

FOR PRIVATE CIRCULATION ONLY

VOLUME 08; AUGUST 2022



MANGALURU BRANCH OF
SIRC OF ICAI

ಸೌಖ್ಯ

continuous progress

एक इंडिया
TEAM INDIA

BIRMINGHAM
2022
commonwealth
games



15th August

HAPPY INDEPENDENCE
DAY

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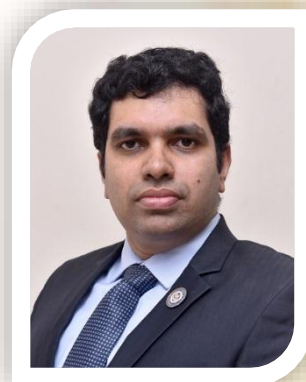
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CHAIRMAN'S MESSAGE

Dear Members & Students,

The month of August is being celebrated as a month of Azadi Ka Amrut Mahotsav to create awareness amongst the public about the struggle of Independence and Journey of India post-Independence. The branch is contributing to the Government Initiatives by participating in Har Ghar Tiranga campaign by delivering flag stand to the members and students of the branch. We request members to participate in the said campaign and make it a successful one.



As a part of CA Day celebrations, the Branch took up the Corporate Social Responsibility initiatives by contributing funds for purchase of uniforms and steel plates worth Rs 50,000/- for the children of Gandhinagar High School, Mangaluru. We thank all the members who contributed to the said cause for motivating us to plan more such initiatives soon.

The Mangaluru Branch is planning to organise career counselling programmes for the students of Pre University College and Degree colleges to motivate and create awareness about the CA course. We request members to coordinate with any of the managing committee members if you have any connections with such institutions so that career counselling programme can be organised by branch at large level.

The Mangaluru Branch is also hosting as joint host with six other branches of Karnataka State a two-day State Level conference at Bengaluru on 19th & 20th of August 2022. We request members to actively participate in the same at large numbers and make it a successful one. Further, the month of August and September will be considered as Tax Audit Season and branch is planning to organise one day seminar in the last week of August to brush up the knowledge and deliberate more on the latest developments in the tax audit.

I would like to end my message with a quote by Dr A P J Abdul Kalam:

"You have to have a goal, but you have to have strategies to achieve it as fast as possible"

Signing off,

CA Prasanna Shenoy M

Chairman

On behalf of Managing Committee



BRANCH ACTIVITIES DURING THE MONTH OF JULY, 2022

SEMINARS

- | | | |
|----|------------|---|
| 01 | 08.07.2022 | Half Day Seminar on

Topic : Accounting Standards for Non Corporate Entities
Preparation of Financial Statements of Non Corporate Entities
Speaker : CA Pramod Jain
Chairman – Accounting Standards Board of ICAI |
| 02 | 09.07.2022 | Half Day Seminar on

Topic : Code of Ethics & Disciplinary Mechanism
Speakers :
1.CA Cotha S Srinivas
Central Council Member – ICAI
2.CA Mangesh P Kinare
Chairman – Ethical Standards Board of ICAI |
| 03 | 21.07.2022 | Half Day Seminar on

Topic : Discussion on Companies Act Revised Schedule III & CARO 2020
Speaker : CA K Gururaj Acharya
Bengaluru |

SOCIAL SERVICES & OTHER ACTIVITIES

- | | | |
|----|------------|---|
| 01 | 01.07.2022 | 74th Chartered Accountants' Day

Chief Guest : CA Shantharam Shetty
Chairman – Indian Red Cross Society , Dakshina Kannada

Programmes :
1.Hoisting of ICAI Flag
2.Blood Donation Camp
3.Distribution of Educational Kits |
|----|------------|---|

BRANCH ACTIVITY GALLERY



**Discussion on Companies Act Revised Schedule III & CARO 2020
by CA K Gururaj Acharya**



**Half Day Seminar on
Code of Ethics & Disciplinary Mechanism by CA Cotha S Srinivas, CCM ICAI and
CA Mangesh P Kinare – Chairman Ethical Standards Board of ICAI**



