further period of extension of 15 days subsequent to lifting of lockdown. However, in contrast The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 has extended the period of limitation from 20.03.2020 to 29.06.2020 in respect of matters mentioned in the said Ordinance. There appears to be a conflict in the dates declared by the Hon'ble Apex Court being 15.03.2020 and by the Taxation Laws Ordinance being 20.03.2020 which has stirred confusion in the legal circles. However, in all fairness, in case of any dispute, it is certainly the order of the Hon'ble Apex Court which shall only prevail being the Law of the Land declared under Article 141 of the constitution.

## 3. VIDEO CONFERENCING IN COURT – GUIDELINES :

The COVID-19 outbreak demands social distancing, and in order to preserve the rule of law and the Constitution of the Country, it is essential to follow the social distancing guidelines whereby each and every individual is expected to cooperate in implementation of measures designed to contain the spread of virus and the scaling down of conventional operations within the precincts of courts is also a measure in that direction. That it is not a matter of discretion but a bounded duty of each and every individual. The Hon'ble Apex Court held that access to justice is fundamental to preserve the rule of law and the same have to be rendered within constitutional boundaries by compliance with social distancing guidelines as envisaged by the health authorities. To obviate any difficulty in rendering justice the Hon'ble Apex Court laid stress on technology enabled video conferencing vide its order dated 06.04.2020 so that justice is effectively rendered without compromising the core legal principles of adjudication.

The Hon'ble Apex Court referred to the decision of Supreme Court in State of Maharashtra vs Praful Desai (2003) 4 SCC 601 wherein the court held that term 'evidence' includes electronic evidence and that video conferencing may also be used to record evidence. This concept has paved up way for the virtual courts to function which are similar to physical courts. Taking recourse to article 142 of the constitution and in order to render complete justice the Apex hereby issued following guidelines and directions , , , ,

1. All measures entailing reduction of physical presence of litigants in courts and maintaining best health practices with social distancing norms shall be deemed lawful.
2. Courts are to ensure robust functioning of the judicial system through the use of video conferencing technologies.

# Article 142 of Constitution in Covid 19

3. Every High Court is authorised to determine modalities for use of video-conferencing;
4. All Courts should maintain a helpline for grievances regarding video feed-line, during and immediately after the hearing;
5. Courts should make appropriate arrangements for litigants who cannot access video-conferencing facilities;
6. Until appropriate rules are framed by the High Courts, video-conferencing will be employed for hearing arguments;
7. Evidence will not be recorded via video conferencing in any case. Further, where evidence must be recorded in a case, the presiding officer shall ensure that appropriate distance is being maintained inside the Courtroom;
8. The Court will have the power to restrict entry into Courtrooms, as and when necessary to maintain distancing. Furthermore, no presiding officer will restrict the entry of the parties to the case unless the parties are suffering any health problems;
9. Additionally, the Presiding officer will also have the power to adjourn proceedings if the courtroom crowd cannot be managed.

It was further reiterated that the directions mentioned herein above, have been issued to ensure that the Judiciary rises to face the unique challenge that has been brought about by the outbreak of COVID-19 pandemic, and that this order shall remain in place until further orders.

## **VIRTUAL ERA : HIGHS AND LOWS :**

That the invocation of Article 142 of the Constitution is not alien to the Income Tax Law. The Hon'ble Apex Court in CIT, Shimla v. Greenworld Corporation had ordered fresh assessment and further held that for rendering complete justice an order passed on dictates of superior without following the due process has to be quashed as being a nullity thereby granting a relief to the assessee. The present order of Hon'ble Apex Court under article 142 dated 23.03.2020 & 06.05.2020 extending period of limitation will safeguard the interest of the Taxpayers as well as the Revenue simultaneously and definitely yield complete justice. Besides above, the orders framed by Apex Court during Covid 19 outbreak has also furthered the cause of Income Tax Department in introducing faceless assessments as well as e-appeals. Recently the Hon'ble President of the Income Tax Appellate Tribunal announced to all the stakeholders that the E-Filing Portal developed in the Income Tax Appellate Tribunal was ready for launch post compliance of mandatory security audit in accordance with the Guidelines issued by the Government of India. Therefore, it is the need of the hour that there should be uniform implementation of e-filing in all Courts, Tribunals, Quasi Judicial Offices etc. all over the country, building secure and robust technical infrastructure leading to improvement in video-conferencing & other facilities and standardising of websites in order to make it easier for the

