# THE ORACLE

MANGALURU BRANCH (SIRC) E-NEWSLETTER

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#### From the desk of the Chairman

CA. Gautham Pai D. Chairman – ICAI Mangaluru

Dear Members



#### Greetings of the Season

The Month of April comes with the dawn of the New Financial year & also the season of Bank Audits kick starts right away. I am certain most of the Members would have been engaged in the Audits during the month & major part of the month has elapsed in that. The Branch as always has been active in engaging activities & the month of April was no different.

The Branch organized A Free Medical Health Camp for the benefit of society at large on the occasion of World Health Day on April 7th in association with Amritha Charitable Foundation & more than 150 beneficiaries made use of the platform. It was indeed an outreach program & an Image Building exercise for the ICAI. As the Chairman of the Branch, I was also bestowed with a golden opportunity to meet & greet the Hon'ble Prime Minister of our Nation Shri Narendra Modi Ji on his visit to our city of Mangaluru on April 14th & it was truly a memorable experience as well a true recognition for the Brand CA. The Branch also launched a Residential Refresher Course (RRC) on April 17th in the two most ancient cities of Bharat, i.e., Varanasi & Ayodhya from June 25th to 28th & the response has been tremendous. During the month on April 30th we also organized a Breakfast Study Circle Meet on the topic of RERA which was engaged by a Young Member of our Branch CA. Nithesh Shetty.

The month of May is eagerly awaited with a lot of events lined up for the benefit of our members. The Branch is all set to commence the ISA 3.0 Post Qualification Course on May 2nd spanning 3 weeks. On the occasion of National Technology Day on May 11th, the Branch will be organizing a Study Circle Meeting on Technology & AI which we'll be deliberated upon by CA. Dayaniwas Sharma & CA. Anand Prakash Jangid. The season is also that of GST Notices & to equip the Members with requisite knowledge & knowhow the Branch is organizing a Two-Day Workshop on Demands & Appellate Remedies on May 24th & 25th. Further a Breakfast Study Circle Meeting is also planned at the end of the month on a topic of utmost relevance.

The Mangaluru Branch is delighted to be bestowed with an opportunity to host the CA Students National Conference for the consecutive year & this year it shall be hosted on June 14th & 15th at the iconic venue of Mangaluru i.e., the Town Hall. We heartily thank the BOS Chairman & the Vice Chairman for reposing faith in us & we request all the Members of our Branch to support us in this endeavor as always & enable the SICASA host yet another wonderful event for the betterment of the student's fraternity.

We once again call upon our Members to take part in the events of the Branch in large numbers & extend your support by means of active participation.

Thank you

# Tax deductibility of contributions to a Group Gratuity Scheme:

- CA Pradeep Kamath, pk@aspr.co.in, & Ms Ranjani Ganesh, ranjani@aspr.co.in



On 10th January 2024, the Government of Karnataka notified the Karnataka Compulsory Gratuity Insurance Rules, 2024 ("Rules"), becoming the second state (after Andhra Pradesh) to implement Section 4A of the Payment of Gratuity Act, 1972. Employers in the state are now required to obtain an insurance policy, make all payments towards the premium, and ensure renewal periodically. A gratuity payout is a statutory obligation for the employer – and an entitlement for the employee by extension – and mandating an insurance cover is a well-intentioned measure taken in the interest of employee welfare.

The Rules exempt two classes of employers from obtaining an insurance policy:

- An employer that has already established an approved gratuity fund ("AGF"), and who desires to continue as is.
- .... and an employer that employs at least five hundred people, who establishes an AGF.

For a fund to qualify as an AGF, it must ensure compliance with the provisions of the Income Tax Act, 1961 ("Act"), which are contained in Part C of the Fourth Schedule, and Part XIV of the Income Tax Rules, 1962. They impose three important caveats: approval of the appropriate tax authorities, the constitution of the fund under an irrevocable trust, and a cap of 8.33% of salary on both initial and annual contributions to the Fund. Contributions to the Fund may thereafter be privately managed or used towards a Group Gratuity Scheme of an insurance provider.

The position of the tax law on the deductibility of contributions to an AGF is clear under the Act. Contributions made to the fund are tax-deductible under Section 36(v), and provisions for contributions are deductible under Section 40A(7). In the case of CIT vs. M/S. Textool Co. Ltd on 9 September 2009, the Supreme Court held that even contributions made directly to the insurance provider (LIC) were deductible, as long as they ultimately came back to an approved fund, based on the principles of reasonable construction of Section 36(v). For employers that are covered by the exemption then, there arises no doubt over the tax deductibility of contributions.