74th Chartered Accountants' Day

Chief Guest : CA Shantharam Shetty

Chairman – Indian Red Cross Society, Dakshina Kannada



Half Day Seminar on

Accounting Standards for Non Corporate Entities

Speaker : CA Pramod Jain, Chairman – Accounting Standards Board of ICAI

ARTICLE ON – “APPLICATION OF INCOME TAX AND GST ON APARTMENT OWNER’S ASSOCIATION”

INTRODUCTION:

Apartment owners form an Association to take care of the maintenance of building. An Association collects monthly maintenance charges towards reimbursement of various expenditure such as security charges, lift maintenance, electricity charges, housekeeping etc. They also collect charges such as capital maintenance, painting charges etc. Further an Association collects rental fees from the members for using common area, lift, amenities, and fees for transfer of rights during the sale of flat. The excess of Income over Expenditure and also Sinking Fund Collections which is unspent is deposited in Bank Fixed Deposits or any other permitted investments which may earn an additional income by way of interest / Dividend etc.,

Now the question arises, whether there are any tax implications under the Income Tax Act or Goods and Services Tax Act. I have analyzed the same in the succeeding paras.

INCOME TAX ACT:

An Association governs by the principle of mutuality. Accordingly, one cannot earn income by themselves whatsoever. The charges collected from members by way of reimbursement of expenditure and even other receipts by way of revenue or capital will not be taxed.

What is mutual concern: A mutual concern or association is an association of persons (AOP), who agree to contribute funds for some common purpose mutually beneficial and receive back the surplus left out in the same capacity in which they have made the contributions. Therefore, the capacity as contributors and participants remain the same. The participation envisaged in the principle of mutuality is not that the members should take the surplus to themselves.

It is enough if they have a right of disposal over the surplus – *CIT V/S. West Godavari District Rice Millers Association, 150 ITR p.394 (AP)*. It was further held in this case that the members contribute not with an idea to trade, but with an idea of rendering mutual help. The receipt in their hands is not really the profit, as no one can make a profit out of himself, just as he cannot enter into a trade or business with himself. However, in every case in which it is claimed that any income or surplus is exempt from the taxation on the ground that it is an income

or surplus earned by a mutual concern, the Court has to scrutinize the facts and circumstances, whether three conditions have been satisfied. The Assessee claiming an exemption of this nature must establish – (i) the identify of contributors and recipients, (ii) the instrumentality of the Assessee in the matter of carrying out the mandates of its members, and (iii) the impossibility of the Assessee deriving any profit from contribution made to it – *Indian Tea Planters' Association V/S. CIT 82 ITR, p.322 (Cal.) and Cuttack Club (P) Ltd. V/S. CIT, 196 ITR p.407 (Ori.)*

In this context, we may also refer to two land-mark judgements of the Supreme Court. The first judgement is in the case of *CIT V/S. Bankipur Club Ltd., 226 ITR p.97 (SC)*. It was held in this case that excess of receipts over expenditure received by club from facilities extended to its members as part of advantage attached to such membership, is not taxable as income.

The second judgement is in the case of *Chelmsford Club V/S. CIT, 243 ITR p.89 (SC)*. It was held in this case that (i) income of a mutual concern is not assessable to tax, (ii) the charge of tax is on income from property and not on the property itself and (iii) the income from property of a mutual concern is not assessable to tax.

There are a number of issues relating to the principle of mutuality and its applicability to the taxation of social clubs and co-operative societies etc. The same are dealt with hereinafter:

1. Principle of mutuality
2. To what type of income of mutual concerns, the principle of mutuality is applicable?
3. When a mutual concern can be said to indulge in trading activity
4. The Interest on Fixed Deposits is liable to tax
5. In case of multi-activity the income governed by the principle of mutuality will remain exempt from tax:
6. Erosion of the concept of tax exemption on the basis of principle of mutuality.