# Article 142 of Constitution in Covid 19

public to access the Judiciary. These measures will not only avoid any disruptions that may arise in future due to force majeure causes like covid 19 but will significantly expand access to Judiciary for large sections of the society with lower cost, much more greater efficiency and will go on to reduce the geographical barrier to a large extent. However, there is a strong apprehension in the minds of litigants as well as professionals that justice may not be forthcoming in virtual era. This is more so because recently in February 2020 the Hon'ble Madras High Court in *'Salem Sree Ramvilas Chit Company P. Ltd.* has set aside the order of the assessing officer treating sums deposited in bank account as unaccounted money under section 69A of the income tax act, by expressly stating that **assessment proceedings has resulted in distorted conclusion on facts** that the amount collected by petitioner during the period was huge and remained unexplained. **The court went on the state that assessment proceedings under the virtual/faceless scenario would required proper determination of facts by proper exchange and flow of correspondence between the assessee and the revenue.** The facts as well as reasoning involved in the said judgment depict the grim situation prevailing in the tax department which cannot be overlooked lightly. However, it appears that the CBDT has taken a proactive measure in the notification issued for faceless assessments whereby the National e-assessment centre may also show cause the assessee as to why the assessment should not be completed as per the draft assessment order framed by the assessment unit or may also refer the same to review unit for conducting a review of the order. Under the faceless assessments scheme, it appears that the assessee will be able to put forward their contentions before the AO right up to the stage of draft assessment order so that injustice is not suffered by him. However, it is equally true that the revenue armed with the power to determine the total income should cultivate and maintain five ethical principles – judicial aloofness, honesty and integrity, independence, humility and impartiality. It is said that Justice should not only be done but should manifestly and undoubtedly be seen to be done and therefore, it is the onerous duty of both the litigants as well as revenue to work together because the purpose of all Law is Justice and Justice alone.

## **EPILOGUE :**

The virtual/faceless era is strongly believed to bring in transparency, accountability and efficiency in the process thereby reducing the harassment of taxpayers and removing the scope of nepotism and corruption in the profession. There is strong apprehension among professionals doubting the efficacy of the system because the taxpayers may not be able to explain their case effectively because of complexities involved in spite of having made their arguments/submissions in a lucid manner. But such fears will fade away once the revenue accepts the taxpayer's documented position in good faith, provides a fair trial through video conferencing or other modes and endeavors to apply the Law without any bias. Let me be sanguine, to say that once this happens the virtual/faceless era can bring monumental accomplishments. This pandemic era has challenged all of us to move forward and accept challenges because the price of doing the same old thing is far higher than the price of change. Our real problem, then, is not our strength today; it is rather the vital necessity of acting today to ensure our strength tomorrow in all walks of life. Therefore, we all have to continually become a student of change because it is the only thing that will remain constant and it is in the readjustment to our surroundings where the art of life lies. Let me sum up the entire write up with the famous quote of of Pauline R Kezer "Continuity gives us roots; change gives us branches, letting us stretch and grow and reach new heights".

**CA Prafulla Pendse**

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# Residential Status due to Covid 19



CA Sanskar Agrawal

The Corona virus disease 2019 (COVID-19) has been declared a global pandemic by the World Health Organization. Apart from the tragic health impact on those afflicted, the pandemic has additionally influenced the day to day lives of individuals everywhere throughout the world. Because of lockdowns executed in different places of the globe, the world economy is under pressure. People are stranded at various locations on account of travel restrictions. The governments of various countries have been focusing on safety and the well-being of people.