Employers not covered by the exemption can be of two types:

- An employer that employs at least five hundred people but didn't already have, and chooses not to establish an AGF,
- An employer that employs less than five hundred people, but doesn't already have an AGF.

(Peculiarly enough, on a plain interpretation of the Rules, it appears that an employer that hadn't already established an AGF is precluded from claiming an exemption on grounds of subsequently establishing one, if it employs less than five hundred people.)

For enterprises that now approach insurers for a policy, there are two alternatives: the policy can be held in the name of, and for the benefit of a newly-established AGF, or the policy can be held directly by the employer. Of these, it is well-settled that contributions made under the former are tax deductible; the question emerges only for contributions made under a policy held directly by the Company.

Given that Section 36(v) permits only contributions made to an approved gratuity fund, and Section 40A(7) disallows the deduction of any provision for payment of gratuity unless it is towards an AGF or actually paid to an employee, the tax deductibility of other contributions hinges on the application of Section 37 of the Act. Section 37 of the Act permits the deduction of all business expenditures that are not otherwise permitted under Sections 30 to 36. What obstructs the direct application of Section 37 – and a straightforward conclusion – is the non-obstante introduction to Section 40A. "The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

This was upheld by the Supreme Court in its judgement in the case of Shree Sajjan Mills Ltd vs CIT on 8th October 1985:

"[...] for gratuity to be deductible under the Act, must fulfil the conditions laid down in section 40A(7). The deduction could not be allowed on general principles under any other section of the Act because sub-section (1) of section 40A makes it clear that the provisions of the section shall have effect notwithstanding anything to the contrary contained in any other provision of the Act relating to the computation of income under the head "Profits and gains of business or profession."

While one may take a view that 40A(7) applies only to "provisions", and not actual payments, the Supreme Court adopted a broader interpretation of the word provision (in its ordinary sense), as "any amount provided for future use out of gross profits."

The Act, then, seeks to disallow mere appropriations, and by extension, the exception under 40A(7) for payments to an AGF is only because they are constituted under an irrevocable trust – the money cannot fall back under the control of the assessee. This was corroborated in the case of Textool (supra):

"From a bare reading of Section 36(1)(v) of the Act, it is manifest that the real intention behind the provision is that the employer should not have any control over the funds of the irrevocable trust created exclusively for the benefit of the employees."

Insurance policies can be surrendered. Take LIC's Group Gratuity Cash Accumulation Plan – the policy can be surrendered by the Master Policyholder at any time, with notice of three months, upon which surrender value (calculated as stipulated) is paid to the policyholder. Money comes right back into the control of the policyholder-assessee and may be used as they please. If deductions were earlier permitted against contributions, they would essentially be tantamount to a tax benefit on appropriations of profit – which defeats the law.

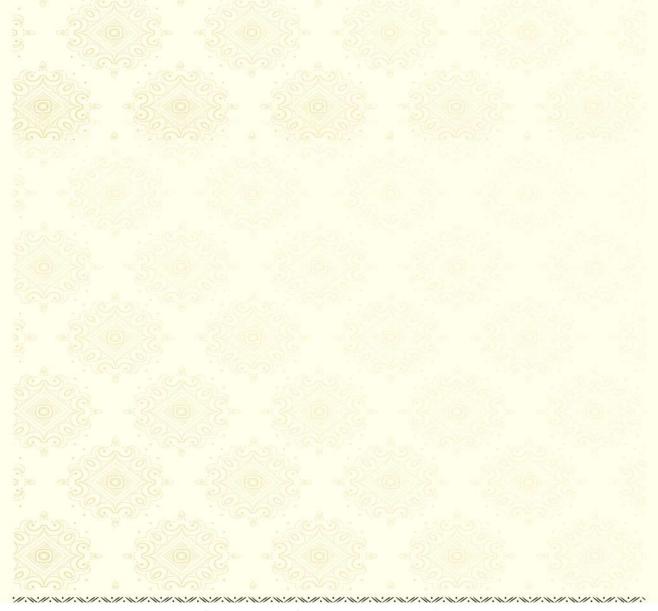
The question that arises at this junction is this: would contributions made for the benefit of an unapproved irrevocable trust be tax deductible? While constructive compliance can certainly be ascertained and substantiated, judicial precedents are a mixed bag:

In the case of Commissioner of Income-tax v. Coimbatore Premier Corpn. (P.) Ltd, the High Court of Madras ruled that:

"It is, therefore, not sufficient to have made a provision or to have made a payment by way of premium to a scheme of gratuity, even if it is under an irrevocable deed of trust."