Principle of mutuality:

The basic principle underlying the principle of mutuality is that no one can make profit out of himself. – *CIT Vs. Royal Western India Turf Club Ltd., 24 ITR p.551 (SC)*. In other words, no one can enter into a trade or business with himself. The essence of mutuality is complete identity between contributors and participators. – *CIT Vs. Kumbakonam Mutual Benefit Fund Ltd., 53 ITR p.241*

(SC). In this case, the Supreme Court has laid down that the essence of mutuality lies in the return of what one has contributed to a common fund and if profits are distributed as shareholders, the principle of mutuality is not satisfied. In this case, Supreme Court has also laid down that all participators must be contributors to the common fund; mere entitlement to contribute will not suffice. There are mutual benefit funds or societies in respect of the income of which the principle of mutuality is normally claimed to be applicable. An entity governed by the principle of mutuality is ordinarily called a mutual concern. A mutual association or concern is an association of persons, who agree to contribute funds for some mutually beneficial common purpose and receive back the surplus left out in the same capacity in which they have made the contribution. Therefore, the capacity as contributors and participators remains the same. They contribute not with an idea to trade but with an idea of rendering mutual help. The receipt in their hands is not really a profit as no man can make the profit out of himself, just as he cannot enter into a trade or business with himself. – CIT V/S. West Godavari District Rice Millers Association, 150 ITR p.394 (AP). Recently, the Apex Court has settled the issues regarding the principle of mutuality in two land-mark judgements, viz.

(i) CIT Vs. Bankipur Club Ltd., 226 ITR p.97 (SC), and

(ii) Chelmsford Club Vs. CIT, 243 ITR p.89 (SC).

The Supreme Court in the case of CIT Vs. Bankipur Club Ltd., 226 ITR p.97 had an occasion to deal with the claims of a number of clubs seeking benefit based on the principle of mutuality.

The principle laid down by the Apex Court in the case of Bankipur Club Ltd., may be summarised, as follows:

“Under the Income-Tax Act, what is taxed is the ‘income, profits or gains’ earned or ‘arising’, ‘accruing’ to a ‘person’. Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial about what particular form an Association takes. Trading between persons associating together in this way does not give rise to profits, which are chargeable to tax. Where the trade or activity is mutual, the fact that, as regards certain activities, certain members only of the association take advantage of the facilities which it offers, does not affect the mutuality of the enterprise.” [Head Note p.97 of the Report]

In this case, there were four appeals, the assessees being Bankipur Club Ltd., Ranchi Club Ltd., Cricket Club of India and Northern India Motion Pictures Association.

The main issue in all these appeals were, whether the assessee-mutual clubs, were entitled to exemption for the receipts or surplus arising from the sale of drinks, refreshments, etc. or amounts received by way of rent for letting out the buildings or amounts received by way of admission fees, periodical subscriptions and receipts of similar nature from its members. In all these cases, the Tribunal as well as the High Court had found that the amounts received by the clubs were for the supply of drinks, refreshments or other goods as also the letting out of building for rent or by way of admission fees, periodical subscription, etc. from the members of the clubs and the same were only for/towards charges for the privileges, conveniences and amenities provided to the members, which they were entitled to, as per the rules and regulations of the respective clubs.

It had also been found that different clubs realised various sums on the above counts only to afford to their members, the usual privileges, advantages, conveniences and accommodation. In other words, the services offered on the above counts were not with any profit motive, and were not tainted with commerciality. The facilities were offered only as a matter of convenience for the use of the members (and their friends, if any, availing of the facilities occasionally).

In view of the aforesaid facts, the Supreme Court held, dismissing the appeals, that in the light of the findings of fact the receipts for the various facilities extended by the clubs to its members, as a part of the usual privileges, advantages and conveniences, attached to the membership of the club, could not be said to be from "a trading activity". The surplus-excess of receipts over the expenditure – as a result of mutual arrangement, could not be said to be "income" for the purpose of the Act. The principle of mutuality in respect of the income of "mutual concern" has been further clarified by the Apex Court in the case of *Chelmsford Club Vs. CIT*, 243 ITR p.89 (SC).

The principles laid down have been summarised in the head note on pp.89 & 90, which is reproduced, as follows: "Under the Income-Tax Act, what is taxed is, the 'income, profits or gains' earned or 'arising', 'accruing' to a 'person'. Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit.