The nationwide lockdown suspended the operation of international flights and people had to prolong their stay in India which can affect the taxability in India. This is because, as per Indian laws, the income tax due in India of an individual depends on the Residential Status, which depends upon physical presence in India. Due to change in Residential Status, an individual may become liable to tax in India not only from sources of income in India but also from sources outside India.

To provide relief to people who have not been able to move out of India because of lockdown, the Central government has issued a clarification in residency under Section 6 of the Income Tax Act, 1961. As per circular No. 11 dated May 8, 2020 while determining Residential Status for FY 2019-20, the days an individual was present in India would be excluded as below:

<b>SCENERIO</b>	<b>PERIOD OF STAY IN INDIA TO BE EXCLUDED WHILE DETERMING RESIDENTIAL STATUS FOR F.Y. 2019-20</b>
<b>If she/he has</b>	
<b>Been unable to leave India on or before 31<sup>st</sup> March 2020.</b>	<b>From 22<sup>nd</sup> March 2020 to 31<sup>st</sup> March 2020.</b>
<b>Departed on evacuation flight on or before 31<sup>st</sup> March 2020</b>	<b>From 22<sup>nd</sup> March 2020 to date of his/her departure from India.</b>
<b>If she/he was quarantined in India on account of COVID—9 on 1<sup>st</sup> March 2020 and has</b>	
<b>been unable to leave India on or before 31<sup>st</sup> March 2020</b>	<b>From 1<sup>st</sup> March 2020 to 31<sup>st</sup> march 2020.</b>
<b>Departed on evacuation flight on or before 31<sup>st</sup> March 2020</b>	<b>From 1<sup>st</sup> March 2020 to date of his/her departure from India.</b>
<b>If she/he was quarantined in India on account of COVID - 19 after 1<sup>st</sup> March 2020 and has.</b>	
<b>been unable to leave India on or before 31<sup>st</sup> March 2020</b>	<b>From beginning of his/her quarantine to 31<sup>st</sup> March 2020</b>
<b>Departed on evacuation flight on or before 31<sup>st</sup>March 2020</b>	<b>From beginning of his/her quarantine to date of his/her departure from India.</b>

The said circular, a reference is made to exclude days for an individual who came on a visit to India on or before 22 March 2020.

# Residential Status due to Covid 19

Further, there is no clarity whether these days of involuntary presence in India should be excluded in the subsequent tax years while evaluating the cumulative presence of 365 days (in previous 4 FYs) / 729 days (in previous 7 FYs), for determining Residential Status . As individuals are present in India due to reasons beyond their control, it would be logical to assume that such days should be excluded. Revenue authorities, to avoid any scope for litigation on this aspect, should issue necessary clarification.

The involuntary presence will also affect such individuals for the new FY, which has commenced on 1 April 2020. The Revenue authorities have indicated that norms for FY 2020-21 will be relaxed on resumption of international flights (based on the relevant dates).

The residency rules in India are complex and applicability of rules in case of each individual would be different based on their fact pattern.

Despite the above relaxation, it is advisable that employees need to be mindful of the presence due to their involuntary stay in India while determining their RS and carefully plan their subsequent travel to India.

**CA Sanskar Agrawal**

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# Income Tax Returns for A. Y. 2020-21

CA Pratik Umale

## Applicability of Income Tax Return forms & some of the major changes in form notified for AY 2020-21

In exercise of the powers conferred by Section 139 read with Section 295 of the Income-tax Act, 1961, The Central Board of Direct Taxes (CBDT) has notified the new Income Tax Return (ITR) forms for FY 2019-20/ AY 2020-21, vide Income-Tax (12th Amendment) Rules, 2020 having "Notification No. 31/2020 Dated 29.05.2020", in line with the amendments made by the Finance Act, 2019.