In the case of Kwality Zippers (P.) Ltd vs. DCIT, the ITAT Lucknow ruled in favour of the assessee, permitting deduction towards group gratuity scheme even if the fund was unapproved, under Section 37 of the Act, placing reliance on judgements in the case of ACIT v. Guntur District Co-operative Bank Ltd (2018), and The District Co-operative Central Bank Eluru vs. ACIT (2018). In the District Co-operative Central Bank Eluru case in specific, in holding that the contribution was deductible, the ITAT made an important observation: "In the instant case the assessee has made the payments to the LIC towards group gratuity scheme directly in approved schemes. The assessee has also obtained the policy in favour of the bank. The assessee has no control over the funds contributed to LIC towards the gratuity."

To conclude, the challenge in asserting what constitutes reasonable construction and how far such construction can deviate from the letter of the law is not new, and as enterprises evaluate and adopt alternative approaches to insuring against their liability for gratuity, the tax law and its many grey areas merit consideration – as with any other business decision.





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# Whether ITC is eligible on employee gratuity insurance?

CA. Akshay Hiregange



Recently Govt. of Karnataka has brought a notification dated 10-01-2024 by exercising powers given under section 4A(4) the Payment of Gratuity Act 1972 - where it has mandated companies registered in Karnataka to obtain gratuity insurance policy for their employees. The said move has been taken to protect employee rights and to provide them financial security in future. Similar rules have been placed Telangana State, Andhra Pradesh, Kerala.

In this short article, we discuss – Whether employers are eligible to avail ITC on GST paid against premium payments w.r.t gratuity insurance services? Before that let us obtain clarity on some important aspects.

#### What is Gratuity?

- Gratuity has not been defined either under the CGST Act 2017 or in the Payment of Gratuity Act 1972. Therefore, the same can be understood from the below case law and general meaning.
- Gratuity is like pension, is retirement benefit for long and continuous services as a provision of old age. It is earned as a matter of right on fulfilling the conditions subject to which it is earned. It is not a gratuitous payment depending upon the discretion or sweet will or fancy of the employer. (Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd., AIR 1984 SC 1064)
- In general meaning gratuity is the amount paid by an employer for the services rendered by an employee during their employment period.

Whether Gratuity Insurance includes Life insurance?

Payment of Gratuity Act, 1972, requires that the gratuity is paid to terminated employees who rendered 5 continuous years of service. 'Terminated employees' situation may arise as follows:

- 1. Superannuation of employees
- 2. Retirement or Resignation
- 3. On their death or
- 4. Disablement due to accident or illness.

In case of death, the gratuity payment is made to the nominee. The computation nor the application of gratuity provision changes upon death, only the payout method for obvious reasons.

Therefore, we can safely conclude that although, payment is made upon death, gratuity insurance cannot be categorised as a life insurance service.

What is the HSN/SAC for Gratuity Insurance?

There is no specific classification for gratuity insurance therefore, HSN/SAC code "997139" which is for "Other Non-Life Insurance services", can be used by the insurance service provider for gratuity insurance while issuing invoice to the service recipient. Blocked credit w.r.t Insurances separately listed in explanatory notes issued by GST Council.

997132 Life insurance services
997133 Accident and health insurance services

#### **GST Provisions:**

- In terms of section 16 of CGST Act a taxpayer is entitled to take ITC on goods or services availed which are used or intended to be used in the course or furtherance of the business. -In terms of section 17(5)(b)(i) ITC on insurance purchased for life and health is not available. Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

#### Judicial Precedent:

- In the case of M/s Hydus technologies India Pvt. Ltd. Versus CCE, C & ST, Hyderabad the department had rejected the refund of ITC on gratuity insurance stating the same is personal in nature, as it is ultimately consumed by employee, which is excluded from the definition of input service under service tax law hence appellant is not eligible on refund on the same. Whereas the appellant contended asserting group gratuity has been taken as it is a statutory obligation as per the Payment of gratuity act. Therefore, the same is for the benefit employer. The benefit bestowed by one legislation cannot be taken away difficult and impractical to be adhered to by another field of law. Therefore, it was concluded that the appellant is eligible for the refund.
- The above case has also been relied upon in the case of M/S. Ganesan Builders Ltd vs The Commissioner of Service Tax where department has denied taking cenvat credits on workmen compensation policy on the appellant.