There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes.

Trading between persons associating together in this way does not give rise to profits, which are chargeable to tax. Where the trade or activity is mutual, the fact that, as regards certain activities, certain members only of the association take advantage of the facilities, which it offers, does not affect the mutuality of the enterprise. The law recognises the principle of mutuality excluding the levy of income-tax from the income of such business to which the above principle is applicable. A perusal of S. 2(24) of the Income-tax Act, 1961, shows that the Act recognises the principle of mutuality and has excluded all businesses involving such principle from the purview of the Act, except those mentioned in clause (vii) of that section.

The three conditions, the existence of which establishes the doctrine of mutuality are

- the identity of the contributors to the fund and the recipients from the fund,
- the treatment of the company, though incorporated as a mere entity for the convenience of the members, in other words, as an instrument obedient to their mandate, and
- the impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves."

The Assessee, a members' club, provided recreational and refreshment facilities exclusively to its members and their guests. Its facilities were not available to non-members. The club was running on "no profit no loss" basis in which the members paid for all their expenses and were not entitled to any share in the profits. Surplus, if any, was used for maintenance and development of the club. The club house was owned by the Assessee. The Assessee claimed that it was a mutual concern and so the annual letting value of the club house was not assessable. The claim was rejected by the High Court. On appeal to the Supreme Court, it was held, reversing the decision of the High Court, that the assessee's business was governed by the doctrine of mutuality. It was an admitted fact that the business of the Assessee did not come within the scope of business referred to S. 2(24)(vii). It was not only the surplus from the activities of the business of the club that was excluded from the levy of income-tax, even the annual value of the club house, as contemplated in S.22 of the Act, would be outside the purview of the levy of Income-tax.

When is it Considered not as Mutual Concern?

When association is getting income from bank it is considered as taxable as it is not earned from its members. We can refer following pronouncements for the same.

- *Rajpath Club Ltd. V/s. CIT, 211 ITR p.379 (Guj.)* - In this case, the interest received by the assessee, a sports club, from Fixed Deposit in bank has been held taxable, as the interest was not from a mutual activity.
- Interest on Fixed Deposits is liable to tax Interest on fixed deposits in a bank is taxable as income. It was held in the case of *Rajpath Club Ltd. V/S. CIT, 211 ITR, p.379 (Guj.)* that interest received by the assessee, a sports club, from fixed deposit, was taxable, as the interest was not from mutual activity. Similarly it was held in the case of *CIT V/s. Salem District Urban Bank Ltd., 8 ITR p.269 (Mad)*, that a co- operative society carrying on banking business with non-members also, was not mutual benefit society.