Like every year, there are some changes in the ITR form for A.Y. 2020-21 / F.Y 2019-20 issued by the CBDT, which shall be discussed below in detail. But let us clear all our confusion which any one may have while choosing the ITR Form applicable to the assessee.

Let us first understand the applicability for ITR forms:

### **Form ITR-1 (Sahaj) & Form ITR-4 (Sugam)**

ITR form-1(Sahaj) is for those Individuals who is a Resident (other than not ordinarily resident) and having his/her total income upto Rs. 50 lakhs, having Income from Salaries, one house property, income from other sources, and agricultural income up to Rs. 5,000.

Likewise ITR form-4(Sugam) is for individuals, HUF's or a Firms (other than LLP) who are resident having there net total income upto Rs.50 lakhs and having income from business and profession which is computed under Section 44AD, 44ADA or 44AE of the Income Tax Act, 1961.

Both these ITR shall not be filled by an assessee if any of the conditions mentioned below is attracted:-

- a) Individual is owner of more than one house property, and income for which is chargeable under the head "Income from House Property".
- b) Director of any company.
- c) Owner of unlisted equity share at any time during the previous year.
- d) An Individual who owns any kind of asset or is an Authorised signatory of any account or earns any source of income from countries located outside India.
- e) Earns Income under the head "Income from Other Sources" in the nature of:-
  - i. winnings from lottery;
  - ii. activity of owning and maintaining race horses;
  - iii. income taxable at special rates under Section 115BBDA or Section 115BBE; or
- f) Individual having any brought forward loss or loss to be carried forward under any head of income.

### **Form ITR-2**

This ITR form shall be filled by those Individuals and HUFs who do not have income from profits and gains of business or profession.

### **Form ITR-3**

This ITR form shall be filled by those Individuals and HUFs who have income from profits and gains of business or profession.

# Income Tax Returns for A. Y. 2020-21

## **Form ITR-5**

This ITR form is applicable for persons Other than an Individual, HUF, Company and person filing Form ITR 7.

## **Form ITR-6**

This ITR form is applicable to Companies other than companies claiming exemption under Section 11 of the Income Tax Act, 1961.

## **Form ITR-7**

This form is for persons including Companies required to furnish return under Sections 139(4A) or 139(4B) or 139(4C) or 139(4D) of the Income Tax Act, 1961 only.

It is very important to choose the form which is applicable to the assessee so that information could be timely obtained and return could be filed accordingly.

Now let us understand the changes done by CBDT in ITR Form this year in comparison with the last year.

### **Some of the majorChanges in ITR Form's are mentioned below:-**

- 1. Inter changeability of PAN and Aadhaar Number has been introduced in the new ITR Forms.**
  - While filing ITR-1, ITR-2, ITR-3 or ITR-4, an Individual assessee having Aadhaar Number but not having a PAN can file his/her Return of Income by simply quoting his/her Aadhaar Number.
  - In case of let-out property, instead of PAN and TAN details of the Tenant, Aadhaar Number of the Tenant can be provided if such tenant is an Individual.
  - While furnishing audit information in ITR-3, ITR-5 and ITR-6, there is an option to give either the PAN or the Aadhaar Number of the Auditor.
  - While providing information of Key Persons in ITR-6, PAN and Aadhaar Number can be used interchangeably.
- There is a check back introduced for confirmation of applicability of "7th Proviso to section 139(1) of The Income Tax Act, 1961" i.e. deposit of Rs 1 Crore or more in current account or have incurred expense of Rs 2 Crore or more on foreign travel or paid electricity bill of more than Rs 1 Lakh in the previous year. This information is to be provided while filing ITR-1, ITR-2, ITR-3 or ITR-4.