#### Analysis:

- Commonly, most of the taxpayers are of the view that all the insurance service would fall under blocked ITC category which will lead to loss of ITC benefit, eventually, leading to an excess cost and cash flow for the business.
- For the given scenario, gratuity insurance taken by the employer will not fall under the section 17(5) as it is not relating to life insurance or health insurance.
- ITC on the same can be availed directly as per section 16 as it is intended to be used for furtherance of business of making taxable supplies or zero-rated supplies.
- On the other hand, numerous notices have been issued by GST department to the innocent taxpayers for every type of insurance service demanding to reverse the ITC which is ineligible as per section 17(5)(b). Therefore, for the given case the taxpayer can substantiate by asserting 17(5)(b) only blocks health insurance and life insurance and the said section is not applicable on gratuity insurance.

△ An additional defence to substantiate the claim for ITC – one can take shelter under proviso to section 17(5)(b) stating insurance on gratuity for employees is mandated by the notification issued by Govt of Karnataka under the Payment of Gratuity Act 1972.

Note - Taxpayer is expected to comply with all the conditions of the Payment of Gratuity Act, 1972, such as gratuity given to employees are eligible employees; such insurance has to be taken from Life insurance corporation or any other insurance companies registered under the Companies Act 2013 etc.

#### Conclusion:

Personal view of the author remains that the ITC is eligible on gratuity insurance, irrespective of whether it is mandated by the government. If so, there is always an additional defence to claim said ITC for businesses as it is obligatory now for employers to take gratuity insurance by law.

Suggestions or feedback can be sent to akshay@hnaindia.com
Disclaimer – Views expressed in this article are personal and must not be construed as a legal opinion.

# Unleashing India's Economic Potential: Reforms as Catalysts for Higher Growth.



#### Mr. Prabhakar Kudva, Director, Samvitti Capital

- A Computer Science Engineer and a Business Management Graduate
   Astute active Investor and Trader since 15 years.
   One among 40 under 40 Investment managers by AIWMI
  - (Association of International Wealth Management of India).
- Principal Officer and Fund Manager of the PMS Schemes that Samvitti manages.

India, a nation endowed with a rich history of cultural heritage and a large workforce, has embarked on an ambitious journey of economic transformation. Over the past few decades, a series of reforms have been implemented, each serving as a catalyst for unlocking the country's vast economic potential. These reforms have not only reshaped the economic landscape but have also paved the way for India to emerge as a global powerhouse, attracting investments and fostering an environment conducive to sustained growth.

#### The Era of Economic Liberalization

The genesis of India's reform journey can be traced back to the early 1990s when the country faced a severe economic crisis. This pivotal moment necessitated a paradigm shift, prompting the government to embrace a new economic policy focused on liberalization, privatization, and globalization. The reforms initiated during this period aimed to dismantle the complex web of regulations, reduce bureaucratic red tape, and encourage private sector participation in various sectors of the economy.

The impact of these reforms was profound. India's economy underwent a remarkable transformation, transitioning from a sluggish, inward-looking economy to a vibrant and globally integrated one. The reforms opened the doors to foreign direct investment (FDI), fostered competition, and facilitated the integration of Indian industries with global supply chains. This shift catalyzed economic growth, with India's GDP growth rate accelerating from an average of around 5% in the 1980s to an impressive 7-9% in the decade following the reforms.

#### Continuing the Reform Momentum

Building upon the success of the initial reforms, subsequent governments have continued to introduce measures to enhance the ease of doing business, promote transparency, and create an environment conducive to entrepreneurship and innovation. These efforts have not only sustained economic growth but have also positioned India as an attractive destination for global investments.

#### Digital Revolution: A Game-Changer

One of the most transformative reforms in recent years has been the digital revolution sweeping across India. The government's emphasis on leveraging technology to streamline processes and promote financial inclusion has yielded remarkable results.

The Unified Payments Interface (UPI) is a prime example of this digital transformation. Launched in 2016, UPI has revolutionized the digital payments landscape in India, enabling seamless and secure transactions across multiple banks and payment platforms. This innovative system has not only facilitated financial inclusion but has also fostered the growth of India's thriving fintech ecosystem.

Another game-changer has been the Aadhaar initiative, the world's largest biometric identification system. By providing a unique 12-digit identification number to over 1.3 billion Indian residents, Aadhaar has streamlined the delivery of government services, subsidies, and benefits, while also promoting financial inclusion and curbing corruption.

#### Empowering the Unbanked: Jan Dhan Yojana

Financial inclusion has been a cornerstone of India's economic reforms, with the Pradhan Mantri Jan Dhan Yojana (PMJDY) scheme playing a pivotal role. Launched in 2014, this ambitious initiative aimed to provide affordable access to banking services, including basic savings bank accounts, to millions of unbanked households across the country.