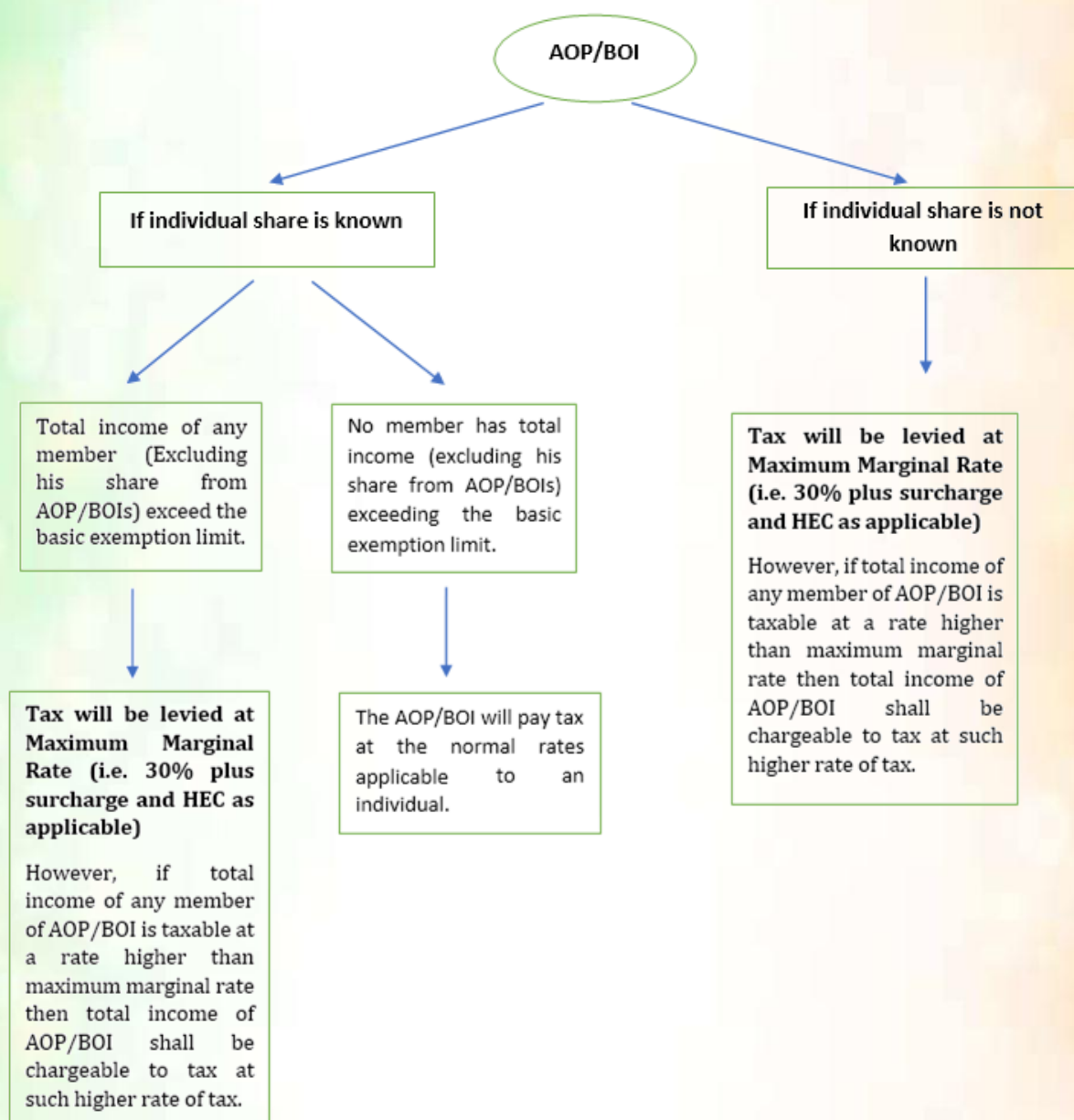
Therefore, after referring to the above case laws from various courts, it can be concluded with the fact that an Association which earns an income from its own members is exempted and if it earns otherwise than from members is taxable.

What is the rate of tax?

We will understand what the rate of income tax to an Association is. Usually, an Association can be formed with the constitution of Association of Person (AOP) or Society.

As per the Income Tax Act, 1961, an AOP/BOI is a separate Assessee. When two or more than two persons or individuals join together to perform some activity and produce income by their efforts in common without forming a Partnership firm or Private/Public Limited Company then we call it an AOP/BOI.

Let us understand the taxability of AOP/BOI:



SOCIETY:

Though Income of Societies Registered under Societies Registration Act, 1860 earned from members is exempt, Income earned from non members of Societies, or any other law corresponding shall be taxable at such a slab rate as applies to an Individual.

GOODS AND SERVICES TAX ACT:

There is no concept of principles of mutuality in Goods and Service Tax Act, 2017(Herein referred as "GST Act"). Further we can understand following definitions before referring taxability of collections of housing society.

- **Supply:** As per Section 7 of CGST Act 2017, supplies includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- **Business:** As per Section 2(17) e of CGST act 2017 "business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.

Above definition clearly explains what is supplies of goods or services by a person in the due course or furtherance of business and business includes provision by above entities of the facilities or benefits to its members.

When to get registered under GST Act?

When society or any organisation exceed turnover of Rs.20 lacs, they have to get themselves registered under the Act. They have to submit the returns and pay the tax if any after deducting limit of Rs.7,500/- per house.

What should be excluded while calculating the limit of Rs. 7500?