Are you filing return of income under Seventh proviso to section 139(1) but otherwise not required to furnish return of income? - (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please furnish following information [Note: To be filled only if a person is not required to furnish a return of income under section 139(1) but filing return of income due to fulfilling one or more conditions mentioned in the seventh proviso to section 139(1)]	
Have you deposited amount or aggregate of amounts exceeding Rs. 1 Crore in one or more current account during the previous year? (Yes/No)	Amount (Rs) (If Yes)
Have you incurred expenditure of an amount or aggregate of amount exceeding Rs. 2 lakhs for travel to a foreign country for yourself or for any other person? (Yes/ No)	Amount (Rs) (If Yes)
Have you incurred expenditure of amount or aggregate of amount exceeding Rs. 1 lakh on consumption of electricity during the previous year? (Yes/No)	Amount (Rs) (If Yes)

- 3. New Schedule DI i.e. Details of Investments has been incorporated in all the ITR Forms:** As we are aware that CBDT has allowed tax saving investment/ expenditure which covered under Chapter-VIA-B of The Income Tax Act, 1961 to be invested or paid upto 30th June 2020. So to provide information for investment /expenditure done before 30th June 2020 this column has been inserted.

# Income Tax Returns for A. Y. 2020-21

4. Earlier we have an option to choose any one bank account to claim refund. But now in New Forms, we have an option to **choose more than one account** to claim refund. But if we opt to choose more than one account, then refund will be credited to one of the accounts decided by CPC after processing the return.
5. A separate column **has been introduced under 'Income from other sources' for deduction u/s 57(iv)** – in case of interest received on compensation or enhanced compensation under section 56(2)(viii).
6. A minor amendment in section can change the whole situation and scenario, the same thing happened in Section 44AB related to Audit under Income Tax Act. CBDT has made some changes in Form ITR-3, ITR-5 or ITR-6, by incorporating certain **additional details requiring to be filled by assessee under Audit**. These are as follows:
  - a) Whether assessee is declaring income only under Section 44AE /44B /44BB /44AD /44ADA /44BBA /44BBB?
  - b) If No, whether during the year Total sales/turnover/gross receipts of business exceeds Rs. 1 crore but does not exceed Rs. 5 crores?

If the answer to point (b) above is Yes, whether aggregate of all amounts received including amount received for sales, turnover or gross receipts or on capital account like capital contributions, loans etc. during the previous year, in cash, does not exceed five per cent of said amount?

Also, if the answer to point (b) above is Yes, whether aggregate of all payments made including amount incurred for expenditure or on capital account such as asset acquisition, repayment of loans etc., in cash, during the previous year does not exceed five per cent of the said payment?

7. Further in Form ITR-3, ITR-5 or ITR-6 there is additional disclosure in “Schedule Other Information” Point No. 11(da) and point No 17 is added.
  - a) Point 11 – Any amount debited to profit and loss account of the previous year but disallowable under section 43B Sub Point (da) – Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking nonbanking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing.
  - b) Point 17 – Whether assessee is exercising option under subsection 2A of section 92CE (Tick – Yes/ No) [If yes , please fill schedule TPSA].
8. In ITR-4, under “**Schedule BP**”, while calculating the Gross Turnover or Gross Receipts under Section 44AD, amounts received through prescribed electronic modes has been incorporated in addition to amounts received through account payee cheque, account payee bank draft and bank electronic clearing system.
9. While filing ITR-1, ITR-2, ITR-3 or ITR-4, under Nature of Employment, Government employees have been bifurcated as Central Govt. and State Govt. employees. Also, a new option “NA” has been added to the list. This option can be used by individuals claiming Family Pension, etc.
10. While filing ITR-2, ITR-3, ITR-5 or ITR-6, under “**Schedule CFL**” i.e carry forward of losses, now there is a requirement of bifurcation of loss details in two columns mainly Normal loss and previously taxed income. This specification is required for House Property, Short Term Capital Gains and Long Term Capital Gains.

**CA Pratik Umale**

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# Impact on MSME DUE TO Covid 19



CA Roli Agrawal

The far-reaching impact of novel coronavirus continues to evolve. Though the Indian government is taking enormous measures to curb the loss caused by global pandemic, MSMEs are grappling for stability when sales and revenue remain at standstill whereas it is difficult to get hold of expenses.