The impact of PMJDY has been transformative, with over 460 million bank accounts opened as of March 2023, bringing a significant portion of the population into the formal financial system. This increased access to banking services has not only fostered financial inclusion but has also facilitated the delivery of government subsidies and benefits directly to beneficiaries' accounts, reducing leakages and ensuring better targeting of welfare programs.

#### Corporate Tax Reforms: Boosting Competitiveness

Recognizing the need to enhance India's competitiveness and attract greater investments, the government has implemented significant corporate tax reforms in recent years. In September 2019, a landmark decision was made to reduce the corporate tax rate for domestic companies to 22%, making India's corporate tax regime more competitive compared to its global peers.

This move, combined with other incentives and simplification measures, has aimed to boost private sector investment, spur economic growth, and foster an environment conducive to business operations. The corporate tax reforms have not only attracted foreign investors but have also incentivized domestic companies to reinvest their profits, driving job creation and economic expansion.

#### Ease of Doing Business: Simplifying Regulations

One of the key focus areas of India's reform agenda has been improving the ease of doing business. Recognizing the need to streamline regulations and reduce bureaucratic hurdles, the government has implemented a series of measures to simplify processes and enhance transparency.

Initiatives such as the introduction of the Insolvency and Bankruptcy Code (IBC) in 2016 have aimed to strengthen the legal framework for resolving corporate insolvencies in a timely and efficient manner. This reform has not only enhanced creditor confidence but has also contributed to improving India's ranking in the World Bank's Ease of Doing Business index.

Furthermore, the implementation of the Goods and Services Tax (GST) in 2017 has been a landmark reform, unifying India's fragmented indirect tax landscape into a harmonized system. By subsuming multiple state and central taxes, GST has not only simplified the tax structure but has also facilitated the seamless movement of goods and services across state borders, enhancing logistics efficiency and reducing compliance costs for businesses.

#### Fostering Entrepreneurship and Innovation

India's reform journey has also focused on nurturing an ecosystem that fosters entrepreneurship and innovation. The government's "Startup India" initiative, launched in 2016, has aimed to create a conducive environment for startups by providing access to funding, simplifying regulatory processes, and promoting incubation and mentorship programs.

Additionally, the "Make in India" campaign has been a significant thrust towards transforming India into a global manufacturing hub. By promoting domestic manufacturing, reducing regulatory bottlenecks, and attracting foreign direct investment, this initiative has aimed to catalyze job creation, boost exports, and foster self-reliance in strategic sectors.

#### **Economic Growth and Development**

The impact of these reforms on India's economic growth and development has been remarkable. According to the World Bank, India's GDP growth rate has averaged around 7% over the past decade, making it one of the fastest-growing major economies in the world.

This sustained economic growth has not only improved living standards and reduced poverty levels but has also positioned India as an increasingly influential player on the global stage. The country's burgeoning middle class, with its rising disposable incomes and consumption patterns, has further fueled domestic demand and attracted foreign investments across various sectors.

#### Conclusion

The implementation of transformative reforms, spanning from economic liberalization to digital revolutions and corporate tax reforms, has unleashed India's economic potential, propelling the country towards higher growth trajectories.

The success of these reforms has not only elevated India's position on the global stage but has also improved the lives of millions of its citizens through increased employment opportunities, enhanced financial inclusion, and improved access to services. However, this journey is far from complete, and continued efforts, coupled with a proactive approach to addressing emerging challenges, will be imperative to sustaining India's economic momentum.

As India navigates the ever-evolving global landscape, its commitment to reforms and its ability to leverage its demographic dividend, technological advancements, and entrepreneurial spirit will be instrumental in shaping its economic destiny. By embracing change and fostering an environment conducive to innovation and growth, India stands poised to cement its status as a formidable economic powerhouse on the world stage.

# The month gone by - April 2024

### Free Medical Health Camp - World Health Day 7th April, 2024













Breakfast Meet - Study Circle Meeting - 30th April, 2024









# Featured on Newspaper



#### WHAT'S IN STORE FOR THE MONTH OF MAY

Date	Event	CPE Hours
May 2 <sup>nd</sup> -	Post Qualification Course on Information Systems Audit	30
May 19th	n n	
(Thu - Sun		
3 weeks)		
May 11 <sup>th</sup>	Study Circle Meeting on the occasion of National Technology	3
2024 (Sat)	Day	
May 24th &	Two Day Workshop on GST Demands & Appellate Remedies	12
25th, 2024		
(Fri & Sat)		
May 30th	Breakfast Meet - Study Circle	3
2024		
(Thur)		