Property tax, electricity charges collected from individual flat owners and other statutory levies are excluded.

What should be included while calculating the limit of Rs. 7500?

Water/electricity charges for common areas and common services like clubhouse, swimming pool, along with parking charges, common property tax, payments for repair and maintenance, security, admin, accounting, Non Occupancy charges.

Are share transfer fees/ interest on late payment included in the limit of Rs. 7500?

No. Share Transfer Fees are taxable but not included in the Rs. 7500 limit as no third party is involved. Similarly, interest on default is an individual charge, so it is taxable, but not covered under the limit of Rs. 7500.

Section 24 of the CGST Act, 2017 states that a person liable to pay GST under the reverse charge mechanism have to compulsorily register under GST. The threshold limits of Rs.20 lakh or Rs.40 lakh, as the case may be, will not apply to them. Ex: In case society avail service of GTA then they have to pay tax for the same after getting registered.

What are all the services included in turnover?

As per GST law, “aggregate turnover” refers to the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of persons having the same Permanent Account Number, to be computed on an all-India basis but excludes Central tax, State tax, Union territory tax, Integrated tax and cess. The aggregate turnover computed for the entire financial year between April of a year up to March of next year is called annual aggregate turnover. In other words, it is the total turnover calculated at a PAN level (all GSTINs put together) being sum of the following:

- a) sales value
- b) Exempt sales value
- c) Export of goods and service, Interstate supplies by the business to its sister concern under the same PAN or interstate stock transfer or supplies between distinct persons under the same PAN.
- d) Goods supplied to job worker on principal to principal basis.
- e) Goods received from job worker on principal to principal basis.
- f) For an agent, the supplies made by him on behalf of all his principals would be included while calculating aggregate turnover.

However, the above sum excludes the tax components such as the Central tax, State tax, Union territory tax, Integrated tax and Cess. Further, the taxable value excludes those purchases where the person is required to pay tax under reverse charge. Note that the sales that are subject to reverse charge must continue to form part of the taxable supplies in aggregate turnover.

Interest received on deposit is also to be added in arriving at aggregate turnover.

Exclusion in Aggregate Turnover:

- a) Value of inward supplies of goods and services on which the recipient is required to pay tax under reverse charge mechanism (Table 3.1 (d) of GSTR-3B). However, the value of such supplies would continue to be part of the ‘aggregate turnover’ of the supplier of such services.
- b) Amount of central tax, state tax, union territory tax and integrated tax and compensation cess Goods supplied for job work or received back after job work under section 143 of CGST Act, 2017
- c) For a job worker, the following supplies would not be included in his aggregate turnover:
 - 1. Goods returned to the principal
 - 2. Goods sent to another job worker on the instruction of the principal

It is also worth to refer advance ruling no. KAR ADRG 30/2020 dated 4-5-2020 by Authority for advance ruling in Karnataka.

Conclusion:

Income tax is payable for a society if it is earned from non-members. Under GST, in case if an aggregate turnover exceeds Rs.20.00 lakhs, society has to be get registered under GST Act. However they can claim abatement up to Rs.7,500/- per house from the specified collection.

Article by:



CA K Subramanya Kamath
Past Chairman
Mangaluru Branch of SIRC of ICAI

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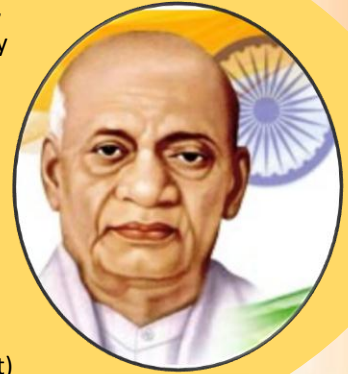
WORDS OF WISDOM