In a developing country like India, MSME industries are the backbone of the economy. The MSME sector contributes to 45% of India's Total Industrial Employment, 50% of India's Total Exports and 95% of all industrial units of the country and more than 6000 types of products are manufactured in these industries (As per msme.gov.in). When these industries grow, the economy of the country grows as a whole and flourishes.

The Indian MSME sector has unremittingly acted as the bulwark for the Indian economy, providing it resilience to ward off global economic shocks and adversities. MSMEs contribute around 6.11% of the manufacturing GDP and 24.63% of the GDP from service activities as well as 33.4% of India's manufacturing output. They have been able to provide employment to around 120 million persons. The sector has consistently maintained a growth rate of over 10%.

With adverse outcomes looming large on the economy, government intervention and relief measures are the need of the hour to minimise the damage being caused to industry, economy and livelihood of many. The government has announced a change in the definition of MSMEs by revising upwards the investment limit and bringing in an additional criteria of turnover size of the company (as per the press release by Finance Minister on 13th May). The new definition of MSME would be:

- a. **Micro** – Investment less than Rs 1 crore and turnover less than Rs 5 crore.
- b. **Small** – Investment less than Rs 10 crore and turnover of less than Rs 50 crore.
- c. **Medium** – Investment less than Rs 20 crore and turnover less than Rs 100 crore.

The definition being changed is done in the favour of MSMEs. There has always been this fear, among successful MSMEs also, that if they outgrow the size of what has been defined as an MSME, they will lose their entitled benefits. This is why MSMEs like to remain within the definition rather than grow. With the revised definitions of MSMEs, they will not have to worry about growing their size and can still avail benefits.

In a bid to provide support to the struggling MSME sector, the government has announced :-

- i. **Collateral-free automatic loans worth Rs 3 lakh crore**, for those firms with Rs 25 crore outstanding loans or annual turnover is over Rs 100 crores. The tenure on the loans would be 4 years, with moratorium of 12 months, also 100% credit guarantee to banks and NBFCs on principal and interest by the central government. No fresh collateral is required for the above scheme and is valid until October 31, 2020. Guaranteed emergency credit will be available for retailers and other businesses too even if they are not registered as MSME.

# Impact on MSME DUE TO Covid 19

- ii. Second scheme for the MSMEs that are stressed, government will facilitate provisions of **Rs 20,000 crore as subordinate debt.**
- iii. In the third scheme for the MSME sector, **Rs 50,000 crore equity infusion** through 'Fund of funds' for MSMEs doing well and wanting to expand their capacities. This handholding will help MSMEs to list their companies in the stock markets.
- iv. Also MSMEs **with receivables from government contracts will receive payment within 45 days.**
- v. The government has disallowed global companies from participating in tenders up to Rs 200 crore, earmarking that space exclusively for Indian companies.  
The revenue generation remains on hold, there are several expenses that the companies can't get their hands off. Though revenue streams of many MSMEs remain dried up in crisis situation, many companies are utilising these days to upgrade the skill set of their workforce. Some organisations are training their team on various productivity tools and also, roped in lifestyle coaches training the team on Stress Management, Personal Styling, etc.

Since it is unclear as to when life comes back to normal, government and businesses will have to work together towards phased re-starting of business operations and be prepared for structural changes in business activities. A big hurdle to restarting now is the lack of labour availability.

## What Needs to be Done?

Though government has taken favourable measures, it needs to think innovatively to save the sector that has been growing tremendously and contributing considerably to the economy. Even if banks have given moratorium options, they are still adding interest for the months we are not paying. Banks can avoid charging interest for these months when we are not able to pay EMIs. Also, some exemptions in GST & risk premiums will be a great relief.

**CA Roli Agrawal**

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*Thank  
you!*

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