- The main task before India today is to consolidate herself into a well-knit and united power.
- Two ways of building character-cultivating strength to challenge oppression and tolerate the resultant hardships that give rise to courage and awareness.
- One can take the path of revolution, but the revolution should not give a shock to the society. There is no place for violence in revolution.
- Manpower without Unity is not a strength unless it is harmonized and united properly, then it becomes a spiritual power.
- Today we must remove distinctions of high and low, rich and poor, caste or creed.
- Every citizen of India must remember that he is an Indian and he has every right in this country but with certain duties.
- Faith is of no avail in absence of strength. Faith and strength, both are essential to accomplish any great work.
- There is something unique in this soil, which despite many obstacles has always remained the abode of great souls.
- Non-violence has to be observed in thought, word and deed. The measure of our non-violence will be the measure of our success.
- Even if we lose the wealth of thousands, and our life is sacrificed, we should keep smiling and be cheerful keeping our faith in God and Truth.
- My only desire is that India should be a good producer, and no one should be hungry, shedding tears for food in the country.
- It is the prime responsibility of every citizen to feel that his country is free and to defend its freedom is his duty.

- It is only so long as a man can retain the child in him that life can be free from those dark shadows which leave inevitable furrows on a mans forehead.
- Your goodness is impediment in your way, so let your eyes be red with anger, and try to fight the injustice with a firm hand.

About the Philosopher

Vallabhbhai Jhaverbhai Patel, commonly known as Sardar, was an Indian lawyer, influential political leader, barrister, and statesman who served as the first Deputy Prime Minister of India and first Home Minister of India from 1947 to 1950. He is also called the "Unifier of India". He was a barrister and a senior leader of the Indian National Congress, who played a leading role in the country's struggle for independence, guiding its integration into a united, independent nation. He was one of the conservative members of the Indian National Congress. In India and elsewhere, he was often called Sardar, meaning "chief". He acted as the Home Minister during the political integration of India and the Indo-Pakistani War of 1947. The Statue of Unity, the Indian government erected world's tallest statue, was dedicated to him on 31 October 2018 and is approximately 182 metres (597 ft) in height.



FACT ZONE

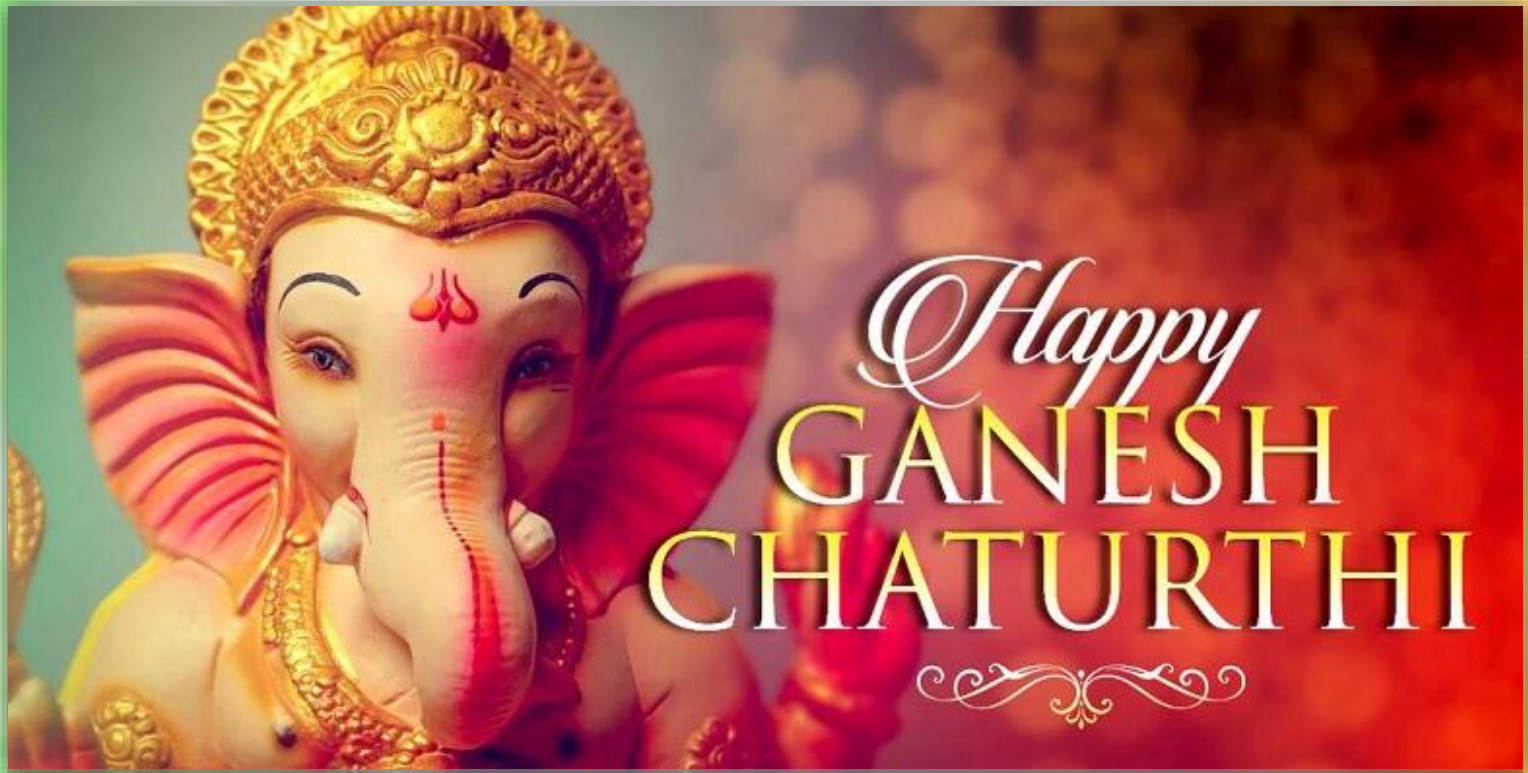
- The Purna Swaraj statement, or "Declaration of the Independence of India," was promulgated during the 1929 meeting of the Indian National Congress, and 26 January was designated as Independence Day in 1930



- In order to achieve total independence for India, the Congress urged citizens to commit acts of civil disobedience and "to carry out the Congress directives issued from time to time."
- It was intended that this Independence Day celebration would incite Indian residents' nationalistic fervour and compel the British administration to consider granting independence.
- Between 1930 and 1946, the Congress celebrated January 26 as Independence Day.
- Meetings where participants made the "pledge of freedom" celebrated the occasion. Such sessions, according to Jawaharlal Nehru's memoirs, were quiet, serious, and "without any remarks or exhortations."
- Gandhi planned for the day to include meetings in addition to "performing some productive activity, whether it is spinning, serving "untouchables," bringing Hindus and Muslims together, working on prohibition, or possibly all of the above."
- The British Labour administration realised in 1946 that it lacked the domestic support, the international backing, and the dependability of indigenous forces to continue to retain control in a restless India since its exchequer had been depleted by the recently ended World War II.
- Clement Attlee, the British government's prime minister, declared on February 20 that British India will have full autonomy by June 1948 at the latest.
- Lord Mountbatten, the new viceroy, moved up the transfer of power date because he thought the ongoing conflict between the Congress and the Muslim League might bring down the interim administration.

- He decided to transfer control on August 15, which is also known as the second anniversary of Japan's World War II surrender.
- On June 3, 1947, the British government said that it had agreed to divide British India into two states, with the successor governments receiving dominion status and an implicit right to leave the British Commonwealth.
- With effect from 15 August 1947, British India was divided into the two new independent dominions of India and Pakistan (which also included what is now Bangladesh).
- The Indian Independence Act 1947 of the United Kingdom Parliament granted the respective constituent assemblies of the new countries full legislative authority.
- On July 18, 1947, the Indian Independence Act 1947 of the United Kingdom Parliament obtained royal assent.





Happy GANESH CHATURTHI

CHATURTHI GANESH

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The Managing Committee of Mangalore Branch of SIRC of ICAI invites articles, write ups and other similar materials in the areas of Accounting, Taxation or any other subject of professional interest for publishing in its E-Bulletin. The articles submitted for consideration of publication should be of 2000-4000 words typed. Soft copy of the article, along with the author's photograph may be sent to icaiebulletin@gmail.com.

Feedback on this e-bulletin can be sent to the editorial team at icaiebulletin@gmail.com

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